

**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)

**NOTICE OF MOTION TO
COMPEL DISCOVERY OR
PRODUCTION OF DOCUMENTS
UNDER F.R.C.P. § 37 et seq.**

PLEASE TAKE NOTICE that Saul D. Zabell, Esq., counsel for Defendants, will move this Court, before the Honorable Joseph F. Bianco, at the United States District Courthouse for the Eastern District of New York, located at 100 Federal Plaza Central Islip, New York, pursuant on May 11, 2011, or as soon thereafter as counsel can be heard, or on a date decided by the Court, pursuant to FRCP § 37 *et seq.* to compel discovery in the above-captioned case.

Dated: Bohemia, New York
April 13, 2011

ZABELL & ASSOCIATES, P.C.

By: _____

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**ALTITUDE EXPRESS, INC. d/b/a SKYDIVE
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**DEFENDANTS' MEMORANDUM OF LAW
SUBMITTED IN SUPPORT OF THEIR
MOTION TO COMPEL DISCOVERY OR PRODUCTION
OF DOCUMENTS UNDER F.R.C.P. § 37 et seq.**

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I. INTRODUCTION

Altitude Express, Inc. d/b/a Skydive Long Island, and Ray Maynard, Defendants, in this action, submit this memorandum of law in support of their Motion to Compel Discovery pursuant to Fed.R.Civ.P. Rule 37, *et seq.* For the reasons set forth below, Defendants' motion should be granted, and Defendants should be awarded costs and legal fees incurred for having to make the instant motion.

II. FACTS

In or about July 2010, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") claiming that he was subjected to discrimination because of his sexual orientation and his alleged non-conformity with gender stereotypes. On or about September 24, 2010, Plaintiff filed suit in the Eastern District of New York, seeking damages for purported violations of Title VII, the New York State Human Rights Law, the Fair Labor Standards Act, and the New York State Labor Law while alleging many of the same allegedly unlawful actions outlined in his EEOC Charge. Relatively soon thereafter, the parties engaged in discovery.

Since the onset of discovery, material issues have arisen regarding the volume and content of Plaintiff's responses to Defendants' discovery demands. Specifically, Defendants served their first combined set of discovery demands on December 16, 2010. (Ex. A). Upon inspection of Plaintiff's response to Defendants' First Request for Admission, dated January 20, 2011 (Ex. B), Defendants responded with a deficiency letter on January 28, 2011 (Ex. C). 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 (Ex. D), necessitated an additional deficiency letter served by Defendant on February 3, 2011 (Ex. E). 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 his improper document production (Ex. F).

Plaintiff's counsel responded *via* email wherein he stated that he "skimmed" Defendants' letters and decided that he, "[does] not intend to waste time answering them," and he, "won't be responding." (Ex. G). Thus, because of Plaintiff's admitted failure to meet and confer in good faith, Defendants sought judicial intervention. However, during the ensuing conference with Your Honor, the parties were instructed to discuss all outstanding discovery issues telephonically prior to making an application to the Court.

Unfortunately, Plaintiff's discovery deficiencies were not limited to Defendants first combined set of discovery demands. Defendants served their Second Request for the Production of Documents on February 9, 2011 by email and first class mail. (Ex. H). Plaintiff failed to respond in a timely manner. Thus, Defendants served Plaintiff with yet another deficiency letter advising Plaintiff he waived his objections to these demands as he failed to object to these demands within 30 days. (Ex. I). Apparently awoken from his slumber, Plaintiff inexplicably denied receipt of our discovery demands. (Ex. J). Defendants responded with objective proof Plaintiff did indeed receive these discovery demands. (Ex. K). Plaintiff eventually conceded this point and admitted receiving these demands, and a mere 20 minutes later, issued a response only objecting to our demands. (Ex. L). On March 21, 2011, Defendants responded *via* deficiency letter advising Plaintiff his responses are insufficient, he previously waived his objections, and was required to provide full and adequate responses. (Ex. M). Unfortunately, Plaintiff refused to provide responses to these demands despite his legal obligation to do so.

On or about March 24, 2011, the parties discussed many of the open discovery issues *via* telephone. Unfortunately, despite discussing the issues, and notwithstanding Plaintiff's half-hearted supplementation of many of his responses, the parties were unable to reach a final resolution on many of these issues. As such, pursuant to Your Honor's directive during the previous conference, Defendants respectfully request Your Honor issue an Order compelling Plaintiff to provide complete and adequate responses to Defendants' discovery demands without objection.

III. STANDARD OF REVIEW

The standard of review used to assess the respective positions in this motion to compel involves the interplay between Rules 26, 33, 34 and 37 of the Federal Rules of Civil Procedure. A closer look at the scope of each Rule is instructive on the issues presented by the parties here.

Fed.R.Civ.P. 26(b)(1) describes the scope of, and limitations on, discovery in civil litigation:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.... For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

Fed.R.Civ.P. 26(b)(1). "Relevance" under Rule 26 "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on any issue that is or may be in the case." Oppenheimer Fund, Inc., 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978). This Court has held that the "right of litigants to discover and present relevant evidence in civil litigations is given great weight in federal courts." Apicella v. McNeil Labs., 66 F.R.D. 78, 82 (E.D.N.Y.1975). In Apicella, this Court further noted that the "liberal"

discovery rules tend “toward admitting as much evidence as possible so that the facts may be more accurately determined.” Id.

Fed.R.Civ.P. 33(c) describes the scope of interrogatories in civil litigation:

“Interrogatories may relate to any matters which can be inquired into under rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.” Fed.R.Civ.P. 33(c). A party wishing to object to an interrogatory may not merely repeat the “familiar litany that the interrogatories are burdensome, oppressive or overly broad,” but rather must “specifically” show how the interrogatory “is not relevant or how each question is overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden.” Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co., 105 F.R.D. 16, 42 (S.D.N.Y. 1984). An objection based upon burdensomeness of an interrogatory “must be considered waived” if it is not “stated with specificity.” Nagele v. Elec. Data Sys. Corp., 193 F.R.D. 94, 111 (W.D.N.Y. 2000).

Fed.R.Civ.P. 34(a) describes the scope of document demands in civil litigation:

Any party may serve on any other party a request ... to inspect, copy, test, or sample any designated documents ... which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served....

Fed.R.Civ.P. 34(a). This Court has held that the scope of a Rule 34 request is governed by Rule 26(b). United States v. 50.34 Acres of Land in East Hills, 13 F.R.D. 19, 21 (E.D.N.Y. 1952). The Second Circuit has held that the “granting or denial of [a request under rule 34] is within discretion of the trial court.” Benning v. Phelps, 249 F.2d 47, 48 (2d Cir. 1957); see also Clift v. U.S., 597 F.2d 826, 829 (2d Cir. 1979) (holding that it is within the court’s discretion to grant or deny document demands).

Fed.R.Civ.P. 37(2)(B) provides parties the ability to compel discovery if a “party fails to answer an interrogatory submitted under Rule 33, or ... a request for inspection submitted under Rule 34...” Fed.R.Civ.P. 37(2)(B). A motion to compel is entrusted to the sound discretion of the district court. In re Fitch, Inc., 330 F.3d 104, 108 (2d Cir. 2003); U.S. v. Sanders, 211 F.3d 711, 720 (2d Cir. 2000). The Second Circuit has noted that a “trial court enjoys wide discretion in its handling of pre-trial discovery, and its rulings with regard to discovery are reversed only upon a clear showing of an abuse of discretion.” In re DG Acquisition Corp., 151 F.3d 75, 79 (2d Cir. 1998) (citing Cruden v. Bank of N.Y., 957 F.2d 961, 972 (2d Cir. 1992)).

When applying the above legal standard, it is clear that Plaintiff should be ordered to provide complete and adequate responses to Defendants multiple discovery demands.

IV. ARGUMENT

While numerous discovery issues permeate the case at bar, and pursuant to Defendants’ obligations under both the Federal Rules of Civil Procedures and the Local Rules of the United States District Courts for the Eastern District, Defendants will discuss each discrete discovery issue in kind.

I. Plaintiff’s Response to Defendants’ First Set of Interrogatories:

Interrogatory No. 1: “Set forth with particularity and detail any and all efforts on the part of Plaintiff to lodge complaints of alleged gender and/or sexual orientation discrimination with any managerial, supervisory or Human Resources employees of Defendant, from 2001 through the present.”

Plaintiff objected to Defendants’ Interrogatory on the grounds that it is “overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years.” Despite Plaintiff’s belief to the contrary, Defendants’ Interrogatory requests information that is clearly relevant and material to the case at hand. As Plaintiff alleges he was subject to both gender and sexual orientation discrimination, Defendants

properly requests information regarding the instances of purported discrimination, including Plaintiff's efforts to file internal complaints. Regarding the Interrogatory's scope, Defendants only employed Plaintiff for portions of 2001, 2009 and 2010; in total, an approximate three (3) year period. As such, the scope of the Interrogatory is sufficiently narrow. Other than setting forth blanket objections, Plaintiff has offered no legitimate basis for refusing to provide a substantive response to this interrogatory. Moreover, during our March 24, 2011 telephone conference, Plaintiff agreed to supplement his response, never did so, yet deemed his "supplementary disclosures complete." (Ex. "N").

Inasmuch as this interrogatory calls for relevant information, Plaintiff should be required to provide a complete and adequate response to same.

Interrogatory No. 3: "Set forth with particularity and detail the basis of Plaintiff's belief that "[i]t was known at work that [P]laintiff is gay and he was open about it," as alleged in ¶21 of Plaintiff's Complaint."

Plaintiff responded that "[b]ecause frequent comments, jokes, and at some times discussion regarding my sexuality by not only employees, but also patron jumpers, non-jumpers, friends of jumpers, and around customers without any denial by me about my sexual orientation." Such a response is deficient as it does not expressly provide the detail and information sought in Defendants' Interrogatory. Such a response seems to imply that Plaintiff's failure to refute the "comments, jokes and at some times discussion regarding [his] sexuality" is the sole basis of his belief stated in ¶21 of his Complaint. If that is indeed the case, he should affirmatively state so explicitly.

Interrogatory No. 5: "Set forth with particularity and detail each and every act of alleged gender discrimination against Plaintiff in connection with Plaintiff's employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;

- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
any action taken in response thereto by Defendant's employees."

In addition to boiler plate objections, Plaintiff's response asserts that discrimination "is a term of art in this lawsuit that may have a legal connotation and cannot be answered by a lay witness." Despite Plaintiff's objections, the request is clear and unambiguous as written. Plaintiff failed to cite a legal justification for his failure to respond to this request and made no claim as to the alleged ambiguity of the request. Moreover, a party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to the terms and phrases utilized in the requests. See Coleman v. Dydula, 175 F.R.D. 177, 180 (W.D.N.Y. 1997); Johnson v. Kraft Foods North America, Inc., 238 F.R.D. 648 (D. Kan. 2006). Thus the answering party should generally attribute to allegedly ambiguous terms their common, everyday meaning. Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co., 105 F.R.D. 16, 1 Fed. R. Serv. 3d 167, 79 A.L.R. Fed. 763 (S.D.N.Y. 1984); Roesberg v. Johns-Mansville Corp., 85 F.R.D. 292, 298 (E.D.Pa.1980). Plaintiff makes this specious argument despite the fact he himself has regularly used this word throughout the course of this litigation within his Complaint and Demand for Discovery. The term discrimination or discriminatory appear no less than three (3) times in Plaintiff's Complaint, including in Plaintiff's First and Second Causes of Action. The term "discrimination" is also used in Plaintiff's third (3rd) request of his Demand for Discovery.

Notwithstanding this semantic argument, Plaintiff directed Defendants to his response to Interrogatory No. 4. If Plaintiff contends that he was not subjected to further acts of alleged gender discrimination while in the employ of Defendants, other than those outlined in Response

No. 4, then he should state so explicitly. However, during the course of our March 24, 2011 telephone conference, Plaintiff indicated that additional examples of gender discrimination likely exist, but has not supplemented this response.

A complete response to this interrogatory will allow the parties to narrow the legal issues that must be explored in discovery, and will limit the areas that will be explored in the course of depositions. As such, Plaintiff should be required to provide complete and adequate responses to this demand.

Interrogatory No. 6: “Set forth with particularity and detail each and every act of alleged sexual orientation discrimination against Plaintiff in connection with Plaintiff’s employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
- f) any action taken in response thereto by Defendant’s employees.”

Plaintiff again states in his response that discrimination “is a term of art in this lawsuit that may have a legal connotation and cannot be answered by a lay witness.” Defendants do not agree with Plaintiff’s assertion regarding the term “discrimination” and direct Plaintiff to Defendants’ response to Plaintiff’s objection to Interrogatory No. 5. Defendants reiterate their belief that as written, the Interrogatory is sound and intelligible. Moreover, Defendants respectfully refer Your Honor to the discussion concerning Interrogatory No. 5, *supra*. Other than the instances outlined in Plaintiff’s response, if Plaintiff contends that he was not subjected to any further acts of alleged sexual orientation discrimination while in the employ of Defendants, then he should state so explicitly. However, during the course of our March 24, 2011 telephone conference, Plaintiff indicated that he would supplement this response, yet has failed to do so and deemed his “supplementary disclosures complete.” (Ex. “N”).

A complete response to this interrogatory will allow the parties to narrow the legal issues that must be explored in discovery, and will limit the areas that will be explored in the course of depositions. As such, Plaintiff should be required to provide complete and adequate responses to this demand.

Interrogatory No. 10: “Identify with particularity and detail any and all of Plaintiff’s accounts, profiles, memberships or postings on all social networking websites or internet communities and forums, from 2004 through the present.”

Plaintiff objects to Defendants’ Interrogatory on the basis that, “the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy.” On the contrary, the request is relevant and probative of the allegations in Plaintiff’s Complaint, as well as Plaintiff’s measure of damages. Plaintiff’s utilization of social networking sites will provide a window into his everyday life. The requested information will offer Defendants the ability to examine the extent to which Plaintiff documented instances of purported adverse working conditions and/or sexual orientation and gender discrimination. Accordingly, such information directly bears on Plaintiff’s claims, Defendants’ affirmative defenses, and Plaintiff’s measure of damages.

The requested information is clearly discoverable, particularly in light of Plaintiff’s claim that outward expression of non-conformity to gender and sexual-orientation stereotypes, and the awareness of Defendants’ employees thereof, resulted in an adverse working environment that eventually led to his termination. Moreover, courts have held that this information is relevant and discoverable, particularly where a Plaintiff has affirmatively placed his/her mental state in issue. See e.g., Bass v. Miss Porter’s School, 2009 WL 3724968, *1 (D.Conn. 2009)(“Facebook usage depicts a snapshot of the user’s relationships and state of mind at the time of the content’s posting. Therefore, relevance of the content of Plaintiff’s Facebook usage as to both liability and

damages in this case is more in the eye of the beholder than subject to strict legal demarcations, and production should not be limited to Plaintiff's own determination of what may be reasonably calculated to lead to the discovery of admissible evidence."); Romano v. Steelcase Inc., 907 N.Y.S.2d 650 (N.Y.Sup., 2010). Additionally, the Second Circuit has made it clear that individuals do not maintain a reasonable expectation of privacy in internet postings. U.S. v. Lifshitz, 369 F.3d 173 (2d Cir.2004).

Plaintiff agreed to supplement this response to reflect that the sole social networking account Plaintiff utilizes is Facebook, yet has not done so.

Interrogatory No. 11: "Identify with particularity and detail any and all email addresses and/or instant message screen names utilized by Plaintiff from 2004 through the present."

Plaintiff objects to Defendants' Interrogatory on the basis that, "the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy." Notwithstanding Plaintiff's general objection, Plaintiff's response only provides one email address and directs Defendants to, "do a search of Plaintiff's name, Don Zarda or Donald Zarda." It is disingenuous for Plaintiff to not provide a full and complete response to Plaintiff's Interrogatory, and to instead direct Defendants to undertake a search of Plaintiff's name. Plaintiff inexplicably seeks to shift the burden of responding to their own document request to Defendants. Accordingly, Plaintiff's response is grossly deficient. Defendants requested any and all of Plaintiff's email address(es), including those not used in communication with Defendants. Plaintiffs do not state if Don@donzarda.com is Plaintiff's sole email account. Defendants indeed know Plaintiff utilizes at least one other email address, djzarda@gmail.com. Plaintiff's response conspicuously omits this address.

Additionally, Plaintiff's response is devoid of any mention of instant message screen names that are utilized by Plaintiff. Plaintiff agreed to supplement his response to reflect that he purportedly does not utilize any instant message screen names, yet has failed to do so, instead deeming his "supplementary disclosures complete." (Ex. "N").

