

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.

EN BANC REHEARING FROM THE PANEL OPINION REPORTED AT 855 F.3d 76

JOINT APPENDIX – VOLUME I

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June 2017

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¹ With permission by order on motion, an electronic appendix on disk, denoted EA or Elec. Appx., was submitted to the Panel appeal. Further allowed the same disks to remain as part of the En Banc hearing (Katzmann, J., June 20, 2017). Some color screen shots are printed in Volume II.

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15-3775

Zarda v. Altitude Express, Inc.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of May, two thousand seventeen.

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

Plaintiffs-Appellants,

v.

15-3775

Altitude Express, Inc., doing business as Skydive Long Island, and Ray Maynard,

Defendants-Appellees.

Following disposition of this appeal on April 18, 2017, a judge of the Court requested a poll on whether to rehear the case *en banc*. A poll having been conducted and a majority of the active judges of the Court having voted in favor of rehearing this appeal *en banc*, IT IS HEREBY ORDERED that this appeal be heard *en banc*. See Fed. R. App. P. 35(a). The *en banc* panel will consist of the active judges of the Court, as well as those senior judges who sat on the panel that heard the initial appeal. See 28 U.S.C. § 46(c).

JA.001

The parties are instructed to brief only the following question: “Does Title VII of the Civil Rights Act of 1964 prohibit discrimination on the basis of sexual orientation through its prohibition of discrimination ‘because of . . . sex?’”

We invite amicus curiae briefs from interested parties. Appellants’ brief and appendix, and any amicus curiae briefs in support thereof, shall be filed by June 26, 2017. Appellees’ brief and appendix, and any amicus curiae briefs in support thereof, shall be filed by July 26, 2017. Appellants’ reply brief shall be filed by August 9, 2017.

Oral argument will be held on September 26, 2016 at 2:00 p.m. at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk

15-3775
Zarda v. Altitude Express

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2016

(Argued: January 5, 2017 Decided: April 18, 2017)

Docket No. 15-3775

-----x

MELISSA ZARDA, co-independent executor of the estate of Donald Zarda, and
WILLIAM ALLEN MOORE, JR., co-independent executor of the estate of Donald
Zarda,

Plaintiffs-Appellants,

- v. -

ALTITUDE EXPRESS, doing business as SKYDIVE LONG ISLAND, and RAY
MAYNARD,

Defendants-Appellees.

-----x

Before: JACOBS, SACK, and LYNCH, Circuit Judges.

Donald Zarda, a skydiver, sued his former employer in the United States
District Court for the Eastern District of New York (Bianco, J.), asserting (inter
alia) sexual-orientation discrimination in violation of New York state law and sex

discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e et seq. The district court, relying on our decision in *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000), declined to hold that discrimination based on sexual orientation constituted discrimination based on sex for purposes of Title VII. The state-law claim for sexual-orientation discrimination went to trial where a jury found for the defendants. On appeal, Zarda argues that *Simonton* should be overturned. We do not entertain that argument because a panel of this Court could not overturn another panel’s decision. Moreover, we reject Zarda’s argument that he is entitled to a new trial on his state-law claim because of alleged evidentiary errors, unfair discovery practices, and prejudicial arguments to the jury based on gay stereotypes. Consequently, we **AFFIRM** the judgment of the district court in all respects.

GREGORY ANTOLLINO, New York, NY,
for Appellants.

Stephen Bergstein, Bergstein & Ullrich,
LLP, Chester, NY, for Appellants.

SAUL D. ZABELL, Zabell & Associates,
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Lenora M. Lapidus, Gillian L. Thomas, Ria
Tabacco Mar, and Leslie Cooper, American
Civil Liberties Union Foundation, New
York, NY; Erin Beth Harrist, Robert
Hodgson, and Christopher Dunn, New
York Civil Liberties Union Foundation,
New York, NY, for Amici Curiae American
Civil Liberties Union; New York Civil
Liberties Union; 9to5; National Association
of Working Women; A Better Balance;
Coalition of Labor Union Women; Equal
Rights Advocates; Gender Justice; Legal
Voice; National Women’s Law Center;

Southwest Women's Law Center; Women Employed; Women's Law Center of Maryland; Women's Law Project, in support of Plaintiffs-Appellants.

Michael D.B. Kavey, LGBTQ Rights Clinic, New York, NY; Omar Gonzalez-Pagan, Lambda Legal Defense and Education Fund, Inc., New York, NY; Gregory R. Nevins, Lambda Legal Defense and Education Fund, Inc., Atlanta, GA, for Amicus Curiae Lambda Legal, in support of Plaintiffs-Appellants.

PER CURIAM:

Plaintiff Donald Zarda, a skydiver, alleges that he was fired from his job as a skydiving instructor because of his sexual orientation.¹ He sued his former employer, Altitude Express (doing business as Skydive Long Island) and its owner Raymond Maynard (collectively "Altitude Express"), asserting that he was discriminated against in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., and New York law.² The United States District Court for the Eastern District of New York (Bianco, J.), found a triable issue of fact as to whether Zarda faced discrimination because of his sexual orientation in violation of New York law, but otherwise granted summary judgment to Altitude Express on Zarda's discrimination claims. In particular, the district court held that the defendants were entitled to summary judgment on Zarda's Title VII claim because Second Circuit precedent holds that Title VII does

¹ Zarda died in a skydiving accident before the case went to trial, and two executors of his estate have replaced him as plaintiff. Zarda and his estate's executors are collectively referred to as "Zarda."

² Zarda also alleged violations of state and federal laws relating to overtime and minimum wage. Those claims are not before us on appeal.

not protect against discrimination based on sexual orientation. At trial, the jury found for the defendants on Zarda's state-law claims.

On appeal, Zarda requests that we reconsider our interpretation of Title VII in order to hold that Title VII's prohibition on discrimination based on "sex" encompasses discrimination based on "sexual orientation." Since a three-judge panel of this Court lacks the power to overturn Circuit precedent, we decline Zarda's invitation.

Separately, Zarda asserts that several errors infected the trial on his state-law discrimination claim, warranting a new trial. Finding no abuse of discretion by the district court, we affirm the judgment in all respects.

I

In 2010, Rosanna Orellana and her boyfriend David Kengle went skydiving at Altitude Express. Each purchased tandem skydives, in which the instructor is tied to the back of the client so that the instructor can deploy the parachute and supervise the jump. Zarda was Orellana's instructor.

At some point, Zarda informed Orellana that he was homosexual and he had recently experienced a break-up. Zarda often informed female clients of his sexual orientation--especially when they were accompanied by a husband or boyfriend--in order to mitigate any awkwardness that might arise from the fact that he was strapped tightly to the woman.

When Orellana and Kengle compared notes on their respective skydives, and Kengle learned that Zarda had disclosed his sexual orientation, Kengle called Altitude Express to complain about Zarda's behavior. Zarda was fired shortly thereafter. Predictably, the parties dispute *why* Zarda was terminated. Altitude Express observes that Orellana had various complaints about Zarda's behavior, and the company contends that Zarda was fired because he failed to provide an enjoyable experience for a customer. For his part, Zarda asserts that he acted appropriately at all times and was fired because of his sexuality: either because of

his supervisor's prejudice against homosexuals or because he informed a client about his sexuality.³

II

The district court determined that there was a genuine dispute of material fact regarding the reason for Zarda's termination. However, the district court concluded that Zarda was entitled to a trial only with respect to his state-law cause of action. See N.Y. Exec. Law § 296(1)(a) (defining discrimination on the basis of sexual orientation as "an unlawful discriminatory practice"). Zarda's Title VII claim, by contrast, was dismissed at summary judgment.

That outcome ultimately resulted from longstanding tension in Title VII caselaw. While this Court has stated that Title VII does not prohibit discrimination based on sexual orientation, *Simonton v. Runyon*, 232 F.3d 33, 36 (2d Cir. 2000), the Supreme Court has held that Title VII does forbid discrimination based on a failure to conform to "sex stereotypes," *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989). See also *Dawson v. Bumble & Bumble*, 398 F.3d 211, 217-19 (2d Cir. 2005) (reaffirming *Simonton*). In light of these precedents, Zarda premised his Title VII cause of action on the ground that he had been terminated for failing to conform to sex stereotypes. Specifically, Zarda alleged that his employer "criticized [Zarda's] wearing of the color pink at work" and his practice of painting his toenails pink, notwithstanding Zarda's "typically masculine demeanor." J. App'x at 30. Accordingly, the district court, granted summary judgment in favor of defendants without analyzing whether Zarda could rely on a "sex stereotype" that men should date women. Instead, the district court limited its analysis to the "sex stereotypes" alleged by Zarda, including "what you may wear or how you may behave." Special App'x at 26. Determining that Zarda failed to establish the requisite proximity between his termination and his proffered instances of gender non-conformity (not including the fact that he dated other men), the district court granted summary judgment to defendants on Zarda's Title VII claim.

³ Zarda alleged that another skydiving instructor had disclosed that he was heterosexual but was not punished.

During these proceedings, the Equal Employment Opportunity Commission (“EEOC”) issued a decision setting forth the agency’s view that discrimination based on sexual orientation constitutes sex discrimination in violation of Title VII. See *Baldwin v. Foxx*, E.E.O.C. Decision No. 0120133080, 2015 WL 4397641, at *5 (July 16, 2015). Relying on *Baldwin*, Zarda moved the district court to reconsider its grant of summary judgment on his Title VII claim. The district court denied the motion, holding that *Simonton* was contrary to the EEOC’s decision, and that it barred Zarda from recovering on a theory that discrimination based on sexual orientation violated Title VII.

After his state-law sexual-orientation claim proceeded to trial and a jury found for the defendants, Zarda appealed.

III

Zarda asserts that *Simonton*’s holding that “Title VII does not proscribe discrimination because of sexual orientation” is incorrect and should be overturned. 232 F.3d at 36. As a threshold matter, *Altitude Express* contends that we need not consider this argument in light of the jury verdict in favor of the defendants on Zarda’s state-law discrimination claim. Essentially, *Altitude Express* argues that the scope of Title VII’s protections are irrelevant to Zarda’s appeal because the jury found that *Altitude Express* had not discriminated.

Altitude Express is incorrect; Zarda’s sex-discrimination claim is properly before us because the district court held him to a higher standard of causation than required by Title VII. Under Title VII, a plaintiff must demonstrate that sex “was a ‘substantial’ or ‘motivating’ factor contributing to the employer’s decision to take the [adverse employment] action.” *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 85 (2d Cir. 2015). Accordingly, to show causation for sex discrimination under Title VII, “[i]t suffices . . . to show that the motive to discriminate was one of the employer’s motives, even if the employer also had other, lawful motives that were causative in the employer’s decision.” *Univ. of Tx. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2523 (2013).

At trial, the district court instructed the jury that Zarda could prevail on his state-law sexual-orientation discrimination claim only if he could prove that “he would have continued to work for Altitude Express . . . except for the fact that he was gay.”⁴ J. App’x at 1771. In other words, the jury charge required Zarda to prove but-for causation, which is a higher standard of causation than is necessary for Title VII sex-discrimination claims. See Vega, 801 F.3d at 86 (“[A] plaintiff in a Title VII case need not allege ‘but-for’ causation.”).

If Zarda is correct that discrimination based on sexual orientation is equivalent to prohibited sex discrimination under Title VII, then he would have been entitled to a jury instruction on the less stringent “motivating-factor” test for causation. See *Gordon v. N.Y. City Bd. of Educ.*, 232 F.3d 111, 116 (2d Cir. 2000) (indicating that an instruction that advises the jury on an erroneously high burden of proof warrants a new trial). It is entirely possible that a jury thought that Zarda’s sexual orientation was “one of the employer’s motives” (i.e. a “motivating factor”) in its termination decision, but was not a “but-for cause” of his firing. In sum, if Title VII protects against sexual-orientation discrimination, then Zarda would be entitled to a new trial.

Zarda’s request that we overturn *Simonton* is therefore not mooted by the jury verdict on his state-law claim. Nonetheless, we decline Zarda’s invitation to revisit our precedent. A separate panel of this Court recently held that *Simonton* can only be overturned by the entire Court sitting in banc, see *Christiansen v. Omnicom Grp.*, No. 16-478, 2017 WL 1130183, at *2 (2d Cir. Mar. 27, 2017), and the same is true in the case at bar, see *United States v. Wilkerson*, 361 F.3d 717, 732 (2d Cir. 2004); cf. *Hively v. Ivy Tech Comm. Coll.*, No. 15-1720, 2017 WL 1230393, at *1-2 (7th Cir. Apr. 4, 2017) (in banc) (overturning, as an in banc court, prior Seventh Circuit precedent holding that Title VII did not prohibit discrimination based on sexual orientation).

In *Christiansen*, the panel nonetheless remanded to the district court after concluding that the plaintiff had stated a plausible claim of “gender

⁴ We express no view as to whether the district court correctly instructed the jury on New York law.

stereotyping,” which is actionable under Title VII. 2017 WL 1130183, at *4. That route is unavailable to Zarda, since, as explained above, the district court found that Zarda failed to establish the requisite proximity between his termination and his failure to conform to gender stereotypes, and Zarda did not challenge that determination on appeal. Consequently, Zarda may receive a new trial only if Title VII’s prohibition on sex discrimination encompasses discrimination based on sexual orientation--a result foreclosed by *Simonton*.

IV

Zarda asserts that he is entitled to a new trial on his state-law, sexual-orientation discrimination claim for several reasons. None has merit.

A

Evidentiary Rulings. Zarda contends that the district court improperly admitted two types of prejudicial evidence. He suggests that the probative value of the evidence was substantially outweighed by its resulting prejudice. See Fed. R. Evid. 403. We review the district court’s decision to admit this evidence for abuse of discretion. *Harris v. O’Hare*, 770 F.3d 224, 231 (2d Cir. 2014).

Zarda contends that the district court improperly admitted evidence concerning an occasion, nine years earlier, on which Zarda had been terminated from Altitude Express. As an initial matter, Zarda does not clearly identify the evidence he believes was improperly admitted, or why it was prejudicial. In any event, as the district court observed, evidence relating to the circumstances of an employee’s previous termination is relevant to determining the circumstances of the same employee’s later termination. Zarda has not shown that any prejudice substantially outweighed the relevance of this evidence. Accordingly, we see no abuse of discretion.

The district court also admitted deposition testimony in which Zarda acknowledged that there was a (small) possibility that the cause of his termination in 2001 was his filing for Worker’s Compensation benefits. Assuming that this statement was prejudicial, any prejudice was negligible.

Zarda stated at deposition that Worker's Compensation might have played no more than a minimal role in his firing; moreover, Zarda's supervisor testified that he knew it would be illegal to fire someone for seeking Worker's Compensation benefits, and that he did not fire Zarda for this reason.

B

Witness List. Zarda argues that the defendants hindered Zarda's trial preparation by listing dozens more proposed witnesses in the parties' joint pre-trial order than the defendants intended to call. Zarda apparently argues that the district court should have precluded the defense witnesses from testifying, pursuant to Rules 26 and 37(c)(1) of the Federal Rules of Civil Procedure.

Even when Rule 37(c)(1) allows for witness preclusion, preclusion is not mandatory. *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 297-98 (2d Cir. 2006). Here the district court had good reason to allow the testimony. The court found that the evidence was important, that Zarda had some notice regarding the potential testimony, and that there was no indication that the defendants had engaged in improper gamesmanship. We review a district court's decision to preclude testimony based on Rule 37(c)(1) for abuse of discretion, and we see none here. *Patterson v. Balsamico*, 440 F.3d 104, 117 (2d Cir. 2006).

C

Appeals to Prejudice. Zarda contends that defense counsel improperly influenced the jury by appealing to prejudice against homosexuals. On review, we consider whether the district court abused discretion by failing to grant relief. *Marcic v. Reinauer Transp. Cos.*, 397 F.3d 120, 124 (2d Cir. 2005). Zarda is entitled to a new trial "only if [opposing] counsel's conduct created undue prejudice or passion which played upon the sympathy of the jury." *Id.* at 127 (quoting *Matthews v. CTI Container Transp. Int'l, Inc.*, 871 F.2d 270, 278 (2d Cir. 1989)).

Although Zarda complains of several allegedly offensive remarks, the context of each comment suggests that the statements were not improper

references to stereotypes. For example, Zarda argues that counsel's description of the relationship between Zarda and one of his witnesses as "odd" is prejudicial. However, the witness was testifying in support of Zarda's claim for emotional damages, and defense counsel made this comment while trying to *downplay* the closeness of Zarda's relationship with the witness in order to make the jury skeptical of the witness's knowledge of Zarda's emotional state. The district court held that the characterization of the relationship as "odd" was a fair argument that went to the credibility of the witness. Zarda has not shown that the district court's ruling was an abuse of discretion or an "error[] . . . that w[as] 'clearly prejudicial to the outcome of the trial;'" consequently, he is not entitled to a new trial. *Marcic*, 397 F.3d at 124 (quoting *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 17 (2d Cir. 1996)).

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court.

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

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

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

Plaintiff

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

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Plaintiff

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

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

V.

Defendant

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

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ATTORNEY TO BE NOTICED

Defendant

Ray Maynard

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15-3775	11/20/2015	3440 CIVIL RIGHTS-Other	04/18/2017	Zarda v. Altitude Express, Inc.	EDNY (CENTRAL ISLIP)		
Civil	Private	-					
ORIG_CRT	0207	2	10-cv-4334		09/23/2010	https://ecf.nyed.uscourts.gov/cgi-bin/DktRpt.pl?caseNumber=10-cv-4334	
ORIG_PER	Trial Judge	Joseph	F.	Bianco		U.S. District Judge	
ORIG_PER	Trial Judge	Anne	Y.	Shields		U.S. Magistrate Judge	
ORIG_DAT	10/28/2015	10/29/2015	11/20/2015		11/20/2015		
PARTY	Melissa Zarda, co-independent executors of the estate of Donald Zarda						

Plaintiff - Appellant

ATTORNEY	Gregory		Antollino	-		275 7th Avenue		Gregory Antollino, Esq.		212-334-7397	New York	NY	10001		[COR LD NTC Retained]		Suite 705		
ATTORNEY	Stephen		Bergstein		Attorney		5 Paradies Lane		Bergstein & Ullrich, LLP		845-469-1277	New Paltz	NY	12561		[COR NTC Retained]		2nd Floor	
PARTY	William Allen Moore, Jr., co-independent executor of the estate of Donald Zarda																		

Plaintiff - Appellant

|ATTORNEY|Gregory||Antollino|-||275 7th Avenue||Gregory Antollino, Esq.||212-334-7397|New York|NY|10001||[COR LD NTC Retained]||Suite 705||
|PARTY|Altitude Express, Inc., doing business as Skydive Long Island||

Defendant - Appellee

|ATTORNEY|Saul|D.|Zabell|-||1 Corporate Drive||Zabell & Associates, P.C.||631-589-7242|Bohemia|NY|11716||[COR NTC Retained]||Suite 103|Esq.|
|PARTY|Ray Maynard||

Defendant - Appellee

|ATTORNEY|Saul|D.|Zabell|-||1 Corporate Drive||Zabell & Associates, P.C.||631-589-7242|Bohemia|NY|11716||[COR NTC Retained]||Suite 103|Esq.|
|PARTY|New York Civil Liberties Union||

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	American Civil Liberties Union																		

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	9 to 5, National Association of Working Women																		

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	A Better Balance																		

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	Coalition of Labor Union Women																		

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	Equal Rights Advocates																		

Amicus Curiae

ATTORNEY	Erin	B.	Harrist		-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus		-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	Gender Justice																			

Amicus Curiae

ATTORNEY	Erin	B.	Harrist		-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus		-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	Legal Voice																			

Amicus Curiae

ATTORNEY	Erin	B.	Harrist		-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus		-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	National Women's Law Center																			

Amicus Curiae

ATTORNEY	Erin	B.	Harrist		-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Fatima	Goss	Graves		-		11 Dupont Circle, NW		National Women's Law Center		202-297-4835	Washington	DC	20036		[NTC Attorney]		#800	Esq.	
PARTY	Southwest Women's Law Center																			

Amicus Curiae

ATTORNEY	Erin	B.	Harrist		-		125 Broad Street			New York Civil Liberties Union			New York	NY	10004		[COR LD NTC Retained]			Esq.
ATTORNEY	Lenora	M.	Lapidus		-		125 Broad Street			American Civil Liberties Union of New York		212-549-2668	New York	NY	10004		[COR NTC Retained]		18th floor	Esq.
PARTY	Women Employed																			

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street		New York Civil Liberties Union		New York	NY	10004	[COR LD NTC Retained]		Esq.		
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street		American Civil Liberties Union of New York		212-549-2668	New York	NY	10004	[COR NTC Retained]		18th floor	Esq.
PARTY	Women's Law Center of Maryland																

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street		New York Civil Liberties Union		New York	NY	10004	[COR LD NTC Retained]		Esq.		
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street		American Civil Liberties Union of New York		212-549-2668	New York	NY	10004	[COR NTC Retained]		18th floor	Esq.
PARTY	Women's Law Project																

Amicus Curiae

ATTORNEY	Erin	B.	Harrist	-		125 Broad Street		New York Civil Liberties Union		New York	NY	10004	[COR LD NTC Retained]		Esq.		
ATTORNEY	Lenora	M.	Lapidus	-		125 Broad Street		American Civil Liberties Union of New York		212-549-2668	New York	NY	10004	[COR NTC Retained]		18th floor	Esq.
PARTY	Lambda Legal Defense and Education Fund, Inc.																

Amicus Curiae

ATTORNEY	Omar		Gonzalez-Pagan	-		120 Wall Street		Lambda Legal Defense and Education Fund, Inc.		212-809-8585	New York	NY	10005	[COR NTC Retained]		19th Floor	Esq.			
ATTORNEY	Michael	Donald Barton	Kavey		Supervising Attorney		New York University School of Law	245 Sullivan Street		Washington Square Legal Services, Inc.		917-623-8884	New York	NY	10012	[COR NTC Retained]		LGBTQ Rights Clinic	5th Floor	Esq.
ATTORNEY	Gregory	R.	Nevins	-		730 Peachtree Street NE		Lambda Legal		404-897-1880	Atlanta	GA	30308	[COR NTC Retained]		Room 1070				
CAPTION	Melissa Zarda, co-independent executors of the estate of Donald Zarda, William Allen Moore, Jr, co-independent executor of the estate of Donald Zarda,																			

Plaintiffs - Appellants,

v.

Altitude Express, Inc, doing business as Skydive Long Island, Ray Maynard,

Defendants - Appellees.

|ENTRY|11/20/2015|NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant William Allen Moore, Jr and Melissa Zarda, FILED. [1649107] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204444949>|

|ENTRY|11/20/2015|DISTRICT COURT JUDGMENT, dated 10/28/2015, RECEIVED.[1649123] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204444989>|

|ENTRY|11/20/2015|ELECTRONIC INDEX, in lieu of record, FILED.[1649124] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204444992>|

|ENTRY|11/30/2015|PAYMENT OF DOCKETING FEE, on behalf of Appellant William Allen Moore, Jr and Melissa Zarda, district court receipt # 19002 , FILED.[1652683] [15-3775]--[Edited 01/04/2016 by LCH] |<https://ecf.ca2.uscourts.gov/docs1/00204454479>|

|ENTRY|12/04/2015|NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellant Melissa Zarda, FILED. Service date 12/04/2015 by CM/ECF. [1656714] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204465232>|

|ENTRY|12/04/2015|ATTORNEY, Stephen Bergstein, [[A HREF='_SERVLETURL_/docs1/00204465232' target='new' ONCLICK='"return doDocPostURL\('00204465232','30987'\);" >5](#)], in place of attorney Richard J Cardinale, SUBSTITUTED.[1656816] [15-3775] ||

|ENTRY|12/04/2015|FORM D, on behalf of Appellant William Allen Moore, Jr, FILED. Service date 12/04/2015 by CM/ECF.[1657026] [15-3775] ||

|ENTRY|12/04/2015|FORM C, on behalf of Appellant William Allen Moore,Jr, FILED. Service date 12/04/2015 by CM/ECF.[1657189] [15-3775] ||

|ENTRY|12/04/2015|FORM C/A, on behalf of Appellant William Allen Moore,Jr, FILED. Service date 12/04/2015 by CM/ECF.[1657198] [15-3775] ||

|ENTRY|12/07/2015|ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee Ray Maynard and Altitude Express,Inc, FILED. Service date 12/07/2015 by CM/ECF.[1657295] [15-3775] ||

|ENTRY|12/08/2015|DEFECTIVE DOCUMENT, FORM C and Form C/A, [9], [10], on behalf of Appellant William Allen Moore,Jr, FILED.[1658544] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204470138>|

|ENTRY|12/08/2015|DEFECTIVE DOCUMENT, Acknowledgment and Notice of Appearance, [11], on behalf of Appellee Ray Maynard, FILED.[1658580] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204470207>|

|ENTRY|12/09/2015|FORM C, on behalf of Appellant Melissa Zarda and William Allen Moore,Jr, FILED. Service date 12/09/2015 by CM/ECF.[1660283] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204474695>|

|ENTRY|12/09/2015|ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED. Service date 12/09/2015 by CM/ECF.[1660316] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204474780>|

|ENTRY|12/11/2015|CURED DEFECTIVE: Acknowledgment and Notice of Appearance, [[A HREF='_SERVLETURL_/docs1/00204474780' target='new' ONCLICK='return doDocPostURL\('00204474780','30987'\);'>return doDocPostURL\('00204474780','30987'\);](#)], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1661573] [15-3775] ||

|ENTRY|12/12/2015|TRANSCRIPT STATUS UPDATE LETTER, dated 12/11/2015, on behalf of Appellant William Allen Moore,Jr , informing court of transcript delays, RECEIVED. Service date 12/12/2015 by CM/ECF.[1662550] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204480653>|

|ENTRY|12/12/2015|TRANSCRIPT STATUS UPDATE LETTER, dated 12/11/2015, on behalf of Appellant Melissa Zarda and William Allen Moore,Jr , informing court of transcript delays, RECEIVED. Service date 12/12/2015 by CM/ECF.[1662551] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204480656>|

|ENTRY|12/16/2015|CURED DEFECTIVE: Form C, [[A](#) HREF='_SERVLETURL_/docs1/00204474695' target='new' ONCLICK='return doDocPostURL('00204474695','30987');" >16'], [[A](#) HREF='_SERVLETURL_/docs1/00204470138' target='new' ONCLICK='return doDocPostURL('00204470138','30987');" >13'], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1666048] [15-3775] ||

|ENTRY|12/16/2015|DEFECTIVE DOCUMENT, Form D, [7], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1666062] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204489628>|

|ENTRY|12/16/2015|FORM D, on behalf of Appellant William Allen Moore,Jr, FILED. Service date 12/16/2015 by CM/ECF.[1666127] [15-3775] ||

|ENTRY|12/26/2015|LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, informing Court of proposed due date 03/30/2016, RECEIVED. Service date 12/26/2015 by CM/ECF.[1671699] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204504438>|

|ENTRY|01/05/2016|CAMP CONFERENCE ORDER, assigning Daniel Kolb, Court-Appointed Mediator, FILED.[1676085] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204516186>|

|ENTRY|01/13/2016|DEFECTIVE DOCUMENT, Form D, [23], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1683749] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204536445>|

|ENTRY|01/13/2016|MOTION, to file supplemental appendix, on behalf of Appellant William Allen Moore,Jr, FILED. Service date 01/13/2016 by CM/ECF. [1683756] [15-3775] ||

|ENTRY|01/13/2016|FORM D, on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED. Service date 01/13/2016 by CM/ECF.[1683767] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204536488>|

|ENTRY|01/13/2016|DEFECTIVE DOCUMENT, Motion to file supplemental appendix, [28], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1683769] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204536499>|

|ENTRY|01/13/2016|CURED DEFECTIVE: Form D, [[A](#) HREF='_SERVLETURL_/docs1/00204536488' target='new' ONCLICK='"return doDocPostURL('00204536488','30987');" >29'], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1683772] [15-3775] ||

|ENTRY|01/13/2016|MOTION, to file supplemental appendix, on behalf of Appellant Melissa Zarda and William Allen Moore,Jr, FILED. Service date 01/13/2016 by CM/ECF. [1683776] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204536516>|

|ENTRY|01/15/2016|CURED DEFECTIVE: MOTION, TO FILE SUPPLEMENTAL APPENDIX, [[A](#) HREF='_SERVLETURL_/docs1/00204536516' target='new' ONCLICK='"return doDocPostURL('00204536516','30987');" >33'], on behalf of Appellant William Allen Moore,Jr and Melissa Zarda, FILED.[1685326] [15-3775] ||

[ENTRY|01/19/2016|NEW CASE MANAGER, Dana Ellwood, ASSIGNED.[1685937] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204542370>]

[ENTRY|01/19/2016|NOTICE, to Appellee Altitude Express, Inc and Ray Maynard, for failure to file an appearance, SENT.[1685984] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204542465>]

[ENTRY|01/19/2016|ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 01/19/2016 by CM/ECF.[1686044] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204542620>]

[ENTRY|01/19/2016|CURED DEFECTIVE Acknowledgment and Notice of Appearance [[A HREF='_SERVLETURL_/docs1/00204470207' target='new' ONCLICK='return doDocPostURL\('00204470207','30987'\);'>14](#)], [[A HREF='_SERVLETURL_/docs1/00204542620' target='new' ONCLICK='return doDocPostURL\('00204542620','30987'\);'>41](#)], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1686057] [15-3775] ||

[ENTRY|01/22/2016|OPPOSITION TO MOTION, to file supplemental appendix [[A HREF='_SERVLETURL_/docs1/00204536516' target='new' ONCLICK='return doDocPostURL\('00204536516','30987'\);'>33](#)], to file supplemental appendix [28], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 01/22/2016 by email, CM/ECF. [1689617] [15-3775] ||

[ENTRY|01/22/2016|DEFECTIVE DOCUMENT, Opposition to Motion, [43], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1689674] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204552079>]

[ENTRY|01/22/2016|OPPOSITION TO MOTION, to file supplemental appendix [[A HREF='_SERVLETURL_/docs1/00204536516' target='new' ONCLICK='return doDocPostURL\('00204536516','30987'\);'>33](#)], to file supplemental appendix [28], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.

Service date 01/22/2016 by email, CM/ECF. [1689991] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204552873>|

|ENTRY|01/22/2016|CURED DEFECTIVE Opposition to Motion [<A
HREF='_SERVLETURL_/docs1/00204552079' target='new' ONCLICK='"return
doDocPostURL('00204552079','30987');" >44], [<A
HREF='_SERVLETURL_/docs1/00204552873' target='new' ONCLICK='"return
doDocPostURL('00204552873','30987');" >45], on behalf of
Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1690005] [15-3775] ||

|ENTRY|01/22/2016|REPLY TO OPPOSITION [<A
HREF='_SERVLETURL_/docs1/00204552873' target='new' ONCLICK='"return
doDocPostURL('00204552873','30987');" >45], on behalf of
Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 01/22/2016
by CM/ECF.[1690043][48] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204553009>|

|ENTRY|01/25/2016|SO-ORDERED SCHEDULING NOTIFICATION, setting
Appellant William Allen Moore, Jr. and Melissa Zarda Brief due date as 03/11/2016.
Joint Appendix due date as 03/11/2016, FILED.[1690432] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204554047>|

|ENTRY|01/28/2016|CAMP CONFERENCE ORDER vacating referral to Daniel Kolb,
Court-Appointed Mediator, FILED.[1693868] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204563151>|

|ENTRY|01/28/2016|CAMP CONFERENCE ORDER, assigning Terence Gilheany,
Court-Appointed Mediator, FILED.[1693890] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204563210>|

|ENTRY|02/02/2016|MOTION ORDER, granting motion to file a non-conforming
(partial) appendix; the electronic material should be submitted on a disc [<A
HREF='_SERVLETURL_/docs1/00204536516' target='new' ONCLICK='"return
doDocPostURL('00204536516','30987');" >33] filed by Appellant

Melissa Zarda and William Allen Moore, Jr., by CFD, FILED. [1696348][56] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204569747|](https://ecf.ca2.uscourts.gov/docs1/00204569747)

|ENTRY|02/09/2016|MOTION, to file oversized brief, on behalf of Appellant Melissa Zarda and William Allen Moore, Jr., FILED. Service date 02/09/2016 by CM/ECF. [1702107] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204584849|](https://ecf.ca2.uscourts.gov/docs1/00204584849)

|ENTRY|02/11/2016|OPPOSITION TO MOTION, to file oversized brief [[A](#) HREF='_SERVLETURL_/docs1/00204584849' target='new' ONCLICK='"return doDocPostURL('00204584849','30987');" >57'], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 02/11/2016 by CM/ECF. [1704106] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204590041|](https://ecf.ca2.uscourts.gov/docs1/00204590041)

|ENTRY|02/11/2016|REPLY TO OPPOSITION [[A](#) HREF='_SERVLETURL_/docs1/00204590041' target='new' ONCLICK='"return doDocPostURL('00204590041','30987');" >59'], on behalf of Appellant Melissa Zarda and William Allen Moore, Jr., FILED. Service date 02/11/2016 by CM/ECF. [1704197][61] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204590286|](https://ecf.ca2.uscourts.gov/docs1/00204590286)

|ENTRY|02/17/2016|MOTION ORDER, granting motion to file oversized brief [[A](#) HREF='_SERVLETURL_/docs1/00204584849' target='new' ONCLICK='"return doDocPostURL('00204584849','30987');" >57'] filed by Appellant Melissa Zarda and William Allen Moore, Jr., by CFD, FILED. [1706206][65] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204595752|](https://ecf.ca2.uscourts.gov/docs1/00204595752)

|ENTRY|03/10/2016|JOINT APPENDIX, volume 1 of 6, (pp. 1-209), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF. [1723502] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204641351|](https://ecf.ca2.uscourts.gov/docs1/00204641351)

|ENTRY|03/10/2016|JOINT APPENDIX, volume 2 of 6, (pp. 301-598), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF. [1723504] [15-3775] [|https://ecf.ca2.uscourts.gov/docs1/00204641356|](https://ecf.ca2.uscourts.gov/docs1/00204641356)

|ENTRY|03/10/2016|JOINT APPENDIX, volume 4 of 6, (pp. 901-1200), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF.[1723505] [15-3775] ||

|ENTRY|03/10/2016|JOINT APPENDIX, volume 5 of 6, (pp. 1201-1500), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF.[1723506] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204641362>|

|ENTRY|03/10/2016|JOINT APPENDIX, volume 6 of 6, (pp. 1501-1800), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF.[1723507] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204641365>|

|ENTRY|03/10/2016|JOINT APPENDIX, volume 3 of 6, (pp. 601-812), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF.[1723508] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204641368>|

|ENTRY|03/10/2016|SPECIAL APPENDIX, on behalf of Appellant Melissa Zarda, FILED. Service date 03/10/2016 by CM/ECF.[1724117] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204643000>|

|ENTRY|03/11/2016|BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/11/2016 by CM/ECF.[1725525] [15-3775] ||

|ENTRY|03/11/2016|LETTER, dated 03/11/2016, regarding filing of hard copies, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 03/11/2016 by CM/ECF.[1725537] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204646767>|

|ENTRY|03/13/2016|CORRECTED BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/13/2016 by CM/ECF. [1725594] [15-3775] ||

|ENTRY|03/13/2016|LETTER, dated 03/13/2016, regarding corrections to brief, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 03/13/2016 by CM/ECF.[1725595] [15-3775]
|https://ecf.ca2.uscourts.gov/docs1/00204646956|

|ENTRY|03/15/2016|LETTER, dated 03/15/2016, regarding delivery of corrected brief and appendix, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 03/15/2016 by CM/ECF.[1728077] [15-3775]
|https://ecf.ca2.uscourts.gov/docs1/00204653329|

|ENTRY|03/15/2016|CORRECTED JOINT APPENDIX, volume 4 of 6, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/15/2016 by CM/ECF. [1728083] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204653346|

|ENTRY|03/15/2016|CORRECTED BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/15/2016 by CM/ECF. [1728085] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204653349|

|ENTRY|03/16/2016|MOTION, to file document, on behalf of Appellant Melissa Zarda and William Allen Moore, Jr., FILED. Service date 03/16/2016 by CM/ECF. [1728495] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204654365|

|ENTRY|03/16/2016|ELECTRONIC APPENDIX CD, volume 1 of 2, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/16/2016 by US mail.[1730349] [15-3775] ||

|ENTRY|03/16/2016|ELECTRONIC APPENDIX CD, volume 2 of 2, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/16/2016 by US mail.[1730353] [15-3775] ||

|ENTRY|03/18/2016|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movants New York Civil Liberties Union, American Civil Liberties Union, 9 to 5, A Better Balance, Coalition of Labor Union Women, Equal Rights Advocates, Gender

