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February 11, 2011

VIA ELECTRONIC CASE FILING

The Honorable Joseph F. Bianco
United States District Judge
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: Zarda v. Altitude Express, Inc., et al.
Case No.: CV-10-4334 (JFB)(ARL)

Your Honor:

This firm is counsel to Altitude Express, Inc., *et al.*, Defendants in the above-referenced action. We write to apprise the Court of a serious dispute which has arisen between the parties surrounding three (3) deficiency letters served by Defendants, the responses issued by Plaintiff's counsel, and seek to compel full and accurate responses to our discovery demands. We have attempted in good faith to resolve these issues directly with Mr. Antollino to no avail. While customarily, counsel would not burden this Court with such matters, we fear that should this impasse not be immediately addressed, the parties' ability to complete discovery in a timely manner will be irreparably compromised.

Since the onset of discovery, material issues have arisen regarding the content of Plaintiff's responses to Defendants' discovery demands. Specifically, Defendants served their first combined set of discovery demands on December 16, 2010. Upon inspection of Plaintiff's response to Defendants' First Request for Admission, dated January 20, 2011, Defendants responded with a deficiency letter on January 28, 2011 (Ex. A). Similarly, Plaintiff's next set of discovery responses to Defendants' First Set of Interrogatories and Request for the Production documents, dated on January 28, 2011, necessitated an additional deficiency letter Defendants served on February 3, 2011 (Ex. A). Later under separate cover, Plaintiff provided bates-stamped documents responsive to Defendants' discovery requests. However, the documents were haphazardly assembled in contravention of F.R.C.P. 34(b)(2)(E). Accordingly, Defendants served a third deficiency letter advising Plaintiff of their improper document production (Ex. A).



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Plaintiff's counsel responded to Defendants' deficiency letters *via* electronic mail on February 10, 2011 (Ex. B). In this e-mail, Mr. Antollino states that he "skimmed" Defendants' letters and decided that he, "[does] not intend to waste time answering them," and he, "won't be responding." Furthermore, Mr. Antollino instructed Defendants' counsel that if we, "want to discuss any individual item that you believe I am withholding, you pick up the phone and call." Later that day, we responded to Plaintiff *via* electronic and first class mail (Ex. B). We informed Mr. Antollino that the content of our three (3) deficiency letters is, "supported by the facts of this matter as well as relevant case law....Defendants are willing to meet and confer regarding this issue." In his e-mail response later that day, Mr. Antollino demonstrates his recalcitrance by refusing to confer in good faith to resolve the discovery disputes outlined in our deficiency letters (Ex. B):

"[I]f you want to meet and confer, you pick up the phone and call. It is not my obligation to call you. I don't intend to be drawn into you minutia or be write letters of response [sic]. You figure out what you really need and you pick up the phone as required and maybe we can work something out. If you don't do that before a motion without that, I'll call you on it to the judge [sic]."

In addition to his refusal to engage in the inter-active process, Mr. Antollino felt compelled to include a series of attacks against Defendants' counsel (Ex. B):

"I find the way you practice - a letter writing war, with a proliferation and waste of paper - old-school and inefficient; frankly, from the very beginning you have struck me as a bit of a know it all and, in my opinion, you clearly don't know it all."

Despite being properly served with multiple deficiency letters, Plaintiff's counsel has refused to engage in the interactive process necessary to resolve typical discovery disputes. In fact, Plaintiff's counsel has, on more than one occasion, advised in writing that he "will not read" Defendants' deficiency letters. Although Mr. Antollino's contempt for the rules of practice is noted, in a final effort to resolve this matter prior to seeking judicial intervention, the undersigned called Plaintiff's counsel earlier this afternoon. Unfortunately, during the telephone conversation, Mr. Antollino reiterated his position that he will not respond to any of Defendants' three (3) deficiency letters. Counsel's response necessitated this application.



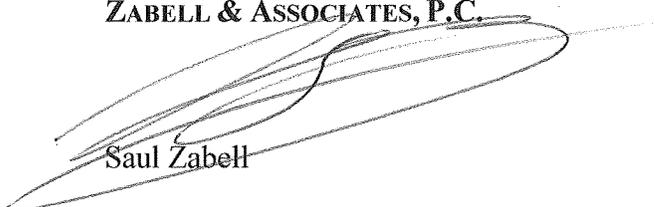
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Based upon the foregoing, Defendants seek to compel discovery production in response to Defendants' demands and deficiency letters, as well as an in person conference to address what appears to be a rapidly deteriorating adherence to rules of civility. Defendants would welcome any guidance this Court may see fit to impart in an effort to resolve this untenable situation.

As always, counsel remains available should Your Honor require additional information regarding this submission.

Respectfully submitted,

ZABELL & ASSOCIATES, P.C.



Saul Zabell

cc: Gregory Antollino, Esq. (*via* electronic case filing)