Interrogatories Nos. 14, 15, 16, 17:

Interrogatory No. 14: Identify with particularity and detail any other damages that Plaintiff claims were caused by Defendant and have not already been described in response to these interrogatories, specifically:

- a) the type of damage;
- b) the total amount claimed, and;
- c) the method of calculation of these damages.

Interrogatory No. 15: Identify any and all individual(s) with knowledge and/or information concerning the allegations in Plaintiff's Complaint. For each individual identified, provide:

- a) contact information for the individual(s);
- b) the knowledge and/or information possessed by each individual(s).

Interrogatory No. 16: Identify any employment positions that Plaintiff has held since 2004, including (a) the identity of each such employer; (b) the length of time Plaintiff has been employed at each such place of employment; (c) the date the employment commenced; (d) the dates of and reasons for any period of separation from that employment; (e) Plaintiff's job title, duties and responsibilities, and immediate supervisor at each place of employment; (f) Plaintiff's rate of pay at the time each employment commenced and the date and amount of all increases in that rate of pay; and (g) a detailed description of, and the monetary value of, all other forms of compensation and fringe benefits received by Plaintiff from each employer including, but not limited to, bonuses, commissions, expense reimbursements, and medical and pension benefits

Interrogatory No. 17: Identify any of Plaintiff's additional sources of income (whether or not reported as taxable income and including, but not limited to, income earned while performing services as an independent contractor, self-employed or as a sole proprietor of a business or as a partner in a partnership, unemployment compensation, workers' compensation, severance pay, deferred wages, medical payments or benefits, vacation pay, pension benefits, social security benefits, and disability benefits) which Plaintiff has received from 2004 to the present, including, for each source of income: (a) the nature, source and amount of the income (including the initial rate of payment and the amount of all subsequent increases); (b) the dates of commencement and termination of each source of income; and (c) the reason, if any, for termination of the income.

In response to all four of the above-referenced Interrogatories, Plaintiff objects as follows:

“Plaintiff objects on the grounds that this interrogatory brings the defendant into a number (including subparts) exceeding the allowable maximum under Rule 33 of the Federal Rules of Civil procedure. If the defendant obtains permission to seek interrogatories in excess of the amount permissible by the rule, plaintiff reserves the right to assert additional objections, including but not limited to the fact that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence.” Notwithstanding the fact we provided Plaintiff with the relevant case law on the issue, and Plaintiff offered none in response, Plaintiff refused to provide a substantive response to these demands.

Courts have held that interrogatory subparts are not to be counted as discrete subparts if they are logically or factually subsumed within and related to the primary question. See Brown v. Artus, 2008 WL 268171 (N.D.N.Y. Jan. 29, 2008); Cramer v. Fedco Automotive Components Co., Inc., 2004 WL 1574691, *4 (W.D.N.Y. May 26, 2004) (citations and internal quotations omitted). Additionally, multiple interrelated questions may constitute a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately. See Brown, 2008 WL 268171; Cramer, 2004 WL 1574691, *4. In light of the foregoing, when applying these rules to the case at bar, it is fairly obvious Defendants have not exceeded the maximum number of Interrogatories as outlined in F.R.C.P 33. Accordingly, Plaintiff’s responses to the four Interrogatories are deficient and Plaintiff should be required to provide complete and full responses thereto.

II. Plaintiff's Response to Defendants' First Request for the Production of Documents:

Requests Nos. 12, 13, 14, 15, 16, 17: "Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in [¶20, 21, 22, 23, 24, 25] of Plaintiff's Complaint, from 2004 through the present."

Plaintiff objects to the above-referenced document requests by stating, "these demands are duplicative." Each of these individual demands correspond to distinct allegations contained within different paragraphs of Plaintiff's Complaint. Therefore, Plaintiff's blanket objection to these requests is without merit. Additionally, in asserting his objection to Defendants' document requests, Plaintiff implies that the paragraphs and individual allegations contained in his own Complaint are "duplicative". Nevertheless, Plaintiff's objection is baseless and complete and full responses to Defendants' requests should have been provided. During the March 24, 2011 telephone conference, Plaintiff agreed to supplement his responses, never did so, yet deemed his "supplementary disclosures complete." (Ex. "N"). Thus, we respectfully request Your Honor issue an Order compelling his response to these demands.

Requests Concerning Plaintiff's Utilization of Social Networking Sites:

Request No. 32: "Produce any and all documentation evidencing Plaintiff's accounts, profiles, and/or memberships on all social networking websites or internet communities and forums, including but not limited to Facebook, Myspace, Twitter, and Friendster, from 2004 through the present."

Request No. 33: "Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, Friendster, and LinkedIn internet communities and internet forums, including but not limited to postings, messages, uploaded photographs, video and audio, from 2004 through the present."

Request No. 34: "Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, LinkedIn, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiff's expression of an emotional feeling, from 2004 through the present."

Requests Nos. 35: “Produce any and all documentation evidencing Plaintiff’s utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiff’s employment with Defendant, from 2004 through the present.”

Requests Nos. 36: “Produce any and all documentation evidencing Plaintiff’s utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding any of the allegations contained in Plaintiff’s Complaint, from 2004 through the present.”

Plaintiff objected to many of these demands claiming that these requests are “overbroad, unduly burdensome, and seek information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” However, a review of the direction of the relevant case law shows that this information is discoverable. Specifically, the Second Circuit has made it clear that individuals do not maintain a reasonable expectation of privacy in internet postings. U.S. v. Lifshitz, 369 F.3d 173 (2d Cir. 2004). Inasmuch as memberships and accounts on social networking sites invariably relate to internet communication and interaction, i.e. postings, Plaintiff does not have an expectation of privacy. Additionally, the requested documentation is clearly discoverable, especially in light of Plaintiff’s claims that outward expression of non-conformity to gender and sexual-orientation stereotypes, and the awareness of Defendants’ employees thereof, resulted in an adverse working environment that eventually led to his termination. Moreover, as previously stated in Defendants’ response to Plaintiff’s objection to Interrogatory No. 11, courts have held that this information is relevant and discoverable, particularly where a Plaintiff has placed his/her mental state in issue. See e.g., Bass v. Miss Porter’s School, 2009 WL 3724968, *1 (D.Conn. 2009)(“Facebook usage depicts a snapshot of the user’s relationships and state of mind at the time of the content’s posting. Therefore, relevance of the content of Plaintiff’s Facebook usage as to both liability and damages in this case is more in the “eye of the beholder” than subject to strict legal demarcations, and production

should not be limited to Plaintiff's own determination of what may be reasonably calculated to lead to the discovery of admissible evidence."); Romano v. Steelcase Inc., 907 N.Y.S.2d 650 (N.Y.Sup. 2010).

Plaintiff has only produced a smattering of the content of his Facebook account, essentially, only providing whatever documents he unilaterally decided were relevant. Moreover, many of the documents he did produce that were responsive to these demands were doctored in such a manner as to obscure much of their content. See, e.g., portions of Ex. "O"

During the March 24, 2011 telephone conference, Plaintiff argued that his Facebook account was set to "private," thus shielding it from the discovery process, and attempted to factually distinguish the above-referenced cases. The small amount of Facebook related production evidences that Plaintiff openly discussed his allegations, his legal theories, and the advice of his Counsel with his Facebook "friends." (Ex. "O"). Moreover, Plaintiff clearly discusses his psychological condition and mental state on Facebook. Id. This is pertinent as Plaintiff has placed his emotional damages and mental state affirmatively at issue in this case. Inasmuch as Plaintiff has already indicated there are additional stressors in his life during the relevant time period, and Plaintiff freely posts the events of his life on Facebook, Defendants should be allowed to explore these areas in discovery.

Request No. 51: "Produce any and all documentation referencing Plaintiff's employment status subsequent to his employment with Defendant, including but not limited to (a) personnel files, (b) job description, (c) applications, (d) resumes, (e) references, (f) recommendations, (g) diplomas, (h) salary and proof of wages and (i) and other documents provided during Plaintiff's initial application for a position, from July 2010 through the present."

Beyond Plaintiff's general objections, Plaintiff states that the request is, "unintelligible insofar as it references an 'initial application.'" First, Plaintiff's "effort" to respond to this request is insincere. Plaintiff should not have been inhibited from responding to the request even

if he had a semantic issue with the meaning of “initial application.” Additionally, as previously stated, a party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to the terms and phrases utilized in the requests. See Coleman v. Dydula, 175 F.R.D. 177, 180 (W.D.N.Y. 1997); Johnson v. Kraft Foods North America, Inc., 238 F.R.D. 648 (D. Kan. 2006). Thus the answering party should generally attribute to allegedly ambiguous terms their common, everyday meaning. Compagnie Francaise d’Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co., 105 F.R.D. 16, 1 Fed. R. Serv. 3d 167, 79 A.L.R. Fed. 763 (S.D.N.Y. 1984); Roesberg v. Johns-Mansville Corp., 85 F.R.D. 292, 298 (E.D.Pa. 1980).

After the March 24, 2011 telephone conference, Plaintiff agreed to supplement this demand. In doing so, Plaintiff stated that he will provide earning information for the work he performed “tangentially” for Advanced Skin Fitness, a business in which he has an ownership interest and, upon information and belief, has regularly performed work during the entire relevant time period to the present. Plaintiff also stated that he has earned remuneration for a drop zone he worked for one weekend in 2010. Despite these representations, Plaintiff has not yet supplemented his response. This documentation is relevant in the case at bar as it bears directly upon Plaintiff’s measure of damages and attempts to mitigate same. As such, it is clearly discoverable, and should have been produced at the onset of discovery.

Requests Concerning Emotional Damages:

Request No. 53: “Provide a properly executed HIPAA Compliant Medical Authorization for any and all health care providers Plaintiff has treated or consulted with during his term of employment with Defendant, including but not limited to therapists, psychologist, psychiatrists and /or other mental health practitioners.”

Request No. 83: “Produce any and all documentation supporting any alleged emotional damages suffered by plaintiff from 2004 through the present.”

Request No. 84: “Produce all documents concerning, relating to and/or regarding consultation with and/or treatment by any medical and/or mental health professional concerning and/or regarding Plaintiff’s allegations and/or claims for emotional distress and psychological injuries.”

Plaintiff objects to this document requests on the grounds of, “doctor-patient and/or therapist privilege. See In re Sims, 534 F.3d 117 (2d Cir. 2008).” However, it is a longstanding tenet of New York law that by claiming emotional damages in an employment discrimination lawsuit, the plaintiff has placed his mental state in issue, thus waiving his right to confidentiality of probative medical documentation relevant to his mental state. See, e.g., Anderson v. City of New York, No. 05 Civ. 54422(ERK)(MDG), 2006 WL 1134117, at *1 (E.D.N.Y. Apr. 28, 2006) (where plaintiff claims to have suffered emotional distress as a result of the defendant's conduct, “plaintiff has placed her mental condition at issue ... and consequently has waived her right to prevent the disclosure of her mental health records”); Cuoco v. United States Bureau of Prisons, No. 98 Civ. 9009(WHP), 2003 WL 1618530, at *2 (S.D.N.Y. Mar. 27, 2003) (“[Plaintiff] directly put her mental and emotional state at issue when she claimed damages for emotional distress in this action. That damages claim consequently waived any psychotherapist-patient privilege for ... psychologist’s notes and statements relevant to the time and subject matter of this action.”).

The holding in Sims does not prevent this information from being produced in discovery. In applying the “garden variety test” to the case before it, the Second Circuit in Sims stressed a number of fairness factors in concluding that the plaintiff in that case had not forfeited his psychotherapist privilege. See In re Sims, 534 F.3d 117 (2d Cir. 2008). As such, there is no bright-line rule stating that disclosure is improper.

Additionally, inasmuch as Plaintiff expressly cites the doctor-patient and/or therapist privilege, it stands to reason Plaintiff treated with a medical professional as a result of his

“injuries” and as such, may decide to use this documentation in the course of this matter. “[W]aiver may be implied in circumstances where it is called for in the interests of fairness,” including “when the party attempts to use the privilege both as ‘a shield and a sword.’” In re Sims, 534 F.3d 117, 132 (2d. Cir.2008). “In other words, a party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim ... and then shield the underlying communications from scrutiny by the opposing party.” Id.; see also Jacobs v. Connecticut Community Technical Colleges, 258 F.R.D. 192 (D.Conn. 2009).

Plaintiff stated during the March 24, 2011 telephone conference, that his amended response would state that Plaintiff is only seeking garden variety emotional damages. Rather, his response reads “Plaintiff does not seek any damages beyond those contemplated as permissible by Sims in the absence of a release.” Nonetheless, in Sims, the plaintiff explicitly abandoned “any claim to damages for mental injury or any non-garden-variety emotional injury.” Id. at 142. Plaintiff has yet to do that. Moreover, inasmuch as Plaintiff has already admitted there were additional stressors in his life during the relevant time period, Defendants should be allowed to explore these issues in the course of discovery.

Request No. 54: “Produce a properly executed authorization for the release of Plaintiff’s employment records for each position held subsequent to the cessation of Plaintiff’s employment with Defendant.”

Plaintiff’s objection to this request states that, “the demand is retaliatory, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” Defendants’ inquiry into Plaintiff’s employment subsequent to his termination by Defendants is relevant. Defendants’ request is probative of Plaintiff’s efforts to mitigate his damages and directly relate to the causes of action outlined in Plaintiff’s

Complaint and, when applicable, his corresponding damage calculations. As such, it is evident that the purpose of Defendants' document request is not retaliatory and is relevant to the case at bar. Moreover, the timeframe established by the request is sufficiently narrow. Accordingly, Plaintiff should be required to provide a full and complete response immediately.

Similarly, during the March 24, 2011 telephone conference, Plaintiff agreed to provide an authorization for the release of Plaintiff's school records. However, he has not yet done so, instead choosing to deem his "supplementary disclosures complete." (Ex. "N"). Plaintiff should be held to his agreement and provide this signed release immediately.

Request No. 63: "Produce any and all documentation concerning, relating to, and/or reflecting income earned by Plaintiff from 2004 through the present, including but not limited to a) 1099 and/or IRS Form W-2's, (b) payroll records, (c) pension documents, (d) 401(k) documents, (e) pay stubs, (f) deposit records and the like, and (i) any other compensation-related documents."

Plaintiff's objection to this request states that, "the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." Again, Defendants' inquiry into Plaintiff's income subsequent to Defendants' termination of Plaintiff is relevant. Defendants' request is probative of Plaintiff's efforts to mitigate his damages and directly relate to the causes of action outlined in Plaintiff's Complaint and, when applicable, his corresponding damage calculations. As such, Defendants' document request is relevant to the case at bar, as it seeks information concerning Plaintiff's earned income both before and after his termination. Moreover, the timeframe established by the request is sufficiently narrow and not overbroad. Accordingly, Plaintiff should be required to provide a full and complete response immediately.

Request No. 64: “Produce any and all of Plaintiff’s banking records, including statements, notices, and other similarly responsive documentation, from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” Again, Defendants’ inquiry into Plaintiff’s income subsequent to Defendants’ termination of Plaintiff is relevant. Moreover, the timeframe established by the request is sufficiently narrow and not overbroad. Additionally, Plaintiff has placed his mental state at issue by alleging emotional damages in this action. Courts have held that a Plaintiff’s spending patterns and financial activities provide evidence of their activity and mental state. See Chiquelin v. Efundz Corp., 2003 WL 21459581 (S.D.N.Y, 2003) (Complete credit card statements of former employee relevant to age discrimination lawsuit, since statements reflected employee’s activity and mental state). Accordingly, this information is relevant to Plaintiff’s measure of damages in the case at bar.

Request No. 65: “Produce any and all of Plaintiff’s credit card statements from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” For the reasons outlined in Defendants’ response to Plaintiff’s objection to document request No. 64, Defendants’ inquiry is clearly relevant. Chiquelin v. Efundz Corp., 2003 WL 21459581 (S.D.N.Y, 2003) (Complete credit card statements of former employee relevant to age discrimination lawsuit, since statements reflected employee’s activity and mental state). Moreover, the timeframe established by the request is sufficiently narrow and not overbroad. Accordingly, this information is relevant to Plaintiff’s measure of damages in the case at bar.

Request No. 66: “Produce all documents concerning Plaintiff’s application and qualifications for employment with Defendant, including, but not limited to, (a) application forms, (b) notes, (c) memoranda, (d) e-mails, and (e) verification forms.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, and unduly burdensome.” Contrary to Plaintiff’s assertion, the request is not overbroad and is sufficiently narrowed to documentation relating to Plaintiff’s employment with Defendants and qualifications to work in the skydiving field. Moreover, the requested documentation is probative of Plaintiff’s employment with Defendants, and as such, materially relevant to the case at bar.