Justice, Legal Voice, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland and Women's Law Project, FILED. Service date 03/18/2016 by CM/ECF. [1731273] [15-3775]
[|https://ecf.ca2.uscourts.gov/docs1/00204661664|](https://ecf.ca2.uscourts.gov/docs1/00204661664)

|ENTRY|03/18/2016|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movant Lambda Legal Defense and Education Fund, Inc., FILED. Service date 03/18/2016 by CM/ECF. [1731341] [15-3775]
[|https://ecf.ca2.uscourts.gov/docs1/00204661850|](https://ecf.ca2.uscourts.gov/docs1/00204661850)

|ENTRY|03/18/2016|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movant Lambda Legal Defense and Education Fund, Inc., FILED. Service date 03/18/2016 by CM/ECF. [1731418] [15-3775]
[|https://ecf.ca2.uscourts.gov/docs1/00204662061|](https://ecf.ca2.uscourts.gov/docs1/00204662061)

|ENTRY|03/18/2016|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movant Lambda Legal Defense and Education Fund, Inc., FILED. Service date 03/18/2016 by CM/ECF. [1731426] [15-3775]
[|https://ecf.ca2.uscourts.gov/docs1/00204662088|](https://ecf.ca2.uscourts.gov/docs1/00204662088)

|ENTRY|03/18/2016|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movant Lambda Legal Defense and Education Fund, Inc., FILED. Service date 03/18/2016 by CM/ECF. [1731491] [15-3775]
[|https://ecf.ca2.uscourts.gov/docs1/00204662270|](https://ecf.ca2.uscourts.gov/docs1/00204662270)

|ENTRY|03/18/2016|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movants New York Civil Liberties Union, American Civil Liberties Union, 9 to 5, A Better Balance, Coalition of Labor Union Women, Equal Rights Advocates, Gender Justice, Legal Voice, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland and Women's Law Project, FILED. Service date 03/18/2016 by CM/ECF. [1731509] [15-3775]
[|https://ecf.ca2.uscourts.gov/docs1/00204662319|](https://ecf.ca2.uscourts.gov/docs1/00204662319)

|ENTRY|03/18/2016|MOTION TO FILE AMICUS CURIAE BRIEF, on behalf of Movants New York Civil Liberties Union, American Civil Liberties Union, 9 to 5, A

Better Balance, Coalition of Labor Union Women, Equal Rights Advocates, Gender Justice, Legal Voice, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland and Women's Law Project, FILED. Service date 03/18/2016 by CM/ECF.[1731693] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204662815>|

|ENTRY|03/18/2016|MOTION TO FILE AMICUS CURIAE BRIEF, on behalf of Movant Lambda Legal Defense and Education Fund, Inc., FILED. Service date 03/18/2016 by CM/ECF.[1731702] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204662854>|

|ENTRY|03/19/2016|MOTION, to amend document, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/19/2016 by CM/ECF. [1731726] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204662933>|

|ENTRY|03/21/2016|NEW PARTY, Movants New York Civil Liberties Union, American Civil Liberties Union, 9 to 5, A Better Balance, Coalition of Labor Union Women, Equal Rights Advocates, Gender Justice, Legal Voice, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland and Women's Law Project, ADDED.[1731821] [15-3775] ||

|ENTRY|03/21/2016|NEW PARTY, Movant Lambda Legal Defense and Education Fund, Inc., ADDED.[1731857] [15-3775] ||

|ENTRY|03/21/2016|LETTER, dated 03/21/2016, informing Court that motion to amend brief is unopposed, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 03/21/2016 by email, CM/ECF.[1731925] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204663442>|

|ENTRY|03/22/2016|MOTION ORDER, referring motions to file amicus curiae brief
[<A HREF='_SERVLETURL_/docs1/00204662815' target='new'
ONCLICK="return doDocPostURL('00204662815','30987');"
>91],[<A HREF='_SERVLETURL_/docs1/00204662854' target='new'
ONCLICK="return doDocPostURL('00204662854','30987');"
>92], filed by Movants New York Civil Liberties Union, American Civil

Liberties Union, 9 to 5, A Better Balance, Coalition of Labor Union Women, Equal Rights Advocates, Gender Justice, Legal Voice, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland and Women's Law Project and Movant Lambda Legal Defense and Education Fund, Inc., FILED. [1733149][102] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204666681>|

|ENTRY|03/22/2016|MOTION ORDER, granting motion to amend brief [[A](#) HREF='_SERVLETURL_/docs1/00204662933' target='new' ONCLICK='"return doDocPostURL('00204662933','30987');" >93'] filed by Appellant Melissa Zarda and William Allen Moore, Jr., FILED. [1733198][105] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204666806>|

|ENTRY|03/23/2016|LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, informing Court of proposed due date 06/10/2016, RECEIVED. Service date 03/23/2016 by CM/ECF.[1734397] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204669993>|

|ENTRY|03/23/2016|CORRECTED BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/23/2016 by CM/ECF. [1734510] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204670299>|

|ENTRY|03/23/2016|ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Gregory Antollino for Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/23/2016 by CM/ECF. [1734514] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204670310>|

|ENTRY|03/28/2016|MOTION, to strike [[A](#) HREF='_SERVLETURL_/docs1/00204641351' target='new' ONCLICK='"return doDocPostURL('00204641351','30987');" >66'], [[A](#) HREF='_SERVLETURL_/docs1/00204641356' target='new' ONCLICK='"return doDocPostURL('00204641356','30987');" >67'], [[A](#) HREF='_SERVLETURL_/docs1/00204641368' target='new' ONCLICK='"return doDocPostURL('00204641368','30987');" >71'], [68], [[A](#) HREF='_SERVLETURL_/docs1/00204641362' target='new' ONCLICK='"return doDocPostURL('00204641362','30987');" >69'], [[A](#) HREF='_SERVLETURL_/docs1/00204641365' target='new' ONCLICK='"return doDocPostURL('00204641365','30987');" >70'] [[A](#) HREF='_SERVLETURL_/docs1/00204643000' target='new' ONCLICK='"return

doDocPostURL('00204643000','30987');" >72], [[78](#)], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 03/20/2016 by CM/ECF. [1736906] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204676715>|

|ENTRY|03/28/2016|SO-ORDERED SCHEDULING NOTIFICATION, setting Appellees Altitude Express, Inc. and Ray Maynard Brief due date as 06/10/2016, FILED.[1737114] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204677304>|

|ENTRY|03/28/2016|OPPOSITION TO MOTION, to strike [[113](#)], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/28/2016 by CM/ECF. [1737651] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204678648>|

|ENTRY|03/29/2016|MOTION ORDER, denying without prejudice motion to strike; the Court will consider a renewed motion to strike that includes a list detailing the specific errors; any renewed motion to strike shall be filed by 04/08/2016 [[113](#)] filed by Appellee Altitude Express, Inc. and Ray Maynard; and deferring motion to deem Appellants' appendices as filed pending a decision on any renewed motion to strike [[80](#)] filed by Appellant Melissa Zarda and William Allen Moore, Jr., by SLC, FILED. [1738565][121] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204681159>|

|ENTRY|04/08/2016|MOTION, to strike [[66](#)], [[67](#)], [[71](#)], [68], [[69](#)], [[70](#)] [[<A HREF='_SERVLETURL_/docs1/00204643000' target='new' ONCLICK="return](#)

doDocPostURL('00204643000','30987');" >72], [78], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 04/08/2016 by CM/ECF. [1746055] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204700752|

|ENTRY|04/08/2016|OPPOSITION TO MOTION, to strike [122], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 04/08/2016 by CM/ECF. [1746337] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204701531|

|ENTRY|04/08/2016|MOTION, to file document, on behalf of Appellant Melissa Zarda and William Allen Moore, Jr., FILED. Service date 04/08/2016 by CM/ECF. [1746483] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204701905|

|ENTRY|04/18/2016|MOTION ORDER, denying motion to strike [122] filed by Appellee Altitude Express, Inc. and Ray Maynard; granting motion to deem the appendices as filed [80], [127], filed by Appellant Melissa Zarda and William Allen Moore, Jr., by SLC, FILED. [1752794][131] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204718306|

|ENTRY|04/25/2016|DEFECTIVE DOCUMENT, Brief, Corrected Brief, Joint Appendix volume 4, [68], [73], [75], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1757840] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204731887|

|ENTRY|04/25/2016|CURED DEFECTIVE Brief, Corrected Brief, Joint Appendix volume 4 [133], [78], [<A HREF='_SERVLETURL_/docs1/00204670299' target='new' ONCLICK="return doDocPostURL('00204670299','30987');"

>108], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1757892] [15-3775] ||

|ENTRY|06/03/2016|MOTION, to extend time, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/03/2016 by email, CM/ECF. [1786220] [15-3775] ||

|ENTRY|06/04/2016|OPPOSITION TO MOTION, to extend time [141], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 06/04/2016 by CM/ECF. [1786267] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204807514>|

|ENTRY|06/06/2016|DEFECTIVE DOCUMENT, Motion to extend time, [141], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1786390] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204807818>|

|ENTRY|06/06/2016|MOTION, to extend time, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/06/2016 by email, CM/ECF. [1786425] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204807890>|

|ENTRY|06/06/2016|CURED DEFECTIVE Motion to extend time [[143](#)], [[144](#)], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1786434] [15-3775] ||

|ENTRY|06/09/2016|MOTION ORDER, granting in part and denying in part the motion to extend time to file the brief; an extension until 06/17/2016 is granted [[144](#)] filed by Appellee Altitude Express, Inc. and Ray Maynard, by RKW, FILED. [1789705][149] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204816420>|

|ENTRY|06/15/2016|BRIEF & APPENDIX, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/15/2016 by email, CM/ECF. [1794601] [15-3775] ||

|ENTRY|06/17/2016|DEFECTIVE DOCUMENT, Brief and Supplemental Appendix, [150], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1796274] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204833583>|

|ENTRY|06/17/2016|BRIEF, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/17/2016 by email, CM/ECF. [1796548] [15-3775] ||

|ENTRY|06/17/2016|SUPPLEMENTAL APPENDIX, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/17/2016 by email, CM/ECF. [1796555] [15-3775] ||

|ENTRY|06/21/2016|LETTER, dated 06/21/2016, regarding unavailability for oral argument, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 06/21/2016 by CM/ECF.[1798883] [15-3775] ||

|ENTRY|06/22/2016|DEFECTIVE DOCUMENT, Letter, [154], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1798969] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204840653>|

|ENTRY|06/22/2016|ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Gregory Antollino for Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 06/22/2016 by CM/ECF. [1799263] [15-3775]
|<https://ecf.ca2.uscourts.gov/docs1/00204841342>|

|ENTRY|06/22/2016|CURED DEFECTIVE Letter [[A](#)
|[HREF='_SERVLETURL_/docs1/00204840653' target='new' ONCLICK='"return doDocPostURL\('00204840653','30987'\);" >155\]](#), [[A](#)
|[HREF='_SERVLETURL_/docs1/00204841342' target='new' ONCLICK='"return doDocPostURL\('00204841342','30987'\);" >156\]](#), on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1799281] [15-3775] ||

|ENTRY|06/23/2016|DEFECTIVE DOCUMENTS, Brief and Supplemental Appendix, [152], [153], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1800761] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204845223>|

|ENTRY|06/23/2016|BRIEF, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/23/2016 by US mail, CM/ECF. [1800992] [15-3775] ||

|ENTRY|06/23/2016|SUPPLEMENTAL APPENDIX, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/23/2016 by US mail, CM/ECF. [1800997] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204845724>|

|ENTRY|06/28/2016|DEFECTIVE DOCUMENT, Brief, [161], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1803962] [15-3775]
|https://ecf.ca2.uscourts.gov/docs1/00204853595|

|ENTRY|06/28/2016|BRIEF, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 06/28/2016 by CM/ECF. [1804133] [15-3775]
|https://ecf.ca2.uscourts.gov/docs1/00204854007|

|ENTRY|06/29/2016|CURED DEFECTIVE Brief and Supplemental Appendix [[163\]](#), [[160\]](#), [[164\]](#), [[162\]](#), on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1805200] [15-3775] ||

|ENTRY|06/30/2016|MOTION, to overlook defects or permit a replacement brief, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 06/30/2016 by CM/ECF. [1805773] [15-3775]
|https://ecf.ca2.uscourts.gov/docs1/00204858473|

|ENTRY|06/30/2016|REPLY BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 06/30/2016 by CM/ECF. [1805774] [15-3775] ||

|ENTRY|06/30/2016|CORRECTED BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 06/30/2016 by CM/ECF. [1806235] [15-3775] ||

|ENTRY|06/30/2016|MOTION, to file document, to file fewer copies, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 06/30/2016 by CM/ECF. [1806310] [15-3775] |https://ecf.ca2.uscourts.gov/docs1/00204859805|

|ENTRY|06/30/2016|LETTER, dated 06/30/2016, regarding motions filed for reply briefs, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 06/30/2016 by CM/ECF.[1806918] [15-3775]
|https://ecf.ca2.uscourts.gov/docs1/00204861519|

|ENTRY|07/01/2016|ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Saul D. Zabell, Esq. for Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 07/01/2016 by CM/ECF. [1807553] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204863284>|

|ENTRY|07/07/2016|MOTION ORDER, granting motion to accept reply brief for filing out of time; denying as moot Appellant's prior motion [168][173][173], filed by Appellant Melissa Zarda and William Allen Moore, Jr., by RKW, FILED. [1810418][181] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204871073>|

|ENTRY|07/07/2016|DEFECTIVE DOCUMENT, Reply Brief, [169], [172], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1810423] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204871101>|

|ENTRY|07/07/2016|REPLY BRIEF, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 07/07/2016 by CM/ECF. [1810527] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204871399>|

|ENTRY|07/13/2016|CURED DEFECTIVE Reply Brief [182], [183], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1813930] [15-3775] ||

|ENTRY|07/22/2016|LETTER, dated 07/22/2016, informing Court of additional unavailability for oral argument, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 07/22/2016 by CM/ECF.[1822695] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204903711>|

|ENTRY|08/01/2016|FRAP 28(j) LETTER, dated 08/01/2016, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 08/01/2016 by CM/ECF.[1829886] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00204922773>|

|ENTRY|09/09/2016|FRAP 28(j) LETTER, dated 09/09/2016, on behalf of Appellant William Allen Moore, Jr., RECEIVED. Service date 09/09/2016 by CM/ECF.[1859374] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205000575>|

|ENTRY|09/12/2016|FRAP 28(j) LETTER, dated 09/12/2016, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, RECEIVED. Service date 09/12/2016 by CM/ECF.[1860888] [15-3775] ||

|ENTRY|09/12/2016|DEFECTIVE DOCUMENT, FRAP 28(j) Letter, [193], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1860960] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205004784>|

|ENTRY|09/12/2016|FRAP 28(j) LETTER, dated 09/12/2016, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, RECEIVED. Service date 09/12/2016 by CM/ECF.[1861000] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205004874>|

|ENTRY|09/12/2016|CURED DEFECTIVE FRAP 28(j) Letter [[194\]](#), [[195\]](#)], on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED.[1861015] [15-3775] ||

|ENTRY|09/12/2016|FRAP 28(j) LETTER, dated 09/12/2016, on behalf of Appellant William Allen Moore, Jr., RECEIVED. Service date 09/12/2016 by CM/ECF.[1861282] [15-3775] ||

|ENTRY|09/13/2016|DEFECTIVE DOCUMENT, FRAP 28(j) Letter, [198], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1862111] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205007947>|

|ENTRY|09/13/2016|FRAP 28(j) LETTER, dated 09/13/2016, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 09/13/2016 by CM/ECF.[1862386] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205008570>|

|ENTRY|09/14/2016|CURED DEFECTIVE FRAP 28(j) Letter [[199\]](#), [[<A HREF='_SERVLETURL_/docs1/00205008570' target='new' ONCLICK='"return](#)

doDocPostURL('00205008570','30987');" >200], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[1862470] [15-3775] ||

|ENTRY|09/19/2016|LETTER, dated 09/19/2016, regarding unavailability for oral argument, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 09/19/2016 by CM/ECF.[1866119] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205018480>|

|ENTRY|09/27/2016|FRAP 28(j) LETTER, dated 09/27/2016, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 09/27/2016 by CM/ECF.[1872338] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205034833>|

|ENTRY|09/30/2016|FRAP 28(j) LETTER, dated 09/30/2016, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, RECEIVED. Service date 09/30/2016 by CM/ECF.[1875019] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205041861>|

|ENTRY|10/11/2016|FRAP 28(j) LETTER, dated 10/11/2016, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 10/11/2016 by CM/ECF.[1881559] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205059381>|

|ENTRY|10/12/2016|CASE CALENDARING, for the week of 01/03/2017, PROPOSED.[1881726] [15-3775] ||

|ENTRY|10/25/2016|CASE CALENDARING, for argument on 01/05/2017, SET.[1892067] [15-3775] ||

|ENTRY|10/28/2016|MOTION ORDER, granting motions to file amicus curiae briefs [[92](#)], [[91](#)], FILED. [1895241][216] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205095238>|

|ENTRY|11/03/2016|AMICUS BRIEF, on behalf of Amicus Curiae Lambda Legal Defense and Education Fund, Inc., FILED. Service date 11/03/2016 by CM/ECF.[1899746] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205107113>|

|ENTRY|11/04/2016|AMICUS BRIEF, on behalf of Amicus Curiae New York Civil Liberties Union, American Civil Liberties Union, 9 to 5, A Better Balance, Coalition of

Labor Union Women, Equal Rights Advocates, Gender Justice, Legal Voice, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland and Women's Law Project, FILED. Service date 11/04/2016 by CM/ECF.[1900229] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205108422>|

|ENTRY|11/07/2016|ARGUMENT NOTICE, to attorneys/parties, TRANSMITTED.[1901287] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205111350>|

|ENTRY|11/21/2016|FRAP 28(j) LETTER, dated 11/21/2016, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 11/21/2016 by CM/ECF.[1910991] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205137073>|

|ENTRY|12/07/2016|NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 12/07/2016 by CM/ECF. [1922801] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205168611>|

|ENTRY|12/08/2016|NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellee Altitude Express, Inc. and Ray Maynard, FILED. Service date 12/08/2016 by CM/ECF. [1922891] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205168832>|

|ENTRY|12/10/2016|LETTER, dated 12/10/2016, requesting permission to bring iPad to oral argument, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 12/10/2016 by CM/ECF.[1924630] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205173468>|

|ENTRY|01/05/2017|MOTION ORDER, granting request to bring an ipad into the Courtroom [229] filed by Appellant Melissa Zarda and William Allen Moore, Jr., FILED. [1940117][234] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205213884>|

|ENTRY|01/05/2017|CASE, before DJ, RDS, GEL, C.JJ., HEARD.[1940440] [15-3775] ||

|ENTRY|03/12/2017|FRAP 28(j) LETTER, dated 03/12/2017, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 03/12/2017 by CM/ECF.[1987398] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205338399>|

|ENTRY|03/27/2017|MOTION, to consolidate with case 16-748 for purposes of en banc review, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 03/27/2017 by CM/ECF. [1998292] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205367130>|

|ENTRY|03/29/2017|LETTER, dated 03/29/2017, withdrawing motion to consolidate with case 16-748 for purposes of en banc review, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 03/29/2017 by CM/ECF.[2000068] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205371770>|

|ENTRY|04/04/2017|FRAP 28(j) LETTER, dated 04/04/2017, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 04/04/2017 by CM/ECF.[2004306] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205383104>|

|ENTRY|04/18/2017|OPINION, the district court judgment is affirmed, per curiam DJ, RDS, GEL, FILED.[2013376] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205407090>|

|ENTRY|04/18/2017|NEW CASE MANAGER, Connie Mazariego, ASSIGNED.[2013380] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205407103>|

|ENTRY|04/18/2017|JUDGMENT, FILED.[2013458] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205407294>|

|ENTRY|04/18/2017|MOTION ORDER, withdrawing motion to consolidate this case with the appeal docketed under 16-748 for the purpose of en banc review [238] filed by Appellant Melissa Zarda and William Allen Moore, Jr., FILED. [2013807][253] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205408195>|

|ENTRY|05/02/2017|PETITION FOR REHEARING/REHEARING EN BANC, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 05/02/2017 by CM/ECF.[2024479] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205436734>|

|ENTRY|05/04/2017|FRAP 28(j) LETTER, dated 05/04/2017, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 05/04/2017 by CM/ECF.[2027486] [15-3775] ||

|ENTRY|05/05/2017|DEFECTIVE DOCUMENT, FRAP 28(j) LETTER, [257], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[2027560] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205444855>|

|ENTRY|05/05/2017|LETTER, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, RECEIVED. Service date 05/05/2017 by CM/ECF.[2027807] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205445479>|

|ENTRY|05/05/2017|CURED DEFECTIVE FRAP 28(j) LETTER [[258\]](#), [[259\]](#)], on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED.[2027900] [15-3775] ||

|ENTRY|05/09/2017|NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Amicus Curiae National Woman's Law Center, FILED. Service date 05/09/2017 by CM/ECF. [2030721] [15-3775] ||

|ENTRY|05/09/2017|MOTION TO FILE AMICUS CURIAE BRIEF, on behalf of Non-Party Filer(s), FILED. Service date 05/09/2017 by CM/ECF.[2030728] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205453084>|

|ENTRY|05/09/2017|DEFECTIVE DOCUMENT, Notice of Appearance for Substitute, Additional, or Amicus Counsel, [[264\]](#)], on behalf of Amicus Curiae National Women's Law Center, FILED.[2030777] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205453269>|

|ENTRY|05/11/2017|NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Amicus Curiae National Women's Law Center, FILED. Service date 05/11/2017 by CM/ECF. [2032491] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205457725>|

|ENTRY|05/11/2017|ATTORNEY, Fatima Goss Graves, [[266\]](#)], in place of attorney Lenora M. Lapidus, SUBSTITUTED.[2032632] [15-3775] ||

|ENTRY|05/11/2017|CURED DEFECTIVE NOTICE OF APPEARANCE AS AMICUS COUNSEL [[A HREF='_SERVLETURL_/docs1/00205457725' target='new' ONCLICK='return doDocPostURL\('00205457725','30987'\);'">266](#)], [[A HREF='_SERVLETURL_/docs1/00205453269' target='new' ONCLICK='return doDocPostURL\('00205453269','30987'\);'">265](#)], on behalf of Amicus Curiae National Women's Law Center, FILED.[2032638] [15-3775] ||

|ENTRY|05/25/2017|ORDER, dated 05/25/2017, A poll having been conducted and a majority of the active judges of the Court having voted in favor of rehearing this appeal en banc, it is hereby ordered that this appeal be heard en banc. Appellants' brief and appendix, and any amicus curiae briefs in support thereof, shall be filed by June 26, 2017. Appellees' brief and appendix, and any amicus curiae briefs in support thereof, shall be filed by July 26, 2017. Appellants' reply brief shall be filed by August 9, 2017. Oral argument will be held on September 26, 2017 at 2:00 p.m., FILED.[2043555] [15-3775]--[Edited 05/25/2017 by DC] |<https://ecf.ca2.uscourts.gov/docs1/00205487090>|

|ENTRY|05/26/2017|MOTION, for ___ relief, on behalf of Appellant William Allen Moore, Jr. and Melissa Zarda, FILED. Service date 05/26/2017 by CM/ECF. [2044920] [15-3775] |<https://ecf.ca2.uscourts.gov/docs1/00205490725>|

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff,

-against-

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

Defendants.

-----X

**AMENDED
COMPLAINT**

10-cv-04334-JFB -ARL

**JURY TRIAL
DEMANDED**

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

NATURE OF THIS ACTION

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

THE PARTIES

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

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

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

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

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

JURISDICTION AND VENUE

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

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

FACTUAL ALLEGATIONS UNDERLYING PLAINTIFF'S CLAIMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
DISCRIMINATION UNDER TITLE VII

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

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

52. Such actions were in violation of Title VII.

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

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

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

55. Plaintiff was fired because of his sexual orientation.

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

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

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

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

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

60. Such actions were in violation of Title VII.

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

FOURTH CAUSE OF ACTION
VIOLATION OF THE FLSA

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

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

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

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

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

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

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

appropriate discovery proceedings to be taken promptly in this cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Plaintiff demands as follows:

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

Dated: New York, New York
February 22, 2011

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

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

DONALD ZARDA,

Plaintiff,

– against –

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

Defendants.

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

**ANSWER TO AMENDED
COMPLAINT**

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

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

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

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

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

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

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE NINTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE TENTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust his administrative remedies.

AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE THIRTEENTH AFFIRMATIVE DEFENSE

Defendants breached no contractual obligations due and owing to Plaintiff.

AS AND FOR THE FOURTEENTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE FIFTEENTH AFFIRMATIVE DEFENSE

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

AS AND FOR THE SIXTEENTH AFFIRMATIVE DEFENSE

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

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

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

Dated: Bohemia, New York
March 22, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

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DONALD ZARDA,

10 Civ 4334 (JFB)

Plaintiff,

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

Defendants.

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

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

Admitted.

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

Admitted upon information and belief.

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

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

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

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

Admitted.

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

This immaterial allegation is admitted upon information and belief.

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

This immaterial allegation is admitted upon information and belief.

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

Admitted.

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

Admitted.

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

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

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

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

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

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

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

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

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

Admitted.

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

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

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

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

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

Admitted.

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

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

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

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

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

Admitted.

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

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

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

Maynard Dep. pg. 149:9-12.

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

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

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

Admitted.

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

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

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

Dep. pg. 347:12-18).

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

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

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

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

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

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

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

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

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

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

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

Admitted.

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

Admitted.

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

Admitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Admitted.

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

Admitted.

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

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

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

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

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

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

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

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

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

Denied. See ¶ 48, infra.

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

Admitted.

The Jump in Question:

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

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

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

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

Admitted.

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

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

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

Admitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Admitted and plaintiff homosexual did not touch Orellana inappropriately,

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

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

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

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

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

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

See response to ¶ 60 incorporated herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This immaterial statement is admitted.

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

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

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

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

Admitted.

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

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

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

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

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

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

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

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

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

22).

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

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

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

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

The Suspension and Termination

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

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

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

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

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

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

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

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

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

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

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

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

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

84. Maynard also questioned Zarda whether “anything about [his] sexual orientation came up” during the jump, and Zarda responded that he did not know. (Zarda Dep. pg. 38:8-10).

He then told Maynard “that that comes up all the time around here,” as it is often joked about

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

Admitted.

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

Admitted.

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

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

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

Admitted.

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

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

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

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

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

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

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

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

Admitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Wage Facts

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

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

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

Admitted.

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

Admitted.

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

Admitted.

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

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

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

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

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

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

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

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

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

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

16).

Admitted.

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

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

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

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

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

This immaterial fact is admitted.

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

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

This immaterial fact is admitted.

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

Admitted.

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

Admitted.

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

Admitted.

Dated: New York, New York
April 7, 2013

_____/s/_____
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DONALD ZARDA,

Plaintiff,

- against -

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

Defendants.

Case No.:

CV-10-4334 (JFB)(ARL)

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

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

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

EXHIBITS

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

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

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

Dated: Bohemia, New York
February 11, 2013

ZABELL & ASSOCIATES, P.C.

By: 

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

NYS Department of State

Division of Corporations

Entity Information

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

Selected Entity Name: ALTITUDE EXPRESS, INC.

Selected Entity Status Information

Current Entity Name: ALTITUDE EXPRESS, INC.

DOS ID #: 1882009

Initial DOS Filing Date: JANUARY 05, 1995

County: SUFFOLK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

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

ALTITUDE EXPRESS, INC.

525JAN WAY

CALVERTON, NEW YORK, 11933

Chairman or Chief Executive Officer

RAYMOND F. MAYNARD

525 JAN WAY

CALVERTON, NEW YORK, 11933

Principal Executive Office

ALTITUDE EXPRESS, INC.

525- JAN WAY

CALVERTON, NEW YORK, 11933

Registered Agent

NONE

This office does not record information regarding

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

***Stock Information**

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

*Stock information is applicable to domestic business corporations.

Name History

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

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

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

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ALTITUDE EXPRESS INC.
D/BA SKY DIVE LONG ISLAND
4062 GRUMMAN BLVD BLD#2A
CALVERTON NY 11933

0018-M104
300 W2s

06/27/2010 3075
DATE CHECK NO

PAY TO THE
ORDER OF

DONALD J ZARDA
PO BOX 312
RICHMOND MO 64085

Total Net Direct Deposit(s)
\$629.53
AMOUNT

VOID THIS IS NOT A CHECK DOLLARS

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

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

FOLD AND REMOVE

FOLD AND REMOVE

PERSONAL AND CHECK INFORMATION

Donald J Zarda
PO Box 312
Richmond, MO 64085

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

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

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	2790.58
Chkg 0589	629.53	1296.56
NET PAY	629.53	4077.13

EARNINGS

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

WITHHOLDINGS

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

NET PAY

THIS PERIOD (\$)
629.53

YTD (\$)
4077.13

Payrolls by Paychex, Inc.

0018 0018-M104 Altitude Express Inc • D/b/a Sky Dive Long Island • 4062 Grumman Blvd Bld#2A • Calverton NY 11933

ZARDA000010

JA.132

List of Remaining Exhibits from Zabell Declaration

Exhibits 2 -3, 4-10 OMITTED, not relevant FRAP(a)(1)(a)- exhibits concerned procedural posture and withdrawn cause of action

Exhibit 11, Donald Zarda deposition (the highlighted portions were those read at trial, and remain solely as an aid. The entire deposition was submitted on summary judgment) JA. 140

Exhibit 12, deposition transcript of Raymond Maynard (*infra*) JA. 583

Exhibit 13 deposition transcript of Richard M. Winstock (*infra*) JA. 419

Exhibit 14 deposition transcript of Lauren Callanan (*infra*) JA. 447

Exhibit 15 deposition transcript of David Kengle (*infra*) JA. 469

Exhibit 16 deposition transcript of Rosana Orellan (*iphtc*) JA. 485

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

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 _____X

4 DONALD ZARDA,

5 Plaintiff,

6
7 -against- Index No.
8 10-CV-04334

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

9 Defendants.

10 _____X

11 December 9, 2011
12 10:15 a.m.

13 4875 Sunrise Highway
14 Bohemia, New York

15 EXAMINATION BEFORE TRIAL OF DONALD ZARDA,

16 the Plaintiff herein, taken by the
17 Defendants, pursuant to Article 31 of the
18 Civil Practice Law and Rules of Testimony,
19 and Notice and order, held at the
20 above-mentioned time and place, before Karen
21 LaMendola, a Professional Court Reporter and
22 Notary Public of the State of New York.

23

24

25

South Shore Court Reporting
(631)-235-6218

1
2 APPEARANCE

S: 3

4 GREGORY ANTOLLINO,
5 ESQ. Attorney for Plaintiff
6 18-20 West 21 Street, Suite 802
7 New York, New York 10010

8 ZABELL & ASSOCIATES, P.C.
9 Attorneys for
10 Defendants 4875
11 Sunrise Highway
12 Bohemia, New York 11716

13 BY: SAUL ZABELL, ESQ.

14

15

16

17

18

19

20

21

22

23 ALSO PRESENT:

24 William L. Murphy

25

26

27

28

South Shore Court
Reporting (631)-235-6218

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

South Shore Court
Reporting (631)-235-6218

1 DONALD ZARDA, the witness
2
3 herein, having been first duly sworn
4 by a Notary Public in and of the
5 State of New York, was examined and
6 testified as follows:
7 EXAMINATION BY
8 MR. ZABELL:
9 Q Would you please state your full
10 name for the record.
11 A Donald Zarda.
12 Q What is your current address?
13 A P.O. Box 312, Richmond, Virginia
14 64085.
15 Q Good morning, Mr. Zarda. How
16 are you?
17 A Good morning. How are you?
18 Q Good. You know my name is
19 Saul Zabell. We've met before; correct?
20 A Correct.
21 Q We haven't had much of a
22 conversation before, but we've met in the
23 context of this case; correct?
24 A Correct.
25 Q And you know me to be
the South Shore Court
Reporting
(631)-235-6218

1 D. Zarda

2 attorney who represents Altitude Express;

3 correct?

4 A I do.

5 Q You also know me to be the

6 attorney who represents Ray Maynard; is that

7 correct?

8 A Yes.

9 Q Today I am conducting this

10 deposition on behalf of Altitude Express. Do

11 you understand that?

12 A Yes.

13 Q You know that I'm going to be

14 asking you questions; correct?

15 A Correct.

16 Q You're going to be providing

17 answers to those questions; correct?

18 A Yes.

19 Q And you are swearing that the

20 answers that you are providing are truthful

21 and accurate?

22 A Yes.

23 Q Do you understand that?

24 A To the best of my recollection;

25 yes.

South Shore Court
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1 D. Zarda

2 Q Do you understand that you took

3 an oath today to swear to tell the truth?

4 A Yes.

5 Q And you understand that if you

6 provide answers that are not truthful, you

7 are subject to charges of perjury?

8 A Yes.

9 Q Giving false answers in this

10 deposition today would be no different than

11 providing false testimony before a Court. Do

12 you understand that?

13 A Yes.

14 Q And have the ramifications of

15 that been explained to you by your Counsel?

16 A Yes.

17 MR. ANTOLLINO: Objection.

18 Anything that you've discussed with me

19 is not going to be asked or answered.

20 MR ZABELL: I believe the answer

21 is on the record.

22 MR.ANTOLLINO: Motion to

23 strike.

24 MR. ZABELL: To the extent I

25 can, your motion is denied.

South Shore Court
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1 D. Zarda

2 MR. ANTOLLINO: Okay.

3 Q How are you feeling today?

4 A Great.

5 Q Are you currently taking any

6 medications?

7 A None other than prescribed.

8 Q What prescribed medications are

9 you taking?

10 MR. ANTOLLINO: Well, I'm going

11 to object on the grounds that that is

12 not relevant. I'll let you ask him

13 whether there is any medications that

14 he takes that would affect his ability

15 to testify or recall events truthfully.

16 MR. ZABELL: Counsel, what

17 you're doing now is making an improper

18 objection. If you would like, I would

19 be more than happy to provide you with

20 a copy of the Federal Rules of Civil

21 Procedure to familiarize yourself

22 before you continue.

23 I can also tell you that we will

24 allow each other to finish speaking

25 before we interrupt each other.

Am I South Shore Court
Reporting
(631)-235-6218

1 D. Zarda

2 A Yes, we all have memories.

3 Q How would you characterize your

4 memory?

5 A Good.

6 Q Why would you characterize your

7 memory as good?

8 A My sister says I have a very

9 good memory, and I remember things very well

10 from the past. She reminds me of that all

11 the time, and I think I have a good memory.

12 Q So you have a good memory

13 because you think you have a good memory and

14 because your sister reminds you that you have

15 a good memory --

16 MR. ANTOLLINO: Objection to

17 form.

18 Q is that correct?

19 A She tells me I have a good

20 memory, both of them. My friends tell me I

21 remember things quite well from the past; fun

22 events and things we have done together, and

23 I remember things well.

24 Q Have you always had a good

25 memory?

South Shore Court
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D. Zarda

1 perhaps, but I can't say whether he was lying
2 about something or not.

3 Q Are you referring to the grading
4 of the 97 out of 100 that he gave you on your
5 jump?
6

7 A That would be one item.

8 Q Did that bother you?

9 A It didn't bother me at all.

10 Q Because if I relayed to you that
11 Mr. Winstock, after the deposition, relayed
12 to me that a 97 out of 100 is pretty damn
13 good, would that surprise you?

14 A It wouldn't make any difference
15 either way. We're both highly experienced
16 instructors who've been doing this a really
17 long time. I think we both hold each other
18 in the same regard.

19 Q Do you find that Mr. Winstock is
20 qualified to, essentially, grade your jumps?

21 A Yes, he is.

22 Q In fact, at Long Island Skydive,
23 he was the most qualified person to grade
24 your dives; is that correct?

25 A Well, as he defined what
most South Shore Court

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D. Zarda

1 passengers sit in, which is also an extension
2 of his office. His office is next door to
3 the video room, and he often holds meetings
4 in that room, as well, when it's not being
5 used for video briefing, and that is where
6 Mr. Maynard and I had the suspension meeting.

7 Q What was discussed at that
8 suspension meeting?

9 A What was discussed was he was
10 asking me questions about a jump that took
11 place on June 18, 2010.

12 Q What questions?

13 A Well, there were a lot of the
14 questions. He was asking me ---

15 Q I want you to take your time,
16 and relate to me all the questions that you
17 recall.

18 A He was asking me if I remembered
19 a jump with a Miss Rosanna. I don't
20 recall --- I don't think he provided the last
21 name at that time, and he asked me if I
22 remembered the jump I did on that day on
23 Friday, which was June 18, and I told him
24 that I did several jumps on June 18, so if I

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D. Zarda

1 look back at the records, I did, I think, ten
2 jumps that day. So, no, I didn't remember a
3 specific jump at that time that he was
4 referring to, so it started with that.

5 Q Continue.

6 A Okay. And so after telling him
7 that, he asked me if I remembered the jump.
8 He said I took a girl named Rosanna, and I
9 said okay, and he asked me if I remembered
10 anything about it, and I said no, I did
11 several jumps. This was on a Monday, so this
12 was about three days later after a long
13 weekend of jumping. It was a routine land.
14 At that time, I didn't remember
15 anything specific about that jump, so then he
16 proceeded to tell me what he knew about the
17 jump, and he told me that there were some
18 customers that came out and jumped, and it
19 was a boyfriend and a girlfriend, and that I
20 had taken the girl, and they had called and
21 made a complaint.

22 Q Continue.

23 A I said okay, and so he was going
24 to ask me questions about what the

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D. Zarda

1 complaint—or about the complaint that was
2 made, and I didn't have any knowledge about
3 anything, because there was nothing out of
4 the ordinary that took place that I could
5 recall at that time.

6 Q What questions did he ask you?

7 A He asked me if anything about my
8 sexual orientation came up or anything about
9 being gay came up, and I said I don't know.

