

**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

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