During the course of the March 24, 2011 telephone conference, Plaintiff indicated he would provide responsive documentation, such as a resume, to this demand. However, Plaintiff failed to do so and instead deemed his “supplementary disclosures complete.” (Ex. “N”).

Request No. 67: “Provide all documentation concerning the termination of Plaintiff’s employment with any employer (whether by discharge, layoff, mutual agreement, resignation, voluntary quit, or any other matter) including, but not limited to, all documents concerning any charges, complaints, claims, or applications made or filed with any federal, state, or local government agency, court, or other tribunal concerning any such termination, from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” The requested documentation is clearly relevant and is probative of his employment application with Defendants and the allegations in Plaintiff’s Complaint regarding claims made about his employment history. As such, the demand is discoverable and Plaintiff’s objection is improper.

During the course of the March 24, 2011 telephone conference, Plaintiff indicated he would provide responsive documentation, such as a resume, to this demand. However, Plaintiff failed to do so and instead deemed his “supplementary disclosures complete.” (Ex. “N”).

Request No. 72: “Produce all documents concerning any communications with any individual(s) whom Plaintiff believes possesses knowledge of the facts, allegations, and claims involved in this case, from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” In an effort to resolve this discovery dispute, Defendants agreed to narrow their request to those communications relating to or concerning the allegations in Plaintiff’s Complaint and Plaintiff’s claims for damages.

Plaintiff supplemented his response by providing communications with Marko Markovich. However, upon information and belief, and after reviewing the few documents Plaintiff produced from his Facebook page, it stands to reason additional responsive documentation exists. As such, we respectfully request Plaintiff produce all responsive documentation.

III. Plaintiff’s Response to Defendants’ First Request for Admissions:

Request No. 6: “Admit that in 2009, before working for Defendant, Plaintiff expressed to Defendant’s employees that he is gay.”

Plaintiff objected to this Request on the grounds that there was no reference to a particular employee and, as written, the Request is vague. Preliminarily, the temporal reference of “before working for Defendant” is intelligible; the Request is narrowed to the time period before Plaintiff began working for Defendant in 2009. Plaintiff already admitted that he was an employee of Defendant in 2009, so there should no issue concerning the Request’s time-frame.

Inasmuch as this request is intelligible as written, Plaintiff should be required to provide a substantive response. Moreover, as Plaintiff has already admitted it was known in the workplace that he happened to be homosexual, Plaintiff should have no aversion to admitting the content of Request No. 6.

Request No. 8: “Admit that in 2010, before working for Defendant, Plaintiff expressed to Defendant’s employees that he is gay.”

Once again, Plaintiff objected to this Request on the grounds that there was no reference to a particular employee and, as written, the Request is vague. Plaintiff already admitted that he was an employee of Defendant in 2010, so there should no issue concerning the intelligibility of the Request’s time-frame. Inasmuch as this request is intelligible as written, Plaintiff should be required to provide a substantive response. Moreover, as Plaintiff has already admitted it was known in the workplace that he happened to be homosexual, Plaintiff should have no aversion to admitting the content of Request No. 8.

IV. Plaintiff’s Response to Defendants’ Second Request for the Production of Documents:

Request No. 1: “Produce any and all documentation regarding communication between Plaintiff and Advanced Skin Fitness, its principals, managing partners, and/or employees, including but not limited to letters, emails, Facebook messages, Myspace messages, memoranda and other similarly responsive documentation, from 2005 through the present.”

Plaintiff objected to this Request on the grounds that “the demand is overbroad and seeks documents that are irrelevant to this litigation and not calculated to lead to the discovery of admissible evidence.” Inasmuch as Plaintiff waived his objections by admittedly failing to respond to this demand within 30 days, he is required to produce all responsive documents. Additionally, this request is relevant to Plaintiff’s mitigation efforts and measure of economic damages.

Request No. 2: “Produce any and all documentation regarding communication between Plaintiff and William Moore, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation, from 2005 through the present.”

Plaintiff objected to this Request on the grounds that “the demand is overbroad and seeks documents that are irrelevant to this litigation and not calculated to lead to discoverable evidence. Additionally, insofar as William Moore was plaintiff’s lover during much of this time, the demand is a bad faith and patent invasion into plaintiff’s and Mr. Moore’s personal privacy.” Inasmuch as Plaintiff waived his objections by admittedly failing to respond to this demand within 30 days, he is required to produce all responsive documents. Moreover, this request is relevant to Plaintiff’s mitigation efforts and measure of economic damages as Mr. Moore is part-owner of Advanced Skin Fitness. Accordingly, Plaintiff should be required to produce this documentation immediately.

Request No. 3: “Produce any and all documentation regarding salary or monies earned by Plaintiff from Advanced Skin Fitness, including but not limited to checks, W-2 forms, financial reports, and other similarly responsive documentation, from 2005 through the present.”

Beyond Plaintiff’s boilerplate objections, Plaintiff states that he, “will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.” Inasmuch as Plaintiff waived his objections by admittedly failing to respond to this demand within 30 days, he is required to produce all responsive documents. Additionally, this request is relevant to Plaintiff’s mitigation efforts and measure of economic damages. Despite Plaintiff’s promises of future production, he has yet to produce this responsive documentation. Accordingly, Plaintiff should be required to produce this documentation immediately.

Request No. 4: “Produce any and all documentation regarding Plaintiff’s ownership interest, employment with and/or work performed for Advanced Skin Fitness, including but not limited to invoices, employee time records, employee agreements/contracts, employee manuals, memoranda, correspondence, and other similarly responsive documentation from 2005 through the present.”

Again, after boilerplate objections, Plaintiff states that he, “will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.” Inasmuch as Plaintiff waived his objections by admittedly failing to respond to this demand within 30 days, he is required to produce all responsive documents. Additionally, this request is relevant to Plaintiff’s mitigation efforts and measure of economic damages. Despite Plaintiff’s promises of future production, he has yet to produce this responsive documentation. Accordingly, Plaintiff should be required to produce this documentation immediately.

Request No. 5: “Produce any and all documentation regarding Plaintiff’s ownership of and/or interest in Advanced Skin Fitness, including but not limited to corporate filings, certificates of incorporation, corporate taxation documents, shareholder agreements, partnership agreements, and other similarly responsive documentation, from 2005 through the present.”

As in his response to Defendants’ fourth (4th) request, Plaintiff states that he, “will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.” Inasmuch as Plaintiff waived his objections by admittedly failing to respond to this demand within 30 days, he is required to produce all responsive documents. Additionally, this request is relevant to Plaintiff’s mitigation efforts and measure of economic damages. Despite Plaintiff’s promises of future production, he has yet to produce any responsive documentation. Accordingly, Plaintiff should be required to produce this documentation immediately.

Request No. 6: “Produce any and all correspondence between Plaintiff and Marko Markovich, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation from 2005 through the present.”

After boilerplate objections, Plaintiff states that he “will conduct a search to see if he has any emails that he has exchanged with Marko Markovich and produce them.” Inasmuch as Plaintiff waived his objections by admittedly failing to respond to this demand within 30 days, he is required to produce all responsive documents. Additionally, while Plaintiff produced some responsive documentation, much of it is doctored to obscure portions of the communications. Accordingly, Plaintiff should be required to produce all responsive, unaltered documents responsive to this request.

A review of the procedural posture of this case evidences Plaintiff has failed to even attempt to meet his discovery obligations as outlined by the Federal Rules of Civil Procedure, thus necessitating this lengthy motion. Moreover, even after meeting and conferring *via* telephone, Plaintiff has refused to produce relevant documentation responsive to Defendants’ multiple requests. While Defendants do not intend to waste judicial time and resources by bringing the instant motion, Plaintiff’s dilatory actions require us to do so.

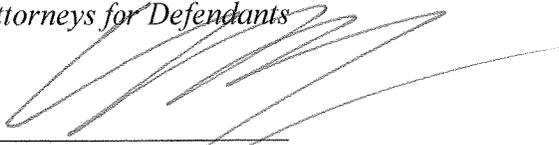
Based upon the foregoing, Plaintiff should be ordered to provide complete and adequate responses to Defendants multiple discovery demands. Furthermore, Defendants should be awarded costs and attorneys’ fees incurred for having to make the instant motion. See Fed.R.Civ.P. 37 *et seq.*

V. CONCLUSION

For all of the foregoing reasons, Plaintiff should be ordered to provide complete and adequate responses to Defendants multiple discovery demands, and Defendants should be awarded costs and attorneys' fees incurred with this submission.

Dated: Bohemia, New York
April 13, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

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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 OF SAUL D.
ZABELL, ESQ. IN SUPPORT OF
DEFENDANTS' MOTION
TO COMPEL DISCOVERY OR
PRODUCTION OF DOCUMENTS
UNDER F.R.C.P. § 37 et seq.**

SAUL D. ZABELL, ESQ., an attorney duly admitted to practice before this Court, hereby declares under penalty of perjury as follows:

1. I am the managing principal of Zabell & Associates, P.C., and attorney for Defendants in the above-captioned case.
2. I am fully familiar with the facts and circumstances contained herein, based on a review of the files and records in this matter, and conversations with Defendants.
3. I submit this Affirmation in connection with Defendants' Memorandum of Law in Support of Defendants' Motion to Compel Discovery or Production of Documents under F.R.C.P. § 37 *et seq.*.
4. For the reasons set forth in the accompanying memorandum of law and upon the documents attached hereto, Defendants' motion should be granted.

EXHIBITS

5. Attached hereto as “Exhibit A” is a true and correct copy of Defendants’ first combined set of discovery demands, served on December 16, 2010.
6. Attached hereto as “Exhibit B” is a true and correct copy of Plaintiff’s response to Defendants’ First Request for Admission, dated January 20, 2011.
7. Attached hereto as “Exhibit C” is a true and correct copy of Defendants’ deficiency letter of January 28, 2011.
8. Attached hereto as “Exhibit D” s a true and correct copy of Plaintiff’s discovery responses to Defendants’ First Set of Interrogatories and Request for the Production documents, dated on January 28, 2011.
9. Attached hereto as “Exhibit E” s a true and correct copy of Defendants’ deficiency letter dated February 3, 2011.
10. Attached hereto as “Exhibit F” s a true and correct copy of Defendants’ third deficiency letter dated February 7, 2011.
11. Attached hereto as “Exhibit G” s a true and correct copy of Plaintiff’s email dated February 10, 2011.
12. Attached hereto as “Exhibit H” s a true and correct copy of Defendants’ Second Request for the Production of Documents, served on February 9, 2011.
13. Attached hereto as “Exhibit I” s a true and correct copy of Defendants’ deficiency letter dated March 18, 2011.
14. Attached hereto as “Exhibit J” s a true and correct copy of Plaintiff’s email dated March 18, 2011.
15. Attached hereto as “Exhibit K” s a true and correct copy of Defendants’ email dated

March 18, 2011.

16. Attached hereto as "Exhibit L" s a true and correct copy of Plaintiff's email dated March 18, 2011 and Plaintiff's Response to Defendants' Second Request for the Production of Documents.
17. Attached hereto as "Exhibit M" s a true and correct copy of Defendants' deficiency letter dated March 21, 2011.
18. Attached hereto as "Exhibit N" s a true and correct copy of Plaintiff's email dated April 8, 2011.
19. Attached hereto as "Exhibit O" s a true and correct copy of portions of Plaintiff's Facebook account.
20. I have read the above nineteen (19) numbered paragraphs and know them to be true to my own knowledge or upon information and belief.

WHEREFORE, for the reasons set forth in Defendants' accompanying Memorandum of Law, Defendants respectfully requests that this Court grants Defendants' motion to compel.

Dated: Bohemia, New York
April 13, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: _____

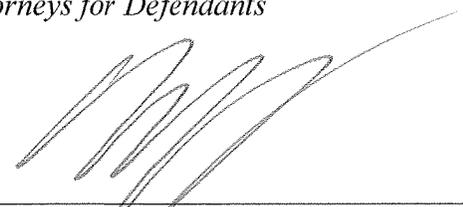

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EXHIBIT A

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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)

**DEFENDANT ALTITUDE
EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND'S FIRST REQUEST
FOR THE PRODUCTION OF
DOCUMENTS TO PLAINTIFF**

PLEASE TAKE NOTICE that, Defendant ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND (hereinafter, "Defendant"), by and through their attorneys, ZABELL & ASSOCIATES, P.C., hereby requests, pursuant to Federal Rules of Civil Procedure 26 and 34 and Local Civil Rule 26.3, which are incorporated by reference herein, that Plaintiff produces for inspection and copying all documents as that term is defined by Local Rule 26.3. Production is to be made at the offices of ZABELL & ASSOCIATES, P.C., attorneys for Defendant, located at 4875 Sunrise Highway, Suite 300, Bohemia, NY 11716 within thirty (30) days from the date of service hereof.

DEFINITIONS and RULES of CONSTRUCTION

The following definitions and rules of construction apply throughout these Document Requests:

1. This request for documents is addressed to Plaintiff and his attorneys. If the requested documents are known by Plaintiff to exist, but are not in his or his attorneys' possession, custody or control, Plaintiff shall so indicate or produce documents which show the name of the person(s) or entity/entities having custody of such documents and the location of the documents.
2. "Documents" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and Local Rule 26.3, including without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate

document within the meaning of this term.

3. "Concerning" means relating to, referring to, describing, evidencing or constituting.
4. If any document responsive to any requests has been lost, mutilated or destroyed, so state and identify each such document and state to which request the document would have been responsive.
5. Each document shall be clearly labeled individually or by group to indicate to which specific request for production herein it is responsive and, if it is intended to be responsive to more than one request, it shall be clearly labeled individually or by group to indicate all requests for production to which it is responsive. If there are no documents in your possession, custody or control which are responsive to a particular request, so state and identify each such request.
6. (a) Where a claim of privilege is asserted in objecting to any means of discovery or disclosure, and an answer is not provided on the basis of such assertion;
 - i. Plaintiff shall identify the nature of the which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked;
 - ii. The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information; and
 - iii. For documents: (i) the type of document (e.g., letter or memorandum); (ii) the general subject matter of the document, (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addresses of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addresses, and recipients to each other;(b) Where a claim of privilege is asserted in response to discovery or disclosure, and information is not provided on the basis of such assertion, the information set forth in paragraph (a) above shall be furnished in writing at the time of the response to such discovery or disclosure, unless otherwise ordered by the court.
7. "And" or "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the disclosure request all documents that might otherwise be construed as outside the scope. "Each" shall be construed to include the word "every," and "every" shall be construed to include the word "each." "Any" shall be construed to include the word "all"; and "all" shall be construed to include the word "any."
8. "Complaint" means the complaint filed by Plaintiff in this action.

9. "Answer" means the answer filed by Defendant in this action.
10. "Concerning," "referring," "relating," "concern," "relate" or "refer" means and includes: with respect to, referring to, relating to, purporting, pertaining, involving, embodying, mentioning, establishing, evidencing, comprising, connected with, commenting on, responding to, prepared in connection with, prepared as a result of, showing, discussing, describing, analyzing, reflecting, presenting, or constituting.
11. "Person" means all individuals and entities including, without limitation, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, or any governmental body, agency or official.
12. References to the plural shall include the singular, and references to the singular shall include the plural. Any pronoun shall include the masculine, feminine or neutral gender, as in each case may be appropriate.
13. "Plaintiff" means the Plaintiff in this action, **DONALD ZARDA**, as well as his agent(s), or any other person or entity acting on her behalf or with his knowledge and/or authorization.
14. "Defendant" means the Defendant in this action, **ALTITUDE EXPRESS, INC., dba SKYDIVE LONGISLAND, and RAY MAYNARD** (hereinafter "Defendant"), including, but not limited to, its directors, administrators, agents or employees.
15. "Social networking site" means any web site that enables users to create a public and/or semi-public profile within the website, and to articulate or generate a list of other users with whom users share a connection. Social networking sites include but are not limited to Bebo, Classmates.com, Facebook, Flickr, Friendfeed, Friendster, Myspace, Smugmug, Tumblr, Twitter, and YouTube.
16. If any responses are withheld under a claim of privilege or work product doctrine, set forth the privilege, identify each person having knowledge or information for which you claim the privilege, and identify each document containing the information for which you claim the privilege, including (1) the type of document, (2) a description of the subject matter of the document, (3) the date of the document, (4) the name(s) and address(es) of each person who viewed the document, and (5) a statement of the basis upon which the privilege is claimed.
17. All Document Requests herein are continuing in nature, so as to require Plaintiff to supplement or amend his responses in accordance with Federal Rule of Civil Procedure 26(e).