10 Q Continue.

11 A Okay. I remember telling him
12 that that comes up all the time around here,
13 because it was often joked about at the drop
14 zone all the time by staff. It was even by
15 some other customers which are experienced
16 skydivers that were mixed in with the jump
17 operation while the jump operation is going
18 on, and so I said that I don't know how it
19 came up or who brought it up at that time.

20 Q Did you know that it was brought
21 up?

22 A I only knew that because he said
23 it was brought up, Ray Maynard said that.

24 Q Okay, continue.

South Shore Court
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D. Zarda

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

South Shore Court
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D. Zarda

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

have South Shore Court Reporting
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2 a staff meeting and talk about it with the
 3 other staff. And he was very angry, and he
 4 said, there will be a staff meeting, all
 5 right. He shouted that because he was very
 6 angry, and I don't know if he was angry at me
 7 or the situation, but that's what he said,
 8 and I think he was saying that in reference
 9 to while I was gone, having a staff meeting,
 10 so that was my response to the issue about me
 11 being gay coming up, so I was pretty
 12 surprised, and I didn't know how to respond
 13 to that.

14 At the very beginning of that
 15 entire suspension conversation, for the first
 16 few seconds of it, I actually thought it was
 17 a gag, they were messing with me. I couldn't
 18 believe this could even be real, so I
 19 actually thought it was a joke, but it became
 20 very clear, very soon that Ray wasn't joking.

21 Q Was that all that was discussed
 22 with you—

23 A No.

24 Q — at that meeting?

25 A No, it was not.

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2 Q Please continue.

3 A After we got through the part

4 where I said that you're going to have to

5 have a staff meeting, and he shouted what I

6 just told you, there'd be a staff meeting,

7 all right, I said, Ray, there must be video

8 of the jumps because you just said you're

9 going to take the full price of two tandems

10 and two videos out of my paycheck.

11 He was, you know ----- I don't

12 know, and he was flustered and angry, and I

13 said, well, if you're going to charge me for

14 two videos, there must be video. Can I see

15 the video of the jumps? And he said, no,

16 it's irrelevant. And I paused for a moment,

17 and I said, Ray, I think it's relevant

18 because you're taking action against me right

19 now about something that you said happened on

20 a jump, and it sounds to me like there's

21 video of the jump, in fact, both jumps, and I

22 would like to take a look at it, and I think

23 I'm entitled to take a look at it, and he

24 said no.

25 I said, well, can't we just

go South Shore Court

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

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

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1 D. Zarda

2 and I'm just getting pretty angry. My anger

3 was building and I was getting really upset.

4 Rich saw that and that's when he pulled me

5 into the classroom, and that's when we began

6 discussing it.

7 Q What started then, this whole

8 line of testimony, was that you believed that

9 Rich testified that this discussion happened

10 in a different location; is that correct?

11 A It sounded to me like yesterday,

12 you know, that this is probably not as

13 important to him. This whole case was just

14 another day at work for him. It sounded like

15 he hasn't really discussed this much, or if

16 at all during this time, and maybe he just

17 doesn't remember the specifics as well, since

18 he's not so closely involved as to where we

19 had the discussion.

20 That's what I believed from what

21 Rich said yesterday, and why there might be a

22 little bit of difference.

23 Q Was there anything else about

24 Rich's testimony that you believe was

25 inaccurate?

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2 In fact, a few people whose

3 names I can't even remember because it was

4 always their nickname, so that sort of became

5 my nickname by a lot of the people, so

6 therefore, that would come up, that would be

7 said in front of customers, it would be said

8 in front of anybody. What does somebody

9 think about that? I don't know, so ---

10 Q Well, I think ---go ahead. I'm

11 sorry.

12 A Rich's recollection and

13 characterization of how often Gay Don came

14 up, where it came up, and who said it, I

15 think, was a little light. That's all.

16 Q Do you remember the interaction

17 at the deposition yesterday where I indicated

18 on the record that you were shaking your head

19 side to side?

20 A I do remember that.

21 Q What do you recall from that?

22 A Well, what I'd like for you to

23 do is, for the record, to go ahead and state

24 what it is you would like to ask me about

25 that since that was yesterday, and I

want to South Shore Court

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1 make sure we're clear about what I was
2 shaking my head about.

4 Q Do you recall Rich testifying

5 yesterday that, yes, he knew you as Gay Don,
6 and he may have referred to you as Gay Don,
7 and he didn't know if you were offended by
8 it, and at that point, I believe you were
9 shaking your head side to side indicating
10 that you were not offended by him referring
11 to you as Gay Don?

12 Is that a fair characterization
13 of what occurred yesterday?

14 A That's pretty close. That's
15 acceptable. What I was shaking my head about
16 was to Rich because Rich is a friend that
17 I've known for a long time. I didn't want
18 him to feel like I felt that he, as a friend
19 of mine, was offending me. That's what I
20 meant.

21 Q When Rich referred to you as Gay
22 Don, you weren't offended by that?

23 A I wasn't offended by that. I
24 know he meant no malice. I know he meant no
25 derogatory meaning towards me. I know

that South Shore Court Reporting
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1 we respect each other, and so he wasn't
2 demeaning me by saying that, and I didn't
3 want him to feel like he was being put on the
4 spot with that question to determine whether
5 or not he was saying that in a demeaning
6 manner to me. I didn't want him to feel that
7 way.

9 Q Did you ever feel that

10 Rich Winstock treated you differently because
11 of your sexuality?

12 A Could you be more specific in
13 what you mean by treated differently?

14 Q Treated differently in the
15 workplace then someone whose sexuality was
16 different than yours.

17 A No, I think Rich Winstock
18 treated me like anybody else.

19 Q You are gay; correct?

20 A I am.

21 Q What is your understanding of
22 the definition of the word gay?

23 A Well, I don't have a dictionary
24 in front of me, but one that is sexually
25 attracted to members of the same sex;

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1 homosexual, or prefers.

2 Q Well, when you say "prefers,"

3 does that mean that there are or have been

4 times of your life where you've been

5 attracted to someone of the opposite sex?

6 A When I say that, I was trying to

7 define what gay might be in the dictionary.

8 I wasn't necessarily defining what gay is to

9 me, so if you want to ask whether I'm

10 100 percent gay, then I would say that I

11 100 percent prefer males.

12 Q Has that always been the case?

13 A It has always been since my

14 youngest knowledge of an understanding of

15 sexual preferences took place whenever that

16 was back in, you know, when you're a child.

17 Whenever that cognitive or that part of

18 development in your brain takes place, it's

19 been that way since that point.

20 Q Have you, since that point, that

21 early point in your life, have you always

22 expressed to others your preference for

23 same-sex relationships?

24 A No, I have not.

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D. Zarda

1 Q Did there come a point in time

2 where you, for lack of a better term,

3 "came out" about your sexuality?

4 A Yes, there was.

5 Q When was that?

6 A There was a transitory phase.

7 There wasn't just one day where I opened the

8 door and said, I'm gay, so that transitory

9 phase began in around 1999 into 2000, and

10 kind of through the course of that year, it

11 came out.

12 Q When were you born?

13 A I was born in 1970.

14 Q Prior to 1999 to 2000, were you

15 involved in any relationships with people of

16 the opposite sex?

17 A I was.

18 Q Do you characterize those

19 relationships as romantic in nature?

20 A I would say that they were

21 friendly in nature, but as far as romantic, I

22 would have to fall short on that because I

23 really couldn't deliver in a romantic way

24 because my heart was not able to do

that South Shore Court

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D. Zarda

2 because I was not heterosexual, so I was just
 3 in the paradoxical situation of being a
 4 closeted gay person, trying to interact in a
 5 heterosexual world which just doesn't work
 6 sometimes, and so, no, there was no real
 7 romance that could take place in those
 8 involvements.

9 Q Were any of the close
 10 involvements physical relationships?

11 A There was some physical contact;
 12 yes.

13 Q Where were you born?

14 A I was born in Independence,
 15 Missouri.

16 Q When did you first start working
 17 at Long Island Skydive?

18 A Well, it's Skydive Long Island.

19 I want to make sure we don't get these
 20 centers mixed up. Skydive Long Island is
 21 Ray Maynard's drop zone while Skydiving
 22 Center is down in East Moriches. That was
 23 Ray's competitor.

24 Q When did you start working at

25 Skydive Long Island?

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D. Zarda

2 A The first time I came to Skydive

3 Long Island was in the summer of 2001.

4 Q I'm sorry?

5 A It was in the summer of 2001.

6 The summer of the Trade Center.

7 Q Is it safe to say that you

8 started working at Skydive Long Island

9 shortly after your transition period, and I'm

10 going to use the term "came out." Is that

11 offensive?

12 A It's not offensive; no.

13 Q So shortly after you came out in

14 the summer of 2001, you started working at

15 Skydive Long Island; is that correct?

16 A That is correct.

17 Q Who hired you at Skydive Long

18 Island in 2001?

19 A Ray Maynard makes the ultimate

20 decisions in hiring people, so he hired me.

21 Q You worked beginning in the

22 summer of 2001 through what period of time?

23 A It was about midsummer through

24 just before the Trade Center disaster.

25 Q How did your employment come

to South Shore Court Reporting
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D. Zarda

1 an end in or around September of 2001?

3 A As I recall, from clear back a

4 decade ago, I was terminated by the general

5 manager, then Brian Petretti, who is now one

6 of Ray's part-time employees, and he does,

7 almost exclusively, video work at the drop

8 zone on weekends.

9 Q Why were you terminated?

10 A From the best I can recall,

11 because Ray didn't discuss the matter with

12 me, it had something to do with a customer

13 being unhappy about not being able to do

14 flips out of the airplane, or something to

15 that effect. I wouldn't do something that

16 they wanted me to do out of the aircraft.

17 Q And you were terminated in or

18 around September of 2001; is that correct?

19 A Yes.

20 Q Did you think that you were

21 being discriminated against when you were

22 terminated in September of 2001?

23 A I was confused about that, why I

24 was told that I was being terminated, because

25 Brian, at the time, didn't say a whole

lot South Shore Court Reporting
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D. Zarda

1 about it because he was doing it on Ray's

3 orders, and again, I'm thinking back on

4 something a decade ago that I thought was old

5 business when Ray rehired me in 2009, so I

6 haven't really thought much about that, so —

7 MR. ANTOLLINO: Just answer the

8 question.

9 Q I think you are. You're doing

10 fine.

11 A Repeat that part of the

12 question, please.

13 Q My question was: On or about

14 September of 2001, did you think you were

15 being discriminated against by your

16 termination?

17 A I'm going to have to say that I

18 don't recall what I thought at that time,

19 2001, about that matter, about being

20 discriminated against or whether I was being

21 discriminated against at that time.

22 Q In your response, you mentioned

23 that you were rehired in 2009; is that

24 correct?

25 A That is correct.

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D. Zarda

1 Q You were rehired by Skydive Long

3 Island; correct?

4 A That is correct.

5 Q Who rehired you?

6 A Ray Maynard.

7 Q Can you tell me how you came to

8 be rehired in 2009?

9 A Can you be a little more

10 specific about — are you asking who I talked

11 to about it?

12 Q What I'm really asking you for

13 is a narrative. At what point did you say,

14 you know what, I'd like to start working

15 there? And explain to me how that all came

16 about.

17 A Okay.

18 MR. ANTOLLINO: Objection. It

19 calls for a narrative.

20 Q And you may go ahead and

21 disregard that objection and provide a

22 narrative.

23 A It wasn't just a one, pick up

24 the phone, call Ray, and ask if I could work

25 there kind of thing. It was something that

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1 D. Zarda

2 had built over the course of a few months. I

3 know a lot of the people that work at Skydive

4 Long Island for a long time. Some of those

5 people are there from 2001, like Rich and

6 Curt and a friend from New Zealand, Duncan

7 Shaw, and I had spoken to Duncan in

8 late 2008, about how things were going at

9 Skydive Long Island and that I was working

10 full-time again in the summer and about

11 coming to work there.

12 We discussed it, and he thought

13 that I should go ahead and contact Ray and

14 talk to him about it, and Duncan said that at

15 that time, that he would like to have me come

16 back to work there because he knew that I'm a

17 good instructor, he knew my qualifications,

18 and he said something to the effect of that

19 he didn't know where Ray was getting some of

20 these people, and he was frustrated and tired

21 of working with, what sounded like,

22 unqualified people that were less than up to

23 par to do the job.

24 And so he was trying to prod me

25 to go ahead and talk to Ray about coming back

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2 to work there, because I think he wanted me
3 to come back and work there. I said, okay,
4 and when I came down from the end of the
5 season in May—excuse me—in Maine from
6 working at Jumping Route, the season ends up
7 there just a few weeks earlier because it's
8 so far north.

9 On my way back through to head
10 to Missouri, I came out to Skydive Long
11 Island and made some fun jumps, and then I
12 also talked to Ray in person about that
13 prospect.

14 Q And you spoke to Ray because you
15 thought, you know what, you like the people
16 here, and you wanted to work here; correct?

17 A That is correct.

18 Q This is all in 2009?

19 A This is in 2008.

20 Q Continue.

21 A So, it wasn't an appointment
22 anything or a specific meeting that I had set
23 up with Ray. I just picked a day that was a
24 nice day to come out, do some fun jumps,
25 socialize a little bit with some of

the South Shore Court

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jumpers I knew, and talk to Ray, if he was
3 there, about it. He just mentioned—I
4 think I spoke to Lauren, as well, going ahead
5 and sending an e-mail over the winter or
6 something when he puts his advertisement out
7 over the winter for staff to contact.

8 Q When you spoke to Ray in 2008,

9 did the issue of your sexuality come up?

10 A I cannot recall if we spoke

11 in 2008 at that time about my sexuality. I
12 don't know why it would come up because he
13 probably, you know, remembered it, so I don't

14 know. I can't recall if it came up

15 specifically at that time.

16 Q Why would he remember your
17 sexuality?

18 A Well, it was brought up in 2001.

19 Q By whom?

20 A By everybody. It was the same

21 scenario as what we just discussed. It was
22 out and about on the drop zone and joked
23 about.

24 Q In 2001 when you were working at
25 Skydive Long Island, you had disclosed your

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1 D. Zarda

2 **sexuality to your coworkers; is that correct?**

3 **A It was out. It was known. I**

4 **don't know if I can --- you know, we're**

5 **talking about ten years ago. I can't say**

6 **that I came in and said, I'm gay, or people**

7 **just figured it out, you know, or could tell**

8 **because I went to these locations like Fire**

9 **Island, you know, for the weekend. Oh, you**

10 **must be gay, or are you gay, you know,**

11 **whether somebody might have asked me. I**

12 **can't tell you from a decade ago exactly how**

13 **the knowledge of my sexuality came out in**

14 **2001.**

15 Q Did you tell people that you

16 went to Fire Island?

17 A People would --- again, I don't

18 know specifics about something a decade ago,

19 you know, like if somebody came up to me and

20 asked, did you go to Fire Island? I can't

21 say for sure. People would ask generally,

22 you know, what did you do this weekend? Oh,

23 we went to the game or we jumped into

24 Neptune's or, you know, I might have said ---

25 this is just conjecture. This is

speculation South Shore Court

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1 D. Zarda

2 of how it could have come up. I went to

3 Fire Island, or I went to the Pines, that

4 kind of thing.

5 Q So when you discussed Fire

6 Island, you discussed certain communities at

7 Fire Island, not just Fire Island, in

8 general?

9 A More than likely. If I said I

10 went to Fire Island, I probably said I went

11 to the Pines.

12 Q And that was ---

13 A I was out. I didn't have

14 anything to hide. I wasn't afraid. I

15 wouldn't have been afraid to tell anybody

16 where I went or what I did, if asked.

17 Jumpers routinely ask each other what you did

18 this weekend or where you're going this

19 weekend or what you did; did you have fun,

20 you know, whatever.

21 **Q In 2001, you experienced a**

22 **certain amount of comradery with your**

23 **colleagues; is that correct?**

24 **A There was a lot of comradery.**

25 Q That comradery lasted with

some South Shore Court

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1 D. Zarda

2 A Well, they don't work there now.

3 Q Who were they?

4 A Brandon Spadero, Orin Perry ---

5 gosh, off the top of my head, there was quite

6 a few.

7 Q Just the ones you can remember.

8 A That aren't there anymore, is

9 that what you're asking?

10 Q That are either there currently

11 or aren't there. Anybody you remember

12 working with?

13 A Well, those two that I

14 mentioned, I do remember very well. Brian

15 Petretti, who was the general manager at the

16 time. I remember Curt. I remember Duncan.

17 Who else? Brandon doesn't work there

18 anymore. Don doesn't work there anymore.

19 Off the top of my head, there's so many

20 people who came through there that I can't

21 remember everybody right now.

22 Q In 2001, these were people you

23 worked with that you were looking forward to

24 working with again in 2009; is that correct?

25 A That's right.

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1 D. Zarda

2 Q At some point before the 2009

3 season, Ray Maynard hired you; is that

4 correct?

5 A We discussed it, if I recall, on

6 or about November 15, 2008, which would be

7 preseason 2009.

8 Q What did you discuss with

9 Mr. Maynard?

10 A Just that he had agreed to have

11 me come back to work there.

12 Q Did he put any conditions on

13 you?

14 A Not that I can specifically

15 recall. Any conditions like --- could you be

16 more specific?

17 Q Any behavioral conditions?

18 A Any behavioral conditions, no, I

19 don't think he said anything specific. Are

20 you referring to like, did he ask ---

21 MR. ANTOLLINO: Just answer the

22 question.

23 A I don't remember anything

24 specific.

25 Q Did you make any

behavioral South Shore Court

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1 D. Zarda

2 representations to Mr. Maynard in order to

3 obtain your employment in November of 2008?

4 A Behavioral representations...

5 Q Such as, if I'm hired, I will do

6 X, or if hired, I will not do Y.

7 A No, no, I ---

8 MR. ANTOLLINO: That's the

9 answer.

10 MR. ZABELL: Counselor, please.

11 You're restricted to just objecting,

12 nothing more.

13 MR. ANTOLLINO: I just want to

14 take a minute break, just one minute.

15 Do you mind?

16 MR. ZABELL: I do mind, but

17 you're entitled to take a break.

18 MR. ANTOLLINO: I'd just like

19 one minute. That's it. Is that all

20 right?

21 MR. ZABELL: That's fine.

22 (Whereupon, a recess was taken

23 from 11:55 a.m. 11:56 to a.m.)

24 Q You just took a break and spoke

25 with Counsel?

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1 D. Zarda

2 that you talked about? I believe he's

3 jumping in Utah now.

4 A Oh, Curt Kellinger.

5 Q Yes. How was Curt Kellinger

in 6 2009?

7 A Crazy as ever.

8 Q Inappropriate crazy?

9 A Curt has his own category. He

10 was --- inappropriate towards me, no.

11 Q Did you enjoy working with those

12 three individuals?

13 A Yes, yes.

14 Q Was there anybody that you did

15 not enjoy working with in 2009?

16 A There is personalities at all

17 drop zones. There is some people that I

18 didn't enjoy as much as others.

19 Q Who are the people that you did

20 not enjoy?

21 A Ben Lowe.

22 Q Continue.

23 A Well, let me think for just a

24 minute.

25 In general, I got along with

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2 everybody, so there were just some people
3 that required a little bit more work than
4 others to be able to get along with, and he
5 was one of those people.

6 Q I think I understand that
7 concept.

8 A Yes.

9 Q Ben Lowe required more work to
10 get along with.

11 Were you able to get along with
12 him?

13 A Yes, I was.

14 Q Who else?

15 A At the very beginning, Willie.

16 That's one of those nicknames. For the life
17 of me, I can't remember his full name right
18 now, but I'm sure we have a record of it
19 somewhere. I remember him very well, but
20 this is one of those situations where people
21 go by their nickname. He required a little
22 bit of extra work, as well, and by the end of
23 the season, it was good.

24 Q So your relationship, by the end
25 of the season, was great with everyone; is

D. Zarda

2 that correct?

3 A I think so.

4 Q So much so that would you

5 characterize you enjoyed working in 2009 at

6 Skydive Long Island?

7 A I enjoyed working in 2009 up

8 until I broke my ankle, so I didn't enjoy

9 that.

10 Q How did you break your ankle?

11 A It was at work, and it was on a

12 landing.

13 Q Do you recall when that was?

14 A The specific date?

15 Q Yes.

16 A Yeah, you don't forget that. It

17 was July 2, 2009 at, approximately, 2 o'clock

18 in the afternoon.

19 Q When you broke your ankle, you

20 were casted; correct?

21 A Eventually.

22 Q How soon after July 2 were you

23 casted?

24 A In a splint, in a cast, or in a

25 boot because there's---be more specific,

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D. Zarda

2 please.

3 Q Which started first?

4 A The very first thing was a

5 splint.

6 Q When were you splinted?

7 A That was later on that evening

8 after I had drove myself to the hospital.

9 Not sure even what the situation with my

10 ankle was at that point.

11 Q You banged it up, you weren't

12 sure if it was broken or sprained, so they

13 splinted it for you; is that correct?

14 A They confirmed later that

15 evening that, in fact, it was fractured

16 which, since I hadn't broken anything, other

17 than a thumb in my entire life, I thought

18 that just meant it was cracked, and I didn't

19 realize that it was, you know, that it was

20 broken, as in broke.

21 Q How long were you told that you

22 would be out of the jumping business?

23 A That's a good question, because

24 that answer kept changing as things with my

25 ankle changed, and there were just

opinions South Shore Court

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D. Zarda

1 2 from various people about that from six weeks

3 on up.

4 Q How long were you ---

5 A I was being optimistic.

6 Q Is it safe to say that July 2 landing

7 injury took you out of jumping for the

8 remainder of 2009?

9 A It took me out of ----- yeah, it

10 did.

11 Q You didn't work at Skydive Long

12 Island after ---

13 A Let me ---

14 Q --- you have to let me finish my

15 question, sir.

16 A Fine.

17 Q You didn't work at Skydive Long

18 Island in 2009 after July 2; is that correct?

19 A That is correct. The injury ---

20 what I was going to say was that it took me

21 out of work jumping for the remainder of the

22 season, completely.

23 Q You came back in 2010?

24 A I did.

25 Q With a vengeance?

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D. Zarda

1 MR. ANTOLLINO: Objection to

2 form.

3 A No.

4 Q You came back in 2010 looking

5 forward to jump again; correct?

6 A I did. I came back with a

7 positive, high-spirited attitude ready to go

8 to work.

9 Q When were you cleared to begin

10 jumping in 2010?

11 A By my doctor, I was cleared to

12 begin work jumping on --- now, this may be off

13 a couple of days --- on or around January 22

14 or 24. It was in that range right there.

15 That was --- let me continue so

16 that I make sure I get this straight.

17 Q Please, go ahead.

18 A That was on my doctor's initial

19 orders that I begin work jumping six months

20 following my surgery. That was six months.

21 We had been in contact on the phone, but when

22 I returned to Long Island, because I knew I

23 was coming back to work for Ray because we

24 had already established that, he still

wanted South Shore Court

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D. Zarda

1 to have an office visit with me for a final
2 check-up to clear me out, and that was in
3 June.

4 Q The "he" is your doctor, or the
5 "he" is Ray that you just referred to?

6 A My surgeon.

7 Q Your surgeon?

8 A Yeah, that did the work.

9 Q Did you have the surgery done
10 here on Long Island?

11 A It was.

12 Q Good surgeon?

13 A Thank goodness, yes, he was.

14 Q When were you rehired by Skydive
15 Long Island 2010?

16 A Well, Ray and I discussed me
17 coming back before I went back home in 2009
18 just after I started walking again. I asked
19 him about coming back to work in 2010, and he
20 said that would be fine; just get healthy,

21 and I said okay.

22 Q You found that response to be
23 appropriate; correct?

24 A Sure.

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D. Zarda

1 Q When did you start working again
2 at Skydive Long Island in 2010?

3 A It was on or about May 15, 2010.

4 That was my report date, and I do believe
5 that was the first day I reported.

6 Q Now, when you started working at
7 Skydive Long Island in 2001, do you know if
8 Ray Maynard was familiar with your sexual
9 orientation when he hired you?

10 A I don't know. I can't remember
11 back that far directly if we discussed it or
12 if he knew about it via Curt or Rich or if he
13 knew about it at all. I think he knew about
14 it possibly from one of them and then if he
15 didn't know about it when he hired me, he
16 certainly didn't take long to figure it out.

17 Q And you were rehired in 2009
18 with full knowledge of your sexuality; is
19 that correct?

20 A Unless he forgot about it, then
21 I would say he would have know.

22 Q Is it possible that he may have
23 forgotten about it?

24 A It's possible.

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D. Zarda

2 Q Then, in 2010 when you began

3 working again, was he aware of your

4 sexuality?

5 A I would say certainly he would

6 have to have been still aware.

7 Q Let's talk about how you acted

8 at work in 2009.

9 A Okay.

10 Q How did you act?

11 MR.ANTOLLINO: Objection to

12 form.

13 A Could you actually be a little

14 more specific? How did I act in --- just

15 break that down, please.

16 Q In your daily mannerisms, did

17 you act just like every other employee?

18 A I think I did.

19 Q If we were watching a video of

20 you, just a video with no volume and we saw

21 your daily interactions, would we be able to

22 distinguish your interactions from any of

23 your coworkers?

24 A I doubt it.

25 Q Was that the same in 2010?

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2 A It was.

3 Q Your work activities throughout

4 your employment at Skydive Long Island were

5 indistinguishable from any of your coworkers;

6 is that correct?

7 A I would say --- there's no way I

8 could say whether indistinguishable or not,

9 because I am the one that is performing the

10 work actions, and I would be viewed by a

11 third person, so it would be strictly up to

12 whoever was watching me and what they

13 thought, but I would say that I acted

14 normally just like everybody else. I didn't

15 do anything special that I can think of.

16 Q In your perception, you acted

17 just like everybody else?

18 A As far as I can tell.

19 Q In 2009, you testified that you

20 got along with everybody; is that correct?

21 A I believe, unless we were to

22 read back what I said, I think I said

23 something to that effect.

24 Q I think what you said is that

25 Ben Lowe and maybe Willie required a

little South Shore Court Reporting
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1 2 bit of extra attention, but you won them over

3 by the end of the season; is that correct?

4 A I didn't say I won them over;

5 you just said that.

6 Q I did just say that. That was

7 my characterization.

8 A Well, I think the relationship

9 developed positively by the end of the

10 season. It required a little extra work, but

11 it got to a good place.

12 Q Would you say that in 2009, you

13 had positive working relationships with all

14 of your colleagues?

15 A I would say so, for the most

16 part.

17 Q What about 2010, did you have

18 positive working relationships with your

19 colleagues?

20 A There were some new characters

21 in 2010, so there's a high turnover rate for

22 seasonal employees at Skydive Long Island, so

23 there were some new people that were brought

24 into the mix, different attitudes and

25 different personalities, and most of the

same South Shore Court Reporting
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1 2 people were there, but I would say that yes,

3 I did have a good experience. There were a

4 couple of personalities that needed a little

5 extra work.

6 Q In 2010, you had a good

7 experience, but some of the personalities

8 needed extra work; is that correct?

9 A I'd say so.

10 Q Who were those personalities?

11 A First, a guy named Monkey John.

12 Q Did his mom give him that name?

13 A I have no idea.

14 Q I'm making a joke.

15 A Oh, all right. He required a

16 little extra work.

17 Q What was Monkey John's problem?

18 A You know, it was kind of funny.

19 His problem was when I returned to my same

20 digs in the staff room, which is already

21 crowded, and I was going to take the same

22 spot that I had the previous year, he didn't

23 like it, so he made a little to-do about it,

24 and that was my first meeting with John, with

25 Monkey. His girlfriend Carmen, at the time,

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1 was in the room, and Monkey kind of actually
 2 got a little bit angry and sort of went off
 3 on me a little bit, and some of the other
 4 staff were in the room like Sean Tierney, I
 5 think Marco was in there, and they dismissed
 6 and resolved it and said, don't worry, Don,
 7 just put your stuff over here, and I was
 8 like, okay, no problem.

10 Q So your coworkers came to your
 11 defense?

12 A They did, and, in fact, Monkey's
 13 girlfriend, Carmen, also came to my defense
 14 in the room by telling Monkey that he was
 15 being, quote, a dick and to stop it.

16 The thing about that is that
 17 it's not a good way for me to start a new
 18 relationship with a coworker on the first
 19 day, but I didn't have anything to do with
 20 it, so I was just present, so that's why that
 21 relationship probably needed a little extra
 22 attention as opposed to the other people I
 23 was working with.

24 Q Did you have any negative
 25 interactions with any of your other
 coworkers South Shore Court
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2 in 2010?

3 A No, not that I can recall.

4 Q Just Monkey Jim?

5 A Monkey John.

6 Q John, Monkey John.

7 A I think his real name is John.

8 I don't know his last name. He's the only
 9 Monkey there.

10 Q From what you've told me, Monkey
 11 John was acting like, and I quote, per
 12 Carmen, a dick?

13 A Yes, that's what she said.

14 Q But then your coworkers and

15 Carmen came to your defense; is that correct?

16 A They did.

17 Q That must have been a good
 18 feeling; right?

19 A None of it was a good feeling

20 because it was awkward for me because I was
 21 coming to work, going back to the same spot
 22 that I was in, and I've got somebody that I
 23 don't know that's confronting me about that,
 24 and so it's the first day, not something
 25 anybody really wants to start out that

way South Shore Court Reporting
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D. Zarda

1 with a new relationship, so what --- you're
2 asking me if I felt good about it? I didn't
3 feel good about it.

4 Q Well, did you appreciate your
5 coworkers coming to your defense?

6 A I did appreciate that.

7 Q There was some discussion
8 yesterday about weight, how much people
9 weighed as it applied to jumping and certain
10 weight restrictions. Now, I can tell you as
11 I sit across this table from you, you appear
12 to be someone who is physically fit; are you?

13 A I am.

14 Q Have you always been?

15 A I have.

16 Q You started jumping for Skydive
17 Long Island in 2001; is that correct?

18 A I first worked there in 2001 for
19 Skydive Long Island.

20 Q Do you recall how much you
21 weighed then?

22 A I can't tell you, specifically,
23 but I've weighed pretty close to the same
24 weight for most of my adult life, so it

was South Shore Court Reporting
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D. Zarda

1 about what I weigh now. It would have been
2 between 170 and 180.

3 Q Does your weight normally

4 fluctuate between 170 and 180?

5 A It stays around 175 or 180.

6 Right now I think I'm actually 185 because I
7 did some mountain climbing this summer.

8 Q Mountain climbing increases your
9 weight?

10 A Well, it's just a form of

11 working out. I suppose I put on some extra
12 muscle.

13 Q And you view that as a good
14 thing?

15 A It is a good thing.

16 Q Has anything since 2001 to now,
17 affected your weight?

18 A Has anything?

19 Q Yes.

20 A No. I need you to be really
21 more specific about that.

22 Q Anything; holidays, workout
23 routines?

24 A Not much. I've really been

in South Shore Court

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D. Zarda

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

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

very South Shore Court

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D. Zarda

1 light weight throughout that four to six
2 months where I was really not supposed to be
3 doing anything.

4 Q So you still worked out; you
5 just used much lighter weights?

6 A I did some alternative
7 exercises, not weightlifting, you know, some
8 light weights, machines, stuff to keep me
9 moving and try to keep in shape. I'm not one
10 that does very good with just lying around,
11 so those kind of instructions don't work too
12 well for me.

13 Q That was the only thing
14 from 2001 to now, 2011, that interfered with
15 your working out; is that correct?

16 A That, and the broken ankle
17 interfered just for a little bit because,
18 obviously, I couldn't go to the gym right out
19 of surgery. I actually ran into the nurse,
20 one of the nurses that was in my surgery, at
21 the gym.

22 Q She yelled at you for being
23 there so soon?

24 A He.

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D. Zarda

1 Q "He"? He yelled at you for
2 being there so soon?
3 A He was surprised to see me in
4 there that quickly and just told me to take
5 it easy.

6 Q Did he scold you?

7 A He just said to be careful, take
8 it easy, don't get too carried away.

9 Q Did you listen to his advice?

10 A I did listen to it. I still
11 went, but I heeded --- you know when somebody
12 tells you something like that, and you've
13 never been through what I was going through,
14 I definitely didn't want to mess anything up,
15 but I didn't want to get out of shape because
16 I sitting around on the sofa.

17 Q Do you still suffer from the
18 effects of that back injury?

19 A I do.

20 MR. ANTOLLINO: Objection. I
21 think we're getting into the medical
22 privilege. Would you agree?

23 MR. ZABELL: No.

24 MR. ANTOLLINO: I think that
25 we South Shore Court Reporting
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1 are, so with the Judge's instruction, I
2 kindly ask you to move on to another
3 subject.

4 MR. ZABELL: Are you directing
5 him not to answer the question?

6 MR. ANTOLLINO: Yes, yes.

7 MR. ZABELL: You need to just
8 make that clear.

9 MR. ANTOLLINO: All right. I'm
10 just trying to make it smooth also.

11 THE WITNESS: Good to go.

12 Q Do you smoke?

13 A No.

14 Q Have you ever smoked?

15 A I've smoked a clove on occasion,
16 but I've never smoked a regular nicotine
17 cigarette.

18 Q Within the last two years, have
19 you smoked clove cigarettes? Is it
20 cigarettes, or just cloves?

21 A It's called cloves. Yeah, I
22 have.

23 Q Why have you smoked cloves?

24 A Social setting. Something along

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D. Zarda

1 that line. Just smells good. Somebody had
2 one.

3 Q Have you smoked marijuana within
4 the last two years?

5 MR. ANTOLLINO: I don't know the
6 answer to that, but I'm going to direct
7 him not to answer that question on the
8 grounds that he has a right not to
9 incriminate himself.

10 MR. ZABELL: Well, his answer is
11 either no, I haven't, or ---

12 MR. ANTOLLINO: If his answer
13 were yes, then ---

14 MR. ZABELL: I tell you what.
15 We can designate it as confidential and
16 that will allay any of your concerns,
17 but I have an absolute right to ask him
18 that question.

19 MR. ANTOLLINO: Let me speak to
20 him outside. I think that his Fifth
21 Amendment Right is a basis for me to
22 direct him not to answer, and that's
23 going to be my objection at this point.

24 If you'd like, I can speak to

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1 him outside. I might reconsider it,
2 and I might not.

3 MR. ZABELL: I'll tell you what.
4 Why don't I leave you alone and this
5 way you don't have to leave.

6 MR. ANTOLLINO: Allright.
7 Sounds good.

8 (Whereupon, a recess was taken
9 from 12:21 p.m. to 12:28 p.m.)

10 MR. ANTOLLINO: We're still
11 discussing this issue, you and I,
12 before you ask him any questions?

13 MR. ZABELL: I don't know if
14 we're discussing anything. Would you
15 like to discuss something?

16 MR. ANTOLLINO: Yes, I would
17 like to discuss something.

18 MR. ZABELL: What would you like
19 to discuss?

20 MR. ANTOLLINO: I would like to
21 direct the witness not to answer, and I
22 am going to ask the witness not to
23 answer on the grounds that an answer
24 could violate his right
25 against South Shore Court

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1 selfincrimination.

2 MR. ZABELL: Well, you can
3 certainly advise him to say that I
4 refuse to answer that question on the
5 grounds that it may incriminate myself,
6 but he has to assert that. You can't
7 assert that for him.

8 MR. ANTOLLINO: I'm not so sure
9 about that. I'm going to direct him
10 not to answer.

11 MR. ZABELL: I understand what
12 you're saying, and we're going to get
13 to the same place, but he has to say, I
14 am refusing to answer that on the
15 grounds that I may incriminate myself.

16 MR. ANTOLLINO: It's a
17 deposition. It's different. It's

18 --

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

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D. Zarda

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

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D. Zarda

1 A There's a whole book full of
2 drugs that could be illegal. It can be drugs
3 that --- it can be prescription drugs that
4 don't have your name on it. That would be
5 illegal drugs. You could have too many
6 antiallergy pills in your backpack. That
7 would be illegal, so I mean, there's a whole
8 list of drugs that would be considered
9 illegal, I presume.

11 Q Can you identify some of the
12 those drugs?

13 A Well, I think the one you hear
14 about in the media the most would be like
15 marijuana, cocaine. Those would be a couple
16 of examples. Methamphetamine, I suppose.

17 Q Ecstasy, is that another one?

18 A I'm sure it would be considered
19 illegal.

20 Q Within the last two or three
21 years, have you taken methamphetamines?

22 MR. ANTOLLINO: I'm going to
23 direct the witness not to answer the
24 question for the reason stated before.

25 Q In the past three years,
have South Shore Court

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2 you used cocaine?

3 MR. ANTOLLINO: I'm going to
4 direct the witness not to answer the
5 question for the reason stated before.

6 Q Have you used ecstasy in the
7 last three years?

8 MR. ANTOLLINO: I'm going to
9 direct the witness not to answer the
10 question for the reason I stated
11 before.

12 Q Have you used any item that has
13 altered your thought process within the last
14 three years that is not prescribed?

15 MR. ANTOLLINO: Wait. Hold on.
16 Okay, again, I'm going to direct the
17 witness not to answer the question for
18 the reason stated before.

