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Magistrate Judge Arlene R. Lindsay
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, New York 11722

RE: Zarda v. Altitude Express, Inc. & Ray Maynard, 10 Civ 4334 (JFB)(ARL)

Dear Judge Lindsay:

I represent plaintiff in this action and write to request close supervision of an aspect of discovery because I believe a witness is being intimidated.

This is a civil rights action alleging sexual orientation and gender discrimination. My client is a tandem skydive instructor, a trained skydiver who straps himself onto those novices who wish to enjoy the thrill of jumping out of a plane and descending to earth with a parachute. Defendant Altitude Express, d/b/a Long Island Skydive, provides this service to the public. In June 2010, Mr. Zarda mentioned to a female skydive customer who he was strapped onto and about to jump out of an airplane that he is gay, something he had done any number of times before with women passengers in order to ease the tension. After the skydive was over, plaintiff learned from the defendant that this customer complained about the revelation. Soon thereafter, defendant also told plaintiff that the customer complained that Mr. Zarda had touched her "in a way that made her feel uncomfortable." Plaintiff was then fired without even being asked to tell his side of the story. Believing this allegation of touching to be facially pretextual – given both his sexual orientation as well as the fact that he needed to touch the passenger in order to protect her from falling to earth – and believing telling any customer that he is gay to be a protected act, plaintiff brought this action.

The day after the action was filed, the New York Post found it and ran a story about it, which spawned additional publicity. Presumably as a result of this publicity, Mr. Zarda received an email from defendant Ray Maynard's wife, Joanne Maynard, whom he had known before only in passing. In the email, Ms. Maynard stated,

i will be willing to help you in any way possible to stop this monster. he made a lot of negative comments about you during our marriage. i plan on stopping him. contact me if i can help you in any way in your suit against him, believe

me he hated your sexual preference

Shortly thereafter, Ms. Maynard sent another email to my client stating, "What i am really upset about and think is unfair is that at other times other customers have complained about tandem masters behavior but those people were not fired."

I tried contacting Ms. Maynard at that point and she did not get back to me. Shortly thereafter, my client contacted Ms. Maynard who told him that she couldn't get involved because Ray Maynard's lawyer – the person was not named – had threatened to sue her and that her own lawyer (the two are apparently in the midst of a divorce) had advised her that she could not testify in this action.

At that point, my intention simply was to serve a subpoena on Ms. Maynard, let the chips fall as they may, and seek Court assistance if appropriate. But yesterday there were other disturbing developments and I believe I cannot wait any longer. Recently, I served on defense counsel Rule 26 initial disclosures and some documents that I had in my possession, including the emails from Ms. Maynard, as was my obligation. I also listed Ms. Maynard as a person with discoverable information, as was also my obligation. Yesterday, however, my client received another email from Ms. Maynard in which she stated that Ray Maynard's lawyer (again not named) had contacted and shown her the emails that I had sent defense counsel. Ms. Maynard also stated, "don i will never be able to help you. ray is trying to destroy me[.]"

I am troubled by this, and I believe the Court should be concerned as well. There are two inferences to draw from these communications, both of which are contrary to the administration of justice. The first is that a witness who has *highly* relevant information is being intimidated. Since this is a civil rights case, so she is also potentially being retaliated against. Even assuming a complete absence of intimidation or retaliation, the second inference is that a witness who has highly relevant information is scared, and believes that she does not have to give truthful testimony about evidence central to plaintiff's case.¹

I believe that the appropriate remedy at this point is a hearing in which Ms. Maynard, and perhaps others, can be compelled to testify as to who, if anyone, is intimidating them. At that point, further remedies such as sanctions can be explored, if

¹ In addition to this, yesterday, a person who plaintiff last week truthfully identified in response to an interrogatory – his name is Marco -- "unfriended" plaintiff on Facebook. While a social slight such as an "unfriending" should not be blown out of proportion, the timing between the identification of the witness and the "unfriending" – days – cannot go unnoticed. The ineluctable conclusion is someone is contacting witnesses and exerting pressure on them. While, again, the Marco incident should not be blown out of proportion, taken with Ms. Maynard's statements that her husband is trying to destroy her and his lawyer trying to sue her should give the Court significant pause.

appropriate. I don't think the hearing would take very long. At a minimum, I'd ask for a tele-conference to explore alternatives and seek guidance as to how to protect potential witnesses, and plaintiff's right to truthful testimony without intimidation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Antollino', with a horizontal line extending to the right.

Gregory Antollino

Cc: Saul Zabell by ecf