DOCUMENTS REQUESTED

1. Produce any and all written statements Plaintiff or his agent(s) have obtained regarding the subject matter of this lawsuit.
2. Produce all witness statements of any kind obtained by Plaintiff in connection with this action.
3. Produce any expert report obtained by or on behalf of Plaintiff, including but not limited to economic and/or financial reports.
4. Produce all documents upon which any expert, retained by Plaintiff, has relied upon in forming, drafting or preparing his or her opinion.
5. Produce any and all investigatory files generated or maintained by Plaintiff concerning the matters alleged in Plaintiff's Complaint.
6. Produce any recordings (e.g.; audio and video) or any other memorialization of conversations, discussions, telephone calls and other communications concerning the matters alleged in Plaintiff's Complaint.
7. Produce any and all documentation that any agent(s) or attorney(s) of Plaintiff filed or submitted on his behalf in any judicial or administrative forum, and all documents relating to this proceeding, including but not limited to: (a) documents that relate to, touch upon or concern Plaintiff's employment with or the separation of employment from Defendant or any other employer; (b) documents relating to any claims brought by Plaintiff against any individual, employer or entity, including gender discrimination, sexual orientation discrimination, failure to pay minimum wage, and failure to pay overtime compensation; (c) documents provided to the Equal Employment Opportunity Commission in response to Plaintiff's charge of discrimination; and (d) documents provided to the New York State Division of Human Rights.
8. Produce any and all documentation relating to, confirming or establishing written or oral communication between Plaintiff and Defendant, or directors, administrators, employees or representatives of Defendant regarding Plaintiff's employment with Defendant or the cessation thereof, from 2001 through the present.
9. Produce any and all documentation concerning, referring or relating to each fact upon which Plaintiff relied on in setting forth each and every allegation contained in Plaintiff's Complaint, including but not limited to, correspondence, memoranda, notes, and other similarly responsive documentation from 2001 through the present.
10. Produce any and all documentation concerning Plaintiff's employment with Defendant, including but not limited to employee manuals, employment contracts, performance evaluations, job descriptions, letters, memoranda, and other similarly responsive

documentation, from 2001 through the present.

11. Produce all calendars, day planners, schedules, appointment books, and/or diaries in paper or electronic form that Plaintiff created, maintained, or used (or which someone else created and/or maintained on his behalf), from 2004 through the present.
12. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶20 of Plaintiff's Complaint, from 2004 through the present.
13. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶21 of Plaintiff's Complaint, from 2004 through the present.
14. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶22 of Plaintiff's Complaint, from 2004 through the present.
15. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶23 of Plaintiff's Complaint, from 2004 through the present.
16. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶24 of Plaintiff's Complaint, from 2004 through the present.
17. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶25 of Plaintiff's Complaint, from 2004 through the present.
18. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶26 of Plaintiff's Complaint, from 2004 through the present.
19. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶27 of Plaintiff's Complaint, from 2004 through the present.
20. Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in ¶28 of Plaintiff's Complaint, from 2004 through the present.
21. Produce any and all documentation confirming, establishing, referring or supporting in any way Plaintiff's allegations concerning Plaintiff's work schedule contained within ¶12 of Plaintiff's Complaint, from 2004 through the present.

22. Produce any and all documentation confirming, establishing, referring or supporting in any way Plaintiff's allegations concerning Defendant's payment practices contained within ¶13 of Plaintiff's Complaint, from 2004 through the present.
23. Produce any and all documentation confirming, establishing, referring or supporting in any way Plaintiff's allegations concerning purported comments made by "straight instructors" contained within ¶18 of Plaintiff's Complaint, from 2004 through the present.
18. Produce any and all documentation evidencing all "jumps" performed by Plaintiff as an employee of Defendant, including but not limited to memoranda, correspondences, notes, e-mails, receipts, spreadsheets and any other similarly responsive documentation, from 2004 through the present.
19. Produce any and all documentation evidencing all days worked by Plaintiff as an employee of Defendant for which he did not perform any "jumps", including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.
20. Produce any and all documentation evidencing all weeks worked by Plaintiff as an employee of Defendant for which he did not perform any "jumps", including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.
21. Produce any and all documentation evidencing all days worked by Plaintiff as an employee of Defendant for which he did not receive minimum wage, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.
22. Produce any and all documentation evidencing all weeks worked by Plaintiff as an employee of Defendant for which he did not receive minimum wage, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present
23. Produce any and all documentation evidencing all days worked by Plaintiff as an employee of Defendant for which he did not receive overtime compensation, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.
24. Produce any and all documentation evidencing all weeks worked by Plaintiff as an employee of Defendant for which he did not receive overtime compensation, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.
25. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff

worked in excess of eight (8) hours a day, for any day, during his term of employment with Defendant from 2004 through the present.

26. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff did **not** work in excess of eight (8) hours a day, for any day, during his term of employment with Defendant from 2004 through the present.
27. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff worked in excess of forty (40) hours a week, for any week, during his term of employment with Defendant from 2004 through the present.
28. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff did **not** work in excess of forty (40) hours a week, for any day, during his term of employment with Defendant from 2004 through the present.
29. Produce all documentation relating to hours worked by Plaintiff while employed by Defendant, including but not limited to time cards, time sheets, work schedules and other similarly responsive documentation, from 2004 through the present.
30. Produce any and all documentation evidencing Plaintiff's use of all his email accounts regarding the allegations contained within Plaintiff's Complaint, from 2001 through the present.
31. Produce any and all documentation evidencing Plaintiff's use of all his instant messaging accounts, including but not limited to America Online instant messenger, MSN messenger, Yahoo instant messenger, and other similarly responsive documentation regarding the allegations contained within Plaintiff's Complaint, from 2001 through the present.
32. Produce any and all documentation evidencing Plaintiff's accounts, profiles, and/or memberships on all social networking websites or internet communities and forums, including but not limited to Facebook, Myspace, Twitter, and Friendster, from 2004 through the present.
33. Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, Friendster, and LinkedIn internet communities and internet forums, including but not limited to postings, messages, uploaded photographs, video and audio, from 2004 through the present.
34. Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, LinkedIn, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiff's expression of an emotional feeling, from 2004 through the present.
35. Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, and Friendster, internet

communities and internet forums relating to, reflecting and/or regarding Plaintiff's employment with Defendant, from 2004 through the present.

36. Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding any of the allegations contained in Plaintiff's Complaint, from 2004 through the present.
37. Produce any and all of Plaintiff's written or electronic diaries, journals, notebooks or writings containing content relating to any and all of the allegations contained in Plaintiff's Complaint.
38. Provide any and all written statements obtained from third parties regarding Plaintiff's claims.
39. Produce all documents Plaintiff created in his capacity as an employee of Defendant, including but not limited to memoranda, electronic mail, letters, and all drafts thereof, from 2004 through the present.
40. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding gender discrimination, from 2004 through the present.
41. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding sexual orientation discrimination, from 2004 through the present.
42. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding failure to pay overtime, from 2004 through the present.
43. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding failure to pay minimum wage, from 2004 through the present.
44. Produces any and all of Plaintiff's resumes from 2001 through the present.
45. Produce any and all documentation regarding, concerning or relating to Plaintiff's degrees, certifications, diplomas, licenses, certificates and other documentation of the like, from 2004 through the present.
46. Produce all documentation regarding, concerning or relating to any and all commendations, awards and official recognitions received by Plaintiff, from 2004 though the present.

47. Produce any and all documentation concerning, relating to and/or regarding any and/or all job training and/or educational instruction received by Plaintiff prior to or subsequent to the cessation of Plaintiff's employment with Defendant.
48. Produce any and all transcripts from any educational institution attended by Plaintiff from 2001 through the present.
49. Produce any and all documentation evidencing any further steps taken by Plaintiff in order to mitigate his damages after the cessation of his employment with Defendant, from July 2010 through the present.
50. Produce any and all documentation that relates to Plaintiff's search for, attempts to prepare for or to obtain employment as an employee, independent contractor, consultant or otherwise (including, but not limited to, self-employment) from July 2010 through the present, including but not limited to:
 - (1) all applications for employment; resumes; curriculum vitae; cover letters; proposals, and/or newspaper, journal, or magazine advertisements concerning any search for work;
 - (2) all communications or correspondence sent to or received from any headhunters, employment agencies, and/or placement agencies concerning any potential employment; and
 - (3) all communications or correspondence sent to or received from any potential employers regarding any potential employment; or
 - (4) all interviews, offers for work, or acceptance or rejection of offers for work.
51. Produce any and all documentation referencing Plaintiff's employment status subsequent to his employment with Defendant, including but not limited to (a) personnel files, (b) job description, (c) applications, (d) resumes, (e) references, (f) recommendations, (g) diplomas, (h) salary and proof of wages and (i) and other documents provided during Plaintiff's initial application for a position, from July 2010 through the present.
52. Produce any and all documentation which relates or refers in any way to Plaintiff's resignation, layoff or termination from employment (or any form of self-employment, including, but not limited to, an independent contractor or consulting arrangement) with any employer subsequent to Plaintiff's employment with Defendant.
53. Provide a properly executed HIPAA Compliant Medical Authorization for any and all health care providers Plaintiff has treated or consulted with during his term of employment with Defendant, including but not limited to therapists, psychologist, psychiatrists and /or other mental health practitioners.

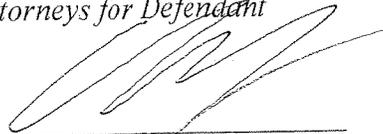
54. Produce a properly executed authorization for the release of Plaintiff's employment records for each position held subsequent to the cessation of Plaintiff's employment with Defendant.
55. Produce a properly executed Internal Revenue Service Tax Information Authorization Form for the years 2004 through the present.
56. Produce all documentation concerning, referring or relating to Plaintiff's income from 2004 through the present, including but not limited to, Federal and State Income Tax Returns and all attachments thereto.
57. Produce any and all documentation relating to Plaintiff's "termination interview" as referenced in ¶29 of Plaintiff's Complaint, including but not limited to notes, letters, recordings, and other similarly responsive documentation.
58. Provide all documents identified or referenced in Plaintiff's response to Defendant's First Set of Interrogatories.
59. Produce every document that Plaintiff intends to introduce as an exhibit at trial in this action.
60. Produce all documents confirming, establishing or referring to any communication between Plaintiff and any employee of Defendant regarding any of the allegations in Plaintiff's Complaint, between 2004 through the present.
61. Produce all documentation that supports, opposes, or in any way relates to Plaintiff's Causes of Action and any other losses for which Plaintiff seeks in this action.
62. Produce all documentation concerning the wages, benefits, and/or other compensation paid to Plaintiff by Defendant, including but not limited to, (a) 1099 and/or IRS Form W-2's, (b) payroll records, (c) health and welfare benefits plans and/or statements, (d) 401(k) documents, (e) pay stubs, (f) deposit records and the like, and (g) any other compensation-related or benefit-related documents from 2004 through the present.
63. Produce any and all documentation concerning, relating to, and/or reflecting income earned by Plaintiff from 2004 through the present, including but not limited to a) 1099 and/or IRS Form W-2's, (b) payroll records, (c) pension documents, (d) 401(k) documents, (e) pay stubs, (f) deposit records and the like, and (i) any other compensation-related documents.
64. Produce any and all of Plaintiff's banking records, including statements, notices, and other similarly responsive documentation, from 2004 through the present.
65. Produce any and all of Plaintiff's credit card statements from 2004 through the present.

66. Produce all documents concerning Plaintiff's application and qualifications for employment with Defendant, including, but not limited to, (a) application forms, (b) notes, (c) memoranda, (d) e-mails, and (e) verification forms.
67. Provide all documentation concerning the termination of Plaintiff's employment with any employer (whether by discharge, layoff, mutual agreement, resignation, voluntary quit, or any other matter) including, but not limited to, all documents concerning any charges, complaints, claims, or applications made or filed with any federal, state, or local government agency, court, or other tribunal concerning any such termination, from 2004 through the present.
68. Produce Plaintiff's automatic disclosure statement pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.
69. Produce all documents identified in Plaintiff's automatic disclosure statement pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.
70. Produce all documents referred to in, or used in the preparation of, Plaintiff's Complaint.
71. Produce for inspection and review the hard drive of Plaintiff's personal computer, or a copy thereof, including any and all e-mails, notes, letters, and any and all other documentation contained therein which pertains, in any way, to Plaintiff's tenure with Defendant, from 2004 through the present.
72. Produce all documents concerning any communications with any individual(s) whom Plaintiff believes possesses knowledge of the facts, allegations, and claims involved in this case, from 2004 through the present.
73. Produce any and all documentation evidencing Defendant's employees were aware that Plaintiff is gay and "open about it" as described in ¶21 of Plaintiff's Complaint.
74. Produce any and all documentation evidencing Ray Maynard's purported hostility to expressions of sexual orientation that does not conform to sex stereotypes as described in ¶22 of Plaintiff's Complaint.
75. Produce any and all documentation evidencing complaints lodged against Plaintiff by a customer or client of Defendant while employed by Defendant from 2004 through the present.
76. Produce any and all documentation evidencing complaints lodged against Plaintiff by a coworker while employed by Defendant from 2004 through the present
77. Produce any and all documentation evidencing complaints lodged against Plaintiff by a customer or client of Plaintiff's other employers from 2004 through the present.

78. Produce any and all documentation evidencing complaints lodged against Plaintiff by a coworker of Plaintiff while employed by other employers, from 2004 through the present.
79. All documents pertaining to any application by Plaintiff for and/or receipt of unemployment insurance benefits, from 2004 through the present.
80. Produce true and accurate copies of any and all documentation issued between Plaintiff and the New York State Department of Labor – Unemployment Insurance Division, from 2004 through the present.
81. All documents pertaining to any application by Plaintiff for and/or receipt of Workers' Compensation benefits, from 2004 through the present.
82. Produce true and accurate copies of any and all documentation issued between Plaintiff and the New York State Workers' Compensation Board, from 2004 through the present.
83. Produce any and all documentation supporting any alleged emotional damages suffered by plaintiff from 2004 through the present.
84. Produce all documents concerning, relating to and/or regarding consultation with and/or treatment by any medical and/or mental health professional concerning and/or regarding Plaintiff's allegations and/or claims for emotional distress and psychological injuries.
85. All documents concerning any other claims and/or complaints of harassment and/or discrimination made and/or filed by Plaintiff against any prior or current employer.
86. All documents concerning any complaint filed by Plaintiff with any governmental or administrative agency against any of the named Defendant.
87. All documents, to the extent not produced pursuant to other requests, that you may seek to introduce in evidence at the trial of this action.
88. All documents that are relevant to the instant action but not covered by the previous requests.

Dated: Bohemia, New York
December 16, 2010

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendant

By: 

Saul D. Zabell, Esq.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel: (631) 589-7242
Fax: (631) 563-7475

FILE

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Tel. (631) 589-7242
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DONALD ZARDA,

Plaintiff,

- against -

**ALTITUDE EXPRESS, INC., dba SKYDIVE LONG
ISLAND, and RAY MAYNARD,**

Defendants.

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

**DEFENDANT ALTITUDE
EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND'S FIRST
REQUEST FOR ADMISSION**

PLEASE TAKE NOTICE that Defendant, ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND (hereinafter referred to as "Defendant") request DONALD ZARDA (hereinafter referred to as "Plaintiff"), within thirty (30) days after service of this request, to admit, for the purpose of this action only and subject to all pertinent objections to admissibility under Federal Rule of Civil Procedure 36 which may be interposed at the trial, that:

1. Admit that Plaintiff was an employee of Defendant in 2001.
2. Admit that Plaintiff was an employee of Defendant in 2009.
3. Admit that Plaintiff was an employee of Defendant in 2010.
4. Admit that in 2001, Plaintiff expressed to Defendant's employees that he is gay.
5. Admit that in 2001, Plaintiff expressed to Ray Maynard that he is gay.

6. Admit that in 2009, before working for Defendant, Plaintiff expressed to Defendant's employees that he is gay.
7. Admit that in 2009, before working for Defendant, Plaintiff expressed to Ray Maynard that he is gay.
8. Admit that in 2010, before working for Defendant, Plaintiff expressed to Defendant's employees that he is gay.
9. Admit that in 2010, before working for Defendant, Plaintiff expressed to Ray Maynard that he is gay.
10. Admit that in 2001, Plaintiff worked for Defendant as a seasonal employee.
11. Admit that in 2009, Plaintiff worked for Defendant as a seasonal employee.
12. Admit that in 2010, Plaintiff worked for Defendant as a seasonal employee.
13. Admit that in 2001, Plaintiff did not work for Defendant for a full calendar year.
14. Admit that in 2009, Plaintiff did not work for Defendant for a full calendar year.
15. Admit that in 2010, Plaintiff did not work for Defendant for a full calendar year.