19 Q Do you drink alcohol?

20 A I do on occasion.

21 Q Do you ever drink to excess?

22 A No, I do not.

23 Q Have you ever drank to excess?

24 A I have, but it was a long time

25 ago.

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D. Zarda

1 Q About how long ago?

2 A I was done with that back in
3
4 around 2000.

5 Q You know, when you fill out
6 certain forms for insurance, they ask you how
7 often you drink. They'll ask you if it's one
8 drink a week or two drinks a week.

9 How many drinks a week would you
10 characterize your usage as?

11 A It just depends on where I'm at.
12 If I'm at a drop zone working and I'm hanging
13 out with a bunch of jumpers after work having
14 a couple of beers after work, or if I'm doing
15 school for a solid week and I'm doing
16 homework, I may not have any, so a per week
17 thing, I think maybe per night or something
18 might be a better way to answer the question.

19 Q Okay, please.

20 A I don't get drunk. I don't like
21 the feeling of being drunk, so I would stick
22 to the rule of no more than a drink an hour
23 or a beer an hour, not even that much. You
24 know, so a person might see me have a couple
25 of beers in a social setting, and that

would South Shore Court

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1 be it.

2 Q Has that remained consistent
3
4 over the last three years?

5 A It has.

6 Q Has anything occurred within the
7 last couple of years to change that?

8 A No, I'm not a drinker.

9 Q At Skydive Long Island when you
10 worked there in 2009 and 2010, was there one
11 employee there that you knew you were
12 supposed to report complaints to?

13 A Say that one more time.

14 Q Was there one employee at
15 Skydive Long Island in 2009 and 2010, that
16 you knew you were supposed to bring your
17 complaints to?

18 A Are you asking if there was a
19 supervisor that if you have problems, you're
20 supposed to go to?

21 Q Yes.

22 A Not clearly, no. There was
23 not --- there were staff meetings in which Ray
24 held, so he would want people to bring
25 complaints to him, if you had them.

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1 wasn't a specific chain of command that was
2 outlined to the staff or in any kind of staff
3 manual that dealt with that.

4 So Ray was the drop zone owner,
5 so if there was a problem with an employee or
6 anything, it went to Ray. Typically, if
7 there was a problem with gear, you went to
8 the rigger or Rich. If there was an issue
9 with procedures, something on a jump, like
10 that, a person would typically go to Rich and
11 talk to him about it, but it wasn't outlined,
12 specifically.

13 Q But you knew you could go to
14 Rich with your problems; correct?

15 A I felt like I could.

16 Q Did you go to Rich with any
17 problems?

18 A I did.

19 Q What problems did you go to Rich
20 about?

21 A I went to Rich about this
22 problem with Ray firing me.

23 Q Did you go to Rich with any
24 other problems?

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D. Zarda

1 A In 2009 and 2010, are you
2 asking?

3 Q Yes.

4 A Let me think about that for just
5 a moment, if there was anything else.

6 No, I can't think of anything
7 specifically that there was a problem that I
8 went to Rich for. The only thing we really
9 discussed work-wise, I don't know if they
10 were problems, was just me getting back on
11 board with the training program at Skydive
12 Long Island, getting me up to date because
13 some things changed over the years.

14 It wasn't a problem. It was
15 just a matter of since he was the chief
16 instructor, working me back into the system.

17 Q You felt comfortable with Rich;
18 correct?

19 A I did.

20 Q You felt you could bring any of
21 your problems to Rich's attention; correct?

22 A I did.

23 Q In fact, there were times when
24 you would confide about personal issues

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D. Zarda

1 Rich; is that correct?

2 A Be more specific about "personal
3 issues," if you would.

4 Q There came a point in time where
5 you suffered a personal loss?

6 A Be more specific, please.

7 Q I believe a pet.

8 A Okay. Yes, there was a time
9 that that happened.

10 Q Do you recall when that
11 occurred?

12 A I do recall when that occurred.
13 That was June 22, 2009.

14 Q What occurred?

15 A My pet, my cat had a heart
16 attack in the middle of the night.

17 Q Was your cat with you on Long
18 Island at that time?

19 A She was.

20 Q How did that affect you?

21 A It was very upsetting. I think
22 anybody would be upset. It was unexpected,
23 out of the blue, in the middle of the night,
24 2 o'clock in the morning, so I was upset.

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D. Zarda

1 Q Did you share that with Rich?

2 A I don't specifically remember
3 going to Rich or having a meeting or pulling
4 him aside and saying, hey, Rich, this

5 happened. I'm sure that I shared it with
6 people. I have no doubt that I shared it
7 with people.

8 Q And you shared it with people at
9 work; correct?

10 A I'm sure I did.

11 Q Did there come a time where
12 people at work told you that they felt that
13 you were unable to jump as a result of the
14 grief that you were experiencing?

15 A No.

16 Q Did you ever feel that the grief
17 that you were experiencing was preventing you
18 from effectively doing your job?

19 A No, it didn't. I did my job.

20 Continued on.

21 Q Did there come a time in 2009,
22 where you were crying at work?

23 A Where I was crying at work?

24 Q Yes.

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2 A I don't recall crying at work.

3 I certainly didn't --- let's see, 2009. No.

4 I didn't cry when I broke my ankle. That's

5 for sure. I don't recall. I don't recall

6 crying at work.

7 Q Did anybody at work make fun of

8 you when you lost your cat?

9 A Nobody made fun of me. Alex

10 Allen thought that he diminished it a little

11 bit. Maybe that's just his personality.

12 It's just a cat, and he didn't like cats, so

13 it's to be expected.

14 Q What was your cat's name?

15 A Little Cat.

16 Q Is that the full name?

17 A That was her full name,

18 Little Cat Moore Zarda.

19 Q Little Cat ---

20 A Moore Zarda.

21 Q Moore?

22 A M-O-O-R-E, Zarda.

23 Q Is Moore a family name?

24 A It is.

25 Q As a side note, I did have a

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2 that my son named Little Bear.

3 A She was a little cat.

4 Q My son liked the TV show Little

5 Bear.

6 Did the loss of Little Cat

7 affect you emotionally?

8 A At the time, yes.

9 Q Does it still affect you

10 emotionally?

11 A I've since gotten over it. I

12 have another cat that we've added to the

13 family. I don't like the fact that she's

14 gone, but people die too. I'm used to that

15 all the time, so you get over that, and move

16 on.

17 Q When do you believe that you've

18 moved on for this?

19 A Well, I don't want to make

20 myself sound cold, but within two days, I had

21 gone to the cattery in New Jersey, and I

22 picked up and got a new cat, so I wouldn't

23 say I was over it the day we picked up the

24 new cat, but I felt it necessary to have

25 another cat with me.

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

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

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2 Q Under what set of circumstances

3 have you taped conversations that you've had

4 with individuals?

5 A In my entire life, or ---

6 Q Yes, in your entire life.

7 A You realize I'm forty-one years

8 old, so it would be difficult for me to

9 recount in this seating each and every

10 instance I've ever recorded a conversation.

11 Q As best you can.

12 A Well, the most recent would be,

13 you know, when Ray fired me, so that comes to

14 mind the most, because this is what I'm

15 focused on thinking about. I don't think

16 about some of the other things that I might

17 have recorded such as customer service calls

18 or calls to the bank or calls to Apple

19 computer regarding my computer, getting them

20 to fix it, or something like that, so I can't

21 recall every instance of recording a

22 conversation. It would be almost impossible.

23 It's pretty broad.

24 Q Why would you record a telephone

25 conversation?

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2 A Several reasons. There could be

3 legal reasons that come to mind. I did

4 record a phone call between me and Ray's

5 wife. I did record that, and again, there

6 could be legal reasons for recording a phone

7 call.

8 The best reason is just to

9 remember what was said during a phone call

10 because unless you type really fast or are a

11 court reporter or you take good notes, it's

12 just easier to record the call, and then if

13 you need to go back and listen to what was

14 said, it's right here. Sort of refresh

15 yourself, so, you know, that's the most

16 useful tool that I can think of for it.

17 Q Where were you when you tape

18 recorded your telephone conversation with

19 Ray's wife?

20 A Where in the world, or where in

21 the country?

22 Q Where, geographically?

23 A I was in the State of Missouri.

24 Q Do you know where she was?

25 A She was --- I don't know exactly

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1 where she was. I believe she was in
2 New York.

3 Q Did you tell her that you were
4 taping your phone call with her?

5 A I did not.

6 Q So you taped it surreptitiously?

7 A Define "surreptitiously." I
8 know what the word means to me, but ---

9 Q Well, why don't you tell me what
10 it means to you.

11 A Well, I think what it means to
12 me is, was I taping it covertly or to be able
13 to use it against her without her approval,
14 or something to that effect. I think that's
15 what you mean.

16 Q Well, I just mean covertly.

17 A What do you mean by "covertly,"
18 exactly?

19 Q What I mean exactly by that is
20 that the fact that it was being taped was not
21 disclosed to her.

22 A Okay, then yes. It was being
23 taped. I did not disclose it to her. It was
24 for my personal use to be able to

reflect South Shore Court

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1 back on to remember and to go over what did
2 she just tell me without me having to write

3 it all down as she's telling it to me because

4 I, obviously, could not keep up with that.

5 I'm not a court reporter. I don't type fast,

6 so to me for my own personal needs, it's no

7 different than if I was taking notes while

8 talking to her on the phone, and that was the

9 purpose.

10 Q Do you know if you violated any

11 laws ---

12 A I checked.

13 Q ---by doing that?

14 A I don't believe I did. I did a

15 check with some of the statutes online to see

16 if that was legal for me to do from my state,

17 and from the research that I did online, it

18 was legal for one party to be recording the

19 conversation, so I do not believe I violated

20 any laws.

21 Q Now, there came a time where you

22 tapped a conversation that you had with Ray;

23 is that correct?

24 A That is also correct; yes.

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2 Q How many conversations with Ray

3 did you tape?

4 A That is the only conversation

5 that I can recall taping with Ray.

6 Q Why did you tape that

7 conversation?

8 A This was the termination. I

9 taped it because I knew that I had a week on

10 suspension. I knew that Ray had broke

11 several laws and made several rash decisions,

12 and I was speaking about the matter during

13 the week with some close friends and told

14 them what had happened to me. And they said

15 when you go back to work on Monday, you need

16 to document what is said when you go back to

17 work just in case something goes wrong, and

18 so I thought about that, and I heeded that

19 advice.

20 Q Who were friends that you spoke

21 to?

22 A I spoke to my partner,

23 William Moore. I spoke to another friend

24 that I've known in Massachusetts that's dealt

25 with situations complex --- complex

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2 situations.

3 Q Who was that person?

4 A His name is Ira Helfand,

5 H-E-L-F-A-N-D, and I spoke, obviously, with

6 my mom and sisters, of course. I'm sure I

7 spoke to --- well, I know I spoke to the owner

8 of the condo that I was leasing about it.

9 Told him --- I mean, he wanted to know why I

10 wasn't going to work, so we talked about it.

11 Q Who is that; what is his name?

12 A Sal, which is S-A-L. Falcone,

13 F-A-L-C-O-N-E. Sal Falcone, and they would

14 come out on, you know, periodically from

15 their condo from Westchester, so his

16 boyfriend, his name is Mike, but I can't

17 think of his last name, and they were

18 together, and Mike has his own business, and

19 I can't remember what it is, so just the fact

20 that he is a business owner in New York, we

21 talked about it some.

22 And I don't remember the details

23 of it, but they knew I was suspended, and I

24 was going back to work the following week for

25 Ray, and that I should be prepared.

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1 Q Did you tell your partner,
2 William Moore, your friend Ira Helfand, your
3 mother, sisters, and Sal Falcone why you were
4 suspended from Skydive Long Island?

5 A I'm sure I told them what I knew
6 at the time.

7 Q What did you tell them?

8 MR. ANTOLLINO: Objection. Go
9 ahead.

10 A I can't remember. I can't
11 recall each conversation I had in detail with
12 each of those individuals during that time.
13 That would be overly broad and impossible for
14 me to tell you, but I can just say I was
15 suspended and that I had spoken to those
16 people, and I told them what had happened,
17 you know.

18 Whatever it was to whatever
19 level of detail and specificity that I would
20 have told each individual, I don't know.
21 There's no way. It was a tense moment, and
22 there's no way for me to remember that.

23 Q Did you tell them that you were
24 suspended because you were gay?

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1 A I don't recall exactly the
2 reason that I told them. I would have told
3 them --- I most likely told them what I told
4 you about what Ray said, so you're asking me
5 to recall exactly what my conversation was
6 with five different individuals during a week
7 that I had, so I can't recall that.

8 Q Do you believe you were
9 suspended because you're gay?

10 A I believe that was the primary
11 reason.

12 Q Do you know what the secondary
13 reasons were?

14 A Well, I think there were some
15 gender issues in there, as well.

16 Q What gender issues were those?

17 A How I would conform to sex
18 stereotypes, how I act as a man. I think
19 that was a problem.

20 Q Did you act like a man?

21 A I think so.

22 Q Did you act like a woman?

23 A I don't think so, but other

24 people may think that. I don't know what

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2 people think.

3 Q Did you give anybody reason to

4 think that you acted like a woman?

5 A Who knows if they saw me throw a

6 softball? I don't know.

7 Q Did anybody comment on how you

8 threw a softball?

9 A I can't remember specifically

10 who and where, but people have seen me throw

11 a ball before during those times between

12 jumps when we're not jumping, we're on

13 weather hold, or whatever, and it was just

14 laughed about in the same realm as my gayness

15 being laughed about, and I just shrugged it

16 off because it does look a little funny.

17 Q So when you throw a softball,

18 you look a little funny?

19 A If I throw a softball, yes, it

20 looks a little funny.

21 Q Are you saying you throw a

22 softball like a spastic man or like a woman?

23 A I would say that if you saw me

24 throw a softball, somebody might think I was

25 gay.

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2 Q Why?

3 A Because of the way it

4 Q Does it look like you're

5 spastic

6 A No. It just looks, I mean, if

7 you've ever seen the stereotypical gay person

8 throw a ball, you know, the way it's thrown,

9 there's a certain look to it.

10 Q Could you explain to me that

11 look?

12 A I've never been asked to explain

13 the look. Maybe I should go out here and

14 throw the ball. It just kind of has a little

15 toss to it like I'm showing you right here

16 (indicating). It doesn't look like a

17 pitcher, a typical baseball pitcher or

18 softball pitchers, how you see straight guys

19 playing catch with the ball and the mitt. It

20 just looks different.

21 Q So straight guys have a

22 stereotype of how they play ball?

23 A I think you can tell the

24 difference when some gay people are throwing

25 a ball and playing ball versus some

straight South Shore Court

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1 people; yeah, I think you can say that.

2 **Q Do you know if there are any gay**

3 **professional baseball players?**

4 **A I don't follow professional**

5 **sports at all. Unfortunately, I cannot**

6 **answer that. I mean, I don't even know who**

7 **the major teams are. I get asked stuff like**

8 **that all the time, but I don't know.**

9 **Q Do you assume that there are?**

10 **MR. ANTOLLINO: Don't assume.**

11 **Objection.**

12 **Q You can assume if I asked you.**

13 **MR. ANTOLLINO: Objection.**

14 **Q You may disregard the objection.**

15 **A Statistically speaking, if**

16 **there's a group of ten people in a room, one**

17 **of us is gay, so I would have to say that**

18 **statistically speaking, probably so.**

19 **Q Other than maybe being teased**

20 **about how you threw a ball, can you think of**

21 **any other specifics?**

22 **A We're talking about specifics**

23 **of...**

24 **Q Of how you acted, I believe,**

in South Shore Court

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1 **2 context of differently than other men at**

2 **3 work.**

3 **4 A Maybe some people enjoyed,**

4 **5 noted, commented on my pink hat, pink cap. I**

5 **6 had a pink ball cap. I don't know if it was**

6 **7 a ball cap or just a regular hat, but it was**

7 **8 pink, and it said rebel on it, and it was**

8 **9 bright pink, and I wore it. I wore it on**

9 **10 occasion at work. I have no hair. I would**

10 **11 wear it sometimes until about 1:00 or**

11 **12 2:00 p.m. when the sun would go behind the**

12 **13 building and I didn't need it anymore. It**

13 **14 was viewed as a feminine thing.**

14 **15 Q Your pink hat was viewed as a**

15 **16 feminine thing?**

16 **17 A It was.**

17 **18 Q Who commented on it?**

18 **19 A Everybody commented on it at**

19 **20 some point that they saw me wearing that hat.**

20 **21 Q I'd like for you to identify for**

21 **22 me the names of the people who commented on**

22 **23 it and what they specifically said, if you**

23 **24 remember.**

24 **25 A Rich put it best yesterday.**

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

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

2 A Let me finish answering.

3 Q Did Rich Winstock say to you,
4 nice pink hat?

5 A Again, I can't specifically
6 recall specific times and moments when the
7 pink hat was discussed. It was discussed or
8 mentioned or commented on regularly. I wore
9 it regularly in the mornings, as I said, to
10 protect my head. It drew attention. People
11 saw it. People commented on it.

12 MR. ANTOLLINO: All right. Can
13 I just say something on the record?

14 MR. ZABELL: No.

15 MR. ANTOLLINO: Not the last
16 question, but the one before that, I'm
17 going to move to strike, because
18 Mr. Zabell interrupted the witness as
19 he was finishing the question. And I
20 even tried to get Mr. Zabell to allow
21 the witness to finish answering the
22 question, but he continued to ask the
23 next question which my client fully
24 answered, and I had no objection.

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1 MR. ZABELL: Counselor, pursuant
2 to the Federal Rules of Civil

3 Procedure, what you have just done is
4 called a speaking objection. You are
5 not entitled to make a speaking
6 objection. If you'd like, I will give

7 you an opportunity to review the
8 Federal Rules of Civil Procedure so you
9 may confirm the representations I have
10 made are completely accurate, and that

11 you will learn to remain silent
12 throughout the rest of deposition and
13 only object in a manner which is
14 appropriate pursuant to the Federal
15 Rules of Civil Procedure.

16 To the extent that I am
17 empowered to, I deny your request to
18 strike the question and the answer and
19 ask that you remain silent throughout
20 the rest of this deposition.

21 MR. ANTOLLINO: I will make
22 objections that are appropriate.

23 MR. ZABELL: Thank you. You
24 have been doing so.

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MR. ANTOLLINO: I have.

MR. ZABELL: That's why I'm

going to request that you take me up on

my offer to review the Federal Rules of

Civil Procedure.

MR. ANTOLLINO: You've, once

again, made a derisive comment,

Mr. Zabell. I have made an appropriate

objection. I have made very few

objections in this deposition, and I

will make what I feel are appropriate

objections.

Q When in 2010, did you wear your

pink hat?

A Be more specific, if you would,

please. When as in, what; days of the week,

time of the day?

Q What days in 2010, while you

worked at Skydive Long Island, did you wear

your pink hat?

A Can't remember every specific

time that I took a pink cap out of my bag or

out of my cubbyhole in the video room and put

it on my head, but in general, I would

wear South Shore Court Reporting
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my pink hat when the sun was shining.

Particularly, in the morning hours from when

we began work until about 1:00 or 2:00 p.m.

when the sun would go behind the building

where the gear area is and I no longer needed

protection from the sun.

I would wear it while I was

gearing up passengers on the ground. Any

time I was running around on the ground and

the sun was shining, I would wear the hat to

protect my head.

Q Have you ever seen a straight

man wear a pink hat?

A I can't say that I recall a

specific time I've seen a straight man wear a

pink cap, but I don't see it often.

Q But you have seen it; is that

what you're saying?

A I can't recall. I mean, you're

asking me to think back over the course of ---

I'm forty-one years old -- to the time that I

could remember if I've ever seen a straight

man wear a pink hat. I will tell you that I

probably have seen a straight person

wear a South Shore Court Reporting
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1 pink hat at some point in my life. When,
2 during this forty-one-year-old process, I
3 can't say right now at this seating.

4 Q When people would say to you the
5 one comment you were able to relay to me,
6 hey, nice pink hat, do you recall who those
7 people were that said that to you?

8 A It's a close-quarters
9 environment. The key players that I worked
10 with, the full-timers, have all said
11 something. Probably most at the beginning of
12 the season when they seen the hat and they
13 seen me we wearing it.

14 I mean, either a sleeveless
15 shirt on because it's hot, or whatever, or
16 there was this guy wearing a pink hat, you
17 know. I can't remember exactly who said
18 what/when about the pink hat.

19 Q Would Rich say anything to you?

20 A It would be in that same
21 category of questioning of me not being able
22 to say specifically if Rich said something,
23 what he said, and when. I just know that it
24 was talked about a lot.

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1 Q As you're sitting here today,
2 you can't identify who specifically said
3 anything about your hat?

4 A Not at this seating. To ask me
5 to think about the number of comments that
6 were made and who made them and exactly what
7 they said, that would be pretty broad.

8 Q Did you maintain a diary during
9 your employment at Skydive Long Island?

10 A No, I'm not graced with the time
11 to keep up with diaries.

12 Q Did you ever take written notes
13 of the occurrence of your days while you were
14 employed at Skydive Long Island?

15 A No. The only kind of
16 documentation that we have are jump logs.

17 Q Did you make any notations in
18 your personal jump logs?

19 A About pink hats, or just period?

20 Q About anything.

21 A My jump logs are really not
22 caught up, and there are printouts in Ray's
23 computer about how many jumps I did on a
24 given day, and that's my jump log right now,

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1 so there are no addendums or notes written
2 onto those. I just trust that that's the
3 number of jumps I made, and they're in a file
4 somewhere.

5 Q You made contemporaneous notes
6 of your jump logs, of your days while
7 employed at Skydive Long Island?

8 A Not that I can recall right now.

9 Q Where do you currently reside?

10 A My home of record is in

11 Missouri; Richmond, Missouri.

12 Q Can I have your actual address?

13 A Well, the actual address I
14 receive correspondence and everything at is
15 the Post Office Box that's I've had for about
16 seventeen years. That's my actual address.

17 Q Do you have an actual home where
18 you sleep when you are in Missouri?

19 A I do.

20 Q Where is that?

21 A That is located on a skydiving

22 center which is private airport called

23 Lexington Memorial Airport, and that is in

24 Henrietta, Missouri, which is just down

the South Shore Court Reporting
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1 road from Richmond.

2 Q You actually sleep there?

3 A When I'm there, I do.

4 Q How often are you there?

5 A I haven't been home in awhile.

6 Over the course of seventeen years that that

7 place has been there, I estimate I've

8 probably been there twenty to thirty percent

9 of that entire time. It varies. It depends

10 on where I'm going to be, what I'm doing, if

11 I'm traveling, working, if I'm in Dallas for

12 an extended stay. It really varies. I have

13 no set schedule for when I'm going to be

14 there.

15 Q Beginning in July of 2010, where

16 did you reside?

17 A Beginning in July of 2010.

18 That's --- oh, beginning in July of 2010. My

19 home of record remains in Richmond, Missouri

20 at that airport.

21 Q Where were you physically

22 residing?

23 A Where I was physically in July

24 of 2010 was, I guess, in Coram, New York.

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1
2 **Q** Where in Coram, New York did you
3 live?

4 **A** I was leasing a condo from the
5 aforementioned Sal Falcone that we talked
6 about, and that was --- I can remember the
7 address but not the zip code. Three
8 Appomattox, A-P-P-O-M-A-T-T-O-X, Court,
9 Coram, New York, and I believe the zip code
10 might have been 11727, but you'll have to

11 look that up yourself.

12 **Q** You resided there until when?

13 **A** In 2010?

14 **Q** Correct.

15 **A** I stayed there until, I believe,
16 September 17, and if it wasn't exactly
17 September 17, it was real close to that, real
18 close. Probably within a day, which I don't
19 remember which day exactly, but it was just
20 after the time period that I was supposed to
21 leave anyway.

22 **Q** Where did you go after that?

23 **A** I have to think about it for a
24 second.

25 **I** believe I proceeded
back South Shore Court
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2 towards Missouri. Yes, I did. I was in my
3 truck, and then I went back home to Missouri,
4 but along the way, I stopped at some other
5 drop zones.

6 **Q** Where did you stop?

7 **A** What drop zone I stopped at was
8 a drop zone that I sought employment at after
9 Ray fired me in July, and that was
10 Chicagoland Skydiving Center. At the time,
11 Chicagoland, they just moved this past
12 season, and you may have to look that up. I
13 can't remember exactly which city. I think
14 it was Hinckley, Illinois at the time.
15 They've moved.

16 **Q** When did you stop by

17 Chicagoland?

18 **A** It would have been in the third
19 week or so of September.

20 **Q** And you asked them for
21 employment; is that correct?

22 **A** At one time, I did; yes.

23 **Q** That September, did you ask them
24 for employment?

25 **A** I did not ask for employment in

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2 September, but rather I discussed the matter
3 of him not offering me employment in July in
4 response to Mr. Maynard terminating me in
5 June.

6 Q Why did you drive there in
7 September then?

8 A Because it is on the way home,
9 directly on the way home, and because I
10 wanted to have a face-to-face conversation
11 with the owner of the drop zone.

12 Q Did you?

13 A I did. I felt we were both
14 entitled to have a conversation about the
15 matter face-to-face.

16 Q What did your conversation with
17 him consist of?

18 A Mostly it was about the e-mail
19 exchange that we had regarding me responding
20 to his ad for help and his denying me
21 employment and the action that had taken
22 place at Skydive Long Island with Ray. We
23 discussed that and what I was going to do
24 about it, primarily.

25 Q What was discussed about
what South Shore Court
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2 happened with you at Skydive Long Island?

3 A Well, we have the e-mails

4 between Mr. Doug Smith, he's the drop zone
5 owner, and I just told him my side of the
6 story.

7 Q What was your side of the story?

8 A I mean, what we already talked
9 about when you asked me about what Ray said
10 when he suspended me that day. I told them
11 all of that.

12 Q Did you tell Doug Smith that you
13 felt you were terminated from Skydive Long
14 Island because you were gay?

15 A I did, and I also supplemented
16 that with the ridiculous accusation that was
17 made that I inappropriately touched a female
18 passenger which he had, I think, enjoyed and
19 could appreciate my frustration with that
20 situation, based on the interaction that we
21 were having while we were having this
22 man-to-man talk.

23 Q Well, you were at the deposition
24 of Rosanna Orelana; were you not?

25 A I was.

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1 Q In her deposition, she testified
2 that she did complain about you; did she not?

3 MR. ANTOLLINO: Objection.

4 Q You may answer.

5 MR. ANTOLLINO: You can answer.

6 A Umm—

7 Q Yes or no?

8 A It's not a yes or no.

9 MR. ANTOLLINO: If this is going

10 to be a yes or no —

11 MR. ZABELL: It is a yes or no.

12 A I'd have to look back on the
13 record, but I think her boyfriend complained.

14 Q You don't remember any testimony
15 about her complaining?

16 A I do remember testimony about
17 her complaining.

18 Q Do you doubt that a complaint
19 was made to Ray Maynard about you?

20 A I doubt that the complaint came
21 from Ms. Orelana, and she was the passenger
22 that I took on the tandem. I doubt that.

23 Q Well, who do you think the
24 complaint came from?

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1 A I think it was clear that day
2 that the complaint came from Mr. Kengle,
3 which was Ms. Orelana's boyfriend.

4 Q Why do you think Mr. Kengle
5 complained about you?

6 A Well, he said during his
7 deposition what his reasons were.

8 Q What do you believe those
9 reasons to have been?

10 A Well, he said that I was getting
11 familiar with his girlfriend.

12 Q Do you think that that's what he
13 complained to Ray?

14 A Well, he said that that was one
15 of the reasons that he felt — I'd have to
16 look back and see exactly what he said, but
17 that was one of the reasons. I mean, that's
18 what he said. He felt I was getting familiar
19 with his girlfriend.

20 Q Do you believe that he actually
21 conveyed that to Ray Maynard?

22 A Be a little bit more specific,
23 if you would, on what you're asking me to
24 answer there, if I — how I believe he —

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1 Q Do you believe that Mr. Kengle
2 actually called up Ray Maynard and
3 complained?

4 A Oh, yes, I believe he called.

5 Q Do you believe that he
6 complained that you were getting familiar
7 with his girlfriend on the jump?

8 MR. ANTOLLINO: Objection.

9 Asked and answered.

10 A Yes, I believe he made a
11 complaint. I believe that he was testifying
12 under oath the day he said that. I wasn't
13 privy to the conversation that he had with
14 Ray, so I have to take him at his word under
15 oath that that is what he said when he called
16 Ray. To that extent, yes.

17 Q Do you believe it was that
18 complaint that Mr. Maynard was acting on when
19 he suspended you?

20 A Not entirely.

21 Q Is the complaint that Mr. Kengle
22 made about you consistent with your sexual
23 orientation?

24 MR. ANTOLLINO: Objection.

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D. Zarda

1 A Okay, I think I understand the
2 question somewhat. Could you maybe be a
3 little more specific?

4 Q I'd like you to try and answer
5 the question, if you can.

6 A You're asking me if the
7 complaint --- let me just reword your
8 question.

9 Q Well, I'd like you to just
10 answer my question, if you can, and if we
11 need to clarify thereafter, we will.

12 MR. ANTOLLINO: I'm going to
13 object.

14 MR. ZABELL: And you may object.

15 Q You're free to disregard the
16 objection.

17 A I want to make sure that I
18 understand the question clearly so that I can
19 give you an accurate answer. I think what

20 you're asking me is if Mr. Kengle's complaint
21 was about me getting familiar with his
22 girlfriend is consistent with me being gay?

23 Q Yes.

24 A No, I don't think that it

is South Shore Court

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2 consistent.

3 Q It doesn't sound like Mr. Kengle
4 complained about you being gay; correct?

5 MR. ANTOLLINO: Objection.

6 A In that one complaint, no, no,
7 not in that part.

8 Q You, in fact, testified that

9 Mr. Kengle complained that you were getting
10 familiar with his girlfriend; correct?

11 A That's what he said.

12 Q If he, in fact, complained, as
13 he testified he complained, then he didn't
14 complain about you being gay; correct?

15 MR. ANTOLLINO: Objection.

16 A He said that. Ray did not say
17 that. Ray said something different when Ray
18 suspended me. Ray said that they complained
19 about my sexuality coming up and that they
20 were offended by it, and that was
21 inappropriate. He said that.

22 Q Did you disclose to Rosanna Orelana
23 your sexuality?

24 A I believe I did.

25 Q Did you disclose your
sexuality South Shore Court

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2 to Ms. Orelana because you sensed that she
3 was uncomfortable?

4 A I believe so.

5 Q Did you disclose your sexuality
6 in an effort to allay her discomfort?

7 A I believe so, yes, and to make
8 me more comfortable, as well.

9 Q Who was the customer on that
10 jump?

11 A Who was the customer?

12 Q Yes.

13 A My particular customer on that
14 particular lift, on that load, was Ms. Orelana.

15 Q Did you agree with Mr. Winstock
16 yesterday when he said your primary role is
17 to go from the airplane to the ground safely?

18 A That is correct. That is our
19 number one priority, to bring the customers
20 back safely ---

21 Q Did you ---

22 A ---above all else.

23 MR. ANTOLLINO: Let him finish.

24 Q Did you agree with him that your
25 secondary role is to make the jump

experience South Shore Court

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1 enjoyable for the customer?

3 A I agree that that is another
4 goal. Whether or not it's two or three, I'd
5 have to think about a little bit, but it is
6 one of our primary goals. Our other primary
7 goal is to make sure the customer is having a
8 good time, to the best of our ability, and to
9 the extent that we can do so without breaking
10 any rules or regulations of the FAA, the
11 United States Parachute Association, our
12 licensing manufacturers that give us our
13 licenses.

14 All of those things that we have
15 to take into account when we're trying to
16 give our customers that good experience. We
17 have to think about every single one of those
18 things on every single jump, so that is a
19 goal. We want to have a good time, and
20 whatever we can do to do that, but sometimes
21 it's not necessarily the second priority. It
22 might be three or four. There could be other
23 things going on that you have to worry about
24 that's number two.

25 Q You chose to disclose
your South Shore Court

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2 sexuality to Ms. Orelana because you sensed
3 that she was uncomfortable; is that correct?

4 A I believe so, yes.

5 Q It came back to you that it did

6 not allay her discomfort; correct?

7 A Apparently not, if they called

8 and complained about it. She—they must

9 not have—and when I said "they," I mean

10 Mr. Kengle called and complained, but they

11 were together in it. I think Mr. Kengle was

12 mentioned as the brains of the operation, or

13 something to that.

14 MR. ANTOLLINO: Adding insult to

15 Ms. Orelana.

16 MR. ZABELL: Counselor, remain

17 silent, please.

18 Q I believe you testified that in

19 the third week of September of 2010, you

20 stopped by the Chicagoland Skydive Center; is

21 that correct?

22 A Chicagoland Skydiving, yes.

23 Q How long did you stay at

24 Chicagoland Skydive Center?

25 A Our conversation was about

one South Shore Court

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2 hour, so I was at the drop zone probably
 3 about two hours. Mr. Smith was flying the
 4 aircraft. I had to wait for him to land the
 5 aircraft for me to have an opportunity to be
 6 able to talk to him.

7 Then sunset came, and I
 8 discussed staying the next day and making
 9 another jump or making a fun jump because I
 10 didn't make another jump. I said, you know,
 11 I'm within eight hours of home, maybe I
 12 should just go for it, and he said, you
 13 probably ought to try to just get home,
 14 sounds like a long trip, so I decided to
 15 leave and go home.

16 Q Then you went home to Missouri?

17 A I did. I made it that far.

18 Q Is it safe to say that in the
 19 third week of September, you made it back to
 20 Missouri?

21 A I would say closer to the fourth
 22 week, the end of the September. Looking
 23 back, it was in the late 20s of the calendar.

24 Q How long did you stay in
 25 Missouri for at that time?

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2 A Before I went somewhere else,
 3 you mean?

4 Q Yes.

5 A Approximately ---I'm pretty
 6 busy. I do a lot of traveling, so I don't
 7 have my travel itinerary exactly in front of
 8 me, so I can't tell you for sure if I went
 9 somewhere else between the next trip, but the
 10 next trip that I can remember that I went on
 11 was a cruise.

12 Q A cruise?

13 A Yes.

14 Q From when to when did you go on
 15 a cruise?

16 A That year ---it shifts every
 17 year by a week, so the dates, I don't --- it's
 18 typically the third week in October, so I
 19 believe that I would have left somewhere
 20 around the middle of October because I
 21 usually go a little early. It's a yearly
 22 event, and I come back a little after the
 23 event, so I usually go out there before I go
 24 on the cruise ship and make some fun jumps,
 25 and then go on the cruise.

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1 Q Where do you cruise from?

2 A It's typically from L.A. to

3 Mexico and then pack to L.A. Although,
4 sometimes it's from San Diego, but most of
5 the time, it's from L.A.

6 Q What kind of a cruise is this?

7 A It's a seven-day Mexican Riviera
8 cruise.

9 Q Who do you go on this cruise
10 with?

11 A Fellow passengers on the cruise.
12 Depending on the cruise ship and the size of
13 the ship, which varies from year to year, it
14 could be anywhere between 2,000 and 3,400
15 other passengers.

16 Q Do you go with a group?

17 A I do not go with a group. I go
18 by myself, but there are people that I know
19 on the cruiseship.

20 Q How do you know these people?

21 A From previous cruises and from
22 introductions from their friends to other
23 friends. It's over the years. I've gotten
24 to know a lot of people.

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1 Q How did you get from Missouri to

2 L.A. in October of 2010?

3 A I'm sure I flew. I normally
4 fly. The only time I drove was in 2009.

5 Q Where did you stay in California
6 in October of 2010?

7 A Before or after the cruise?

8 Q Before the cruise.

9 A Typically, I would stay at the
10 drop zone in Paris, California; Paris Valley
11 Skydiving Center. It's a very large
12 commercial facility, and they have bilitines
13 for visiting skydivers.

14 Q They have what?

15 A Bilitines. Bilitine is housing
16 or places to sleep. Bilitine, buildings,
17 bunkhouses, accommodations, work
18 accommodations. They have accommodations for
19 visiting jumpers.

20 Q Do you pay?

21 A You do pay a small fee. It's
22 minimal.

23 Q Did you work while you were out
24 there?

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2 A No, I did not.

3 Q Did you attempt to work while
4 you were out there?

5 A No.

6 Q You stayed there for how many
7 weeks before your cruise?

8 A It's not weeks. I would have to
9 go back and look at the itinerary

10 specifically, but typically, I'll go out

11 there a few days, so that can be four or five

12 days, so I can jump, and I like to leave

13 myself some leeway in case we have crappy

14 weather. I don't want to show up a day

15 before the cruise or two, and not get to

16 jump. Typically, it's four to five days, and

17 then we go on the cruise.

18 Q The way you talk about jumping,
19 it almost seems like you need to get your
20 jumps in in order to keep your head on
21 straight, in order to maintain your mental
22 health; is that accurate?

23 A No, I won't say that at all. I

24 won't say that that's accurate. I would say

25 that I've been jumping for almost twenty

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2 years, just like Rich Winstock yesterday.

3 We're almost the same age. We started in the

4 same year. We are dedicated to it. We are

5 passionate about it. We're professionals,

6 and we both share the same feeling in it, and

7 it's typically a comradery of a relatively

8 small group of society, the population, that

9 we all enjoy. I won't say that I need it. I

10 enjoy it.