Dated: Bohemia, New York
December 16, 2010

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendant

By: _____

Saul D. Zabell, Esq.
Zabell & Associates, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel.: (631) 589-7242
Fax: (631) 563-7475
SZabell@laborlawsny.com

AFFIDAVIT OF SERVICE

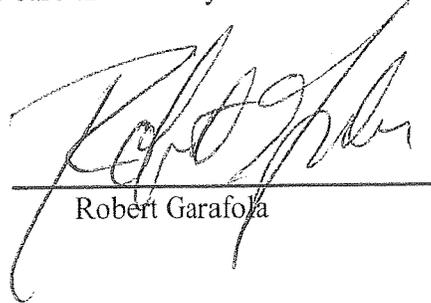
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

ROBERT GARAFOLA, being duly sworn, deposes and says:

- 1. That I am over eighteen years of age and am not a party to this action.
- 2. That on the 16th day of December, 2010, I served a copy of Defendant Altitude Express, Inc., d/b/a Skydive Long Island's First Request for the Production of Documents, First Set of Interrogatories, First Notice to Admit, annexed hereto, upon:

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

- 3. *via* First Class Mail at the address listed above, same being the address designated for that purpose, by depositing a true copy of the same enclosed in a properly addressed wrapper in a depository under the exclusive care and custody of the United States Postal Service.



Robert Garafoia

Sworn to before me
this 16th day of December, 2010.



NOTARY PUBLIC

TIMOTHY J. DOMANICK
Notary Public, State of New York
No. 02DO6182370
Qualified in Suffolk County
Commission Expires February 25, 2012

Saul D. Zbell, Esq.
ZABELL & ASSOCIATES, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel. (631) 589-7242
Fax (631) 563-7475

**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)

**DEFENDANT ALTITUDE
EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND'S FIRST SET OF
INTERROGATORIES TO
PLAINTIFF**

PLEASE TAKE NOTICE that Defendant, ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND (hereinafter, "Defendant"), by and through its attorneys, ZABELL & ASSOCIATES, P.C., hereby request, pursuant to Federal Rule of Civil Procedure 33 and Local Civil Rule 26.3, which are incorporated by reference herein, that Plaintiff answer under oath the following interrogatories and deliver the answers to the office of ZABELL & ASSOCIATES, P.C., attorneys for Defendant, located at 4875 Sunrise Highway, Suite 300, Bohemia, NY 11716 within thirty (30) days from the date of service hereof.

DEFINITIONS and RULES of CONSTRUCTION

The following definitions and rules of construction apply throughout these interrogatories:

1. "And" or "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the disclosure request all documents that might otherwise be construed as outside the scope. "Each" shall be construed to include the word "every", and "every" shall be construed to include the word "each". "Any" shall be construed to include the word "all", and "all" shall be construed to include the word "any".
2. "Communication" or "communicate" means every manner of transmitting and receiving facts, information, opinions and thoughts, whether orally, by document, writing or copy thereof, in conferences or conversations, or otherwise, including but not limited to, oral statements, telephone conversations, negotiations, conferences and meetings (however, formal or informal), transmission of data by computer, including "E-mail" and/or "Voice-Mail".

Mail”.

3. “Complaint” means the complaint filed by Plaintiff in this action.
4. “Concerning”, “referring”, “relating”, “concern”, “relate” or “refer” means and includes: with respect to, referring to, relating to, purporting, pertaining, involving, embodying, mentioning, establishing, evidencing, comprising, connected with, commenting on, responding to, prepared in connection with, prepared as a result of, showing, discussing, describing, analyzing, reflecting, presenting, or constituting.
5. “Document” means any written, recorded, electronic or graphic representation, however and by whomever prepared, disseminated or made, produced or reproduced, and all copies and drafts thereof including, but not limited to, all correspondence, telexes, written communications, notes, jottings, memoranda, telegrams, records, reports, computer printouts, computer data, magnetic media, customer lists, calculations, worksheets, written agreements, diaries, summaries, tape recordings or transcripts of conversations or meetings, statistics, studies, receipts, invoices, checks and bills in your possession, custody or control from whatever source, whether or not prepared by you. “Document” as used herein shall also mean any electronic recording or stored data, or representation of information including computer data, films and photographs and any draft or carbon or photographic copy of any such material, the content of which differs in any respect from the original. Any copy of a document differing in any respect from an original shall be deemed to be a separate document.
6. “Person” means all individuals and entities including, without limitation, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, or any governmental body, agency or official.
7. “Identify” means as completely and fully as possible, to describe, explain, express, tell, depict, disclose, give details, put in plain words, give an explanation, enlighten, make clear, give reasons for, justify, rationalize, state, articulate, communicate, convey, put across, inform, advise, divulge, reveal, spell out, expound, all facts, details and/or circumstances comprising, encompassing, causing and/or contributing to the event, occasion, incident, episode, experience, appointment, occurrence, encounter, meeting, date, scheduled time, engagement, conference, get-together, gathering, reason, rationale and/or condition.
8. “Social networking site” means any web site that enables users to create a public and/or semi-public profile within the website, and to articulate or generate a list of other users with whom users share a connection. Social networking sites include but are not limited to Bebo, Classmates.com, Facebook, Flickr, Friendfeed, Friendster, Myspace, Smugmug, Tumblr, Twitter, and YouTube.
9. “Plaintiff” means the Plaintiff in this action, **DONALD ZARDA**, as well as his agents, or any other person or entity acting on his behalf or with his knowledge and/or authorization.

10. "Defendant" means the Defendant in this action **ALTITUDE EXPRESS, INC., dba SKYDIVE LONGISLAND**, (hereinafter "Skydive," or "Defendant Skydive"), including but not limited to, its directors, administrators, agents or employees.
11. References to the plural shall include the singular, and references to the singular shall include the plural.
12. If any responses are withheld under a claim of privilege or work product doctrine, set forth the privilege, identify each person having knowledge or information for which you claim the privilege, and identify each document containing the information for which you claim the privilege, including (1) the type of document, (2) a description of the subject matter of the document, (3) the date of the document, (4) the name(s) and address(es) of each person who viewed the document, and (5) a statement of the basis upon which the privilege is claimed.
13. All Interrogatories herein are continuing in nature, so as to require Plaintiff to supplement or amend his response in accordance with Federal Rule of Civil Procedure 26(e).

INTERROGATORIES TO PLAINTIFF

INTERROGATORY #1: Set forth with particularity and detail any and all efforts on the part of Plaintiff to lodge complaints of alleged gender and/or sexual orientation discrimination with any managerial, supervisory or Human Resources employees of Defendant, from 2001 through the present.

INTERROGATORY #2: Identify all individuals employed by Defendant who partook in purported banter or conversation with Defendant's customers and/or clients as described in ¶18 of Plaintiff's Complaint.

INTERROGATORY #3: Set forth with particularity and detail the basis of Plaintiff's belief that "[i]t was known at work that [P]laintiff is gay and he was open about it," as alleged in ¶21 of Plaintiff's Complaint.

INTERROGATORY #4: Set forth with particularity and detail any and all instances that Ray Maynard demonstrated hostility to expression of "sexual orientation that did not conform to sex stereotypes," as alleged in ¶22 of Plaintiff's Complaint, from 2001 through the present.

INTERROGATORY #5: Set forth with particularity and detail each and every act of alleged gender discrimination against Plaintiff in connection with Plaintiff's employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
- f) any action taken in response thereto by Defendant's employees.

INTERROGATORY #6: Set forth with particularity and detail each and every act of alleged sexual orientation discrimination against Plaintiff in connection with Plaintiff's employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
- f) any action taken in response thereto by Defendant's employees.

INTERROGATORY #7: Set forth with particularity and detail any and all days Plaintiff worked and did not receive minimum wage as an employee of Defendant, from 2004 through the present.

INTERROGATORY #8: Set forth with particularity and detail any and all days Plaintiff worked and did not receive overtime compensations as an employee of Defendant, from 2004 through the present.

INTERROGATORY #9: Set forth with particularity and detail any and all weeks Plaintiff worked and did not receive overtime compensations as an employee of Defendant.

INTERROGATORY #10: Identify with particularity and detail any and all of Plaintiff's accounts, profiles, memberships or postings on all social networking websites or internet communities and forums, from 2004 through the present.

INTERROGATORY #11: Identify with particularity and detail any and all email addresses and/or instant message screen names utilized by Plaintiff from 2004 through the present.

INTERROGATORY #12: Identify all of Plaintiff's employers, including contact information, from 2004 through the present, including but not limited to all sky diving employers.

INTERROGATORY #13: Identify with particularity and detail Plaintiff's claims for damages for lost wages, failure to pay overtime compensation, failure to pay minimum wage, lost benefits, or other economic damages, specifically:

- a) the total amount claimed for each claim;
- b) information used to calculate the amount of each claim; and
- c) the method of calculation for those damages.

INTERROGATORY #14: Identify with particularity and detail any other damages that Plaintiff claims were caused by Defendant and have not already been described in response to these interrogatories, specifically:

- a) the type of damage;
- b) the total amount claimed, and;
- c) the method of calculation of these damages.

INTERROGATORY #15: Identify any and all individual(s) with knowledge and/or information concerning the allegations in Plaintiff's Complaint. For each individual identified, provide:

- a) contact information for the individual(s);
- b) the knowledge and/or information possessed by each individual(s).

INTERROGATORY #16: Identify any employment positions that Plaintiff has held since 2004, including (a) the identity of each such employer; (b) the length of time Plaintiff has been employed at each such place of employment; (c) the date the employment commenced; (d) the dates of and reasons for any period of separation from that employment; (e) Plaintiff's job title, duties and responsibilities, and immediate supervisor at each place of employment; (f) Plaintiff's rate of pay at the time each employment commenced and the date and amount of all increases in that rate of pay; and (g) a detailed description of, and the monetary value of, all other forms of compensation and fringe benefits received by Plaintiff from each employer including, but not limited to, bonuses, commissions, expense reimbursements, and medical and pension benefits

INTERROGATORY #17: Identify any of Plaintiff's additional sources of income (whether or not reported as taxable income and including, but not limited to, income earned while performing services as an independent contractor, self-employed or as a sole proprietor of a business or as a partner in a partnership, unemployment compensation, workers' compensation, severance pay, deferred wages, medical payments or benefits, vacation pay, pension benefits, social security benefits, and disability benefits) which Plaintiff has received from 2004 to the present, including, for each source of income: (a) the nature, source and amount of the income (including the initial rate of payment and the amount of all subsequent increases); (b) the dates of commencement and termination of each source of income; and (c) the reason, if any, for termination of the income.

Dated: Bohemia, New York
December 16, 2010

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendant

By: _____

Saul D. Zabell, Esq.
Zabell & Associates, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel.: (631) 589-7242
Fax: (631) 563-7475
szabell@laborlawsny.com

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff,

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

Defendants.

-----X

**RESPONSE TO
REQUEST FOR
ADMISSIONS**

01 Civ 4334 (JFB)(ARL)

Plaintiff responds to defendants' request for admissions as follows:

1. Admit that Plaintiff was an employee of Defendant in 2001.

Plaintiff admits only to performing duties at Skydive Long Island on a cash basis in 2001.

2. Admit that Plaintiff was an employee of Defendant in 2009.

Admitted.

3. Admit that Plaintiff was an employee of Defendant in 2010.

Admitted.

4. Admit that in 2001, Plaintiff expressed to Defendant's employees that he is gay.

Admitted.

5. Admit that in 2001, Plaintiff expressed to Ray Maynard that he is gay.

Denied.

6. Admit that in 2009, before working for Defendant, Plaintiff expressed to Defendant's employees that he is gay.

Plaintiff objects on the grounds that he cannot answer this without reference to the particular employee and or what is meant by the vague formulation "before working for

Defendant.” Therefore, without a more precisely formulated request, it cannot be answered.

7. Admit that in 2009, before working for Defendant, Plaintiff expressed to Ray Maynard that he is gay.

Plaintiff does not recall discussing his being gay with Maynard in 2009 therefore the request for admission must be denied.

8. Admit that in 2010, before working for Defendant, Plaintiff expressed to Defendant’s employees that he is gay.

Plaintiff objects on the grounds that he cannot answer this without reference to the particular employee and or what is meant by the vague formulation “before working for Defendant.” Therefore, without a more precisely formulated request, it cannot be answered.

9. Admit that in 2010, before working for Defendant, Plaintiff expressed to Ray Maynard that he is gay.

Denied.

10. Admit that in 2001 , Plaintiff worked for Defendant as a seasonal employee.

Objection on the grounds that seasonal is undefined and may be a legal term and therefore the request for admission cannot be answered.

11. Admit that in 2009, Plaintiff worked for Defendant as a seasonal employee.

Objection on the grounds that seasonal is undefined and may be a legal term and therefore the request for admission cannot be answered.

12. Admit that in 2010, Plaintiff worked for Defendant as a seasonal employee.

Objection on the grounds that seasonal is undefined and may be a legal term and therefore the request for admission cannot be answered.

13. Admit that in 2001, Plaintiff did not work for Defendant for a full calendar year.

Admitted.

14. Admit that in 2009, Plaintiff did not work for Defendant for a full calendar year.

Admitted.

15. Admit that in 2010, Plaintiff did not work for Defendant for a full calendar year.

Admitted.

Dated: New York, New York
January 21, 2011



GREGORY ANTOLLINO
Attorney for Plaintiff
18-20 West 21st Street Suite 802
New York, NY 10010
(212) 334-7397

DONALD ZARDA, does hereby declare under penalty of perjury that I have reviewed the answers to the requests for admission attached hereto and state that they are true to the best of my knowledge.

Dated: January 20, 2011,
Richmond, Missouri



DONALD ZARDA

EXHIBIT C

Counseling and Advising Clients Exclusively on Laws of the Workplace



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Saul D. Zabell
SZabell@laborlawsny.com

January 28, 2011

VIA FIRST CLASS MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

Dear Mr. Antollino:

We are in receipt of Plaintiff's Response to Defendants' First Request for Admissions, but we have yet to receive responses to Defendants' First Request for the Production of Documents and First Set of Interrogatories.

As a preliminary matter, Plaintiff has failed to comply with the Federal Rules of Civil Procedure inasmuch as Plaintiff did not serve his responses in a timely manner, despite the fact that Plaintiff received an extension of time in which to do so. Pursuant to FRCP 26 and 34 and Local Civil Rule 26.3, Plaintiff is required to produce responses to Defendants' Discovery Demands within thirty (30) days of the date of service. Plaintiff's Discovery Demands were served on December 16, 2010, and after receiving a discovery extension, Plaintiff's Response to Defendants' First Notice to Admit was ultimately served on or about January 24, 2011. Accordingly, inasmuch as Plaintiff has failed to serve responses to Defendants' First Set of Interrogatories and First Request for the Production of Documents, Plaintiff has waived any and all objections to Defendants' Discovery Demands and any attempt to assert objections in the future would be improper. Kindly provide complete and adequate responses immediately.

I. Plaintiff's Response to Defendants' First Request for Admissions:

Request No. 6: "Admit that in 2009, before working for Defendant, Plaintiff expressed to Defendant's employees that he is gay."

Plaintiff objected to this Request on the grounds that there was no reference to a particular employee and, as written, the Request is vague. Preliminarily, the temporal reference of "before working for Defendant" is intelligible; the Request is narrowed to the time period before Plaintiff began working for Defendant in 2009. Plaintiff already admitted that he was an employee of Defendant in 2009, so there should be no issue concerning the Request's time-frame. Should Plaintiff have further difficulty understanding the Request, Defendants agree to amend their Request as follows:



Admit that prior to Plaintiff's first working day for Defendants in 2009, Plaintiff expressed to any of Defendants' employees that he is gay.

Request No. 8: "Admit that in 2010, before working for Defendant, Plaintiff expressed to Defendant's employees that he is gay."

Again, Plaintiff objected to this Request on the grounds that there was no reference to a particular employee and, as written, the Request is vague. Plaintiff already admitted that he was an employee of Defendant in 2010, so there should be no issue concerning the intelligibility of the Request's time-frame. Should Plaintiff have further difficulty understanding the Request, Defendants agree to amend their Request as follows:

Admit that prior to Plaintiff's first working day for Defendants in 2010, Plaintiff expressed to any of Defendants' employees that he is gay.

Request No. 10, 11, 12: "Admit that in 2001 [2009, and 2010], Plaintiff worked for Defendant as a seasonal employee."