11 Q Do you get depressed if you

12 don't get to jump for a period of time?

13 A Be more specific about do I get

14 depressed; about what?

15 Q About jumping.

16 A Do I get depressed about

17 jumping? Well, if I haven't jumped for a

18 period of time, then I seek and want to jump

19 soon.

20 Q What period of time is that?

21 A It varies. It depends on, you

22 know, if I'm really busy with school or if

23 I've had a hectic couple of weeks, or you

24 know, some people, you know, fun jumpers have

25 a hard time getting through the work week

1
2 without thinking about jumping. They come
3 out during the week, in fact, after work and
4 make a jump to calm themselves down. It just
5 varies. It depends. I know I can feel when
6 I need to go make a jump.

7 Q Have you ever made a jump just
8 to calm yourself down?

9 A What do you mean by calm myself
10 down?

11 Q Exactly how you just used the
12 term.

13 A I plan on making a jump tomorrow
14 or Sunday or several jumps, so it's been a
15 little while already. I've got a lot of
16 things going on, and it's a nice, relaxing
17 thing. I think we're going to have great
18 weather, and I'm going to be with some
19 friends, and I'm going to have a good time.

20 Q Where are you jumping tomorrow?

21 A Likely, if the weather does hold
22 out, I will go to The Ranch which is in
23 Gardiner, New York. It's a large commercial
24 drop zone.

25 Q You went out to California in

2 the third week of October for some fun dives;

3 is that what you call them; fun jumps?

4 A Just to clarify for the record.

5 Typically, jumpers that work in the industry

6 will call work jumps, work jumps, and jumps

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

8 customers of the drop zone and we're actually

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

10 just jumping for fun, we call those fun

11 jumps.

12 All jumps are fun, but there's a

13 distinguishing —we distinguish between work

14 jumps when we're actually working and getting

15 paid and jumps where we're actually just

16 playing, and those are fun jumps. Just to

17 make it easier for us to have this dialogue.

18 Q So you went to California in the
19 third week of October for some fun jumps

20 before your cruise; is that correct?

21 A Yes, that's correct.

22 Q Then you went on the cruise for

23 seven days; is that correct?

24 A That is also correct.

25 Q Then you stayed in California

2 for another couple more fun jumps; is that
3 correct?

4 A That's correct. Somepeople
5 jump after the cruise, as well, about the
6 same period of time.

7 Q Where did you go after those fun
8 jumps at the conclusion of your cruise?

9 A 2010; right?

10 Q Correct.

11 A I just went through this
12 routine, so I have to think about it for a
13 second. Okay. All right. Yeah, it's coming
14 back to me here. I went back to Missouri.

15 Q What did you do in Missouri?

16 A I was taking care of things I
17 needed to do around the house before it got
18 too cold to do; maintenance outside because
19 November, and, you know, cut the grass last
20 time, do maintenance, painting, whatever, you
21 know, anything that needed to be done outside
22 before it got too cold. I was doing that and
23 getting prepared for school.

24 Q You went back to Missouri in the
25 end of October, early November to do some

2 maintenance; is that correct?

3 A Yes, and prepare for school.

4 Q What school did you go to?

5 A I did go to, and I am currently

6 going to Embry-Riddle Aeronautical University.

7 Q Where is Embry-Riddle

8 Aeronautical University?

9 A Well, it's a worldwide school.

10 It's the largest aeronautical university, so

11 they have locations, you know, primary

12 campuses; Daytona Beach, Florida and

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

14 online student.

15 Q You were preparing to attend

16 Embry-Riddle via computer?

17 A That's right. These are

18 compressed terms that move very quickly, so

19 once they get started, you really do need to

20 prepare before classes start so you can be

21 seamlessly able to go through it.

22 Q When did you start going to

23 Embry-Riddle, initially?

24 A The very first class I think I

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

1
 2 **Q What is the course of study that**
 3 **you're pursuing?**
 4 **A It's a Bachelor's of Science in**
 5 **aviation management, logistics technical**
 6 **specialty, and I'm also seeking a minor with**
 7 **that in international relations.**
 8 **Q The classes that you started**
 9 **taking in 2010 or in and around November of**
 10 **2010, when you did sign up for those classes?**
 11 **A Enrollment is between the 1st of**
 12 **November and when classes start, which is**
 13 **always on the 15th of the month, so I would**
 14 **have enrolled in that window, or I would have**
 15 **e-mailed my advisor a few days prior or so.**
 16 **I would have to look back and see, but it's**
 17 **in that window.**
 18 **Q And you had intended to take**
 19 **those classes; correct?**
 20 **A Yes, I did.**
 21 **Q For how long did you intend to**
 22 **take those classes?**
 23 **A How long did I plan on going to**
 24 **school for that term, do you mean?**
 25 **Q Yes, in November of 2010.**

1
 2 **A Until this is done. Until my**
 3 **degree is done. I go to school every**
 4 **November, so it's just planned.**
 5 **Q So since 2006, every November,**
 6 **you're going to be attending school online?**
 7 **A I hadn't made that commitment to**
 8 **that level back in '06 or '07, but certainly,**
 9 **in the last, I think, four Novembers, I've**
 10 **been at that, yeah.**
 11 **Q So from November of 2008---**
 12 **A I believe so, and I'd have to**
 13 **look and see about that, but I think that's**
 14 **right. Eight, nine, ten, eleven; yes.**
 15 **Q So from November 2008, you**
 16 **committed yourself to begin going to school**
 17 **every November; is that correct?**
 18 **A Definitely for that term, yes.**
 19 **Q How long does a November term**
 20 **last for?**
 21 **A It's eleven weeks.**
 22 **Q You know for that eleven-week**
 23 **period since 2008, you're going to be going**
 24 **to school, and you're not going to be doing**
 25 **anything else; is that correct?**

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2 A I know that --- yeah, I know that
3 it's --- I'm going to be going to school and
4 that the likelihood of being able to do much
5 of anything else was pretty slim.

6 Q Did anything in November of 2010
7 affect your ability to concentrate on your
8 classes?

9 A Yes.

10 Q What was that?

11 A This situation that I'm involved
12 in with Ray.

13 Q You mean the situation where you
14 were terminated?

15 A The whole thing; the
16 termination, the suspension, the false
17 accusations, this case, all of it.

18 Q Did Ray falsely accuse you of
19 something?

20 A Yes, he did.

21 Q What did he falsely accuse you
22 of doing?

23 A He falsely accused me of
24 inappropriately touching a tandem passenger
25 at the hip, and he knows better that that

1 D. Zarda

2 didn't happen.

3 Q Didn't Mr. Kengle accuse you of
4 that?

5 A Well, we just learned that four
6 weeks ago, so that's the first time that I've
7 heard anybody else, other than Mr. Kengle say
8 that, so up until that point, that verbatim
9 came from Ray Maynard, and so Ray accused me
10 of it, and what's even worse is that Ray is

11 also an instructor. He's been jumping around
12 forty years, tandem instructor and an owner
13 of a drop zone, and he knows better. He
14 knows better. He knows better that that
15 didn't take place.

16 Q But you know that Mr. Kengle
17 complained about it taking place; correct?

18 A I know now that Mr. Kengle
19 complained about it, but before Mr. Kengle
20 testified, the only thing I knew was what Ray
21 said, so that's all I have to go on, so Ray,
22 in effect, is the person that accused me of
23 it.

24 Q But Ray said to you that he
25 received a complaint, and he told you what

D. Zarda

2 the complaint was; correct?

3 A Through that line of questioning
4 that we talked about earlier where I was
5 asking if there was anything else, and Ray
6 said, yeah, and he mentioned --- if we have to
7 look back to see exactly what I said --- where
8 he mentioned the inappropriate touching,
9 well, Ray said that.

10 Q Ray said that the customer
11 complained about it; correct?

12 A He said the customer complained
13 about it, yes, I would still ---

14 Q In November ---

15 MR. ANTOLLINO: I'm sorry. The
16 witness hasn't finished answering the
17 question ---

18 MR. ZABELL: Excuse me. You
19 have a right to object. Other than
20 that, your role is to remain silent.

21 MR. ANTOLLINO: My role is to
22 allow the record to be clear to let the
23 witness answer the question. Just like
24 you don't want him to interrupt you,
25 you need to let him finish answering

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2 the question.

3 MR. ZABELL: You, sir, are
4 interrupting the record, and you were
5 doing nothing to keep the record clear
6 and straight.

7 Again, you may object to the
8 form of a question. Beyond that, your
9 role is to remain silent ---

10 MR. ANTOLLINO: No, that's not ---

11 MR. ZABELL: --- please do so.

12 MR. ANTOLLINO: I'm allowed to
13 insist that you allow the witness to
14 answer the question, and I will
15 continue to do so if you continue to
16 interrupt the witness.

17 Q In November of 2010 when you
18 started taking your classes, do you know what
19 classes you took?

20 A If I could, I would like to
21 finish answering the question.

22 Q I just asked you a question, so
23 you can start by ---

24 MR. ANTOLLINO: Just answer his
25 question.

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1 Q ---answering that.

2 A All right. Repeat that

3 question, please.

4 Q In November of 2010 when you

5 started taking classes, do you know what

6 classes you took?

7 A Yes.

8 Q What classes did you take?

9 A From memory, I'll have to think

10 about this a little bit. Business

11 information systems, business law ---give me

12 just a minute ---and some other management

13 class. I can't..

14 Q One other managementclass?

15 A Yeah. It was management

16 production operations, or something to that

17 effect. It was a management-driven aviation

18 class. The specific title of that class, I

19 can't remember, but the other two, because

20 they were hard, I remember. Business law and

21 business information systems.

22 Q Do you know what your grade was

23 in the business information systems class?

24 A Yes. I got an A in all three

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1 classes.

2 Q That's pretty good; right?

3 A I guess. I suppose it is.

4 Q Were you happy with your grades

5 in all three classes?

6 A I was happy and surprised.

7 Q You were surprised that you did

8 so well?

9 A I was surprised I made it, yes.

10 Q But you did?

11 A I did.

12 Q Do you take classes other than

13 in November of each year?

14 A Yes.

15 Q When is the next period of time

16 that you take classes?

17 A Following the eleven-week term

18 that begins on November 15, I take classes in

19 the next term.

20 Q When does the next term run

21 from?

22 A It runs from February 15 until

23 the first week of May. Terms start on the

24 15th of every month all year long, but if

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1
2 you're already in a term, obviously, you're
3 going to finish that term, and then start
4 another one, so that's how I do it.

5 Q If you started a class
6 November 15, you would have gone to school
7 from November through December through
8 January; correct?

9 A That's right.

10 Q Did you do anything between the
11 end of the November term and the beginning of
12 the February term?

13 A So what you're asking me is in
14 the little break there?

15 Q Yes. What did you do?

16 A I went on a cruise.

17 Q Where did you cruise to?

18 A That was a Caribbean cruise; one
19 that I had booked a year in advance.

20 Q Did you have fun on the cruise?

21 A It was very refreshing after
22 what I'd just been through, so yes, I had a
23 good time.

24 Q You know, I didn't even ask
25 before, and it was rude of me. Did you have

1
2 a good time when you cruised from L.A. to
3 Mexico?

4 A It's a fun cruise, yes. I go on
5 it every year, you know, if it wasn't fun, I
6 wouldn't go on it.

7 Q You had fun when you cruised
8 from L.A. to Mexico; is that correct?

9 A I had fun on the cruise, yes.

10 Q You enjoyed the cruise?

11 A I did.

12 Q Was it refreshing, as well?

13 A It is. It takes me away from
14 these worldly problems and gives kind me of a
15 moment where I can be with some good friends
16 and good people and do some jumps and get
17 away from it.

18 Q How did you pay for the cruise
19 from L.A. to Mexico?

20 A Specifically, what payment
21 method or ---

22 Q Where did you get the money to
23 pay for it?

24 A That would be an accounting
25 thing that I wouldn't be able to tell you

1 exactly what account I paid the money from,
 2 but I typically buy those cruises a year in
 3 advance, so if it was 2010, I probably paid
 4 for it somewhere in late 2010 or early 2011
 5 on a credit card because you have to put a
 6 deposit down.

8 I think for the 2010 one, I went
 9 ahead and signed up on the ship before
 10 getting off actually for that particular
 11 year. Sometimes I do that. Sometimes I
 12 don't. Sometimes they make you a deal if you
 13 sign up on the ship before you disembark, so
 14 it just depends on what the deal is. If it's
 15 good, then I'll sign up.

16 Q Is it safe to say that one of
 17 your hobbies is going on cruises?

18 A No, it isn't, because I wouldn't
 19 define that as a hobby.

20 Q What would you define it as?

21 A Going on a cruise?

22 Q Yes.

23 A Social experience. Maybe a
 24 short vacation. I wouldn't call it a hobby.

25 Q Is it your preferred social

1 experience or a preferred social experience
 2 for you?

4 A It's not my preferred, but it is
 5 a social experience that I enjoy. I mean, I
 6 have lots of social experiences I enjoy.

7 Jumping is certainly one of them, so it's one
 8 of them. I enjoy it.

9 Q This cruise to the Caribbean in
 10 that break between January and February,
 11 where did that leave from?

12 A Fort Lauderdale, Florida.

13 Q Did you arrive early and stay
 14 late again so you could jump?

15 A I didn't get that luxury on that
 16 one. The terms, again, are compressed.

17 They're very difficult. They're eleven
 18 weeks. I had three finals to take and a term
 19 paper to write and prepare for this case, the
 20 interrogatories and admissions that you
 21 requested, all in that time frame, so there
 22 was some — I had a number of things going
 23 on, so I wasn't able to book any previous
 24 time for anything other than making it to the
 25 cruise ship terminal one day in advance to

D. Zarda

1
2 get on the ship.

3 Q That February to May courses

4 that you took, how many courses did you take?

5 A I took a full-time course load

6 of two courses and two courses is full-time

7 because of the compressed nature of the

8 classes.

9 MR. ANTOLLINO: Can we take a

10 bathroom break?

11 MR. ZABELL: Once I'm finished

12 with this line of questioning.

13 MR. ANTOLLINO: Okay.

14 Q So the previous semester you

15 took three classes. This semester you took

16 two classes; correct?

17 A I took three, and that was

18 overkill, and I'd never done that before, so

19 two classes is full-time, and I'm sticking

20 with the two classes.

21 Q What two classes did you take?

22 A In the February one?

23 Q Yes.

24 A There were more aviation

25 management, 400-level courses, and again,

D. Zarda

1
2 : without having it in front of me, one of them

3 was operations. They were so similar in the

4 title that particular term that I kept

5 getting them almost mixed up, but Management 420

6 and Management 424, I can tell you, if you

7 want to look up the course syllabus.

8 Q What kind of grades did you get

9 in those classes?

10 A I received an A.

11 Q In both of them?

12 A Yes.

13 MR. ZABELL: I think your

14 attorney wants to take a bathroom

15 break.

16 THE WITNESS: Sounds like a good

17 idea.

18 (Whereupon, a recess was taken

19 from 1:44 p.m. to 1:54 p.m.)

20 MR. ANTOLLINO: Alright,

21 Mr. Zabell, since you've mentioned it

22 in the previous three depositions, I

23 just want to make sure that I put on

24 the record that my client would like to

25 review a copy of the transcript

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2 **have thirty days to return it to you**

3 **sworn and signed by the three.**

4 **MR. ZABELL: We'll make it**

5 **available for him to review.**

6 **Are we exchanging deposition**

7 **transcripts?**

8 **MR. ANTOLLINO: Let's talk about**

9 **it later. I tend not to proceed too**

10 **unreasonably, but I'd like to talk**

11 **about that later.**

12 **MR. ZABELL: Wait. You tend to**

13 **not to proceed unreasonably?**

14 **MR. ANTOLLINO: I tend not to**

15 **proceed unreasonably with most of my**

16 **adversaries, but I want to make a deal**

17 **with you, if you're asking me for**

18 **something.**

19 **This is wasting our time here**

20 **today, so let's finish with the**

21 **questions, and let's talk nicely after**

22 **the deposition about it; okay?**

23 **MR. ZABELL: I will endeavor to**

24 **talk nicely after the deposition with**

25 **you.**

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1 D. Zarda

2 Does that work for you, Mr. Zarda?

3 THE WITNESS: Yup, I'm good.

4 Q Before the break, we were

5 talking a little bit about why you were upset

6 with Mr. Maynard in that until you heard

7 Mr. Kengle's deposition testimony, you blamed

8 the complaint on Mr. Maynard; is that

9 correct?

10 MR. ANTOLLINO: Objection,

11 characterizes.

12 Q You may answer.

13 A I don't want to have you put

14 words in my mouth. Did I blame ---the only

15 information ---the only person I could hold

16 accountable for the accusation that was being

17 made to me at that time was Mr. Maynard,

18 because I didn't hear the customers complain

19 to me or my supervisor.

20 It wasn't written up on a piece

21 of paper for me to sign in the form of a

22 reprimand by Ray. There wasn't a statement,

23 letter, an e-mail, or anything generated by

24 the client for me to see that's tangible or a

25 recording or anything. This was just words

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1 from Ray's mouth that the customer said.

3 That's it.

4 Q Did you not believe Ray when he

5 relayed this information to you?

6 A It was hard to believe that

7 somebody could have said something like that,

8 so that led me to quite a few things. I was

9 angry myself because I thought it was so

10 ridiculous. I didn't understand it

11 completely, and so I didn't know what to make

12 of it. It was an unbelievable thing to hear,

13 so whether it was truth or not, to hear that,

14 it was an unbelievable thing to hear.

15 Whether that means Ray Maynard

16 was lying or not, that was a big question

17 mark that's been hanging over the whole

18 thing. What did the customer say; what did

19 they not say? Well, I think we found a

20 little bit of it out of what they said in

21 that deposition, so we know a little bit more

22 now about what was said, but for a long time,

23 I really wasn't sure whether Ray was flat-out

24 lying or exaggerated it or what.

25 Q Now that you heard Ms. Orelana

2 and Mr. Kengle testify, do you think that Ray

3 made up what he relayed to you in that

4 meeting?

5 A I'm still not sure how I feel

6 about the truth of the testimony that was

7 given because so much time has passed.

8 There's been opportunities for the customer

9 and Ray to speak. There has been

10 opportunities for them to have their stories

11 corroborate, so I'm not sure that I'm

12 convinced as to the truthfulness of that

13 testimony that was given.

14 Q So now you doubt the

15 truthfulness of Ms. Orelana and Mr. Kengle?

16 A I doubt the truthfulness of the

17 whole thing. I know they made a complaint.

18 Whether it was genuine or not is probably

19 what's most in doubt.

20 Q Do you know why they would

21 fabricate a complaint against you?

22 A It could be for a number of

23 reasons. It could be —do you want me to go

24 through some of the reasons that I think it

25 might be?

2 Q Please.

3 A It could be just that Mr. Kengle

4 is insecure and maybe his insecurity led him

5 to say things and behave and act in a manner

6 that an otherwise normal person would not in

7 that situation. That's one reason. Another

8 reason could be, and I brought this up in the

9 termination to Mr. Maynard, maybe they were

10 just looking for a free jump, and they ended

11 up getting one, so that was stricken down

12 quite abruptly by Mr. Maynard as even a

13 possibility, so that could have been a

14 motivation. I don't know, beyond those two

15 things, what the motivations might have been.

16 Q Do you know what Mr. Maynard's

17 motivation may have been for terminating you?

18 A What his motivation may have

19 been? Be a little more specific on

20 terminating me in relation to me touching the

21 girl inappropriately, please.

22 Q Do you know what Mr. Maynard's

23 motivation was for terminating you in or

24 about July of 2010?

25 A All I know is what he said, so I

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1 can only attest to his motivations being

2 associated with what he said, so I can't

3 superimpose anything on Mr. Maynard's thought

4 processes, because they're rather abstract at

5 times, and they don't always make sense.

6 Q So you think he terminated you

7 for the reasons he told you he terminated

8 you; is that correct?

9 A Sounds like that's what I'm

10 saying.

11 Q What were those reasons again?

12 A Well, because I'm gay and that I

13 brought that up, or it was mentioned before

14 the customers and they were offended by it,

15 and that that was inappropriate and for

16 touching my female passenger in a way that

17 made her feel uncomfortable at the hips.

18 Q Both of those things actually

19 occurred on the jump; is that correct?

20 MR. ANTOLLINO: Objection.

21 A No. Let's be more specific when

22 you say this occurred.

23 Q As part of the jump, you had to

24 touch the customer in the hip area; is that

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1 correct?

2 A As part of the jump, yes, you do
3 have to touch the customer in the area of the
4 hips, but you don't have to touch them
5 inappropriately.

6 Q And you sensed that the client,
7 Ms. Orelana, was uncomfortable when you were
8 touching her in the hips; is that correct?

9 A No, that's not correct. I did
10 not sense that she was uncomfortable when she
11 was being touched around the hips. I just
12 sensed at some point, that she was
13 uncomfortable.

14 Q In an effort to allay her
15 discomfort, you revealed your sexual
16 orientation; is that correct?

17 A I believe that to be correct;
18 yes.

19 Q So those things happened during
20 the jump that you had to touch her hips, that
21 she felt discomfort, and that you revealed to
22 her your sexual orientation. Those three
23 things happened, and they may have happened
24 abstractly, but they happened over the

1 of her jump experience; is that correct?

2 MR. ANTOLLINO: Objection to
3 form.

4 A The way the question --- I think
5 it was a multiple question. The way it was
6 asked to me had different parts, so I broke
7 it down to make sure that they don't get
8 confused or inflated.

9 Q Let me break it down again.

10 A Okay, break it back down.

11 Q During the jump with Ms. Orelana,
12 at some point, you put your hands on her
13 hips; is that correct?

14 A I would put my hands in the
15 location around the hips that's necessary to
16 be able to perform the functions that I am
17 required to do as a tandem instructor.

18 Q And at some point, you sensed
19 that Ms. Orelana was uncomfortable; is that
20 correct?

21 A At some point, I sensed that she
22 was uncomfortable, but I can't say it was
23 because I was putting my hands anywhere near
24 her hips, so those two things are too close

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

25 Q You know you testified before

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

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2 discomfort came from me touching her around
3 the hips.

4 Q Even though that's what she
5 testified to; correct?

6 A I don't think that's exactly
7 what she was saying that day in her
8 testimony. I think her boyfriend was the one
9 that was really saying that.

10 Q But the one thing that you are
11 sure about is that, first, the discomfort
12 came, and then came the conversation about
13 your sexual orientation; correct?

14 A First the discomfort came, and
15 then I brought that up to allay her
16 discomfort. Sounds like it.

17 Q That February to May group of
18 classes, aviation management and one of the
19 operations classes, you got As in those, as
20 well; correct?

21 A I did.

22 Q What was the next set of classes
23 you took?

24 A Well, that brings us to this
25 term, I believe.

2 Q So from May—

3 A No, wait a minute. Let's see.

4 We're talking — yeah, this term because it's
5 2011, so yeah, that brings us to this term.

6 Q What did you do from May of 2011
7 to this current term, the November 15, 2011,
8 term; what did you do?

9 A I did a lot of the things.

10 Q A couple of cruises?

11 A No, no cruises. Well, I just
12 went on a cruise, so...

13 Q Stop lying to me, sir.

14 A No, I cannot lie.

15 Q Now, you know that I said that
16 as a joke.

17 A Oh great. I'll take it as a
18 joke.

19 Q Okay. I see you're starting to
20 warm up to me. It's okay.

21 A No, I'm just—

22 MR. ANTOLLINO: I told him not
23 to, but go ahead.

24 MR. ZABELL: He clearly has. I
25 would imagine that that's the case.

D. Zarda

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

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D. Zarda

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

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1 D. Zarda

2 Q Guilt is?

3 A That's a relative, relative
4 term.

5 Q Tell me what you did for the
6 months, and why you're smiling when you're
7 talking about it.

8 A The reason I'm smiling when I
9 talk about it is because it was a very good
10 trip. I had a great time that allowed me to
11 get away from the horrible winter that I had
12 which was dealing with this case and the
13 classes and other things that were going on
14 that were difficult, and it was an
15 unbelievable breath of fresh air, a nice
16 place.

17 Q I've got to stop you. You said
18 some other things that were going on this
19 winter?

20 A Just minor stuff.

21 Q I'm going to need to know what
22 they are; you know that, right?

23 A Okay, go ahead. Ask me.

24 Q What were those some other
25 things that you just referenced?

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1 D. Zarda

2 A My partner, his father died over
3 the holidays, so that was tough. That just
4 added on to all this other stuff. I was out
5 there living on an airport, going to classes,
6 and we had an unusual run of bad weather and
7 a lot of the snow, and it's very rural. I
8 literally got in a situation where I was
9 snowed in to my house, and I couldn't even go
10 get food several times, and I didn't have
11 some water for part of time because
12 everything froze up.

13 Just when you add all that
14 together with classes, trying to deal with
15 this situation---

16 Q "This situation" being the
17 lawsuit?

18 A ---the lawsuit, getting these
19 interrogatories and these demands met that
20 were needed for this, my partner needing, you
21 know, strength from me for his loss. It was
22 a lot in a short amount of time.

23 The class load alone. I took
24 nine hours. That's a very heavy load for an
25 eleven-week term. They're compressed. Six

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D. Zarda

2 hours is considered full-time, twelve hours
3 is maximum. They don't even let you take
4 more than twelve, so that just gives you an
5 idea of what kind of class load it is with
6 this university, and it's a leading
7 university, and they don't mess around.

8 Q How did you do on your classes,
9 by the way?

10 A I did good. I struggled. It
11 was very hard. It took a lot out of me, but
12 I did okay.

13 Q You got As on them; right?

14 A I did.

15 Q Prior to 2009, how were your
16 grades?

17 A They were the same.

18 Q All As?

19 A I've been getting good grades.

20 I wouldn't say all As. I think I got a
21 couple of Bs in there somewhere, but mostly
22 As.

23 Q Is it safe to say that after

24 July of 2010, you've only gotten As in your
25 coursework?

D. Zarda

2 A I think so.

3 Q You finished that February to

4 May class, May, your classes end; you have a
5 scheduled trip to Norway?

6 A Yes.

7 Q Two fabulous months of Norway?

8 A They were good moments.

9 Q Any bad moments?

10 A During that time?

11 Q Yes.

12 A Couple fatalities. Some people

13 injured. I mean, you got to take the good

14 with the bad. You know, it's not good when

15 you meet people on a trip where you're having

16 a good time and they end up dead. That's

17 not, you know, a great thing.

18 Q Some of the people that you went

19 on the trip with ended up dead?

20 A People that I met.

21 Q How did they die?

22 A Within the activities I was

23 participating in.

24 Q May I inquire?

25 A Yes, BASE jumping.

1
 2 Q You were actually BASE jumping,
 3 and on a BASE jump, somebody died?
 4 A Yes.
 5 Q And you were there?
 6 A I was in the area.
 7 Q That must have been devastating.
 8 A Yeah, that sucks when that
 9 happens; without a doubt. We don't like that
 10 to happen, but it does happen. I've been
 11 jumping for almost twenty years, so you kind
 12 of get a little used to some of that stuff
 13 happening, but it's never pleasant when that
 14 happens.
 15 Q How many fatalities were there?
 16 A During my trip, there were two
 17 that I knew. As far as total, I don't know.
 18 For the summer, I don't know.
 19 Q That must have weighed heavily
 20 on you?
 21 A We don't like it, but it's part
 22 of the nature of the activity that people
 23 accept, like it or not, and it's something
 24 that happens. It's just part of the reality
 25 of it, and you deal with it, and you go on.

1
 2 It's kind of like dealing with losing a pet.
 3 Q Kind of like Disney's Circle of
 4 Life?
 5 A I'm not familiar with that.
 6 Q No?
 7 A I'm not a big Disney follower.
 8 Q Any reason why?
 9 A As far as mainstream sports,
 10 things like that, along with ball games, I'm
 11 not into that, TV programs, and the main
 12 reason is that I don't have time in my life
 13 for much else. Cannot connect with much
 14 mainstream things. It's a time thing.
 15 Q The two fatalities, were they
 16 people you actually knew?
 17 A They were.
 18 Q People you had conversations
 19 with?
 20 A Yes.
 21 Q People you shared a meal
 22 with?
 23 A Yes.
 24 Q People you shook hands with?
 25 A Yes.
 26 Q You were actually physically

1 present when both of the fatalities occurred?

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

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

10 A There were.

11 Q How many other injuries?

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

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

21 A No.

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

24 A No, I did not. I came back

1 around the end of August.

2 Q August. So you went from ---

3 A June to August.

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

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

8 Q How is Dallas?

9 A Then, it was freaking hot.

10 Q How were the stars at night?

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

13 Q Not big and bright?

14 A No, not there.

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

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

1 D. Zarda

2 in a row.

3 Fortunately, I was overseas
4 during much of that, but having returned from
5 being in Norway where it's just the polar
6 opposite of that, it was hot, so I went back
7 to Dallas in August to be with my partner, my
8 ex-husband for a moment.

9 Q What is your ex-husband's name?

10 A William Moore, M-O-O-R-E.

11 Q Therein, is the family name
12 for ---

13 A Little Cat.

14 Q --- Little Cat Moore?

15 A Right.

16 Q You said ex-husband?

17 A Yes.

18 Q When were you married to

19 William Moore?

20 A As you may be familiar, gay
21 marriage is not legally recognized in most
22 parts of the country, so the term "married"
23 and use of the word "husband" and so forth
24 are, in the gay community, sort of used
25 interchangeably, even though they don't carry

1 D. Zarda

2 the legal status.

3 Q When did you begin the period of
4 your relationship with William Moore wherein
5 you referred to each other as husbands?

6 A Well, we met in September of
7 2000, September 8, 2000, in Dallas, Texas,
8 and so we were together for quite a few
9 years, and we started a business together and
10 so forth.

11 Q Right. But my questions is ---

12 A When did we consider ourselves
13 married?

14 Q Yes.

15 A I'd almost have to ask Bill.

16 Q Why; did you not consider
17 yourself married during a period of time
18 where he did?

19 A Probably within two or three
20 years of our relationship because we acquired
21 things together and had significant trips and
22 things like that together.

23 Q When was that; what year was
24 that?

25 A I'm going to say in the

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

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

D. Zarda

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

D. Zarda

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

1
2 Q Did you work?

3 A I did some work for the company
4 that we are involved in together that needed
5 to be done with the computers and with our IT
6 infrastructure that we have in place, and so
7 I worked on some of that and began to prepare
8 for getting ready to enroll in some of these
9 classes that I'm in now.

10 Q Did you look for any work, other
11 than working for that company, during that
12 four or five weeks?

13 A No, I didn't look for any, so I
14 did some tandems, you know, a couple of
15 weekends at a drop center in Texas, which is
16 another drop zone that I worked at part-time.
17 I did do some of those.

18 Q From October to November 15, you
19 just cut the lawn and got yourself ready to
20 go to classes; is that correct?

21 A No, that's not correct this
22 year. That was the routine the previous two
23 years. This year, I've yet to make it back
24 to Missouri, so the grass is about two feet
25 high, and if you'd like to come cut it, fly

1
2 out there, and cut it for me. I'd appreciate
3 it because I haven't been able to get anybody
4 to do that yet.

5 Q I think it's down, but okay.

6 A It's laid over, but it's pretty
7 tall.

8 Q I wouldn't be flying up to
9 Missouri; I'd be flying down, but we'll let
10 that go.

11 A Yeah, I guess you're right.

12 It's actually across, but we'll let that go.

13 So no, I haven't been back to
14 the airport yet since I left in June and here
15 we are, it's December.

16 Q How are you taking your classes?

17 A Online.

18 Q Where are you residing now?

19 A I am in Dallas.

20 Q Why did you not go from Dallas
21 to Missouri?

22 A Literally because I just could
23 not work it in timewise between doing what I
24 was doing there, getting caught up from the
25 summer, coming up here for the depositions

1
2 that we had in November, which was right
3 before school just started, and all those
4 things. I mean, just simply didn't have time
5 to make it happen.

6 Q Where are you living in Texas
7 now?

8 A I'm staying at the office.

9 Q The office where you run your
10 business?

11 A There is an apartment attached
12 to it, and I'm sleeping upstairs currently.

13 Q You keep referencing how this
14 case is causing you stress.

15 A Sure.

16 Q Is that correct?

17 A Yes.

18 Q That's the stress of responding
19 to interrogatories and document demands and
20 admissions?

21 A Well, last winter when that was
22 going on, it was just a lot of administrative
23 stuff. Obviously, you requested a lot of
24 things to try to come up with in a short
25 amount of time, and simultaneously taking an

2 extra heavy load of classes, so yeah, that
3 created quite a bit of stress, just to get
4 all that together. That was quite a bit of
5 information, a lot of things to think about.

6 At the same time, I was trying
7 to do these classes, and you can really only
8 focus on one or the other. You can't be
9 doing homework at the same time as you're
10 doing that, so that created a lot of stress.

11 Q You're doing all right with it
12 now?

13 A With the case, or with the
14 stress?

15 Q The stress.

16 A This case and this situation and
17 what happened has — no, I'm not doing okay
18 with it.

19 Q Let's take this in a couple of
20 different directions.

21 A Okay.

22 Q Let's talk about the stress
23 involved in preparing for this case.

24 A Okay.

25 Q Are you doing okay with that

D. Zarda

2 now?

3 A Better, better.

4 Q The fact that now you know that

5 someone actually complained to Ray about your

6 conduct, did that add more stress or detract

7 from the stress?

8 A I think that now that I'm being

9 able to learn some of the things and get some

10 information. I think some of the truth is

11 starting to come out more and more, so it's

12 making me feel a little better about what

13 happened. For me, from my perspective,

14 there's not as much of a big question mark as

15 to who said what, when, and who's going to

16 say what, when, so I think that now that

17 things are getting documented, testimony is

18 being given, and we're finding things out,

19 I'm starting to feel a little better about

20 it.

21 Q What things did you find out

22 that you're feeling better about?

23 A Specifically about the testimony

24 or — why don't you break that down a little

25 bit?

D. Zarda

2 Q You said that now that things

3 are coming out, I'm starting to feel a little

4 better about it.

5 A Right.

6 Q So what things are coming out

7 that you're now feeling better about?

8 A As I said, when Ray suspended me

9 and when he fired me, there was no

10 documentation. There were no letters of

11 reprimand that I signed or offered or any of

12 that kind of thing, so that everything that I

13 was told about the incident came from Ray, so

14 we established that.

15 So he was the only source, and

16 his motives, to me, were not pure and unclear

17 and uncertain, so I had nothing else to go

18 on, other than what Ray said and what was Ray

19 thinking, and, you know, did he lie, did he

20 exaggerate, you know, all these things.

21 So now that Ms. Orelana and

22 Mr. Kengle have testified, it's helped to

23 refresh me about the jump. I've been

24 actually able to see the videos for the first

25 time that I asked to see when Ray suspended

1
2 me, and he denied me access, and he had the
3 ability to let me see those videos right then
4 and there when he suspended me. We could
5 have done it. It could have happened and he
6 refused. He said it was irrelevant, and I
7 could have looked at it right then, so I
8 finally got to see that and see that the jump
9 was routine, the customers were happy, it
10 looks in the video, and there wasn't any
11 crazy thing hanging out there that I didn't
12 know about to be hidden from me, so stuff
13 like that makes me feel a little better.
14 And then also finding out from
15 both the customers' testimony, and they're in
16 complete agreement, that somebody else in the
17 airplane cracked a joke that could be deemed
18 inappropriate, and it wasn't me, causing me
19 to react the way I reacted with what I said.
20 So I feel vindicated some. It's actually a
21 little bit of a relief.
22 Q What is it that was said that
23 caused you to say something?
24 A Well, what they said was ----- if
25 you recall, the boyfriend, Mr. Kengle, was

1
2 bringing Ms. Orelana out to Skydive Long
3 Island to make a tandem jump for her
4 birthday. I think we agree on that. I think
5 even Ray agrees with that. That was the
6 circumstance, and I was taking Ms. Orelana on
7 her tandem and that the joke was to the
8 boyfriend that somebody else made, which was
9 Mr. Kengle, he's the boyfriend, how do you
10 feel about your girlfriend being strapped to
11 another man or another guy? It was either
12 man or guy, same thing.
13 So that was the joke that was
14 made, and they're a young couple, so that's
15 the not first time that joke has been used.
16 It's a golden oldie. It's been used several
17 times before, you know, at many drop zones.
18 It's a pretty routine, boring joke for us.
19 Q Is that a gay joke?
20 A That, itself, is not a gay joke,
21 but if everybody is okay with it, then it's
22 not even inappropriate, but apparently in
23 this case, Mr. Kengle is not okay with it or
24 maybe Ms. Orelana, or maybe neither one of
25 them were okay with it.