Plaintiff objected to these requests on the grounds that the term seasonal "is undefined and may be a legal term." In Request 13, 14, and 15 Plaintiff admitted that he did not work for Defendant for a full calendar year in 2001, 2009, 2010. In light of Plaintiff's responses, Defendants agree to amend their requests as follows:

Admit that in 2001, Plaintiff only worked for Defendants during the months that Defendants actually performed tandem skydive jumps.

Admit that in 2009, Plaintiff only worked for Defendants during the months that Defendants actually performed tandem skydive jumps.

Admit that in 2010, Plaintiff only worked for Defendants during the months that Defendants actually performed tandem skydive jumps.

We request that Plaintiff provide amended responses to Defendants' Request for Admissions as detailed above within ten (10) days of the date of this letter. Additionally, Plaintiff's responses to Defendants' First Request for the Production of Documents and First Set of Interrogatories are due and owing and must be produced immediately. Should we not receive complete responses within ten (10) days, Plaintiff will seek court intervention to compel discovery, without further notice.

Kindly contact me should you have further questions regarding these matters.

Very truly yours,

ZABELL & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'Saul Zabell', is written over the typed name and contact information.

Saul Zabell
cc: Client

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff,

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

Defendants.

-----X

**RESPONSE TO
DEMAND FOR
INTERROGATORIES**

01 Civ 4334 (JFB)(ARL)

GENERAL OBJECTIONS

A. Plaintiff objects to Defendants' First Set of Interrogatories to the extent that they seek to impose upon him obligations or burdens, which are greater than, or inconsistent with, the Federal Rules of Civil Procedure Rule 33.

B. Plaintiff objects generally to the First Set of Interrogatories on the grounds that they are overly broad and burdensome. Plaintiff has made a good faith effort to respond to the Interrogatories, but reserves the right to object to, and to move to have vacated, all of defendant's Interrogatories.

C. The following responses and objections are based upon information now known. Plaintiff has not yet completed discovery or preparation for trial in this action and therefore will supplement these responses and objections to the extent permitted.

D. The interrogatories exceed the 25 (including discreet subparts) allowed by Federal Rule of Civil Procedure 33.

E. Without waiving these objections and by way of response, Plaintiff provides the following responses.

INTERROGATORY #1: Set forth with particularity and detail any and all efforts on the part of Plaintiff to lodge complaints of alleged gender and/or sexual orientation discrimination with any managerial, supervisory or Human Resources employees of Defendant, from 2001 through the present.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years.

INTERROGATORY #2: Identify all individuals employed by Defendant who partook in purported banter or conversation with Defendant's customers and/or clients as described in ¶ 18 of Plaintiffs Complaint.

Ray Maynard
Carmen M. Villamil Burgos
Duncan Shaw
Edward Reiter
Joe Fortune
Jordan Miles
Marko Markovich
Lauren Callanan
Meghan Ayers
Curt Kellinger
Jerry Hannon
John Sherman
Rich Winstock
Ben Lowe
Brett Nock
Michael Gocke Sr.
Pat Newman
Shaun Tierney
Wayne Burell
Alley Rogers
Brian Petretti
Janeen Tierney
Kevin Gilbert
Jason Lucas
Pilot Jim
John Ciatti? (Campbell)
Telly Dorizas
"Willie"
"Alex"
Others whose names are not known

INTERROGATORY #3: Set forth with particularity and detail the basis of Plaintiffs belief that “[i]t was known at work that [P]laintiff is gay and he was open about it,” as alleged in ¶ 21 of Plaintiffs Complaint.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years. Without waiving the objection, plaintiff states as follows:

Because frequent comments, jokes, and at some times discussion regarding my sexuality by not only employees, but also patron jumpers, non-jumpers, friends of jumpers, and around customers without any denial by me about my sexual orientation.

INTERROGATORY #4: Set forth with particularity and detail any and all instances that Ray Maynard demonstrated hostility to expression of “sexual orientation that did not conform to sex stereotypes,” as alleged in ¶ 22 of Plaintiffs Complaint, from 2001 through the present.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years. Without waiving the objection, plaintiff states as follows:

Ray Maynard was hostile to the fact that I chose to wear a pink cast on my foot and that I also had pink colored toenails that were visible outside of the cast. He also openly tolerated banter of a sexual nature on behalf of all male students, who commonly objectified women and made fun of homosexuals. Yet when he learned that I as much as mentioned my being gay to an employee who objected to that knowledge, I was fired. Additionally, he did not so much as ask me to respond to allegations of an alleged inappropriate touching a female passenger,

notwithstanding a complete lack of objective evidence of such touching on the tape of her dive, and notwithstanding the fact that I am 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 and the release signed by the passenger wherein she knew she would be touched. It is my position in this lawsuit that Maynard's reaction to a baseless complaint of touching by a woman 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.

INTERROGATORY #5: Set forth with particularity and detail each and every act of alleged gender discrimination against Plaintiff in connection with Plaintiffs employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
- f) any action taken in response thereto by Defendant's employees.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years. Plaintiff further objects on the grounds that "discrimination" is a term of art in this lawsuit that may have a legal connotation and cannot be answered by a lay witness. Without waiving the objection, plaintiff states as follows:

See response to #4. The events involving the cast took place at various times in July and August 2009. The events concerning plaintiff's termination took place in July 2010.

INTERROGATORY #6: Set forth with particularity and detail each and every act of alleged sexual orientation discrimination against Plaintiff in connection with Plaintiffs employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
- f) any action taken in response thereto by Defendant's employees.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years. Plaintiff further objects on the grounds that "discrimination" is a term of art in this lawsuit that may have a legal connotation and cannot be answered by a lay witness. Without waiving the objection, plaintiff states as follows:

1. Ray Maynard specifically and very clearly stated during my initial suspension from work meeting with him that I was being suspended because I am gay and the two customers that complained were offended by my stating as much.
 - a. On or about June 21, 2010 immediately following sunset which was at 8:30 PM
 - b. sexual orientation
 - c. verbal scolding and suspension, failure to pay for dive
 - d. Ray Maynard
 - e. inquiry into the adverse action. Immediately consulted the chief instructor and safety and training advisor (Rich Winstock) following the adverse action as I was leaving the premise. Privately discussed the matter that just took place minutes ago in detail and specificity with Rich Winstock in the drop zone classroom.
 - f. Discussed situation with Rich Winstock. Ray barged in opening door and yelled, "ugh, you're in here talking about this" and slammed door as he went away.

2. Ray Maynard terminated plaintiff.
 - a. On or about June 28, 2010
 - b. sexual orientation and gender discrimination
 - c. termination
 - d. Ray Maynard
 - e. EEOC charge and complaint
 - f. unknown

3. References to plaintiff's sexual orientation in a derogatory manner by various staff and Ray Maynard.
 - a. Continuously as described above
 - b. sexual orientation
 - c. hostile work environment
 - d. Ray Maynard and other employees, and at least one customer
 - e. Asking employees to stop on occasion; on others, ignoring the comments
 - f. none

INTERROGATORY #7: Set forth with particularity and detail any and all days Plaintiff worked and did not receive minimum Wage as an employee of Defendant, from 2004 through the present.

Plaintiff did not earn minimum wage during any hour in which he was at the drop zone and not participating in a dive. Plaintiff is not in possession of defendant's records, notwithstanding a release for same and thus cannot answer this question at this juncture, but will do so when records are provided by the employer and he has an opportunity to review them.

INTERROGATORY #8: Set forth with particularity and detail any and all days Plaintiff worked and did not receive overtime compensations as an employee of Defendant, from 2004 through the present.

Plaintiff is not in possession of defendant's records, notwithstanding a release for same and thus cannot answer this question at this juncture, but will do so when records are provided by the employer and he has an opportunity to review them.

INTERROGATORY #9: Set forth with particularity and detail any and all weeks Plaintiff worked and did not receive overtime compensations as an employee of Defendant.

See response to ¶ 7, 8.

INTERROGATORY #10: Identify with particularity and detail any and all of Plaintiffs accounts, profiles, memberships or postings on all social networking websites or internet communities and forums, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy.

INTERROGATORY #11: Identify with particularity and detail any and all email addresses and/or instant message screen names utilized by Plaintiff from 2004 through the present.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy. Without waiving the objection, if defendant wants the email address to which it corresponded to defendant, it should do a search of don@donzarda.com as well as a search of plaintiff's name, Don Zarda or Donald Zarda.

INTERROGATORY #12: Identify all of Plaintiff's employers, including contact information, from 2004 through the present, including but not limited to all sky diving employers.

Plaintiff objects on the grounds that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy. Without waiving the objection, Defendant has resumes on file for both professional skydiving and non-skydiving containing

such information that was emailed to defendant over the winters of 2008 and 2009.

Said resumes will be re-produced in this litigation and incorporated herein.

INTERROGATORY #13: Identify with particularity and detail Plaintiffs claims for damages for lost wages, failure to pay overtime compensation, failure to pay minimum wage, lost benefits, or other economic damages, specifically:

- a) the total amount claimed for each claim;
- b) information used to calculate the amount of each claim; and
- c) the method of calculation for those damages.

Plaintiff is not in possession of defendant's records, notwithstanding a release for same and thus cannot answer this question at this juncture, but will do so when records are provided by the employer and he has an opportunity to review them.

INTERROGATORY #14: Identify with particularity and detail any other damages that Plaintiff claims were caused by Defendant and have not already been described in response to these interrogatories, specifically:

- a) the type of damage;
- b) the total amount claimed, and;
- c) the method of calculation of these damages.

Plaintiff objects on the grounds that this interrogatory brings the defendant into a number (including subparts) exceeding the allowable maximum under Rule 33 of the Federal Rules of Civil Procedure. If the defendant obtains permission to seek interrogatories in excess of the amount permissible by the rule, plaintiff reserves the right to assert additional objections, including but not limited to the fact that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence.

INTERROGATORY #15: Identify any and all individual(s) with knowledge and/or information concerning the allegations in Plaintiffs Complaint. For each individual identified, provide:

- a) contact information for the individual(s);
- b) the knowledge and/or information possessed by each individual(s).

Plaintiff objects on the grounds that this interrogatory brings the defendant into a number (including subparts) exceeding the allowable maximum under Rule 33 of the Federal Rules of Civil Procedure. If the defendant obtains permission to seek interrogatories in excess of the amount permissible by the rule, plaintiff reserves the right to assert additional objections, including but not limited to the fact that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence.

INTERROGATORY #16: Identify any employment positions that Plaintiff has held since 2004, including (a) the identity of each such employer; (b) the length of time Plaintiff has been employed at each such place of employment; (c) the date the employment commenced; (d) the dates of and reasons for any period of separation from that employment; (e) Plaintiffs job title, duties and responsibilities, and immediate supervisor at each place of employment; (f) Plaintiffs rate of pay at the time each employment commenced and the date and amount of all increases in that rate of pay; and (g) a detailed description of, and the monetary value of, all other forms of compensation and fringe benefits received by Plaintiff from each employer including, but not limited to, bonuses, commissions, expense reimbursements, and medical and pension benefits

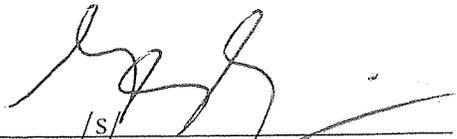
Plaintiff objects on the grounds that this interrogatory brings the defendant into a number (including subparts) exceeding the allowable maximum under Rule 33 of the Federal Rules of Civil Procedure. If the defendant obtains permission to seek interrogatories in excess of the amount permissible by the rule, plaintiff reserves the right to assert additional objections, including but not limited to the fact that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence.

INTERROGATORY #17: Identify any of Plaintiffs additional sources of income (Whether or not reported as taxable income and including, but not limited to, income earned while performing services as an independent contractor, self-employed or as a sole proprietor of a business or as a partner in a partnership, unemployment compensation, workers' compensation, severance pay, deferred

wages, medical payments or benefits, vacation pay, pension benefits, social security benefits, and disability benefits) which Plaintiff has received from 2004 to the present, including, for each source of income: (a) the nature, source and amount of the income (including the initial rate of payment and the amount of all subsequent increases); (b) the dates of commencement and termination of each source of income; and (c) the reason, if any, for termination of the income.

Plaintiff objects on the grounds that this interrogatory brings the defendant into a number (including subparts) exceeding the allowable maximum under Rule 33 of the Federal Rules of Civil Procedure. If the defendant obtains permission to seek interrogatories in excess of the amount permissible by the rule, plaintiff reserves the right to assert additional objections, including but not limited to the fact that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence.

Dated: New York, New York
January 24, 2011



/s/

GREGORY ANTOLLINO
Attorney for Plaintiff
18-20 West 21st Street Suite 802
New York, NY 10010
(212) 334-7397

DONALD ZARDA, does hereby declare under penalty of perjury that I have reviewed the answers to interrogatories attached hereto and state that they are true to the best of my knowledge.

Dated: January 24, 2011
Richmond, Missouri

A handwritten signature in cursive script, appearing to read "Donald Zarda", written over a horizontal line.

DONALD ZARDA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff,

-against-

**ALTITUDE EXPRESS, INC.,
d/b/a Skydive Long Island, and RAY MAYNARD,**

Defendants.

-----X

**RESPONSE TO
DOCUMENT DEMANDS**

10-cv-04334-JFB -ARL

PLEASE TAKE NOTICE that plaintiff, through his attorney hereby responds to defendants' demands as follows. Plaintiff objects on the grounds that the demand defines terms in a manner contrary to the local rules and confers burdens in excess of the local and federal rules.

1. Produce any and all written statements Plaintiff or his agent(s) have obtained regarding the subject matter of this lawsuit.

Plaintiff objects on the grounds that such request impinges on the attorney client privilege, however, without waiving that objection plaintiff will provide all responsive documents other than emails between himself and his attorney.

2. Produce all witness statements of any kind obtained by Plaintiff in connection with this action.

Plaintiff will produce responsive documents, if any, other than emails between himself and his attorney, which are attorney client privileged.

3. Produce any expert report obtained by or on behalf of Plaintiff, including but not limited to economic and/or financial reports.

Plaintiff will comply with rules of expert discovery when required.

4. Produce all documents upon which any expert, retained by Plaintiff, has relied upon in forming, drafting or preparing his or her opinion.

Plaintiff will comply with rules of expert discovery when required.

5. Produce any and all investigatory files generated or maintained by Plaintiff concerning the matters alleged in Plaintiffs Complaint.

Plaintiff objects on the grounds that the demand is vague, and maintains that there is no "investigatory file" other than any documents tendered in response to request 1.

6. Produce any recordings (e.g.; audio and video) or any other memorialization of conversations, discussions, telephone calls and other communications concerning the matters alleged in Plaintiff's Complaint.

Plaintiff will produce any responsive documents.

7. Produce any and all documentation that any agent(s) or attorney(s) of Plaintiff filed or submitted on his behalf in any judicial or administrative forum, and all documents relating to this proceeding, including but not limited to: (a) documents that relate to, touch upon or concern Plaintiff's employment with or the separation of employment from Defendant or any other employer; (b) documents relating to any claims brought by Plaintiff against any individual, employer or entity, including gender discrimination, sexual orientation discrimination, failure to pay minimum wage, and failure to pay overtime compensation; (c) documents provided to the Equal Employment Opportunity Commission in response to Plaintiff's charge of discrimination; and (d)

documents provided to the New York State Division of Human Rights.

Without waiving any potential attorney-client or work product privilege, there are no potentially responsive documents other than the EEOC charge, which defendants have in their possessions

8. Produce any and all documentation relating to, confirming or establishing written or oral communication between Plaintiff and Defendant, or directors, administrators, employees or representatives of Defendant regarding Plaintiff's employment with Defendant or the cessation thereof, from 2001 through the present.

Plaintiff objects on the grounds that this demand is duplicative and vague, but will produce responsive documents, if any exist.

9. Produce any and all documentation concerning, referring or relating to each fact upon which Plaintiff relied on in setting forth each and every allegation contained in Plaintiff's Complaint, including but not limited to, correspondence, memoranda, notes, and other similarly responsive documentation from 2001 through the present.

Plaintiff objects on the grounds that this demand is duplicative and vague, but will produce responsive documents, if any exist.

10. Produce any and all documentation concerning Plaintiffs employment with Defendant, including but not limited to employee manuals, employment contracts, performance evaluations, job descriptions, letters, memoranda, and other similarly responsive documentation, from 2001 through the present.

Plaintiff objects on the grounds that this demand is duplicative and vague, but will produce responsive documents, if any exist.

11. Produce all calendars, day planners, schedules, appointment books, and/or diaries

in paper or electronic form that Plaintiff created, maintained, or used (or which someone else created and/or maintained on his behalf), from 2004 through the present.

Plaintiff objects on the grounds that this demand is overbroad and not calculated to lead to discoverable evidence.