1
2 I think, if I recall in their
3 testimony, they were saying, well, we're
4 young, we can take a joke, and they were okay
5 with that joke, but me saying something like,
6 don't worry, I'm gay, they were okay with
7 that, and I think they said that. That has
8 to make me kind of scratch my head a little
9 bit, so I'm being put in this situation where
10 I have sort of in my possession, because I'm
11 taking this girl on a tandem jump, and I'm
12 strapping her body to my body in an intimate
13 situation.
14 I have her and I have her
15 boyfriend sitting right over here
16 (indicating) with somebody else cracking a
17 joke about me strapping his girlfriend to my
18 body, and so I was not comfortable with that.
19 Q Couldn't you have just said,
20 don't worry, they're being silly?
21 MR. ANTOLLINO: Objection. You
22 can answer.
23 A You can speculate all the
24 different things that a person could say, but
25 I could have said nothing, or I could have

1
2 said anything, so I said what I felt was the
3 best thing to say, at the time, for me and
4 for her and for him.
5 Q And in hindsight, was that the
6 best thing to say?
7 MR. ANTOLLINO: Objection. Go
8 ahead.
9 A In hindsight, if it were a
10 perfect world, then I suppose nobody could
11 make any jokes about anything because
12 somebody might get offended or be upset by
13 it.
14 So your questions was, in
15 hindsight, would I say it again; is that what
16 you're asking me?
17 Q Sure. Knowing what you know
18 now.
19 A About their complaint?
20 Q Yes.
21 A If I knew ----- I don't think there
22 would be any way to know that the boyfriend
23 would get upset by that or that they would be
24 anti-gay or offended by gay remarks, you
25 know. There would be no way to know that, so

1 I can't say. I can say this about it: I've
 2 used that comment before in situations just
 3 like that over the years to sort of resolve
 4 or calm a situation, and it's worked for me,
 5 and it's taken me out of the hot seat. It's
 6 made me feel more comfortable to be able to
 7 say, in that situation where I got somebody
 8 else's girlfriend, I'm strapping them to my
 9 body and somebody says something like that,
 10 don't worry about me, I'm gay, I have an
 11 ex-husband for proof, don't worry, to disarm
 12 the situation, so if he hears me say that, he
 13 can know, okay, he's not going to hit on my
 14 girlfriend. He's gay anyway. So I don't
 15 think I would change it.

17 Q So, wait a minute. Are you
 18 saying that Mr. Kengle didn't know you were
 19 gay before that joke was made?

20 MR. ANTOLLINO: Objection.

21 A Just re-ask that. Rephrase that
 22 a little bit.

23 Q Did you know if Mr. Kengle knew
 24 you were gay before you told his girlfriend
 25 you were gay?

1 MR. ANTOLLINO: Objection.

2 A Definitely, I have no way to
 3 know if he knew. He didn't tell me he knew,
 4 so he's sitting over here (indicating). We
 5 all met in an instant, in a flash. It's just
 6 like normal kind of like a conveyer belt. I
 7 don't know.

9 Q It seems to me like maybe you
 10 were being accused of being straight as
 11 opposed to being gay.

12 A Nobody accused me when that joke
 13 was made. Maybe people had assumptions. The
 14 staff certainly knows I'm gay, so I don't
 15 know if it has anything to do with who
 16 cracked that joke, you know, cracking the
 17 joke and trying to get a response for fun out
 18 of all of us, because, generally, when that
 19 joke is made, it is to get a response from
 20 the customers in a fun way and not to make
 21 anybody upset, and generally, people laugh
 22 that off, oh, yeah, ha, ha, ha. Don't worry,
 23 she comes home to me, you know. A lot of
 24 times you'll hear the customer say that. I'm
 25 her only man, or just stuff like that.

1 D. Zarda

2 Q Now, did you ---

3 A That's the normal response.

4 People don't normally get upset.

5 Q In July of 2010, did you ask

6 Rich to intercede on your behalf and try and

7 convince Ray not to terminate you?

8 MR. ANTOLLINO: I believe it was

9 June.

10 A It was the end of June of 2010,

11 yes.

12 Q And why?

13 A Why did I ask Rich,

14 specifically?

15 Q Yes.

16 A Well, Rich is the person that

17 just a few minutes after Ray suspended me

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

19 with the problem.

20 Q Were you asking him that because

21 you enjoyed working at Skydive Long Island?

22 A No, not specifically, no. I

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

24 his counsel immediately because I was upset.

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

1 D. Zarda

2 I thought him knowing Ray for so long, him

3 being the chief instructor there and so

4 forth, his position there, he should know

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

6 what just happened, and he offered to, in

7 that conversation, to advocate on my behalf,

8 to talk to Ray and reason with Ray and calm

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

10 tangent, just let him calm down.

11 This is what Rich said he didn't

12 remember yesterday. Rich didn't remember

13 that conversation very well. I remember it

14 better than he does. Rich probably hasn't

15 thought about it that much anymore. I

16 obviously have, but Rich told me to go on

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

18 with you.

19 Q But in 2010, you wanted to

20 continue to work at Skydive Long Island;

21 correct?

22 A After the suspension, is that

23 what you're asking?

24 Q Yes.

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

1 any job. I didn't even want to lose that

2 week. I didn't want to lose a day.

3 Q In 2010, did you enjoy working

4 at Skydive Long Island?

5 A Up until that point.

6 Q What was it about that job that

7 you liked working, that you liked; what was

8 about it?

9 A There was a lot of things I

10 liked about it.

11 Q Did you like the people you

12 worked with?

13 A I liked the people I worked

14 with.

15 Q Did you like the work

16 environment?

17 A The work environment could be

18 better, but it could be worse. Work

19 environments at skydiving centers vary

20 widely, so none of them are perfect, but the

21 work environment, they all have areas where

22 they are dysfunctional. The work environment

23 was okay. I liked being able to make good

24 money.

1 As you probably can see, the

2 instructors make pretty good money in that

3 short amount of time to work there, so that's

4 a good thing. I like the fringe benefits of

5 having being able to come to New York for a

6 season and be with friends that I have up

7 here and be able to go do things with friends

8 I have in New York, friends that I've met on

9 some of these trips. That, itself, was a

10 little bit of a driver to making me want to

11 come up here, and I made some relationships

12 with some friends, so it's like, hey, I think

13 I'll be working in Long Island next year, you

14 know, great. We're going to have a great

15 time, and so, yeah.

16 Q Could you tell me where you've

17 applied for skydiving work since being

18 terminated in June of 2010?

19 A Well, the first place I applied

20 was directly or pretty soon after Ray

21 terminated me was the one we mentioned

22 earlier, Chicagoland Skydiving in Hinckley,

23 Illinois.

24 Q Do you know why you didn't get

D. Zarda

1 the job there?

3 A Yes.

4 Q Why didn't you get the job

5 there?

6 A I didn't get the job there,

7 because the owner found out or was told by

8 somebody that I was suing Skydive Long

9 Island, and he felt I would be too much of a

10 liability for him to take on because of that.

11 And those are not exact quotations, but

12 that's what he said in an e-mail that he sent

13 to me which, I believe, has been forwarded on

14 to you and Ray.

15 Q Do you know if he found out

16 about it because your lawyer had press

17 releases made of the lawsuit?

18 A I know—

19 MR. ANTOLLINO: Objection.

20 Q You may answer.

21 MR. ANTOLLINO: Objection to the

22 characterization.

23 A I can say that that was

24 impossible because when he denied me that

25 employment, that was like two months before

D. Zarda

1 any legal action was taken.

3 Q Are you sure of that?

4 A I'm sure of that, because I

5 answered an ad for work at his drop zone in

6 July of 2010, and he denied me employment

7 right then, and no legal action had been

8 taken against Skydive Long Island or Ray at

9 that point.

10 When I finally got to talk to

11 Mr. Smith face-to-face, like I think I

12 mentioned I was going to do to him on the

13 phone at some point, he corroborated part of

14 that.

15 Q Did you ask him how he found out

16 about the lawsuit?

17 A I did ask him how — or no, he

18 didn't tell me how he found out about the

19 lawsuit. I asked him when we were talking

20 face-to-face, I said, who told you that I had

21 filed a lawsuit against Skydive Long Island?

22 And he said that he had sources that he

23 wasn't willing to reveal, and I said that the

24 reason I'm asking you is because at that time

25 that you sent me that e-mail, I hadn't taken

1 any legal action whatsoever, so basically,
 2 what I was telling him is that somebody is
 3 talking shit on me, and I'm pissed off.
 4 Q Did you ever find out who was
 5 talking that shit on you?
 6 A I did not find out. I pressed
 7 Mr. Smith, as far as I felt was gentlemanly,
 8 and he wasn't willing to offer the source.
 9 He just said he had sources, and apparently,
 10 his sources were incorrect. For one, because
 11 of the timing, and I don't know, you know,
 12 how they're related to Ray or Ray's drop zone
 13 or anybody that knows anything about what
 14 happened.
 15 All I can say is that I applied
 16 because of what happened at Skydive Long
 17 Island. I didn't get the job, and it was a
 18 major drop zone, a major skydiving center,
 19 and that upset me very much.

21 Q Where else did you apply for
 22 work?

23 A I didn't directly apply, but I
 24 went and had a meeting with the owner of Long
 25 Island Skydiving Center, which is Ray's

26 competitor on Long Island, and that guy's
 27 name was Brian Erler. Don't quote me on it.
 28 He's the only owner. I can't remember the
 29 guy's name. I just can't remember.
 30 Q When did you speak to him?
 31 A I spoke to him probably around
 32 that same time.
 33 Q Around July of 2010?
 34 A Around the end of July.
 35 Q The end of July?
 36 A Yeah. Because it was around the
 37 third week of July, I think, if we look in
 38 the e-mail from Doug Smith where we were
 39 going back and forth talking about me working
 40 for him. I think it was around maybe the
 41 third week of July when he said no. It was
 42 after that I think I talked to Long Island
 43 Skydiving Center, and I drove out there in my
 44 truck and sat down and discussed the matter
 45 in detail with the owner of Long Island
 46 Skydiving Center.
 47 Q What matter did you discuss?
 48 A I told him everything that we've
 49 discussed right here today. I told him about

1
2 me being complained about. I told him about
3 the accusations. I told him about the gay ---
4 what Ray did to me. I told him about the
5 Chicagoland thing. I mean, I just told him
6 the whole thing.

7 Q What did Ray do to you?

8 A Ray fired me for being gay. He
9 accused me of something I didn't do. He
10 stole money from me and then gave it back.
11 He humiliated me in the skydiving community.
12 I'm trying to --- maybe the list of what Ray
13 didn't do to me might actually be shorter. I
14 have to think about it. He did a lot of
15 things.

16 Q You were fired not for being
17 gay; you were fired because there were
18 customer complaints about you; correct?

19 MR. ANTOLLINO: Objection.

20 A I disagree. I said that I think
21 it's a --- it's not --- you know, people don't
22 always get fired for just one thing. It
23 could be a culmination of things. I think
24 this was a culmination of all these things
25 we've discussed.

2 Q This wasn't the first time you
3 were fired by Ray; was it?

4 A It wasn't.

5 Q And you were fired the first
6 time because of an apparently inappropriate
7 interaction between yourself and a customer;
8 correct?

9 MR. ANTOLLINO: Objection.

10 A I won't say that was
11 inappropriate interaction. I'd say that it
12 sounds like to me that the customer wasn't
13 satisfied, for whatever reason, in that
14 incident that was ten years ago, but I'm not
15 going to say it was inappropriate. I don't
16 agree that it was inappropriate.

17 Q You had a customer that wasn't
18 satisfied then, and you had a customer that
19 wasn't satisfied now; correct?

20 A The customer then, I believe,
21 wasn't satisfied with something about the
22 jump, and then in this case, the customer,
23 she didn't say that she wasn't satisfied with
24 the jump. She looked satisfied to me,
25 sounded like she said she was satisfied. She

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

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

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

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

1
 2 a mistake. And he wouldn't even let me, when
 3 he was questioning me about whatever it was
 4 the incident was, he wouldn't even let me
 5 reflect upon the videos that were readily
 6 available. He wouldn't let me see them. He
 7 was asking me questions, he was angry, he
 8 wasn't calm, about a jump that took place,
 9 who knows, twenty to thirty jumps ago and
 10 three days ago.
 11 He's asking me details about
 12 this, and yet, he wouldn't stop long enough
 13 to let me look at the videos and say, hey,
 14 okay; oh, yeah, I think I remember those
 15 people. Okay, all right. You know, that's a
 16 mistake.
 17 If you're going to take action
 18 against an employee, you should at least give
 19 them the common courtesy of being able to
 20 look at their records and give them an
 21 opportunity to respond. He didn't give me
 22 that. He just brought me in that room that
 23 day to tell me what he was going to do to me,
 24 and then he did it.
 25 Q Any other mistakes he made?

1
 2 A Any other mistake he made, let
 3 me think. Is this a general,
 4 all-encompassing question?
 5 Q Yes.
 6 A Mistake about how he runs his
 7 business, or just anything?
 8 Q We're talking about mistakes
 9 having to do with your employment.
 10 A Just having to do with my
 11 employment, okay.
 12 I think a mistake that he made
 13 was to mention at any time, either in the
 14 suspension or the termination, this issue
 15 about personal information in front of
 16 customers. Seems to be something he's
 17 concerned about. Seems to be something he's
 18 passionate about, not having happened yet.
 19 He has the — what's the word
 20 I'm looking for — I'm getting tired. He had
 21 the leeway to discuss his marriage in front
 22 of staff, when he was leaving his wife, when
 23 there was other customers standing around.
 24 I'm trying to understand what this whole
 25 business is about me saying something

1
2 **personal about myself, personal information,**
3 **like he said in the termination, and then him**
4 **talking about his personal life in earshot of**
5 **customers, so it seems like that's a mistake.**
6 **If you're going to fire somebody**
7 **and use that as part of the reason and then**
8 **you do it yourself, it seems a little**
9 **hypocritical.**

10 Q Did you tell him that?

11 A No, I didn't have an opportunity
12 to tell him that.

13 Q What other mistakes?

14 A Well, okay. I'm thinking about
15 some more things because Ray has made a lot
16 of mistakes, in my opinion, so to come up
17 with all of them in one seating... I need to
18 take a moment.

19 I think that Ray had some
20 concerns about the issue of my ankle, and so
21 the way that he handled that he could have
22 been handled better. He had questions for me
23 about the Workers' Comp that I received, and
24 all of that. And his mistake was, instead of
25 asking me questions and calling me on the

1
2 **phone or sending me e-mails or when he had a**
3 **question, having a dialogue with me about it,**
4 **he saved up all this stuff until a week**
5 **before I came to work for him in 2010 --- he**
6 **calls me about six days --- I have my vehicle**
7 **packed, I have everything ready to go so I**
8 **can report to work on time on May 15, 2010,**
9 **and I get this blistering phone call, and**
10 **it's Ray Maynard, in my ear, shouting at me**
11 **about this Workers' Comp stuff that was over,**
12 **as far as I'm concerned, four months prior,**
13 **and so I think that was a mistake.**

14 If you can imagine my surprise,
15 I'm getting this phone call from the guy I'm
16 going to work for another season, and he's
17 yelling at me, in my ear, just before going
18 up there. I conferred with my drop zone
19 owner at the airport I live about it and got
20 his opinion, and he said he thought that was
21 odd. I said, what do you think I should do,
22 and he said, well, he didn't tell you not to
23 come up to go to work, so go up there and do
24 your job and come home, so I said, okay,
25 because I don't really have a choice at this

1 matter.

2 But what was a mistake was, he
3 just went off on a tangent, like he has a
4 history of doing, without getting the facts
5 and without asking the questions that needed
6 to be asked so he can get the facts to find
7 out what really happened. Just like in this
8 case, where he suspended and fired me. It
9 was just a prelude to that with the Workers'
10 Comp thing.

11 He didn't know what he was
12 talking about when he called and yelled at
13 me. He didn't have the information in front
14 of him. He was just reacting to either ---
15 whatever it was that he was reacting to.
16 I'm not able to talk to Ray when
17 he's being irrational like that and yelling.
18 You can't talk to Ray. Both when Ray
19 suspended me, he stomped out of the room, and
20 when he fired me, he stomped out of the room.
21 I mean, it gets to a point where you can't
22 deal with him. You can't talk to him. What
23 are you supposed to do? I think that's a
24 mistake.

1 If you're going to be a CEO, if
2 you're going to run a company, you're going
3 to have to be able to make rational
4 decisions. You're going to have to listen to
5 what your employees say. If you've got a
6 problem with an employee or something comes
7 up, you need to investigate it from all
8 angles. You need to get the information, and
9 once you get the information, then you're at
10 a position where you can discuss the
11 information with the person and then make
12 decisions. Ray didn't do that. That's a
13 mistake.

14 Q Anything else?

15 A Unfortunately, yes.

16 I believe after kind of talking
17 to some people, that Ray --- Lauren Callanan,
18 she is the manifest person and the office
19 person at Skydive Long Island, that Ray may
20 have been upset that his Workers' Comp
21 insurance went up drastically as a result of
22 the claim for my injury, and so I think Ray
23 was taking that out on me, and I don't think
24 it was fair.

1 D. Zarda

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

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1 D. Zarda

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

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1
2 needed to be calmed down; correct?

3 A Yes.

4 Q Because at some point, you

5 sensed Ms. Orelana was uncomfortable;

6 correct?

7 A Yes.

8 Q You just don't know when ---

9 A I don't.

10 Q ---you just don't know when it

11 was in relation to the joke being made?

12 A No. I mean, there's a lot of

13 things going on in the airplane. It's a

14 fifteen- to twenty-minute ride up, depending

15 on the load. It's a pretty routine process.

16 Q During that process, did you

17 ever rest your head on Ms. Orelana's shoulder

18 or neck?

19 A No. And I know what she said

20 about that. We can discuss this for a

21 second, but before we do, do you want me to

22 finish talking about Ray's mistakes?

23 Q We'll get to that.

24 MR. ANTOLLINO: Just answer the

25 question.

1
2 THE WITNESS: All right. I just

3 didn't want to get---

4 MR. ANTOLLINO: Answer the

5 question.

6 THE WITNESS: ---to where I was

7 forgetting where I was going thinking

8 about all Ray's mistakes---

9 MR. ANTOLLINO: Okay, answer the

10 question.

11 THE WITNESS: ---because it

12 takes awhile.

13 A The question was about me

14 resting my head on her shoulder?

15 Q Correct.

16 A No, I didn't rest my head on her

17 shoulder, and after hearing her testimony,

18 after seeing the video, it's very easy for me

19 to see what that's about.

20 Q What's that about?

21 A Well, what that is about is me

22 leaning forward to give her instructions

23 prior to leaving the aircraft, like I've done

24 thousands and thousands of times before, in

25 her ear so that she could understand and hear

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

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

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

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

1 D. Zarda

2 MR. ZABELL: Let's get this man

3 a drink.

4 (Whereupon, a recess was taken

5 from 3:35 p.m. to 3:59 p.m.)

6 Q Before the break, I was asking

7 you questions about the possible likelihood

8 that you were terminated because Ray Maynard

9 was upset that his Workers' Comp policy went

10 up because you had filed a claim; do you

11 recall that?

12 A I recall that.

13 Q Do you recall testifying that it

14 was, in fact, possible that that was one of

15 his motives?

16 A I said that it was possible.

17 Q And another one of his motives

18 could have been that Mr. Kengle and

19 Ms. Orelana complained about their jump; is

20 that correct?

21 A Sounds like it, yeah. I mean,

22 that's what he told me.

23 Q During the break there was, what

24 I would characterize as, innocent banter

25 between your attorney and myself, and I think

1 D. Zarda

2 you were involved, as well; is that correct?

3 A Yes.

4 MR. ANTOLLINO: It was off the

5 record.

6 MR. ZABELL: Yes, absolutely.

7 Q One of the topics that were

8 discussed were gay jokes, jokes regarding

9 people who are gay, and I don't think anybody

10 was offended by them. I don't think I made

11 any of them, but do you engage in jokes about

12 being gay?

13 A Depends on the situation and

14 where and when, like --- could you be more

15 specific?

16 Q Sure. Could there be an

17 occasion where making a joke that has to do

18 with someone's sexuality would be

19 appropriate?

20 A Is this in a social setting, at

21 work, at home, family, or where?

22 Q In the setting that we were just

23 in during a break at a deposition ---

24 A Yeah.

25 Q Were we not making a joke?

1 D. Zarda

2 A We were.

3 Q Was it appropriate?

4 A I thought it was okay.

5 Q Who made the joke?

6 A Greg made a joke, and I

7 corroborated the joke.

8 Q And I laughed at the joke;

9 correct?

10 A Yeah.

11 Q And I laughed completely

12 appropriately?

13 A I wasn't offended by it.

14 Q What kind of setting would you

15 call that?

16 A I'd call it casual. I mean,

17 we're in an official setting, but I would say

18 that that was casual.

19 Q Are you more comfortable with

20 gay jokes being made around me because I'm a

21 Civil Rights attorney?

22 MR. ANTOLLINO: Objection.

23 A No. I didn't even know you were

24 Civil Rights attorney, to be honest, so I

25 didn't know you were a Civil Rights attorney.

1 D. Zarda

2 Q Okay.

3 A Are you a Civil Rights

4 Q That's what we're here

5 litigating about today; correct?

6 A Oh, I know that. I didn't know

7 that was your area of specialty.

8 Q Yes, it's all I do, Civil Rights

9 and labor and employment.

10 A Oh, okay.

11 Q Have you ever had e-mail

12 correspondence with your friends where jokes

13 were made about your sexuality?

14 A I'm sure there has. I'm sure

15 there has been some. FaceBook, possibly.

16 Q Have any of your friends

17 referred to you as a homo?

18 A They have.

19 Q Have you ever referred to any of

20 them as a homo?

21 A Possibly.

22 Q Do you believe that they have

23 referred to you as a homo inappropriately?

24 A Well, technically, if they've

25 called me a homo, they're correct. I'm a

1 D. Zarda
2 **homosexual.**

3 **Q** But if I had never met you
4 before and I called you a homo, even though
5 it may be correct, it wouldn't be considered
6 appropriate; would it?

7 **A** That's probably on the boundary.
8 It would probably just depend on the
9 by-language, the interaction that we were
10 having, the rapport that we were having.

11 If you were walking down the
12 street and you said, hey, homo, and you
13 yelled at me and were a stranger, that would
14 probably sound derogatory. If we were just
15 hanging out with some friends, it would be
16 all right.

17 **Q** You're comfortable enough in
18 your sexuality that if somebody was going to
19 make jokes with you about it, it was clear
20 that their intention was just to invoke a
21 smile or some laughter, that it would be
22 fine; correct?

23 **A** Correct.

24 **Q** Did anybody at Skydive Long
25 Island bring up your sexuality in an attempt

1 D. Zarda
2 **to hurt your feelings?**

3 **A** In an attempt to hurt my
4 feelings, I can't remember specifics. I
5 don't think so. Like we just talked about,
6 some borderline stuff. I think that an
7 attempt to hurt my feelings would imply
8 malice and so that the person was wanting to
9 be malicious, and so I don't think anybody
10 there was wanting to be malicious to me, so

11 they might have done it in error or
12 ignorance, possibly, not knowing what to say
13 or how to say something; yeah, in that regard
14 possibly, but not --- I don't think anybody
15 was being malicious about it.

16 **Q** And if somebody had brought
17 something up to you in error, did you feel
18 comfortable addressing it with them?

19 **A** Again, specifics over this whole
20 time period is difficult for me to come to.
21 I'm just thinking back. There were some
22 social cues, you know, moments where somebody
23 like Willie, possibly, or Ben might have said
24 something that was a little off just because
25 they didn't know any better. I didn't feel a

D. Zarda

1
2 need to try and correct it beyond maybe ---
3 no.
4 I mean, if there was an
5 opportunity to be able to correct it or
6 address it without causing a stink and making
7 an issue out of it because I don't want to
8 make an issue out of anything, then I
9 probably would say something, but it
10 certainly wouldn't be something I would go
11 tell Rich about or make a big deal about.
12 Q Did you find any of your
13 coworkers at Skydive Long Island to be
14 homophobic?
15 A Yes, I did.
16 Q Who was homophobic?
17 A Ray.
18 Q Ray was?
19 A Yes.
20 Q Ray, the man who hired you on ---
21 A Yes.
22 Q ----- three different occasions?
23 A Yup.
24 Q Do you think that your sexual
25 orientation affected whether or not you were

D. Zarda

1 hired by Ray Maynard?
2
3 A Which time?
4 Q All three times.
5 A I think that Ray tolerated it up
6 until a point where he could no longer deal
7 with it himself, so that would be the best
8 answer I could give for that.
9 Q Are you saying he tolerated it
10 up until a point where he received a
11 complaint about you?
12 A Up until a point where he,
13 himself, for whatever reason, couldn't deal
14 with having me be gay and be there working
15 for him. For whatever reason, whether it's
16 him being a homophobic person, or he has
17 issues with homophobia or gay people.
18 Whatever the reason is, and I don't know what
19 all the reasons are. I got a little
20 information from his wife about some possible
21 reasons.
22 Q What were those possible
23 reasons?
24 A That Ray hated my sexuality, I
25 believe, is what she said in an e-mail and

1
2 spoke negatively about me often during their
3 marriage, so I thought that was intriguing.
4 Not completely surprised to hear that. Don't
5 know what Ray was thinking.

6 Q So Ray's issue with you is just
7 because you're gay; is that what you're
8 saying?

9 A Which time; when he fired me?

10 Q When he fired you in 2010.

11 A Well, when he fired me in 2010.

12 he said it was because the issue of my
13 sexuality came up in front of the customers.
14 He was firing me for that. It was
15 inappropriate, and the issue about touching
16 this girl inappropriately came up, and that's
17 what he said.

18 Q But you think it also may be
19 because you caused his Workers' Compensation
20 premiums to go up, as well; correct?

21 MR. ANTOLLINO: Objection.

22 A No. I'm not going to go down
23 that road. I didn't cause anything. I'm not
24 the Workers' Comp Board. I'm not the New
25 York State Insurance Fund. I didn't cause

1
2 anything that happened. Whether Ray took
3 action on that or not, that's in his head.
4 It's a possibility. That's all I can say
5 about it.

6 Q But it's something that you
7 believe is a possibility?

8 A It is a possibility. That's it.
9 Nothing beyond.

10 Q And Ray knew you were gay each
11 of the three times he hired you; correct?

12 A I think we covered that.

13 Again, back in 2001, I don't
14 specifically recall this seating if we talked
15 about it, but it was pretty clear in 2009
16 and 2010.

17 Q Talk to me about this business
18 you share with your ex-husband in Texas.

19 A Could you be a little more
20 specific; what would you like to know?

21 Q What's the name of the business?

22 A It's Advanced Skin Fitness.

23 Q What is Advanced Skin Fitness?

24 A It's a medical spa.

25 Q What happens at the medical spa?

- 1
2 A We do a variety of anti-aging
3 procedures. We do laser hair removal, which
4 is the primary thing, we do facials, we do
5 laser skin resurfacing, and we do cellulite
6 reduction. We do hormone therapy. We do a
7 lot of things. I don't have the whole list
8 of all we do.
- 9 Q Is it run by a doctor?
- 10 A We have medical directors that
11 oversee the legal part of that part of the
12 operation.
- 13 Q Is your ex-husband a medical
14 doctor?
- 15 A He is not a medical doctor.
- 16 Q Is he a doctor?
- 17 A He is not a doctor. He has a
18 Master of Science in Exercise Physiology and
19 Kinesiology.
- 20 Q Are you a doctor?
- 21 A I am not.
- 22 Q But you have doctors on your
23 board ---
- 24 A We do.
- 25 Q ---to make everything kosher,

- 1
2 for lack of a better term?
- 3 A To make everything legal.
- 4 Q Are you familiar with that term,
5 "kosher"?
- 6 A I am.
- 7 Q What's the name of this
8 business?
- 9 A Well, it's Advanced Skin Fitness.
10 The incorporated name is Lush, L-U-S-H,
11 Investments Incorporated.
- 12 Q Are you a partner in that
13 company?
- 14 A Silent partner.
- 15 Q What percentage of the business
16 do you own?
- 17 A We don't have that broken down
18 like that. My ex and I started that
19 together, so for various reasons and legal
20 reasons, I don't have a legal holding.
- 21 Q You don't have any legal
22 holding?
- 23 A I don't have a legal holding.
- 24 Q What is the reason for you not
25 having a legal holding?

1
2 A It's personal, primarily, and
3 partly strategic. In the event that while we
4 were together and we had started this and we
5 didn't make it, for whatever reason, we could
6 always start up under my name.
7 Q What's the personal reason?
8 A What is the personal reason?
9 Q Yes.
10 A Those are reasons related to our
11 relationship.
12 Q I need to know for purposes of
13 this deposition. I'm not prying, but I do
14 need to know.
15 A I don't have --- I can't recall
16 every personal thing that we've discussed
17 over this many years that we've had this
18 business, and we've been together in and out
19 of the personal relationship that we've been
20 in.
21 It's just the way we started it.
22 We started the business. I wrote the first
23 check. It was in an office about this
24 (indicating) size, and then we grew and just
25 moved forward, and some of it had to do with

1
2 my willingness to relocate to Dallas from
3 Kansas City, and whether we were going to be
4 together that way or not. That was a little
5 bit of it.
6 I maintained a place up in
7 Kansas City, and obviously, to be more
8 involved in that would require me to fully
9 move to Dallas and be in Dallas. That's an
10 example of one of the personal things that I
11 meant.
12 Q So you're a partner in this
13 business, you do work for this business, but
14 nowhere in the business's records are you
15 indicated to be a partner?
16 A That's right.
17 Q What percentage of the profits
18 of the business do you share in?
19 A It works like this: If there is
20 any profit left over, then we may get paid.
21 That's pretty much the long and short of it.
22 Q Is it a profitable business?
23 A It has been. It has been
24 profitable. I mean, it depends on which
25 month you want to look at. It's up and down,

1
2 especially during these turbulent times.
3 People aren't as focussed on spending money
4 on how they look and getting expensive
5 treatments done, so it's up and down. It's
6 difficult.

7 Q In 2010, did the company make
8 any money?

9 A I don't have the records in
10 front of me. I don't have the books in front
11 of me. I'd have to look to see what our
12 actual profit and loss --- to what our balance
13 sheet actually reflects, but I think we did
14 make some money. I think we were somewhere
15 in the black. We certainly weren't living
16 large or anything like that, but I think that
17 we were somewhere in the black.

18 I'd have to look back at the
19 records and see what capital purchases were
20 made to be able to tell. And 2010 --- you
21 said 2010, right?

22 Q I did.

23 A I'd have to look.

24 Q Did you make any money from the
25 business in 2010?

2 A Did I make any money? No, I
3 didn't make any money from the business. I
4 received some, I guess, reimbursements from
5 the business.

6 Q Did you get paid for the work
7 you performed for the business in 2010?

8 A No, not yet. Maybe some day.

9 We both have --- I mean, the business owes us
10 a lot of money on the books, so maybe some
11 day, if we can keep going and get through
12 everything, get to a better place, maybe then
13 it will pay us back. I hope for all of our
14 hard work and the employees and the people
15 that work for us to get their paychecks.
16 Sometimes we don't get our paychecks.

17 Q Did the business file an income
18 tax return in 2010?

19 A Yes, it did.

20 Q Did it file an income tax
return 21 in 2009?

22 A It did.

23 Q And for all previous years that
24 it was in existence, did it file a tax
25 return?

1 D. Zarda

2 A It did.

3 Q Did you file an income tax
4 return for 2010?

5 A 2010, yes.

6 Q Did you file an income tax
7 return for 2009?

8 A It has not been filed yet.

9 Q Why is that?

10 A That was the year that I broke
11 my ankle, and I got behind, in part, because
12 of that. It was just a matter of logistics.
13 I had traveled, and I had a difficult time
14 with the whole situation; with my ankle being
15 broke and getting around, getting my records
16 together and school, and I just simply got
17 behind and didn't get to it.

18 Q But were able to get your 2010
19 filed ---

20 A Yes.

21 Q ---just not your 2009?

22 A Right.

23 Q Did you make more in 2010 than
24 you made in 2009?

25 A I don't know, because I haven't

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1 D. Zarda

2 done 2009 yet, so I'll find out. It's just a
3 matter of getting caught up on that.

4 Q Now we're at the end of the year
5 in 2011; are we not?

6 A We are.

7 Q How did you do financially in 2011?

8 A Not very good.

9 Q Is that because you spent a fair
10 amount of time out of the country and on
11 vacation?

12 A No, it's because I didn't take a
13 full-time job skydiving.

14 Q And why didn't you take a
15 full-time job skydiving?

16 A Because of this.

17 Q Because of this lawsuit?

18 A In part, because of this

19 lawsuit. Mostly because of the damages that
20 have been done to me because of what Ray did
21 when he fired me and accused me of something
22 I didn't do and how it's hurt me in the
23 industry.

24 Q Isn't it the accusations of
25 Ms. Orelana and Mr. Kengle?

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1 D. Zarda

- 2 A We've been through this I think
3 about two or three times now, so...
4 Q Well, Ray didn't accuse you of
5 doing anything. Ray just relayed to you the
6 accusations made by the customers; correct?
7 A Ray accused me when he suspended
8 me and when he fired me.
9 Q Well, specifically, what did he
10 accuse you of?
11 A Well, we went over that. He
12 accused me of touching Ms. Orelana in a way
13 that made her feel uncomfortable at the hips.
14 Q Did he say you touched Ms. Orelana
15 in a way that made her uncomfortable at the
16 hips, or did he say, I received a complaint
17 from a customer that said you touched her in
18 a way that made her uncomfortable at the
19 hips?
20 A He said that I touched her ---
21 well, let me think about that for a minute.
22 There has been more than one time that this
23 has been discussed, so I can't recall how he
24 said it right now.
25 Q Because earlier today you said,

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1 D. Zarda

- 2 (reading), he relayed to me that a customer
3 made a complaint that I made her feel
4 uncomfortable because I had touched her in
5 the hip area, and I disclosed my sexual
6 orientation to her.
7 A Okay.
8 Q That's what you said. That's
9 different than Ray accusing you of doing it.
10 That's Ray relaying to you that somebody else
11 was accusing you of doing it; correct?
12 A I---
13 Q I need you to answer that
14 question with a yes or a no.
15 A No.
16 Q No, that's not correct?
17 A No.
18 Q Okay, go ahead. What is it you
19 wanted to say?
20 A The reason it's not correct is
21 because what I said earlier. Ray knows
22 better, so even if Ray is relaying that
23 information, and that information is
24 relatively new to this case and to us, as far
25 as I'm concerned, because I just got to hear

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1 you as a fag?

2 A You're asking me if he ever used
3 that word?

4 Q Yes.

5 A Not that I can recall at this
6 time in earshot of me.

7 Q Did Marco Marcovitch ever refer
8 to you as a fag?

9 A I think he has used the word in
10 a joking way somewhere along the line.

11 Q Did you ever discuss with Marco
12 Marcovitch what you would do to him if he
13 were a homosexual?

14 A What I would do to him?

15 Q Yes.

16 A Not that I can recall. No.
17 Could you break that question — what do you
18 mean by what I would do to him?

19 Q Sexually.

20 A No, I don't recall ever
21 discussing it. Marco and I have never
22 discussed sexual relationships with each
23 other, so if you say something to the
24 contrary, I'd be interested to know what it

D. Zarda

1 is.

2 Q Do you have comments posted on
3 your FaceBook site by Marco Marcovitch?

4 A I did at one time. We have had
5 comments back and forth. They typically
6 involved joking and banter between each
7 other.

8 Q Did that joking and banter ever
9 include sexual orientation?

10 A I'm sure it did.

11 Q Were you bothered by it?

12 A Well, there was a lot of it, so
13 as a blanket statement, I can't answer to
14 that because I'd have to see the specific
15 comment as an example, but in general, no,
16 because I know Marco wouldn't have been
17 saying anything to me maliciously.

18 Q You control what you post on
19 your FaceBook page; right?

20 A You're asking me do I control
21 what I post?

22 Q Yes.

23 A Yes, I control what I

24 Q Nothing is posted on

1
2 Facebook page without you approving it;
3 correct?
4 MR. ANTOLLINO: Objection.
5 A Incorrect.
6 Q What's posted on your Facebook
7 page without your approval?
8 A Facebook has the ability to be
9 able to allow people to post things on your
10 wall or in your forum or tag photos of you
11 without you having control over that, and
12 they still have that in place, even though
13 they've made improvements to their privacy
14 controls.
15 Sometimes those privacy controls
16 aren't pushed out to the community to make
17 you aware of them, and I'm still not even
18 aware of them today, of all of them, but you
19 are not always in control over what somebody
20 puts on your Facebook page.
21 Q If somebody put something on
22 your Facebook page that you're unhappy with,
23 you can take it down; correct?
24 A You could if you know about it
25 and if you saw it, if you got a notification.

1
2 It's a living, breathing, electronic entity
3 and things come and go, and if you don't log
4 on to your Facebook for a week, there could
5 be a week's worth of stuff that passed
6 through there that you don't even see.
7 Q Tell me about the incident that
8 occurred at Fire Island where you picked up
9 some Brazilian boys.
10 A Sounds like I had a good time,
11 but I don't recall it.
12 Q You don't recall speaking to
13 some of your coworkers about picking up
14 Brazilian boys at Fire Island?
15 A Brazilian boys at Fire Island.
16 No, I don't. I don't recall it.
17 Q Is that something you would have
18 discussed at work had it happened?
19 A It depends on whether somebody
20 would have asked me what I did this weekend
21 or not, or one of the times or the many times
22 Brian Petretti --- I don't why he kept
23 bringing it up --- hey, Don, did you go the
24 Grove this weekend? If he would ask me that,
25 maybe I would have responded with, no, I went

1 D. Zarda

2 **to the Pines. That would be the context.**

3 **That would be the only context that I could**

4 **think of.**

5 **Q** Did you ever discuss taking

6 **Viagra with your coworkers at Skydive Long**

7 **Island?**

8 **A** Did I ever discuss it?