12-17. (Multiple demands seeking documentation supporting specific paragraphs in the complaint.)

Plaintiff objects on the grounds that these demands are duplicative.

18. Produce any and all documentation evidencing all jumps" performed by Plaintiff as an employee of Defendant, including but not limited to memoranda, correspondences, notes, e-mails, receipts, spreadsheets and any other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

19. Produce any and all documentation evidencing all days worked by Plaintiff as an employee of Defendant for which he did not perform any "jumps", including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

20. Produce any and all documentation evidencing all weeks worked by Plaintiff as an employee of Defendant for which he did not perform any "jumps", including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

21. Produce any and all documentation evidencing all days worked by Plaintiff as an employee of Defendant for which he did not receive minimum wage, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

22. Produce any and all documentation evidencing all weeks worked by Plaintiff as an employee of Defendant for which he did not receive minimum wage, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

23. Produce any and all documentation evidencing all days worked by Plaintiff as an employee of Defendant for which he did not receive overtime compensation, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

24. Produce any and all documentation evidencing all weeks worked by Plaintiff as an employee of Defendant for which he did not receive overtime compensation, including but not limited to memoranda, correspondences, notes, e-mails, spreadsheets and any

other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

25. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff worked in excess of eight (8) hours a day, for any day, during his term of employment with Defendant from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

26. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff did not work in excess of eight (8) hours a day, for any day, during his term of employment with Defendant from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

27. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff worked in excess of forty (40) hours a week, for any week, during his term of employment with Defendant from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

28. Produce all documentation which shows, reflects, and/or demonstrates that Plaintiff did not work in excess of forty (40) hours a week, for any day, during his term of employment with Defendant from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the

years 2009 and 2010.

29. Produce all documentation relating to hours worked by Plaintiff while employed by Defendant, including but not limited to time cards, time sheets, work schedules and other similarly responsive documentation, from 2004 through the present.

Plaintiff will produce any responsive documentation in his possession for the years 2009 and 2010.

30. Produce any and all documentation evidencing Plaintiff's use of all his email accounts regarding the allegations contained within Plaintiffs Complaint, from 2001 through the present.

Plaintiff objects on the grounds that this demand is vague and incomprehensible duplicative of other demands. To the extent that the demand seeks non-privileged emails concerning the allegations in the complaint, they will be produced for the years 2009 and 2010.

31. Produce any and all documentation evidencing Plaintiffs use of all his instant messaging accounts, including but not limited to America Online instant messenger, MSN messenger, Yahoo instant messenger, and other similarly responsive documentation regarding the allegations contained within Plaintiffs Complaint, from 2001 through the present.

Plaintiff objects on the grounds that this demand is vague and incomprehensible duplicative of other demands. To the extent that the demand seeks non-privileged emails or IMs or text messages concerning the allegations in the complaint, they will be produced for the years 2009 and 2010.

32. Produce any and all documentation evidencing Plaintiffs accounts, profiles,

and/or memberships on all social networking websites or internet communities and forums, including but not limited to Facebook, MySpace, Twitter, and Friendster, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

33. Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, MySpace, Twitter, Friendster, and LinkedIn internet communities and internet forums, including but not limited to postings, messages, uploaded photographs, video and audio, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

34. Produce any and all documentation evidencing Plaintiffs utilization of social networking websites, including but not limited to Facebook, MySpace, Twitter, LinkedIn, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiffs expression of an emotional feeling, from 2004 through the present.

Plaintiff objects on the grounds that the demand is vague, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

35. Produce any and all documentation evidencing Plaintiffs utilization of social networking websites, including but not limited to Facebook, MySpace, Twitter, and

Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiffs employment with Defendant, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence. Without waiving the objection, plaintiff has produced the emails that Joanne Maynard sent him on Facebook.

36. Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, MySpace, Twitter, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding any of the allegations contained in Plaintiffs Complaint, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence. Without waiving the objection, plaintiff has produced the emails that Joanne Maynard sent him on Facebook.

37. Produce any and all of Plaintiffs written or electronic diaries, journals, notebooks or writings containing content relating to any and all of the allegations contained in Plaintiff's Complaint.

Plaintiff will provide any responsive documents if they should be found to exist.

38. Provide any and all written statements obtained from third parties regarding Plaintiffs claims.

Plaintiff will provide any responsive documents if they should be found to exist.

39. Produce all documents Plaintiff created in his capacity as an employee of Defendant, including but not limited to memoranda, electronic mail, letters, and all drafts thereof, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

40. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding gender discrimination, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

41. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding sexual orientation discrimination, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

42. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding failure to pay overtime, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

43. Produce any and all documentation evidencing written, electronic or oral complaints made by Plaintiff, either formal or informal, to Defendant regarding failure to pay minimum wage, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

44. Produces any and all of Plaintiff's resumes from 2001 through the present.

Plaintiff will produce his resumes for the period of time concerning the

allegations in the complaint.

45. Produce any and all documentation regarding, concerning or relating to Plaintiff's degrees, certifications, diplomas, licenses, certificates and other documentation of the like, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

46. Produce all documentation regarding, concerning or relating to any and all commendations, awards and official recognitions received by Plaintiff, from 2004 through the present.

Plaintiff will provide any responsive documents if they should be found to exist.

47. Produce any and all documentation concerning, relating to and/or regarding any and/or all job training and/or educational instruction received by Plaintiff prior to or subsequent to the cessation of Plaintiff's employment with Defendant.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome, and is not calculated to lead to admissible evidence. Without waiving the objection, plaintiff will provide such limited documents as are reasonably related to the training he is receiving and has received since the cessation of his employment with the defendant.

48. Produce any and all transcripts from any educational institution attended by Plaintiff from 2001 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome, and is not calculated to lead to admissible evidence. Without waiving the

objection, plaintiff will provide such limited documents as are reasonably related to the training he is receiving and has received since the cessation of his employment with the defendant.

49. Produce any and all documentation evidencing any further steps taken by Plaintiff in order to mitigate his damages after the cessation of his employment with Defendant, from July 2010 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome, and is not calculated to lead to admissible evidence. Without waiving the objection, plaintiff will provide such limited documents as are reasonably related to the training he is receiving and has received since the cessation of his employment with the defendant, as well as any other written information he may have concerning his job search.

50. Produce any and all documentation that relates to Plaintiff's search for, attempts to prepare for or to obtain employment as an employee, independent contractor, consultant or otherwise (including, but not limited to, self-employment) from July 2010 through the present, including but not limited to:

(1) all applications for employment; resumes; curriculum vitae; cover letters; proposals, and/or newspaper, journal, or magazine advertisements concerning any search for work;

(2) all communications or correspondence sent to or received from any headhunters, employment agencies, and/or placement agencies concerning any potential employment; and

(3) all communications or correspondence sent to or received from any potential

employers regarding any potential employment; or

(4) all interviews, offers for work, or acceptance or rejection of offers for work.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome, and is not calculated to lead to admissible evidence. Without waiving the objection, plaintiff will provide such documents that may be in his possession concerning his job search since the termination of his employment.

51. Produce any and all documentation referencing Plaintiff's employment status subsequent to his employment with Defendant, including but not limited to (a) personnel files, (b) job description, (c) applications, (d) resumes, (e) references, (f) recommendations, (g) diplomas, (h) salary and proof of wages and (i) and other documents provided during Plaintiffs initial application for a position, from July 2010 through the present.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome, and is not calculated to lead to admissible evidence and unintelligible insofar as it references an "initial application."

52. Produce any and all documentation which relates or refers in any way to Plaintiff's resignation, layoff or termination from employment (or any form of self-employment, including, but not limited to, an independent contractor or consulting arrangement) with any employer subsequent to Plaintiffs employment with Defendant.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome, and is not calculated to lead to admissible evidence. Without waiving the objection, plaintiff will provide such documents that may be in his possession concerning his job search or employment since the termination of his employment.

53. Provide a properly executed HIPAA Compliant Medical Authorization for any and all health care providers Plaintiff has treated or consulted with during his term of employment with Defendant, including but not limited to therapists, psychologist, psychiatrists and /or other mental health practitioners.

Objection on the grounds of doctor-patient and/or therapist privilege. See In re Sims, 534 F.3d 117 (2nd Cir. 2008).

54. Produce a properly executed authorization for the release of Plaintiff's employment records for each position held subsequent to the cessation of Plaintiff's employment with Defendant.

Plaintiff objects on the grounds that the demand is retaliatory, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

55. Produce a properly executed Internal Revenue Service Tax Information Authorization Form for the years 2004 through the present.

Plaintiff will release his federal tax return from 2007 to the present.

56. Produce all documentation concerning, referring or relating to Plaintiff's income from 2004 through the present, including but not limited to, Federal and State Income Tax Returns and all attachments thereto.

Plaintiff will release his federal tax return from 2007 to the present.

57. Produce any and all documentation relating to Plaintiff's "termination interview" as referenced in ¶ 29 of Plaintiff's Complaint, including but not limited to notes, letters, recordings, and other similarly responsive documentation.

Plaintiff will produce the tape made of such interview.

58. Provide all documents identified or referenced in Plaintiff's response to Defendant's First Set of Interrogatories.

Plaintiff objects on the grounds that the demand is vague and overbroad and duplicative of other demands. Without waiving the objection, any such documents specifically identified in plaintiff's interrogatories will be produced.

59. Produce every document that Plaintiff intends to introduce as an exhibit at trial in this action.

Plaintiff objects on the grounds that he does not know what he intends to introduce as an exhibit at trial, but will exchange documents in discovery and tender all exhibits in accordance with this judge's trial procedures.

60. Produce all documents confirming, establishing or referring to any communication between Plaintiff and any employee of Defendant regarding any of the allegations in Plaintiff's Complaint, between 2004 through the present.

Plaintiff will tender any documents.

61. Produce all documentation that supports, opposes, or in any way relates to Plaintiff's Causes of Action and any other losses for which Plaintiff seeks in this action.

Plaintiff will tender any documents.

62. Produce all documentation concerning the wages, benefits, and/or other compensation paid to Plaintiff by Defendant, including but not limited to, (a) 1099 and/or IRS Form W-2's, (b) payroll records, (c) health and welfare benefits plans and/or statements, (d) 401(k) documents, (e) pay stubs, (f) deposit records and the like, and (g) any other compensation-related or benefit-related documents from 2004 through the present.

Plaintiff will tender any documents in his possession.

63. Produce any and all documentation concerning, relating to, and/or reflecting income earned by Plaintiff from 2004 through the present, including but not limited to a) 1099 and/or IRS Form W-2's, (b) payroll records, (c) pension documents, (d) 401(k) documents, (e) pay stubs, (f) deposit records and the like, and (i) any other compensation related documents.

Plaintiff objects on the grounds that the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

64. Produce any and all of Plaintiff's banking records, including statements, notices, and other similarly responsive documentation, from 2004 through the present.

Plaintiff objects on the grounds that the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

65. Produce any and all of Plaintiff's credit card statements from 2004 through the present.

Plaintiff objects on the grounds that the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

66. Produce all documents concerning Plaintiff's application and qualifications for employment with Defendant, including, but not limited to, (a) application forms, (b) notes, (c) memoranda, (d) e-mails, and (e) verification forms.

Plaintiff objects on the grounds that the demand is duplicative of other demands,

overbroad and unduly burdensome.

67. Provide all documentation concerning the termination of Plaintiff's employment with any employer (whether by discharge, layoff, mutual agreement, resignation, voluntary quit, or any other matter) including, but not limited to, all documents concerning any charges, complaints, claims, or applications made or filed with any federal, state, or local government agency, court, or other tribunal concerning any such termination, from 2004 through the present.

Plaintiff objects on the grounds that the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

68. Produce Plaintiff's automatic disclosure statement pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

Plaintiff will tender such documents.

69. Produce all documents identified in Plaintiffs automatic disclosure statement pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

Plaintiff will tender such documents if any exist.

70. Produce all documents referred to in, or used in the preparation of, Plaintiff's Complaint.

Plaintiff will tender such documents however none exist other than the EEOC charge, the defendant's general waiver, and the recording of plaintiff's termination interview.

71. Produce for inspection and review the hard drive of Plaintiffs personal computer, or a copy thereof, including any and all e-mails, notes, letters, and any and all other

documentation contained therein which pertains, in any way, to Plaintiff's tenure with Defendant, from 2004 through the present.

Plaintiff objects on the grounds that the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence. Without waiving the objection, plaintiff will conduct a search of any hard drive he had at the time of the incidents described in the complaint that mention any of the defendants or allegations in the complaint.

72. Produce all documents concerning any communications with any individual(s) whom Plaintiff believes possesses knowledge of the facts, allegations, and claims involved in this case, from 2004 through the present.

Plaintiff objects on the grounds that the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.

73. Produce any and all documentation evidencing Defendant's employees were aware that Plaintiff is gay and "open about it" as described in ¶21 of Plaintiffs Complaint.

Plaintiff will tender such documents if any exist.

74. Produce any and all documentation evidencing Ray Maynard's purported hostility to expressions of sexual orientation that does not conform to sex stereotypes as described in ¶ 22 of Plaintiff's Complaint.

Plaintiff will tender such documents if any exist.

75. Produce any and all documentation evidencing complaints lodged against Plaintiff by a customer or client of Defendant while employed by Defendant from 2004 through

the present.

Plaintiff is not in possession of any such document.

76. Produce any and all documentation evidencing complaints lodged against Plaintiff by a coworker while employed by Defendant from 2004 through the present

Plaintiff is not in possession of any such document.

77. Produce any and all documentation evidencing complaints lodged against Plaintiff by a customer or client of Plaintiff's other employers from 2004 through the present.

Plaintiff is not in possession of any such document.

78. Produce any and all documentation evidencing complaints lodged against Plaintiff by a coworker of Plaintiff while employed by other employers, from 2004 through the present.

Plaintiff is not in possession of any such document.

79. All documents pertaining to any application by Plaintiff for and/or receipt of unemployment insurance benefits, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad and seeks irrelevant information but will tender any documents in his possession for 2010 to the present.

80. Produce true and accurate copies of any and all documentation issued between Plaintiff and the New York State Department of Labor- Unemployment Insurance Division, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad and seeks irrelevant information but will tender any documents in his possession for 2010 to the present.

81. All documents pertaining to any application by Plaintiff for and/or receipt of Workers' Compensation benefits, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad and seeks irrelevant information but will tender any documents in his possession for 2009 to the present.

82. Produce true and accurate copies of any and all documentation issued between Plaintiff and the New York State Workers' Compensation Board, from 2004 through the present.

Plaintiff objects on the grounds that the demand is overbroad and seeks irrelevant information but will tender any documents in his possession for 2009 to the present.

83. Produce any and all documentation supporting any alleged emotional damages suffered by plaintiff from 2004 through the present.

Objection on the grounds of doctor-patient and/or therapist privilege. See In re Sims, 534 F.3d 117 (2nd Cir. 2008). Without waiving the objection, if there are any non-privileged documents, they will be tendered.

84. Produce all documents concerning, relating to and/or regarding consultation with and/or treatment by any medical and/or mental health professional concerning and/or regarding Plaintiffs allegations and/or claims for emotional distress and psychological injuries.

Objection on the grounds of doctor-patient and/or therapist privilege. See In re Sims, 534 F.3d 117 (2nd Cir. 2008).

85. All documents concerning any other claims and/or complaints of harassment and/or discrimination made and/or filed by Plaintiff against any prior or current employer.

Plaintiff objects on the grounds that the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to

admissible evidence.

86. All documents concerning any complaint filed by Plaintiff with any governmental or administrative agency against any of the named Defendant.

Other than the EEOC charge, there are no responsive documents.

87. All documents, to the extent not produced pursuant to other requests that you may seek to introduce in evidence at the trial of this action.

Plaintiff objects on the grounds that he does not know what he intends to introduce as an exhibit at trial, but will exchange documents in discovery and tender all exhibits in accordance with this judge's trial procedures.

88. All documents that are relevant to the instant action but not covered by the previous requests.

Objection on the grounds that the demand is vague and overbroad and duplicative.

Without waiving the objection, there are no responsive documents.