9 **Q** Yes.

10 **MR. ANTOLLINO:** I'll object to

11 **the form.**

12 **A** I can't recall.

13 **Q** You can't recall?

14 **A** I can't recall having a

15 **discussion about Viagra.**

16 **Q** Did you have discussion about

17 **Viagra and Fire Island and a sex marathon?**

18 **A** No.

19 **Q** You never had the discussion

20 **with Curt Kellinger?**

21 **A** A sex marathon, no. Now that

22 **you're bringing it up, it seems like that**

23 **Curt might have put something or made a**

24 **comment on a FaceBook post at some point, or**

25 **he might have said something like that, but**

1 D. Zarda

2 **not me.**

3 **Q** You never had a discussion with

4 **Curt Kellinger about Viagra at Fire Island?**

5 **A** Not that I can recall. I mean,

6 **he might have made a joke about something at**

7 **some point.**

8 **Q** Talk to me about pornography on

9 **your cellphone.**

10 **A** Talk to you about pornography on

11 **my cellphone?**

12 **Q** Yes.

13 **A** What about it?

14 **Q** Do you ever look at pornography

15 **on your cellphone?**

16 **A** Define "pornography." What is

17 **pornography to you?**

18 **Q** Do you ever look at pictures of

19 **naked people on your cellphone?**

20 **A** I've had pictures of naked

21 **people on my cellphone; yes.**

22 **Q** Did you ever look at pictures of

23 **naked people on your cellphone while at**

24 **Skydive Long Island?**

25 **A** I suppose it's possible that if

1
2 somebody sent me a picture or over lunch or
3 something on FaceBook or something came up on
4 my cellphone, that it's possible that
5 somebody saw it.

6 Q Did John Campbell tell you to
7 stop looking at naked pictures on your
8 cellphone?

9 A You know, I think he might have
10 made a joke at one point about something like
11 that, and that's Monkey, John Campbell. I
12 think he made a joke one time or something
13 like that, and I don't even know if I was
14 looking at naked pictures on my cellphone. I
15 think he might have been assuming that.

16 Q Do you remember a time when a
17 coworker brought their child to work at
18 Skydive Long Island?

19 A There's been several people that
20 have brought children to work.

21 Q Do you remember complaining
22 about it?

23 A I don't.

24 Q Did you ever discuss at work at
25 Long Island Skydive oral sex?

2 A Did I ever discuss it?

3 Q Yes.

4 A No, I didn't discuss

5 People — other employees they discussed
6 sexual things quite a bit, so I steered away
7 from making too many comments like that, so
8 when the conversation would turn in that
9 direction among my peers, I steered away from
10 it.

11 Those kind of things came up a
12 lot, and a lot of times, it could have been
13 straight related, or it could have been gay
14 related. Those things came up just among
15 peers, among staff in the video room.

16 I mean, if there was a girl with
17 big boobs on a jump that were bulging out of
18 her halter top, there'd be a rush, an influx
19 into the video room to hurry up and see the
20 video so they could look at the girl's boobs
21 spread apart in free fall. Ray participated
22 in that. In that setting, there would be
23 people that would make comments and jokes.

24 Who knows what was said?

25 Q Did Marco Marcovitch ever lie to

D. Zarda

1 you?

2 A Did Marco ever lie to me

3 about...

4 Q Anything.

5 A Well—I can't think of

6 anything he lied to me about directly.

7 Q Do you have any reason to

8 believe that Marco Marcovitch is not a

9 truthful person?

10 MR. ANTOLLINO: Objection.

11 Answer.

12 A No, I don't think that I have

13 any reason to believe that he's a liar.

14 Q Do you have any reason to—

15 A I think that he's vulnerable.

16 Q Do you have any reason to doubt

17 his propensity for truthfulness?

18 A Yes.

19 Q What is your reason for doubting

20 his propensity for truthfulness?

21 A I just think that he's

22 vulnerable, because he's a young kid and he's

23 not experienced in a lot of areas with life,

24 and he's working in a very unique adult

D. Zarda

1 environment like it is at Skydive Long

2 Island. The kind of job that we're doing

3 there, the kind of responsibilities that we

4 have, and all those things that are going on

5 there. I just think he's vulnerable.

6 Q Do you have any reason to doubt

7 Mr. Winstock's propensity for truthfulness?

8 A I was concerned about it.

9 Q What is your reason for doubting it?

10 A Well, I was concerned about the

11 conflict of interest with his position at

12 Skydive Long Island and his position, which

13 is newly acquired with United States

14 Parachute Association, and his relationship

15 with Ray. I was concerned.

16 Q Well, you heard him testify

17 yesterday. Do you think he testified

18 untruthful about anything?

19 MR. ANTOLLINO: Objection.

20 A I feel better after hearing him

21 testify yesterday.

22 Q That's a wonderful answer. It's

23 just not the answer to the question I asked

24 you.

1 D. Zarda

2 **Do you believe that he testified**
3 **about anything untruthfully yesterday?**

4 MR. ANTOLLINO: Objection.

5 A Let me just think and recall for
6 a moment.

7 Q Please.

8 **A I think that he may have been**
9 **factually incorrect on some of the things**
10 **that he said.**

11 Q And those things were?

12 **A Which would be different than**
13 **testifying ---**

14 MR. ANTOLLINO: Objection.

15 **A ----- and that would be different**
16 **than testifying untruthfully.**

17 Q What were the things that you
18 thought he was factually incorrect about?

19 A Just some ---

20 MR. ANTOLLINO: Objection.

21 Asked and answered.

22 A ---of the questions.

23 Q I'm going to ask you to be as
24 specific as you can.

25 A This was just yesterday, so it's

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1 D. Zarda

2 **a lot of information that was covered**
3 **yesterday.**

4 Q But you were taking notes, so

5 I'm sure you recall---

6 MR. ANTOLLINO: Objection.

7 Asked and answered.

8 A What I was taking notes about
9 were questions to ask ---

10 MR. ANTOLLINO: Don't discuss
11 what you were going to discuss with me.

12 A That's what I was taking notes
13 about.

14 Q Tell me what you think he was
15 factually inaccurate about.

16 MR. ANTOLLINO: Objection.

17 Calls for a narrative. Asked and
18 answered.

19 Q You may disregard the comments
20 from your attorney.

21 MR. ANTOLLINO: Like all other

22 objections, unless I tell you not to

23 answer, go ahead.

24 Q Feel free to disregard and
25 continue.

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1
2 A Okay. Just some things that he
3 may not have remembered because through the
4 passage of time, such as, gay jokes, you
5 know, me being called Gay Don, things about
6 safety, the handle touches. Just some of
7 those kinds of things.
8 I don't think that he
9 maliciously said anything that was untrue or
10 that he lied. I just think that he may have
11 not remembered some of the facts at all or
12 maybe not remembered some of them 100 percent
13 clearly.

14 Q How about Duncan Shaw; have you
15 ever had a reason to doubt Duncan Shaw's
16 propensity for truthfulness?

17 A I have.

18 Q What was that?

19 A Same thing. Similar problem,
20 conflict of interest. And Duncan Shaw's
21 position is different than Rich's. He's not
22 a chief instructor, but he is a longtime
23 employee of Ray's. He's worked there for
24 awhile. He's had run-ins with Ray. In and
25 out. He's been in and out of employment with

2 Ray, and like many of the people that work
3 there, they're under Ray's thumb, so they all
4 work for him, and so I feel that—and
5 they're all participants, they all
6 participated in this joking, this gay banter,
7 this gay fun. They all participated, so
8 they're all culpable to some extent in this,
9 and yet we're in a situation where they all
10 still work for Ray and they're under Ray's
11 thumb, and Ray can hang their jobs over them.

12 Q Right. But I asked you to
13 identify this gay banter, and you were unable
14 to identify it.

15 A When was I unable—I don't
16 remember being unable—

17 Q I asked you to tell me about any
18 of the gay banter that was made, and you were
19 unable to state what was said and when it was
20 said. If you've thought of something, please
21 enlighten me now.

22 What was this gay banter?

23 A Well, I think Rich just nailed
24 it right on the head; easy with Gay Don. I
25 mean, that's my name, Gay Don. Everybody

1
2 said it all the time. I mean, it's pretty
3 clear. You start there with that and that
4 just leads into other things.
5 Q What other things?
6 A Well, even Rich couldn't
7 remember all the jokes. It's just so much.
8 Q I know. I'm not asking Rich.
9 I'm asking you. What were the jokes?
10 A I can't remember all the jokes
11 at this seating.
12 Q Can you remember some of them?
13 A Well, let me just sit here and
14 think about it for a moment.
15 Without remembering specifically
16 who said things like this, there were times
17 when there might be guys that were muscular
18 or attractive or gay looking that were
19 customers that were around, and some of the
20 other employees would say, how about him,
21 Don? He looks like your type. What do you
22 think about him? Stuff like that.
23 Q Do you recall who said that to
24 you?
25 A It happened frequently. I do

1
2 recall, and I won't be able to tell you the
3 dates and times because that would just be
4 impossible for me to recall, but one of the
5 persons that did that all the time was
6 Brian Petretti.
7 Q Do you remember the year in
8 which it occurred?
9 A That occurred in 2001, '09, and '10.
10 Q When in 2010 did it occur?
11 A During the time I was working
12 there, so before I was fired.
13 Q Do you remember the day?
14 A No.
15 Q Do you remember the month?
16 A It would have been in June or
17 July; possibly May. I guess it would have
18 been June and May in 2010, because those are
19 the only two months I worked there.
20 Q That happened in 2010 ---
21 A Yes.
22 Q ---with Brian Petretti?
23 A Yes.
24 Q Did he say it
25 A Brian ---

1 D. Zarda

2 Q Yes or no?

3 MR. ANTOLLINO: Let him answer

4 the question.

5 Q Yes or no, Don?

6 A No, I don't think it was

7 malicious.

8 Q Do you have any reason to doubt

9 Curt Kellinger's propensity for truthfulness?

10 A Curt is a straight-shooter. I

11 think of everybody, I would feel most

12 comfortable with him.

13 Q What about Michael Goki (phonetic)?

14 A I don't really know him that

15 well.

16 Q Did Michael Goki ever lie to you

17 while you were employed at Skydive Long

18 Island?

19 A I can't recall Mike lying to me

20 about anything. I don't even really know him

21 that well. He was the rigger, and he was

22 there part-time. Technically, a full-timer

23 there, but he wasn't out there full-time.

24 Q Did Curt Kellinger ever lie to

25 you while you were employed at Skydive Long

1 D. Zarda

2 Island?

3 A Not that I recall.

4 Q Did John Campbell ever lie to

5 you while you were employed at Skydive Long

6 Island?

7 A Not that I can recall at this

8 moment.

9 Q Did Duncan Shaw ever lie to you

10 while you were working at Skydive Long

11 Island?

12 A Not that I can recall at this

13 time.

14 Q Did Rich Winstock ever lie to

15 you while you were working at Skydive Long

16 Island?

17 A Not that I can recall at this

18 time. I don't have any evidence or proof.

19 Q Did Ray Maynard ever lie to you

20 while you were working at Skydive Long

21 Island?

22 A Yes.

23 Q What did he lie to you about?

24 A He lied about me touching this

25 passenger inappropriately at the hips.

1
2 **Q Is that the only thing he lied**
3 **about?**
4 **A He lied about there being video**
5 **of the jump. There was video of the jump.**
6 **Q Did he ever tell you there was**
7 **no video of the jump?**
8 **A At one point --- at one point, he**
9 **cast doubt on whether there was video.**
10 **Q So he never told you there was**
11 **no video of the jump; is that correct?**
12 **A I can't remember him directly**
13 **saying there was no video. I'm trying to**
14 **remember around the time, a week later when**
15 **he terminated me, or not if it came up after**
16 **the termination, because I still wanted to**
17 **see those videos, so that's why I'm trying to**
18 **remember if it came up then or not, again,**
19 **because I asked about the videos after the**
20 **termination.**
21 **Q In fact, he never accused you of**
22 **touching this woman inappropriately. He**
23 **relayed to you her complaint or her**
24 **boyfriend's complaint that you touched her**
25 **inappropriately; correct?**

1
2 **A We've been through this ---**
3 **Q Right.**
4 **A --- so I'm going to state it**
5 **again.**
6 **Q Please do.**
7 **A Okay, so I think we'll have this**
8 **on the record four or five times now.**
9 **MR. ANTOLLINO: Yes. Objection**
10 **to the fact that it's been asked many**
11 **times.**
12 **Q Thank you for reminding him.**
13 **A Good, so ---**
14 **Q I know it probably bothers him**
15 **more than ---**
16 **MR. ANTOLLINO: Actually, we**
17 **were doing fine, but if you want to use**
18 **your seven hours asking things again,**
19 **you can do that.**
20 **MR. ZABELL: I'm aware of what I**
21 **can and can't do, Counselor. Thank**
22 **you, though.**
23 **A Since I've answered this so many**
24 **times, I'm going to try to make it even a**
25 **little bit more condensed, in that Ray's**

1 D. Zarda

2 corroboration of that ridiculous complaint is

3 accusing me of it because he knows better.

4 Simple as that. It's just that simple.

5 Q How did Ray corroborate that

6 event?

7 A The accusation?

8 Q Yes.

9 A Because he went along with it.

10 He didn't investigate it. He didn't let me

11 see the video. He didn't ask anybody else in

12 the plane. He didn't check this out. He

13 just acted on the customer's complaint

14 immediately, didn't check anything out, so he

15 just owned it.

16 Q And that's how he lied to you?

17 A It's a lie because he knows that

18 Don Zarda did not touch the customer in a way

19 that was inappropriate whatsoever. He knows

20 that.

21 Q How does he know that?

22 A Because he has the experience in

23 the industry, in the sport, as an instructor,

24 and he knows me for ten years now. He knows

25 my record, he knows my reputation, and he

1 D. Zarda

2 knows better. Simple.

3 Q And you think he just fired you

4 because you were gay and because you drove

5 his Workers' Comp premiums up?

6 MR. ANTOLLINO: Objection.

7 A No, no. I said earlier when you

8 asked me that if that was a possibility that the

9 Workers' Comp. was an issue, and I said that

10 it's a possibility.

11 Q Is it also a possibility that it

12 was because you were gay?

13 A Yes, absolutely.

14 Q Which do you think is more

15 probable?

16 A That I'm gay.

17 Q You think so?

18 A I think that's bigger.

19 Q Do you have an opinion one way

20 or the other as to the reason why you were

21 terminated; is it because you were gay, or is

22 it because of the Workers' Comp premium —

23 MR. ANTOLLINO: Objection.

24 Q ----- in your mind?

25 A It's clearly going to be the gay

D. Zarda

2 issue.

3 Q As you sit here today, you
4 believe you were terminated 100 percent
5 because you are gay?

6 A I didn't say 100 percent. You
7 said 100 percent.

8 Q What percentage would you say—

9 MR. ANTOLLINO: Objection.

10 Q — the likelihood is that you
11 were terminated because you're gay?

12 MR. ANTOLLINO: Objection.

13 A Statistically speaking, I
14 suppose if you were to crunch the numbers, if
15 there's a possibility of another reason, then
16 this reason over here can't be 100 percent,
17 so where in there is it; one percent, two
18 percent, three percent? I don't know. I'm
19 not in Ray's head, so I can't answer that.

20 The question was: Is it
21 possible that Ray could have fired me, in
22 part, for the Workers' Comp situation? Yes,
23 it's possible. How much of that weighed on
24 him when he made the decision to fire me for
25 being gay, I don't know. I wasn't in Ray's

D. Zarda

2 head, so I can't answer that.

3 Q Do you believe that it could
4 have only been one of those two reasons?

5 MR. ANTOLLINO: Objection.

6 Q You may answer.

7 A Do I believe—can you repeat
8 that?

9 Q Do you believe, as you sit here
10 today, that your termination was either the
11 result of you being gay or the result of you
12 driving up his Workers' Comp policy?

13 MR. ANTOLLINO: Objection.

14 A I'm going to say this once more.
15 I didn't do anything to drive up his Workers'
16 Comp policy.

17 Q Well, his belief that you drove
18 up his Workers' Comp policy.

19 A I still don't think that I can
20 say that is even his belief because that's
21 something that is not in my control, nor his
22 control, so I can't state to what his belief
23 is about me driving up his Workers' Comp
24 that as being a factor in whether or not he
25 wanted to let me go or not, could have been a

1
 2 little part of it, but I think the bigger
 3 piece, the much bigger piece, the
 4 dramatically larger piece of it had to do
 5 with me being gay.
 6 MR. ANTOLLINO: Off the record
 7 for one moment, if you don't mind.
 8 MR. ZABELL: Are we talking
 9 about scheduling?
 10 MR. ANTOLLINO: Yes.
 11 MR. ZABELL: Sure.
 12 (Whereupon, a discussion was
 13 held off the record.)
 14 Q The dramatically large piece of
 15 your termination had to do with your being
 16 gay.
 17 What, if any, do you believe
 18 could have been the other factors?
 19 MR. ANTOLLINO: Objection.
 20 Asked and answered.
 21 A Well, we've been down this path,
 22 but to go briefly again, the accusation of
 23 the inappropriate touching was in the mix and
 24 the issue of me being gay.
 25 Q And?

1
 2 A The slight possibility that it
 3 had to do with the Workers' Comp situation,
 4 for which neither Ray nor me has any control
 5 over because Ray doesn't work for the New
 6 York State Insurance Fund or the Workers'
 7 Comp Board and neither do I.
 8 Q Are you finished with your
 9 answer?
 10 A I am.
 11 Q Anything else you want to add?
 12 MR. ANTOLLINO: Objection.
 13 A To that question?
 14 Q Yes.
 15 A No, I think I answered it a lot.
 16 Q Okay. Talk to me about
 17 Lauren Callanan; what do you know about her?
 18 A She is the manifestor, the
 19 primary manifestor for the office, and I
 20 don't know if she has an official title as an
 21 office manager, but she certainly takes on
 22 that role.
 23 Q Nice person?
 24 A She appears to be.
 25 Q She ever lie to

1
2 A Let me think about that for a
3 minute.
4 Q You do that.
5 A I can't think of a specific time
6 where she would have just flat out said an
7 untruth to me directly. Given that she was
8 participating, however, in my termination, to
9 me, might make her culpable in that, in the
10 act of possibly committing an untruth in that
11 situation.
12 Q But as you sit here right now,
13 do you have any reason to believe that she
14 lied?
15 A I do have reason to believe—I
16 do have a little bit of reason to believe. I
17 just can't prove that.
18 Q We all need a reason to believe.
19 A Yeah, well.
20 Q What is your reason to believe
21 that she lied?
22 A My reason would be because she
23 was sitting there with Ray and me when I was
24 terminated, for whatever reason, whether it
25 was for Ray to have a witness or whatnot, and

1
2 for her to be there, I can't imagine her
3 believing this to be true, the reason I was
4 being fired, so that would make me feel like
5 that she could be culpable of lying by
6 corroborating with Ray, the reason Ray was
7 firing me for.
8 I guess it would be like this:
9 Lauren, do you really believe that this
10 happened? That would be my question if I had
11 to ask her, and she would have to say yes or
12 no, and depending on that would, I guess,
13 determine whether or not she was lying. I
14 can't imagine—
15 MR. ANTOLLINO: Allright.
16 That's the answer.
17 MR. ZABELL: Counselor, if your
18 client is speaking and he's halfway
19 through his answer, you do not get to
20 say, all right, that's enough.
21 MR. ANTOLLINO: Yes, I
22 apologize.
23 Q You said "I can't imagine."
24 Please tell me what you can't
25 imagine with regard to that question, and

1 D. Zarda

2 disregard your attorney telling you, okay,
3 that's enough.

4 A I can't imagine her believing
5 that.

6 Q Can't believe that a customer
7 complained about you or believing that the
8 actual complaint was accurate?

9 A Believing that I did anything
10 wrong like that.

11 Q What months in the year 2001 did
12 you work for Skydive Long Island?

13 A I'll just have to give you an
14 approximate on that. It could have been the
15 months in June, July, August, and very early
16 September.

17 Q Would that have been the
18 same for 2009?

19 A No. 2009 would have been the
20 months of May, June, and the first part of
21 July.

22 Q What about 2010?

23 A Those would have been the months
24 of May and June.

25 Q And typically, if you were given

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1 D. Zarda

2 the opportunity, would you have worked for

3 Mr. Maynard year round?

4 A It was a seasonal arrangement.

5 It was a seasonal engagement to come to work
6 there.

7 Q What makes it seasonal?

8 A In part, the weather and the

9 nature of the activity, and the location of

10 Mr. Maynard's drop zone is in that place

11 mentioned. I think Rich told you, the season

12 was from March to November, and that's for

13 the locals. So what I mean by that is, Rich

14 lives in this area and so do some of the

15 other employees, so they stay all year, and

16 they're able to work a little bit longer

17 outside in the busy season where instructors

18 like me come from other parts --- they're able

19 to work a little bit longer on either end of

20 the season because they live here versus

21 instructors get hired in from other parts of

22 the country. We come for the busy part.

23 Q And you understand that

24 skydiving on Long Island is a seasonal

25 business; correct?

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- 1
2 A It can be a seasonal business.
3 Technically speaking, skydiving can take
4 place 365 days a year, seven days a week, if
5 you have the weather. If the planets
6 rearrange themselves and it got to be nice
7 weather in December, they --- I wouldn't be
8 surprised if in the coming weekends, even
9 this month, if they aren't doing tandems at
10 Skydive Long Island on the weekend.
11 Q Would you work on rainy days?
12 A Would I work on a --- you're
13 asking me ---
14 Q On a rainy day, yes.
15 A If I would or did?
16 Q If you would.
17 A If I would work on a rainy day?
18 Q Yes.
19 A Could you be more specific; in
20 what way would I work?
21 Q Would you actually jump out of
22 planes in the rain?
23 A We're not allowed to do that.
24 Q So on rainy days, you can't jump
25 from planes?

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- 1
2 A You can't jump from planes while
3 it's raining, during the part of the day that
4 it's raining.
5 Q What other restrictions are
6 there on when you can jump from a plane?
7 A Legally, as far as conditions?
8 Q Yes.
9 A Legally, the sky must be clear,
10 you must have visibility of three statute
11 miles, you must be 500 feet below clouds,
12 there must be 1,000 feet above the clouds,
13 and 2,000 feet separation from the clouds to
14 be able to jump. If you don't have that kind
15 of visibility --- that's off the top of my
16 head. The FARs, but it's relatively close.
17 Q And that was enforced at Skydive
18 Long Island; correct?
19 A Not all the time.
20 Q No; there were times where you
21 would break the law and dive?
22 A Yes.
23 Q Why would you do that?
24 A Because the pilot was willing to
25 fly the aircraft, and Ray was willing to have

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1 us do jumps in those conditions.

2 Q And you were willing to jump in
3 those conditions?

4 A Willing or --- I was willing to
5 jump. Pressured to jump, I think, would
6 probably be a better way to put it.

7 Q You had the right to refuse a
8 jump; did you not?

9 A You could. If you did and you
10 were the only one, then that would possibly
11 raise concern or draw attention to why you
12 would not be jumping when these other people
13 who have a vested interest in making as much
14 money as they possibly can are jumping, so
15 there's that paradox.

16 Q What's the paradox?

17 A Everybody else must think it's
18 okay to jump, so therefore, I should jump
19 too, even if it's illegal. That's the
20 paradox.

21 Q Did you ever complain about
22 being forced to jump illegally?

23 A In this industry, if you
24 complain about things too much, illegal or

1 not, then you may lose your job.

2 Q That's a wonderful answer. It's
3 just not the answer to the question I asked
4 you.

5 A Okay.

6 Q Did you complain about being
7 forced to jump illegally?

8 A No.

9 Q If you wanted to complain, who
10 would you complain to?

11 A The only person I would have
12 felt comfortable with making a complaint
13 about conditions and not jumping would have
14 been Rich, himself, and if Rich wasn't there,
15 I would probably conferred next with Duncan,
16 Duncan Shaw.

17 Generally, either one of those
18 two people would be there. Collectively how
19 it would work is, if it's really crappy
20 conditions and we're talking borderline
21 dangerous, it would get to a point where the
22 herd of staff would collectively stand down.
23 Sometimes that call had to be made by
24 somebody. Oftentimes, it was not Ray. Many

1
2 times it was Rich. Sometimes it would be the
3 pilot. Everybody has a different role in
4 this.

5 The pilot could refuse not to
6 fly if the conditions aren't good enough, so
7 then if the pilot doesn't fly, then,
8 obviously, the jumpers can't make the
9 decision not to jump.

10 Q Did you maintain a schedule of
11 your hours worked in 2009?

12 A A written schedule, no.

13 Q Did you maintain a schedule of
14 your hours worked in 2010?

15 A No. We were expected to show up
16 at work at a specific time, and that time was
17 given to us either the prior day, we'd look
18 at the schedule, see what tandems were coming
19 in, and we were expected to stay until the
20 work was complete, no matter how long that
21 was or until we were dismissed, if we were
22 ever dismissed.

23 Q Sometimes you would never be
24 dismissed; right?

25 A Sometimes you wouldn't.

1
2 Q And you would sleep there when
3 you weren't dismissed; correct?

4 A You're just waiting. You could
5 be using the computer or you could do
6 nothing, or if there was something --- there
7 was various things you could do. If you
8 needed to pack your parachute or something, I
9 suppose you could do that.

10 Q You could also drive off site
11 and just when they call you back, return;
12 correct?

13 A Sometimes they would let you do
14 that, but not all the time.

15 Q You had a cellphone when you
16 worked in 2009 and 2010; correct?

17 A Yes.

18 Q What was your cellphone number?

19 A Same as it is now.

20 Q Which is?

21 A (901)569-5860.

22 Q And that was known to Skydive
23 Long Island; correct?

24 A Yes, of course.

25 Q And they could always call you

1 D. Zarda

2 on your cellphone; correct?

3 A Yes, they could.

4 Q And, you know, there were times

5 during bad weather where you'd leave and go

6 run some errands and maybe stop back, but if

7 the skies opened up and it got more rainy,

8 you would just go home; correct?

9 A No. Typically, for me, once I

10 made the trip out there, I would stay from

11 where I had come from, so I can't think of

12 specifics, but there were not very many times

13 that I would go run errands, because there's

14 not too many things that you can do out

15 there, where you could run errands, other

16 than go get something to eat and come back.

17 So for me, that doesn't work.

18 For some of the other people

19 that live out there, have full-time homes and

20 stuff, they could kind of come and go and do

21 stuff like that, but it didn't really work

22 out for me that way.

23 Q That's just because you lived a

24 little bit of a distance away?

25 A It was a little bit of a

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1 D. Zarda

2 distance; yeah.

3 Q It was just less convenient for

4 you; correct?

5 A Yeah. It would have been kind

6 of ridiculous to drive all the back to Coram

7 and then come all the way back to that area.

8 Q Did you ever meet any of the

9 customers of Skydive Long Island afterwards,

10 after a jump?

11 A Did I ever meet ---be more

12 specific about "after a jump." Are we

13 talking the same day, like after they just

14 made their jump and they were hanging out?

15 Q No. Did you ever make an

16 acquaintance with a customer and then meet up

17 with them at some later date?

18 A I made some acquaintances, but I

19 haven't met up with them. I made a couple of

20 acquaintances on FaceBook, one that I could

21 think of. I haven't seen him since. I mean,

22 we're still FaceBook friends.

23 Q Did you ever date any of the

24 customers you met at Skydive Long Island?

25 A No, I never have.

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1 D. Zarda

2 Q Did you ever try?

3 A Nope.

4 Q Now, what was your expected work
5 schedule in 2009 at Skydive Long Island?

6 A Are you asking me what dates I
7 was expected to be there?

8 Q What days of the week were you
9 expected to work?

10 A It's a seven-day-a-week operation.

11 Q I know it's a seven-day-a-week
12 operation —

13 A You're expected to work seven
14 days a week if the weather is good.

15 Q How did you happen to spend
16 weekends over at Fire Island if you were
17 working seven days a week?

18 A I didn't spend any full weekends
19 over at Fire Island, unless it was completely
20 crappy weather and we were dismissed from
21 jumping and we were not jumping, period, or
22 we were allowed to go home or any of those
23 scenarios, if they occurred. I didn't spend
24 weekends over at Fire Island.

25 Q Really? Because you testified

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2 before that in response to questions of, hey,
3 Don, what did you do this weekend, you would
4 share with people that you went to Fire
5 Island or you went to the Pines, or something
6 else.

7 A Yup. You can very easily get a
8 ride on down to Sayville, get on the ferry,
9 and come right back. Coram is fifteen
10 minutes from Sayville. I did it several
11 times. Come back and go to work, so I didn't
12 spend weekends on Fire Island.

13 Q Did you spend evenings there?

14 A If there was time to make it
15 over there. It just depends on the schedule.
16 If there was a way to go over there and come
17 back, then, yeah.

18 Q So some days your schedule would
19 permit it and some days your schedule
20 wouldn't; is that correct?

21 A The schedule never permitted to
22 go spend a weekend on Fire Island. It did
23 not permit that, and I did not spend any
24 weekends on Fire Island because of that. If
25 the situation warranted or the conditions

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1 D. Zarda

2 permitted you to be able to go to Fire Island

3 for any amount of time, then I may have gone,

4 and I did go on some occasions.

5 Q In 2009?

6 A Yes.

7 Q And in 2010?

8 A Yes.

9 Q How many occasions in 2010 did

10 you go to Fire Island?

11 A I can't recall a specific number

12 of occasions. There's no way of me to tell

13 you that.

14 Q More than one?

15 A Oh, yes, more than one.

16 Q More than two?

17 A I'm pretty sure it was more than

18 two.

19 Q More than three?

20 A I would say so.

21 Q More than four?

22 A Would say that it was ---we're

23 talking about 2010?

24 Q Yes.

25 A I'd say it was less than ten

1 D. Zarda

2 times total.

3 Q Some amount between six and ten?

4 A Somewhere around there, yeah. I

5 think that's fair to say.

6 Q What about 2009?

7 A 2009, less. I'd probably say it

8 could be four to five times.

9 Q Four to five times?

10 A I managed to make it over there,

11 despite the injury, a couple of times, so

12 yeah, probably about that.

13 Q Fire Island wasn't the only

14 place you socialized on Long Island; is it?

15 A Well, there was the drop zone,

16 and then ---2009?

17 Q 2009 or 2010.

18 A 2009, I can't think of going

19 anywhere else to socialize. 2010 on Long

20 Island, I can't think of anywhere else I went

21 to socialize.

22 Q Did you ever go to any clubs in

23 Sayville?

24 A No, never been to any clubs in

25 Sayville.

1
2 **Q Did you ever enjoy any of Long**
3 **Island's fine restaurants, fine dining**
4 **establishments?**
5 **A I mean, I eat out a lot, so**
6 **can't say as to what all restaurants I went**
7 **to. I think in 2010, I might have gone to a**
8 **restaurant--- I did go to a restaurant. I**
9 **just can't remember which one it was, in**
10 **Port Jeff Station right around the corner**
11 **from the condo. That was nice. I don't**
12 **remember which one it was.**
13 **Q Did you ever have occasion to go**
14 **into New York City---**
15 **A Yes.**
16 **Q ---when you worked in 2009**
17 **and 2010?**
18 **A Yes.**
19 **Q When would you go into the City?**
20 **A Whenever time permitted.**
21 **Q How much time would you need to**
22 **get into the City?**
23 **A That was always a toughy. If we**
24 **were busy working and we had to be at work**
25 **the next morning, depending on what time we**

1
2 **got released from work or the last jump was**
3 **would dictate on whether or not we could get**
4 **down to Ronkonkoma, hop the train, get to the**
5 **City and come back, so I did that a few**
6 **times.**
7 **Q In 2009, how many times did you**
8 **do that?**
9 **A Did I ever go to New York from**
10 **Coram; is that what you're asking?**
11 **Q Did you ever go to New York City**
12 **while you were working in 2009?**
13 **A A couple of times.**
14 **Q Three or four?**
15 **A I don't know if it was three or**
16 **four, because I got hurt pretty early on, so**
17 **we were busy, and that was during the long**
18 **daylight hours, but I know I went at least**
19 **once, probably twice.**
20 **Q How about 2010?**
21 **A Same thing, because the only**
22 **thing different is that I was hurt in a**
23 **different way in 2010. I was fired, but it**
24 **was about the same amount of time.**
25 **Q If it was a long daylight day,**

D. Zarda

1 as I believe you said ---

2 A Yes.

3 Q ---what does that mean?

4 A Well, in the summer solstice,
5 the days are the longest. Skydiving goes on
6 typically all way until one half hour before
7 sunset. As the sunset gets longer and longer
8 in the summer, then so does the workday.

9 Q What is the longest day in the
10 summer?

11 A June 20.

12 Q From that point, it gets ---

13 A It starts getting slowly
14 shorter.

15 Q If there's more sunlight, does
16 that mean you can perform more jumps in a
17 day?

18 A It does.

19 Q What was the most amount of
20 jumps that you had done in a day?

21 A Eighteen.

22 Q How much do you get, roughly,
23 for each jump?

24 A \$40.

D. Zarda

1 Q And that's the amount that you
2 agreed upon; correct?

3 A Right.

4 Q On a piecemeal basis, once your
5 jump is completed, that's what you get paid;
6 is that correct?

7 A Right.

8 Q Sometimes you get paid more than
9 \$40; right?

10 A As Rich was kind of explaining,
11 because the breakdown is kind of complicated
12 and depending on the kind of jump, so if it
13 was a training jump, training tandem versus
14 just a joyride, then there was a slightly
15 different schedule for that, and I don't
16 recall right off the top of my head how much
17 it was, because the majority of the jumps
18 that take place at Skydive Long Island are
19 passenger joyrides. They're not training
20 jumps, so I don't have it off the top of my
21 head.

22 There were times that if you
23 were doing a different kind of jump, you got
24 paid a different amount.

1
2 **Q Did you keep track of how many**
3 **jumps you did in 2009?**
4 **A The computer kept track of it.**
5 **My altimeter has it. I'm not sure if we**
6 **provided that to you or not. It's in my**
7 **altimeter. It's on my computer.**
8 **Q What does that mean, it's in**
9 **your altimeter, it's on your computer?**
10 **A Well, the old standard way of**
11 **logging jumps, and some people still use it,**
12 **some people half-and-half it, is an actual**
13 **logbook, like this (indicating) spiral bound.**
14 **You write down the jump number and what you**
15 **do. Many professional jumpers don't do that**
16 **anymore because we're just doing so many**
17 **jumps, and they're all just the same thing,**
18 **and we have altimeters that electronically**
19 **record the jump.**
20 **Q Would that electronically record**
21 **a fun jump for you?**
22 **A Yes, it would.**
23 **Q Would it distinguish it as a**
24 **jump?**
25 **A It doesn't, but when you**

1
2 **download the jumps into your software program**
3 **on your computer, then you can go in and say,**
4 **dive type or type of jump it is, and also**
5 **typically, if you just forgot and you wanted**
6 **to look, you can tell what kind of jump it is**
7 **because you could look at the free fall time,**
8 **free fall speeds and opening altitudes that**
9 **the altimeter records, so it would really be**
10 **obvious that a tandem wasn't a fun jump and**
11 **you opened at 2,000 feet. That's really a**
12 **no-brainer.**
13 **Q Now, Mr. Winstock said yesterday**
14 **when he was critiquing one of your jumps that**
15 **he thought you were waiting too long to throw**
16 **your drogue out.**
17 **A Just his opinion.**
18 **Q Well, it's his opinion that**
19 **counts; isn't it?**
20 **A It counts for what?**
21 **Q He gets to review your jumps to**
22 **determine that you're jumping appropriately;**
23 **correct?**
24 **A No. There wasn't a review**
25 **process. I think that was just some**

1 skydiving comradery. No. So no, there was
 2 not performance reviews. There was not
 3 performance evaluations.
 4 Q In a tandem jump, how long are
 5 you supposed to wait before throwing out your
 6 drogue?
 7 A Three to five seconds, or until
 8 stability is achieved and when the instructor
 9 deems it appropriate to be able to safely
 10 deploy the drogue chute.
 11 Q Why do you not want to wait too
 12 long to deploy your drogue chute?
 13 A Well, because it could get
 14 entangled with the tail of the aircraft. It
 15 could get entangled with you. It can get
 16 entangled with the passenger; any of the
 17 those things. So you need to deploy the
 18 drogue whenever the time is correct that you
 19 have achieved stability and that you have
 20 control and that it's safe to do so.
 21 Q Right. And you don't want to
 22 throw your drogue out after --- the whole
 23 purpose of your drogue is to slow you down so
 24 you're not hitting terminal velocity;
 25

1 correct?
 2 A It's just to keep the tandem
 3 pair falling at the same speed, roughly, that
 4 a solo jumper would fall.
 5 Q And isn't it also to lessen the
 6 impact of the initial shoot opening, as well?
 7 A It is also for that.
 8 Q Because that would put a lot of
 9 stress on you; wouldn't it?
 10 A It does, yes. It does also
 11 serve that purpose.
 12 Q So that's why you want to open
 13 it in that three to five seconds?
 14 A Three to five seconds is very
 15 arbitrary. It could be seven.
 16 Q Really? Because I thought at
 17 twelve seconds, you hit terminal velocity.
 18 A Actually, at nine seconds you
 19 do.
 20 Q Oh, you do? Then it makes sense
 21 you're going to want to do it at three to
 22 five as opposed to eight because you don't
 23 want to hit terminal velocity; right?
 24 A No, no. It's okay to wait, you
 25

1 D. Zarda

2 know, up to seven seconds. It's fine.

3 Q Did Rich indicate that you did
4 it in about twelve seconds?

5 A We didn't look at the video
6 again, because I don't think there was
7 twelve seconds there.

8 Q Because there was time for you
9 wave before you did it; correct?

10 A Oh, there's time to give the
11 peace sign. There's time to do a couple of
12 flips. There's time to wave. There's time
13 to do all of that.

14 Q Do you flip while there is
15 somebody strapped to you?

16 A I have.

17 Q Is it recommended?

18 A Technically, it is not allowed.

19 And that reminds me of the
20 initial complaint in 2001 of that passenger
21 where I mentioned that there was something
22 that that passenger wanted me to do that I
23 wouldn't do, that just happens to be exactly
24 what it was. It was flips out of the
25 airplane.

1 D. Zarda

2 Q Which you've done before?

3 A Every instructor has done it.

4 Q But you're not allowed to do
it?

5 A Technically, you're not
allowed

6 to do
it

7 Q But you've done it.

8 A And everybody does.

9 Q So if everybody does it, then it

10 makes it all right; correct?

11 A It depends. It depends on if
12 the manufacturers are wanting to enforce that
13 or not, and during the period of time in 2001
14 when that came up, it was under very extreme
15 scrutiny at that point, and it was being
16 enforced, and there were consequences if you
17 were caught doing it.

18 Q What were the consequences?

19 A You could have your license
20 revoked.

21 Q And that's actually any time if
22 you're caught doing it, you could have your
23 license revoked; correct?

24 A It is, but I've not heard of
25 that happening in years.

D. Zarda

- 1
- 2 Q So you've escaped detection in
- 3 years?
- 4 A Everybody has escaped detection
- 5 in years, even though it's broadcast on
- 6 YouTube thousands of times. Instructors
- 7 doing flips and barrel rolls with tandem
- 8 passengers, and somehow there still manages
- 9 to be licensed instructors in the country
- 10 doing tandems. It's a great thing.
- 11 Q You agreed specifically to get
- 12 paid on the per jump basis; did you not?
- 13 A That is correct.
- 14 Q And you were paid on a per jump
- 15 basis; correct?
- 16 A Yes.
- 17 Q And you were paid what you had
- 18 agreed to be paid; correct?
- 19 A Except for the jumps that Ray
- 20 withheld from my paycheck.
- 21 Q But then he gave them back to
- 22 you; right?
- 23 A (No verbal response.)
- 24 Q You testified that he did.
- 25 A He stole the TV, and then he

D. Zarda

- 1
- 2 returned it.
- 3 Q You got paid everything that you
- 4 were agreed to be paid; correct?
- 5 A Yup.
- 6 Q Did you ever collect any Social
- 7 Services payments in 2009 or 2010?
- 8 MR. ANTOLLINO: Objection to
- 9 form.
- 10 A Define "Social Services" to me.
- 11 Q Anything from welfare to
- 12 unemployment benefits to Workers' Compensation
- 13 Benefits.
- 14 A I received Workers' Compensation
- 15 benefits.
- 16 Q When?
- 17 A That was in 2009.
- 18 Q Did you ever receive
- 19 unemployment benefits?
- 20 A Not in 2009.
- 21 Q Did you receive unemployment
- 22 benefits in 2010?
- 23 A Yes.
- 24 Q From what state did you receive
- 25 unemployment benefits?

1 D. Zarda

2 A New York.

3 Q I assume you applied for

4 unemployment benefits; correct?

5 A I did.

6 Q Did you indicate on your

7 application for unemployment benefits that

8 you were a partner in a business?

9 A I would have to see the form. I

10 doubt it, because I'm a silent partner, and I

11 don't have any legal standing with the

12 business whatsoever, and I don't have

13 anything there, so I doubt it.

14 Q But you do receive income from

15 the business when the business has income;

16 correct?

17 A When the business is able to pay

18 for what it owes me for work that's been done

19 years ago, then we get some money.

20 Q And in 2010, you actually did

21 work for the business; correct?

22 A I haven't been paid for that

23 work.

24 Q But you did work; right?

25 A In 2010, I did some things here

1 D. Zarda

2 and there.

3 Q What did you do for the

company 4 in 2010?

5 A In 2010, I was gone a lot, so

6 just IT stuff.

7 Q Do you recall what period of

8 time to what period of time you did IT stuff?

9 A It would have been before I

10 went.

11 Q It would have been what?

12 A It would have been before I went

13 to leave for the season to go to Skydive Long

14 Island.

15 Q Well, didn't you testify before

16 that you also worked there after you left

17 Skydive Long Island?

18 A You're talking about '10; right?

19 Q Yes.

20 A I think that -- I think that you

21 were talking about '11 when I came back and

22 doing the work that you just asked me about

23 recently.

24 Q So you're saying you didn't do

25 any work for the company in 2010, or you did

1 D. Zarda

2 do work in 2010?

3 A Before I went to Skydive Long

4 Island.

5 Q From what period of time to what
6 period of time did you collect unemployment
7 benefits?

8 A I don't have a --- that's a good
9 question because it took so long to get any
10 response in that broken system, that awful
11 system---

12 MR. ANTOLLINO: Just answer the
13 question.

14 Q It's an awful broken system. I
15 got you.

16 A It is. It's awful. I think
17 actually by the time I actually got any
18 benefits, it was the end of November of 2010.
19 It took that long.

20 Q How long did you receive those
21 benefits for?

22 A I think it was just until
23 January, the end of January. Maybe early
24 February.

25 Q Why did you stop receiving

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2 benefits?

3 A Because we got into a dispute
4 over a program that I applied for,
5 599 Program, and they suspended my benefits.

6 Q What is a "599 Program"?

7 A It has to do with training. If
8 you are in school or in an approved training,
9 and I'm not going to speak as if I'm an
10 expert on this, because I don't have the rule
11 in front of me because it's all very

12 complicated, you can receive benefits for
13 unemployment while you are actually in school
14 full-time, as long as you meet these specific
15 criteria that was listed in their handbook,
16 and I met that criteria, so we actually still
17 have an open case to this day, and I intend
18 to win that to get the remaining benefits
19 with unemployment.

20 Q You do?

21 A I do.

22 Q How do you intend to do that?

23 A When the Judge --- when I finally
24 get a hearing and I get to talk to the Judge,
25 I think, just as in the case with the

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1
2 **Workers' Comp, I think the Judge will see it**
3 **my way.**
4 **Q You do?**
5 **A I do.**
6 **Q Has anybody advised you on it?**
7 **A Like an attorney, you mean?**
8 **Q Yes.**
9 **A Not specifically.**
10 **Q Generally?**
11 **A No. They have not specifically**
12 **advised me on that. I'm kind of handling**
13 **that on my own. I think ---it's a**
14 **bureaucracy. I think the facts speak for**
15 **themselves, and then when it gets to a point**
16 **where a Judge can look at it, it will be**
17 **easy.**
18 **Q Do you know what the earnings**
19 **are of Altitude Express or Skydive Long Island?**
20 **A What they make as a corporation?**
21 **Q Yes.**
22 **A I don't.**
23 **Q Do you know the periods of time**
24 **in which they make their money?**
25 **A I don't know, specifically, but**

1
2 **I think they are capable of making money year**
3 **round. They can sell gift certificates over**
4 **the winter, even though they're not jumping.**
5 **They can actually do jumps in January. I've**
6 **seen posts for jumps in the winter, so it's**
7 **just not the up, main season.**
8 **Q Do you agree that skydiving is a**
9 **seasonal sport?**
10 **A In some areas, it is, and in**
11 **some areas, it is not.**
12 **Q Would you say that Skydive Long**
13 **Island is a seasonal sport, dependent to**
14 **operate mostly in the warmer weather?**
15 **A Typically so for Skydive Long**
16 **Island; yeah, yes.**
17 **Q So if you actually swore to the**
18 **accuracy of that statement, that would be**
19 **correct?**
20 **A I think I did say that.**
21 **Q I think so too.**
22 **A Yeah.**
23 **Q I believe you said the last jump**
24 **of each day occurred a half hour before**
25 **sunset; is that correct?**

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2 A Well, if everybody is following
3 FAA rules and United States Parachute
4 Association rules and all the rules that
5 you're supposed to follow, then technically
6 speaking, the last jump is supposed to be
7 wheels up, which means takeoff, thirty
8 minutes before sunset; whatever the official
9 posted sunset is.
10 Q How long does a jump actually
11 take?
12 A That depends on the type of
13 jump, the type of aircraft that's being used
14 to take the jumpers to altitude, and the
15 altitude of the jump.
16 Q When you were at Skydive Long
17 Island, how long did your jumps take?
18 A Well—
19 Q Generally? You can give me the range.
20 A That's better because there is
21 two different aircrafts, and they operate at
22 two very different speeds and they were
23 different altitudes, so a jump could go
24 anywhere from, I would say, ten to twenty,
25 twenty-two minutes or so, somewhere in that

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2 neighborhood.
3 Q In a ten to twenty-minute
4 period, you would earn somewhere around \$40;
5 is that correct?
6 A That's correct. You could do
7 pretty well, depending on which plane you're
8 in. If you're lucky and in the KingAir all
9 day, you did better because it was a faster
10 plane. You could get up and down quicker and
11 do more jumps.
12 Q That was the ten-minute jumps;
13 right?
14 A Well, the reason I said ten is
15 because that's if you are doing some kind of
16 jump mastering with a student that's not a
17 tandem and they're getting out at a low
18 altitude on the way up to a higher altitude,
19 so that's why I included that. That's not
20 the typical tandem jump. A typical tandem
21 jump is going to be fifteen to twenty
22 minutes.
23 Q Okay.
24 A Tandems were, you know, were the
25 main staple. There's all kinds of other

2 variables.

3 Q Most of the jumps took between
4 fifteen and twenty minutes for which you
5 would earn the \$40; correct?

6 A Yeah. Sometimes a little less
7 if it was in the King Air and you didn't get
8 full altitude, for whatever reason, and
9 sometimes that happened because of traffic or
10 clouds.

11 Q And again, if it was a cloudy
12 day or a rainy day, you ended up hanging out
13 around there, but you could go run errands or
14 whatever, but you didn't go home because it
15 just didn't work out for you; correct?

16 A I typically didn't go home
17 because it was too far, but it depends on the
18 kind of clouds. I know that maybe sounds a
19 little hard to understand, and the kind of
20 weather.

21 Q No, I understand. You got your
22 nimbus, your cumulonimbus, your thunder.

23 A If it was, you know, stuff is
24 moving in, it's definitely not going
25 anywhere, then you know probably we're done

2 for the day. If it was hit-and-miss stuff
3 coming and going, you know, you could maybe
4 get a few loads off in between the stuff, and
5 then more rain would come, so it would just
6 depend, and then it depends on the altitude
7 of the clouds.

8 Sometimes the ceiling might be
9 10,000 feet. We could still do jumps below
10 10,000 feet without breaking the law. It
11 depends.

12 Q You would judge from the weather
13 whether or not you would hang around or not;
14 correct?

15 A We wouldn't judge. The decision
16 had to come down from Lauren. Lauren, a lot
17 of times, made the call, and I think when she
18 made the call, it was probably with Ray's
19 approval. It would come down from Ray or
20 Lauren and possibly Rich on whether we're
21 done or the pilot.

22 Keep in mind, it's a little bit
23 complicated. I want everybody to be able to
24 understand this. Ray runs the drop zone, he
25 owns the drop zone, he controls most things.

2 However, the drop zone cannot operate if the
3 pilot does not or cannot fly the aircraft,
4 and the pilot has the absolute final say on
5 whether anybody goes anywhere, bar none.

6 Q What was the least amount of
7 jumps that you had performed on a day?

8 A That would be easy. It would be
9 zero.

10 Q And that's if you showed up and
11 the weather just didn't permit a jump;
12 correct?

13 A That's right.

14 Q In which case, you'd ---

15 A You'd just have to see what the
16 situation was going to be. It was an
17 on-the-fly thing.

18 Q But while you're waiting around
19 for the weather to clear, you can go ---

20 MR. ANTOLLINO: Objection.

21 Q --- get a sandwich, order a
22 pizza, or something?

23 A It depends. I'm not going to
24 make a general statement about that because
25 it just simply depends.

2 Q Just some days you could, and
3 some days you couldn't?

4 A Some days you could, and some
5 days you couldn't.

6 Q Some days you could go home; and
7 some days you couldn't?

8 A Yeah.

9 Q You just wouldn't go home
10 because it was pretty far; right?

11 A Well, yup. If I had to go home
12 and come back, it would have been too far, so
13 really that wasn't an option for me, because
14 what if I'm on the way home and almost to

15 Coram, and then a hole opens up and we got
16 twenty or thirty ---

17 Q Jumpers?

18 A --- customers standing there that
19 we can get in the air and I'm not there to do
20 it, that wouldn't be good.

21 Q Some people live pretty close to
22 the ---

23 A They do.

24 Q --- jump zone; right?

25 A Yes, they do.

1
 2 **Q** Who lived the closest to the
 3 jump zone?
 4 **A** I think Duncan and Willie at the
 5 time and Alex Allen.
 6 **Q** Now, you and Willie weren't that
 7 close, but Duncan was a good guy, right,
 8 Duncan liked you?
 9 **A** Everybody was a good guy.
 10 **Q** Everybody; all of the workers
 11 were good guys, even Willie?
 12 **A** Even Willie. Willie was one of
 13 those people that we talked about earlier
 14 that needed a little bit of work.
 15 **Q** Did Duncan or Willie ever invite
 16 you to their house to get something to eat
 17 during the down times?
 18 **A** Not during those times; no.
 19 **Q** During any other time?
 20 **A** Yes. I've been over to their
 21 house, but not during, you know, workdays.
 22 **Q** After work, you'd go over and
 23 socialize; right?
 24 **A** Actually, no. Believe it or
 25 not, social as we are with those long days,

1
 2 the people that work there, the professional
 3 jumpers, were the ones who didn't socialize a
 4 whole lot because we were worn out. You went
 5 home. You had very little time to do what
 6 you needed to do for your person, in my case,
 7 my errands, workouts, whatever, and then you
 8 had to be back the next day, so those of us
 9 that worked full-time, we didn't really,
 10 during the heavy part, we didn't socialize a
 11 whole lot.
 12 **Q** Did you ever get to workout at
 13 the drop zone?
 14 **A** No.
 15 **Q** Do pushups, sit-ups, or
 16 pull-ups?
 17 **A** No.
 18 **Q** Never did that?
 19 **A** No.
 20 **Q** Were there shower facilities at
 21 the drop zone?
 22 **A** Crude, but I never used it, but
 23 out behind the electrical transformer, there
 24 was a stall and I think a water hose.
 25 **Q** Well, it's always good to keep

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2 water hoses by electrical transformers;

3 right?

4 A Right.

5 Q But that was available for you

6 to use; right?

7 A If you felt like you could get

8 cleaner in that place, then I guess you could

9 shower there.

10 Q Were there ever beverages

11 provided in the drop zone?

12 A For sale, or --- Ray had a

13 hamburger shack that you could get soft

14 drinks from and some Coke machines.

15 Q Anybody ever bring beer to the

16 drop zone?

17 A All the time.

18 Q Who would bring beer?

19 A That could be staff, fun

20 jumpers, customers. Beer is encouraged.

21 Q But you can't jump while you're

22 drunk; can you?

23 A No, you cannot.

24 Q And you would never jump while

25 you were drunk; right?

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2 A Absolutely not.

3 Q Did you ever drink a beer at the

4 drop zone?

5 A Yes.

6 Q On occasion; right?

7 A On occasion.

8 Q It would be like, you know, once

9 a week, maybe once or twice a week?

10 A I wouldn't call it a per-week

11 thing. It would just depend on the day and

12 if there was something going on at the drop

13 zone. Typically, in the industry, or, you

14 know, culturally-wide, skydivers ended the

15 day with beer. They have a beer light. They

16 even have an actual beer light at Skydive

17 Long Island. A lot of drop zones do. It's a

18 green light or a light, and when it's turned

19 on, you're allowed to drink beer.

20 Q Your attorney had mentioned

21 something about getting laid yesterday.

22 Do you know what he was talking

23 about?

24 MR.ANTOLLINO: Objection. May

25 I clarify for the record?

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MR. ZABELL: No.

MR. ANTOLLINO: When you say,

"laid," are were you spelling it

L-E-I-D or L-A-I-D?

MR. ZABELL: I'm just saying

that you were talking about getting

laid yesterday, and I'm asking your

client if he knows what you were

talking about.

A I think that he was making

reference to a posting that he may have seen

on Skydive Long Island's website about a

summertime party, a luau, where it mentioned

something about getting laid.

Q Do you recall how it was spelled

because your attorney seems to want to know?

A I don't recall how it was

spelled. I may have seen it in passing.

Drop zones routinely have newsletters and

publicize on Dropzone.com and other websites,

boogie-type events for things like that, not

every single one of them, but it sounds like

something that a drop zone would have.

Q Were you ever at a getting-laid

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party at the drop zone ---

A No.

Q --- on Long Island?

A No. I didn't stick around much

for parties at the drop zone, because I had

to be at work the next day, or if I didn't

have to be at work the next day, then I had

other stuff to go do (indicating).

Q You're pointing to your lawyer.

I don't know ---

A I'm pointing as "in a way." I

had other stuff to go do.

Once you've been at the drop

zone for twelve hours or more and you're

working there, at least for me and I think

for Duncan sometimes and the other full-time

staff, we would pretty much just end up

leaving. Maybe have a beer and then leave.

Q You're unfamiliar with this

getting-laid party that your lawyer was

referring to?

A I think I've seen, you know, in

passing, this luau that they have. They have

all kind of quirky parties out there. They

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2 have some quirky parties at Skydive Long

3 Island that take place.

4 Q Did they in 2009?

5 A Yes.

6 Q What quirky parties did they
7 have?

8 A Same ones. They have the same
9 parties. The party themes tend to be similar
10 in nature or the same one regurgitated and
11 redone year after year.

12 Q What parties had occurred at
13 Skydive Long Island in 2009 when you were
14 working?

15 A Well, they have some kind of
16 disco, '80s, something-or-other party during
17 the time when the casa was supposed to be
18 there, which is a boogie that Rich mentioned,
19 and then boogie is just another word for a
20 skydiving event that involves more people and
21 typically, a specialty aircraft that doesn't
22 usually reside at the drop zone being brought
23 in for a special occasion. For those kind of
24 occasions. I think they had that luau, as
25 well. I think that was a separate occasion,

2 but I'm not sure.

3 In 2009, I wasn't available to
4 be able to go to too many of the parties
5 because I was on crutches.

6 Q When you were on crutches, you
7 weren't working; correct?

8 MR. ANTOLLINO: Objection.

9 A I was not.

10 Q During the period of time before
11 you busted up your ankle ---

12 A It was a short period because ---
13 not terribly short, a couple of months, I
14 guess.

15 Q Well, there was May and June;
16 correct?

17 A May, June, and the first day of
18 July; yeah, so --- what were you asking about?

19 Q Did you go to any of those
20 parties in 2009?

21 A Not that I recall.

22 Q Were you invited to any of those
23 parties?

24 A You're all invited; yes.

25 Q And you choose not to go?

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- 1
2 A If I didn't go, then I'm sure I
3 made the choice.
4 Q Was there anything occurring at
5 the parties that made you uncomfortable?
6 A I can't say because I wasn't
7 there, but things do go on at some of those
8 parties at some drop zones that I don't
9 really feel it's part of my liking.
10 Q Does that have anything to do
11 with the disco music?
12 A No.
13 Q You're okay with the disco
14 music?
15 A I'm okay with it, but, you know,
16 I got other stuff to go do and other ways to
17 entertain myself than to hang around the drop
18 zone.
19 Q Well, what things go on at those
20 parties, at Skydive Long Island parties, that
21 you don't like?
22 A People get drunk.
23 Q You don't like people getting
24 drunk?
25 A I prefer not to be around drunk

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- 1
2 people, so I don't get drunk myself. It's
3 just that I don't like drunkenness. It
4 doesn't mean that you can't drink, but if
5 you're drunk and slobbering and falling all
6 over the place and being loud and whatever
7 people get like when they get drunk, I don't
8 like that.
9 Q You gave that all up in 1999
and 10 2000; right?
11 A I did.
12 Q What else goes on at the parties
13 that you don't like to participate in?
14 A Well, I can't say exactly
15 everything that goes on at some of these
16 things. I mean, you know, jumpers tend to
17 hook up with other jumpers at events like
18 that when people get drunk and start doing
19 stupid things, and so, you know, there's not
20 too many gay jumpers around, and I just got
21 other things to go do.
22 Q Slim pickings and ---
23 A If you want to call it that,
24 then yeah.
25 Q I'm trying to get a handle on

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2 **your position here.**

3 A My position is that if I have an
4 opportunity to hangout at the drop zone at a
5 party and listen to disco music or to go to
6 Fire Island or something during that same
7 time period and be around some of my gay
8 friends and listen to that kind of music, I'm
9 probably going to go do that.

10 Q Is there a difference between
11 straight disco and non-straight disco?

12 A Well, disco is different than
13 some of the kind of music that we listen to.
14 The kind of music that I prefer is better
15 than the music at the parties.

16 Q Okay.

17 A I guess you could say so.

18 Q So it wasn't so much the people;
19 it was---

20 A No.

21 Q --- the music and the drinking?

22 A No, it's not so much the people.
23 If you're there all the time already, you've
24 been there all day, it's time to go do
25 something else. It's just that simple.

1 D. Zarda

2 Q So you weren't excluded?

3 A No, I wasn't excluded.

4 Q You have in front of you
5 Defendants' Exhibit B; do you not?

6 A Right here (indicating).

7 Q And you reviewed that?

8 A I looked it over last night.

9 Q Do you know what that document
10 is?

11 A Yes. It's says, (reading),
12 Amended Response to Demand for
13 Interrogatories.

14 Q And you swore to its accuracy;
15 did you not?

16 A I would say I did, according to
17 page 13. Yeah, I think that says --- to the
18 best of my knowledge, yes.

19 Q Is there anything you want to
20 change in there?

21 A I'd have to look it over again
22 to answer that question right now, but while
23 I was reviewing it last night, I didn't see
24 anything that --- I didn't grab a pen or go
25 for anything to cross out, so no, I think

1 it's probably okay.

2 Q Okay. Tell me when you made any
3 complaints about alleged gender or sexual
4 orientation discrimination while you were
5 employed at Skydive Long Island.

6 A I think we covered that --- I
7 think I covered that in here, in this
8 document, and I didn't make any complaints to
9 the owner, Ray, or Rich about that or any
10 supervisory personnel directly.

11 Q Did you make any complaints
12 indirectly?

13 A What would be an indirect
14 complaint?

15 Q I don't know. But when you
16 said, I didn't make any complaints directly,
17 you're qualifying ---

18 A Oh, okay ---

19 Q --- and I'm obligated to follow
20 up on your qualifier, so if your answer is, I
21 didn't make any complaints at all, then I
22 won't have to follow up on that question.

23 A Yeah, I see what you're saying.
24 Then I didn't make any complaints to anybody

1 at Skydive Long Island about it.

2 Q Did you complain to anybody
3 else?

4 A In the world?

5 Q Yes.

6 A Yes.

7 Q Who did you complain to?

8 MR. ANTOLLINO: Don't say
9 anything you said to your attorney.
10 Other than that, you can answer the
11 question.

12 Can I take a bathroom break?

13 MR. ZABELL: I think you can.

14 COURT REPORTER: Mr. ZABELL,
15 there is a question pending without an
16 answer.

17 MR. ZABELL: Yes, thank you.

18 Answer the question before we
19 break please.

20 Read back that question, please.

21 (Whereupon, the requested
22 portion of the record was read by the
23 court reporter.)

24 A I made an EEOC complaint.

1 D. Zarda

2 **Q This was after your employment**
 3 **ended?**
 4 **A Oh, okay.**
 5 **Q Right?**
 6 **A Yes.**
 7 **Q You made no complaints while you**
 8 **were actually employed at Skydive Long Island**
 9 **to anybody?**
 10 **A No.**
 11 **Q Okay.**
 12 **MR. ZABELL: Go to the lavatory.**
 13 **MR. ANTOLLINO: Okay, great.**
 14 **Thank you.**
 15 **(Whereupon, a recess was taken**
 16 **from 5:38 p.m. to 5:58 p.m.)**
 17 **Q Do you recall ever signing a**
 18 **release when you began your employment at**
 19 **Skydive Long Island?**
 20 **A I signed the standard waiver**
 21 **release document that's required for anybody**
 22 **to make a skydive at any skydiving center in**
 23 **the United States and for most places to**
 24 **qualify.**
 25 **Q Did you understand that that**

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2 **release releases Skydive Long Island from any**
 3 **and all claims that you may make against it?**
 4 **MR. ANTOLLINO: Objection.**
 5 **A No.**
 6 **Q Doesn't it, in fact, say that?**
 7 **A If I could be provided with a**
 8 **copy of it, it says something to that context**
 9 **in regard to anything related to the jump,**
 10 **not employment. It doesn't mention anything**
 11 **about anything regarding employment in there**
 12 **whatsoever, so no.**
 13 **And having familiarity of jump**
 14 **operations over almost a period of twenty**
 15 **years, I've come to know that the standard**
 16 **indemnification and waiver in release of**
 17 **liability for skydiving doesn't include**
 18 **employment matters whatsoever, and I've never**
 19 **seen one include an employment issue**
 20 **whatsoever.**
 21 **Q You haven't even discussed the**
 22 **possibility as to whether or not you've**
 23 **waived your right to bring any claims against**
 24 **Skydive Long Island?**
 25 **MR. ANTOLLINO: Objection.**

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2 With anyone other than with your
3 attorney.

4 A I've discussed it with my
5 attorney.

6 Q Just so you know, that's exactly
7 what he just told you not to say, but okay, I
8 got you. I'm fine.

9 MR. ZABELL: You tried. You
10 gave it the old college try.

11 Q When you worked at Skydive Long
12 Island---

13 MR. ZABELL: Are you okay?

14 MR. ANTOLLINO: Yes, sure.

15 MR. ZABELL: Because if you need
16 a break, I'll---

17 MR. ANTOLLINO: No, we don't
18 need a break. Keep going.

19 A I stated what I said about the
20 waiver. I know what the waiver means, what
21 its intended purpose is for, and I said what
22 that was.

23 Q And its intended purpose is to
24 release claims against Skydive Long Island;
25 correct?

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2 A And indemnify the drop zone and
3 the instructors for any claims made in
4 relation to getting hurt or killed. It is
5 not intended for anything related to
6 employment.

7 Q And you're a lawyer?

8 MR. ANTOLLINO: Objection.

9 A I am not a lawyer. I am an
10 instructor that's been in the industry for
11 almost twenty years now and have seen this
12 paperwork a lot of times, and I know what it
13 means.

14 Q Have you actually seen any
15 decisions of courts interpreting that
16 document?

17 A Yes. Over the years, I have
18 when customers or skydivers got hurt and
19 actually went and sued a drop zone because
20 they got hurt or a family has sued because
21 somebody got killed. I have, over the years,
22 seen it put to the test in those regards.

23 Q Were there coworkers that you
24 were more senior to at Skydive Long Island?

25 A Yes.

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2 Q What is ---

3 A That's using one of those

4 definitions that was mentioned yesterday, and

5 it can be number of jumps, number of years,

6 or number of years at a drop zone.

7 Q Were you treated better or worse

8 than those people that you were more senior

9 to?

10 A I don't think seniority has made

11 any difference.

12 Q You were all treated the same?

13 A Mostly. A newbie gets treated a

14 little differently than someone that's senior

15 in years.

16 Q You guys picked on the newbies a

17 little bit?

18 A What's that?

19 Q You guys picked on the newbies a

20 little bit?

21 A I don't.

22 Q The others do?

23 A It's just a pecking order.

24 Q Were you picked on when you were

25 a newbie?

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2 A Everybody gets picked on a

3 little bit; yeah.

4 Q But it kind of stopped after you

5 were a newbie?

6 A No. It's skydivers.

7 Q Skydivers, they just pick on

8 everybody?

9 A They do.

10 Q So all your coworkers got picked

11 on at one point or another?

12 A Skydivers --- yeah, they had...

13 Q Sometimes the bottle would point

14 to you, and sometimes the bottle would point

15 to somebody else?

16 A That's a good way to put it.

17 Q Right?

18 A That's a good way to put it, so

19 yes.

20 Q You were treated just like

21 everybody else there; right?

22 A For the most part.

23 Q So if you swore under oath that

24 you weren't, would you be lying; correct?

25 A No. I said for the most part.

1 D. Zarda

- 2 Q Yes. For the most part, you
3 were treated just like everybody else,
4 correct; yes or no? That's a yes-or-no
5 question, and I get to ask yes-or-no
6 questions.
- 7 A You do, but that's ---
- 8 Q You said that for the most part,
9 you were treated like everybody else;
10 correct?
- 11 A For the most part.
- 12 Q So that's a yes; correct?
- 13 A Yes, for the most part ---
- 14 Q Thank you.
- 15 A ---I was treated like everyone
16 else.
- 17 Q Now, could you tell me what
18 comments John made?
- 19 A What comments he made?
- 20 Q Yes.
- 21 A I don't know that I specified
22 John's comments in here (indicating).
23 Are you talking about when he
24 got upset with me where my stuff was located?
- 25 Q Any comments that he made to you

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1 D. Zarda

- 2 about your sexuality.
- 3 A Any comments ---he could have
4 said anything.
- 5 Q I'm not asking what he could
6 have said.
- 7 What did he say?
- 8 A I don't recall at this moment.
- 9 Q What comments did Ray Maynard
10 make to you about your sexuality?
- 11 A Well, he said that my pink cast
12 looked gay.
- 13 Q Good thing you weren't at work
14 when you had your cast on; right?
- 15 A No, I didn't say that; you said
16 that. I was at work.
- 17 Q Right. But you weren't working
18 when you had your cast because you couldn't
19 work when you had your cast; correct?
- 20 A I was not working doing jumps,
21 and I wasn't working doing any other
22 functions, but I did attend a mandatory staff
23 meeting right after I got my pink cast that I
24 got an e-mail to attend while I was on
25 crutches, and I was at that.

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2 Q Do you have that e-mail?
3 A For the mandatory staff meeting?
4 Q Yes.
5 A I think I would have provided
6 that, but yes.
7 Q And it was directed to all
8 staff; correct?
9 A It was directed to all staff.
10 Q But you weren't a staff member
11 because you couldn't work at that time;
12 right?
13 A That's not correct. I'm still
14 on the staff. Just because you get hurt
15 doesn't mean you no longer are on the staff.
16 Q Well, you're no longer working
17 and on payroll; correct?
18 MR. ANTOLLINO: Objection.
19 There is no payroll.
20 A No, you're not not on staff
21 anymore because you get hurt. Instructors
22 get hurt all the time. They're still on
23 staff.
24 Q Who heard Ray make that comment
25 to you?

1 D. Zarda
2 A Which one?
3 Q Your pink cast looks gay.
4 A I heard him make that to me when
5 I was coming through the door to the office
6 as he was going the other way when he first
7 saw the pink cast with the pink toenails.
8 Q Who else heard him say that?
9 MR. ANTOLLINO: Objection.
10 A I don't know who else. I don't
11 know.
12 Q So nobody else; right?
13 MR. ANTOLLINO: Objection.
14 A No. I'm not saying nobody else.
15 Somebody else could have heard him.
16 Q Well, I'm asking you to identify
17 who else heard him.
18 A I can't identify who else heard
19 it. I mean, God could have heard it. I
20 mean, Lauren could have heard it. Anybody
21 that was within earshot could have.
22 Q Who was physically within
23 earshot at that time?
24 A Well, it depends on how good
25 your hearing is, so is that from here to a

1
 2 mile away, or here to ten feet, twenty feet?
 3 Is there walls in the middle, is there doors
 4 closed? I don't know, so I can't say who
 5 else could have heard that.
 6 Q What else did Ray say to you?
 7 A At that time?
 8 Q At any time, regarding your
 9 sexuality.
 10 A I can't possibly recallevery
 11 incident at thisseating.
 12 He mentioned at another later
 13 time when I was out at the drop zone on
 14 crutches with the pink cast and I was sitting
 15 on the bench by the Coke machines outside the
 16 office with the pink toenails, in regard to
 17 that, that I was going to have to put a sock
 18 over my toe, over my foot.
 19 Q Why were you at the dropzone
 20 that day?
 21 A Because I just came out to see
 22 what was going on and to visit.
 23 Q So you came out to
 24 hamoret?
 24 A A little bit, yeah.
 25 Q And he didn't say you

1
 2 hangout there; he just said you had to put a
 3 sock on your foot; right?
 4 A He wanted me to cover up the
 5 pink toenails.
 6 Q Could it possibly be that he
 7 didn't want any customers to see somebody
 8 hobbling along with a broken foot?
 9 A I think the characterization
 10 that you might be drawing that from Rich's
 11 testimony is flawed. It's not uncommon for
 12 injured jumpers to come out and hangout at
 13 the drop zone. It happens all the time at
 14 drop zones all over the country. Jumpers
 15 hobbling around on crutches, canes, walkers.
 16 There are even some in wheelchairs. They
 17 come to the parties. They come hangout at
 18 the drop zone.
 19 Q Great. Who else at Skydive Long
 20 Island in 2009 was walking around with
 21 crutches and a broken foot?
 22 A I'd have to stop and think.
 23 There ---
 24 Q I'd like you to stop and think.
 25 A ---weresome.

1 D. Zarda

2 MR. ANTOLLINO: You don't need
3 to interrupt him, and don't badger him;
4 okay? Let him answer the question—
5 MR. ZABELL: Remember you said
6 that you were going to remain silent?
7 MR. ANTOLLINO: No, I don't
8 remember that I said that.
9 MR. ZABELL: You do. That's why
10 you're giggling to yourself.
11 Does everybody else remember him
12 saying he was going to remain silent?
13 Madam reporter, did you remember
14 him saying that?
15 MR. ANTOLLINO: I did not say
16 that.
17 MR. ZABELL: You did say that,
18 sir.
19 Q Just tell me the names of the
20 people who were hobbling around with broken
21 legs or feet or casts, or even crutches
22 without any of that in 2009.
23 A I don't know the names of all
24 the people. There are a lot of people that
25 jump there.

1 D. Zarda

2 Q Give me the names of just one
3 of them.
4 A I don't recall.
5 Q Okay.
6 A I'm very bad with names and
7 not uncommon. I mean, people know that
8 sometimes when I would meet a person if they
9 just told me their name and I get distracted
10 for a minute, I might forget their name.
11 MR. ANTOLLINO: Allright.
12 We're going to take a break now.
13 (Whereupon, a recess was taken
14 from 6:09 p.m. to 6:11 p.m.)
15 Q You're crappy with names, even
16 though you have a good memory because your
17 sister told you so; right?
18 MR. ANTOLLINO: Objection.
19 Argumentative.
20 Q You can answer.
21 A I don't remember names very
22 well. I do remember events pretty well, as I
23 said before.
24 Q Do you remember somebody walking
25 around the drop site in 2009 with a cast on

1 D. Zarda
2 **their foot?**

3 **A** There were more than one. I
4 **just don't remember who. It's so common.**
5 **It's like asking me if you remember people**
6 **walking around on the drop zone in 2009 or**
7 **2010; who were they? It's not an uncommon**
8 **thing if you're jumping out of airplanes.**
9 **People get hurt. It's not unusual to see**
10 **hurt people hanging out at the drop zone**
11 **telling their story or whatever about their**
12 **injury or just to be there to socialize,**
13 **because it's a social group of people.**

14 **Q** So you weren't there to work;
15 **you were there to socialize; correct?**

16 **A** I came out infrequently just to
17 **say hi, let people know how I'm doing, see**
18 **what's going on, but I didn't spend very much**
19 **time there. I didn't stay long. I was on**
20 **crutches. It's not a friendly place to get**
21 **around when you are on crutches and people**
22 **are busy working.**

23 **Q** And customers who were there who
24 **are about to jump out of a plane; correct?**

25 **A** That is also true.

1 D. Zarda
2 **Q** You can imagine how it might be
3 **off-putting for a customer to see a bunch of**
4 **people bobbling around with broken feet**
5 **around the drop zone; correct?**

6 **A** No, I can't, and I can tell you
7 **why, very simply.**

8 **Q** Go ahead. Please do.

9 **A** Because it's not any different
10 **than somebody hobbling around on a crutch**
11 **that slipped and fell on the bathtub and**
12 **broke their ankle in exactly the same manner,**
13 **like I talked to people while I was on**
14 **crutches with my broken ankle that had that**
15 **happen to them.**

16 **Unless the customer knows that**
17 **you got hurt skydiving, it's no different**
18 **than anybody else walking around that got**
19 **injured in a car accident or any other way**
20 **that people can get injured to include**
21 **getting out of bed.**

22 **Q** You don't think they just
23 **assumed it?**

24 **A** They would have had to have
25 **known that I was on staff. I didn't have a**