Dated: New York, New York
January 28, 2011



/s/
GREGORY ANTOLLINO
Attorney for Plaintiff
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New York, NY 10010
(212) 334-7397

EXHIBIT E

Counseling and Advising Clients Exclusively on Laws of the Workplace



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February 3, 2011

VIA FIRST CLASS MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

Dear Mr. Antollino:

We are in receipt of Plaintiff's responses to Defendants' First Request for the Production of Documents and First Set of Interrogatories. As previously stated in our letter of January 28, 2011, Plaintiff has failed to comply with the Federal Rules of Civil Procedure, despite being granted an extension of time in which to serve discovery responses. Again, pursuant to FRCP 33 and 34 and Local Civil Rule 26.3, Plaintiff is required to respond to Defendants' Discovery Demands within thirty (30) days of the date of service (December 16, 2010); Plaintiff's Responses were received on January 31, 2011. Inasmuch as Plaintiff's mailed envelope is not date-stamped, does not include an affidavit of service, and was served under separate cover from Plaintiff's Response to Defendants' First Notice to Admit, Defendants take the position that Plaintiffs' responses are untimely and violative of the FRCP and Local Civil Rules. Accordingly, Plaintiff has waived any and all objections to Defendants' Discovery Demands and the inclusion of boilerplate objections is improper. Specific deficiencies identified in your client's discovery responses are listed as follows. Kindly provide complete and adequate responses immediately.

I. Plaintiff's Response to Defendants' First Set of Interrogatories:

Interrogatory No. 1: "Set forth with particularity and detail any and all efforts on the part of Plaintiff to lodge complaints of alleged gender and/or sexual orientation discrimination with any managerial, supervisory or Human Resources employees of Defendant, from 2001 through the present."

Plaintiff objected to Defendants' Interrogatory on the grounds that it is "overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for a narrative covering a period of nearly ten years." Despite Plaintiff's belief to the contrary, Defendants' Interrogatory requests information that is clearly relevant and material to the case at hand. As Plaintiff alleges he was subject to both gender and sexual orientation discrimination, Defendants properly requests information regarding the instances of purported discrimination,



including Plaintiff's efforts to file complaints. Regarding the Interrogatory's scope, Defendants only employed Plaintiff for portions of 2001, 2009 and 2010; an approximate three (3) year period. As such, the scope of the Interrogatory is sufficiently narrow.

Interrogatory No. 3: "Set forth with particularity and detail the basis of Plaintiff's belief that "[i]t was known at work that [P]laintiff is gay and he was open about it," as alleged in ¶21 of Plaintiff's Complaint."

Plaintiff's response is deficient as it does not expressly provide the detail and information sought in Defendants' Interrogatory. If Plaintiff is implying that his failure to refute the "comments, jokes and at some times discussion regarding [his] sexuality" is the sole basis of his belief stated in ¶21 of his Complaint, then state so explicitly.

Interrogatory No. 5: "Set forth with particularity and detail each and every act of alleged gender discrimination against Plaintiff in connection with Plaintiff's employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
any action taken in response thereto by Defendant's employees."

In addition to boiler plate objections, all of which are waived, Plaintiff's response asserts that discrimination "is a term of art in this lawsuit that may have a legal connotation and cannot be answered by a lay witness." Despite Plaintiff's objections, the request is clear and unambiguous as written. Plaintiff failed to cite a legal justification for his failure to respond to this request and made no claim as to the alleged ambiguity of the request. Moreover, a party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to the terms and phrases utilized in the requests. See Coleman v. Dydula, 175 F.R.D. 177, 180 (W.D.N.Y. 1997); Johnson v. Kraft Foods North America, Inc., 238 F.R.D. 648 (D. Kan. 2006). Thus the answering party should generally attribute to allegedly ambiguous terms their common, everyday meaning. Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co., 105 F.R.D. 16, 1 Fed. R. Serv. 3d 167, 79 A.L.R. Fed. 763 (S.D.N.Y. 1984); Roesberg v. Johns-Mansville Corp., 85 F.R.D. 292, 298 (E.D.Pa.1980). However, in an effort to allay Plaintiff's concern regarding the equivocation of the term "discrimination," we direct Plaintiff to his Complaint and Demand for Discovery. The term discrimination or discriminatory appear no less than three (3) times in Plaintiff's Complaint, including in Plaintiff's First and Second Causes of Action. The term "discrimination" is also used in Plaintiff's third (3rd) request of his Demand for Discovery. To provide a semantic basis for future usage of the term "discrimination," Plaintiff is directed to the manner in which the term is used in his Complaint and his Demand for Discovery.

Additionally, unless counsel does not intend to aide Plaintiff in the preparation of his response to Defendants' Interrogatories, there should be no concern regarding discovery demands that contain terms "that may have a legal connotation" to which a "lay witness" cannot answer.



Other than the instances outlined in Plaintiff's response to Defendants' fourth (4th) Interrogatory, if Plaintiff contends that he was not subjected to further acts of alleged gender discrimination while in the employ of Defendants, then state so explicitly.

Interrogatory No. 6: "Set forth with particularity and detail each and every act of alleged sexual orientation discrimination against Plaintiff in connection with Plaintiff's employment with Defendant from 2001 through the present, including but not limited to:

- a) the date and time any alleged instance of discrimination occurred;
- b) the type of discrimination experienced by Plaintiff;
- c) the manner in which Plaintiff was discriminated against;
- d) the individual(s) that discriminated against Plaintiff;
- e) any action taken in response thereto by Plaintiff; and
- f) any action taken in response thereto by Defendant's employees."

Plaintiff again states in his response that discrimination "is a term of art in this lawsuit that may have a legal connotation and cannot be answered by a lay witness." Defendants do not agree with Plaintiff's assertion regarding the term "discrimination" and direct Plaintiff to Defendants' response to Plaintiff's objection to Interrogatory No. 5. Defendants reiterate their belief that as written, the Interrogatory is sound and intelligible. Other than the instances outlined in Plaintiff's response, if Plaintiff contends that he was not subjected to any further acts of alleged sexual orientation discrimination while in the employ of Defendants, then state so explicitly.

Interrogatory No. 10: "Identify with particularity and detail any and all of Plaintiff's accounts, profiles, memberships or postings on all social networking websites or internet communities and forums, from 2004 through the present."

Plaintiff objects to Defendants' Interrogatory on the basis that, "the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy." On the contrary, the request is relevant and probative of the allegations in Plaintiff's Complaint, as well as Plaintiff's measure of damages. The requested information will offer Defendants the ability to examine the extent to which Plaintiff documented instances of purported adverse working conditions and/or sexual orientation and gender discrimination. Accordingly, such information directly bears on Plaintiff's claims, Defendants' affirmative defenses, and Plaintiff's measure of damages. The requested information is clearly discoverable, particularly in light of Plaintiff's claim that outward expression of non-conformity to gender and sexual-orientation stereotypes, and the awareness of Defendants' employees thereof, resulted in an adverse working environment that eventually led to his termination. Moreover, courts have held that this information is relevant and discoverable, particularly where a Plaintiff has affirmatively placed his/her mental state in issue. See e.g., Bass v. Miss Porter's School, 2009 WL 3724968, *1 (D.Conn. 2009) ("Facebook usage depicts a snapshot of the user's relationships and state of mind at the time of the content's posting. Therefore, relevance of the content of Plaintiff's Facebook usage as to both liability and damages in this case is more in the eye of the beholder than subject to strict legal demarcations, and production should not be limited to Plaintiff's own determination of what may be reasonably calculated to lead to the discovery of admissible evidence."); Romano v. Steelcase Inc., 907 N.Y.S.2d 650 (N.Y.Sup., 2010). Additionally, the Second Circuit has made it clear that individuals do not maintain a reasonable expectation of privacy in



internet postings. U.S. v. Lifshitz, 369 F.3d 173 (2d Cir.2004). Accordingly, Defendants demand that Plaintiff provide a complete and full response to their Interrogatory.

Interrogatory No. 11: “Identify with particularity and detail any and all email addresses and/or instant message screen names utilized by Plaintiff from 2004 through the present.”

Plaintiff objects to Defendants’ Interrogatory on the basis that, “the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence and calls for an unwarranted invasion into his privacy.” Notwithstanding Plaintiff’s boiler plate objection, Plaintiff’s response only provides one email address and directs Defendants to, “do a search of Plaintiff’s name, Don Zarda or Donald Zarda.” It is disingenuous for Plaintiff to not provide a full and complete response to Plaintiff’s Interrogatory, and to instead direct Defendants to undertake a search of Plaintiff’s name. Plaintiff inexplicably seeks to shift to Defendants the burden of responding to Defendants own document request. Accordingly, Plaintiff’s response is grossly deficient. Defendants requested any and all of Plaintiff’s email address(es), including those not used in communication with Defendants. Plaintiffs do not state if Don@donzarda.com is Plaintiff’s sole email account. If that is the case, please state so explicitly, and should Plaintiff have further email address(es)/accounts, please list them.

Additionally, Plaintiff’s response is devoid of any mention of instant message screen names that are utilized by Plaintiff. Again, should Plaintiff not have any such accounts or screen names, please state so explicitly. Otherwise, provide a full list of Plaintiff’s screen name(s).

Interrogatories Nos. 14, 15, 16, 17:

In response to all four of the above-referenced Interrogatories, Plaintiff objects as follows:

“Plaintiff objects on the grounds that this interrogatory brings the defendant into a number (including subparts) exceeding the allowable maximum under Rule 33 of the Federal Rules of Civil procedure. If the defendant obtains permission to seek interrogatories in excess of the amount permissible by the rule, plaintiff reserves the right to assert additional objections, including but not limited to the fact that the demand is overly broad, unduly burdensome, not calculated to lead to admissible evidence.”

Courts have held that interrogatory subparts are not to be counted as discrete subparts if they are logically or factually subsumed within and related to the primary question. See Brown v. Artus, 2008 WL 268171 (N.D.N.Y. Jan. 29, 2008); Cramer v. Fedco Automotive Components Co., Inc., 2004 WL 1574691, *4 (W.D.N.Y. May 26, 2004) (citations and internal quotations omitted). Additionally, multiple interrelated questions may constitute a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately. See Brown, 2008 WL 268171; Cramer, 2004 WL 1574691, *4. In light of the foregoing, Defendants have not exceeded the maximum number of Interrogatories as outlined in F.R.C.P 33. Accordingly, Plaintiff’s responses to the four Interrogatories are deficient and Plaintiff must immediately provide complete and full responses thereto.



II. Plaintiff's Response to Defendants' First Request for the Production of Documents:

In sum and substance, Plaintiff's response is devoid of substantive information and documentation regarding Defendants' document requests and is utterly unresponsive. Plaintiff has only provided two (2) Facebook correspondences in response to Defendants' eighty eight (88) document requests. There are no less than fifty two (52) instances in which Plaintiff responded to Defendants' requests by stating responsive documentation, should it exist, will be produced. In all fifty two (52) instances, Plaintiff did not explicitly state if he is actually in possession of responsive documentation and if so, when Defendants can expect to receive the future production of such documentation. Accordingly, in all instances that Plaintiff's response to a document request contains reference to the promise of future production of any responsive documentation on an undefined date, explicitly state whether Plaintiff is in possession of responsive documentation and if so, when said documentation will be served.

Additionally, Plaintiff indicates throughout his responses that documentation is being withheld due to a purported privilege. As previously instructed in ¶6 and ¶16 under the Definitions and Rules of Construction of Defendants' First Request for the Production of Documents, for all responsive documentation that is being withheld from any of Plaintiff's responses due to privilege, identify the documents in Plaintiffs' Privilege Log. Accordingly, Plaintiff is instructed to produce a Privilege Log should one not already exist.

Requests Nos. 12, 13, 14, 15, 16, 17: "Produce any and all documentation evidencing, referring, or supporting Defendant's purported discrimination against Plaintiff as alleged in [¶20, 21, 22, 23, 24, 25] of Plaintiff's Complaint, from 2004 through the present."

Plaintiff objects to the above-referenced document requests by stating, "these demands are duplicative." Each of these individual demands correspond to distinct allegations contained within different paragraphs of Plaintiff's Complaint. Therefore, Plaintiff's universal objection to these requests is without merit. Additionally, in asserting his objection to Defendants' document requests, Plaintiff implies that the paragraphs and individual allegations contained in his own Complaint are "duplicative". Nevertheless, Plaintiff's objection is baseless and a complete and full responses to Defendants' requests must be provided.

Request No. 32: "Produce any and all documentation evidencing Plaintiff's accounts, profiles, and/or memberships on all social networking websites or internet communities and forums, including but not limited to Facebook, Myspace, Twitter, and Friendster, from 2004 through the present."

Plaintiff's objection to this document request states that, "the demand is overbroad, unduly burdensome, and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." First, as previously stated, the Second Circuit has made it clear that individuals do not maintain a reasonable expectation of privacy in internet postings. U.S. v. Lifshitz, 369 F.3d 173 (2d Cir.2004). Inasmuch as memberships and accounts on social networking sites invariably relate to internet communication and interaction, i.e. postings, Plaintiff does not have an expectation of privacy. Additionally, the requested documentation is clearly discoverable, especially in light of Plaintiff's claims that outward expression of non-conformity to gender and sexual-orientation stereotypes, and the awareness of Defendants' employees thereof, resulted in an adverse working environment that eventually



led to his termination. Moreover, as previously stated in Defendants' response to Plaintiff's objection to Interrogatory No. 11, courts have held that this information is relevant and discoverable, particularly where a Plaintiff has placed his/her mental state in issue. See e.g., Bass v. Miss Porter's School, 2009 WL 3724968, *1 (D.Conn. 2009) ("Facebook usage depicts a snapshot of the user's relationships and state of mind at the time of the content's posting. Therefore, relevance of the content of Plaintiff's Facebook usage as to both liability and damages in this case is more in the "eye of the beholder" than subject to strict legal demarcations, and production should not be limited to Plaintiff's own determination of what may be reasonably calculated to lead to the discovery of admissible evidence."); Romano v. Steelcase Inc., 907 N.Y.S.2d 650 (N.Y.Sup., 2010). Accordingly, Plaintiff must provide a full and complete response to Defendants' request.

Request No. 33: "Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, Friendster, and LinkedIn internet communities and internet forums, including but not limited to postings, messages, uploaded photographs, video and audio, from 2004 through the present."

Plaintiff's objection to this document request states that, "the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." Again, for the reasons stated above in Defendants' response to Plaintiff's objection to document request No. 32, Plaintiff's objection is without merit. Moreover, as memberships and accounts on social networking sites invariably relate to internet communication and interaction, i.e. postings, Plaintiff does not have an expectation of privacy, especially when such accounts are used to make postings or communication regarding the allegations contained in Plaintiff's Complaint. The two (2) documents produced thus far by Plaintiff perfectly evidence this point. In an effort to focus Defendants' request for the purpose of Plaintiff's response, Defendants agree to amend their request as follows:

"Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, Friendster, and LinkedIn internet communities and internet forums, including but not limited to postings, messages, uploaded photographs, video and audio, from 2004 through the present regarding the allegations contained in Plaintiff's Complaint."

Request No. 34: "Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, LinkedIn, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiff's expression of an emotional feeling, from 2004 through the present."

Plaintiff's objection to this document request states that, "the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." Defendants' request is clearly discoverable in light of the reasons outlined in Defendants' response to Plaintiff's objection to document request No. 32. However, should Plaintiff provide an affidavit stating that he is not pursuing emotional damages in this case, and claims to not suffer severe and lasting embarrassment, humiliation and anguish due to any conduct by Defendants, we will agree to withdraw the request. See Hodge v. City of Long Beach, 2006 WL 1211725 (E.D.N.Y. 2006). Failing such



an occurrence, Plaintiff must immediately provide a full and complete response to Defendants' request.

Requests Nos. 35: "Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding Plaintiff's employment with Defendant, from 2004 through the present."

In response to this request, Plaintiff states that, "[w]ithout waiving the objection, plaintiff has produced the emails that Joanne Maynard Sent him on Facebook." Please state if Plaintiff has produced all responsive documentation in his possession. Should Plaintiff have additional responsive documentation, please produce same immediately.

Requests Nos. 36: "Produce any and all documentation evidencing Plaintiff's utilization of social networking websites, including but not limited to Facebook, Myspace, Twitter, and Friendster, internet communities and internet forums relating to, reflecting and/or regarding any of the allegations contained in Plaintiff's Complaint, from 2004 through the present."

See the above response to Plaintiff's objection to Defendants' document request No. 35.

Request No. 51: "Produce any and all documentation referencing Plaintiff's employment status subsequent to his employment with Defendant, including but not limited to (a) personnel files, (b) job description, (c) applications, (d) resumes, (e) references, (f) recommendations, (g) diplomas, (h) salary and proof of wages and (i) and other documents provided during Plaintiff's initial application for a position, from July 2010 through the present."

Beyond Plaintiff's general objections, Plaintiff states that the request is, "unintelligible insofar as it references an 'initial application.'" First, Plaintiff's effort to respond to this request is insincere. Plaintiff should not have been inhibited from responding to the request even if he had a semantic issue with the meaning of "initial application." Additionally, as previously stated, a party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to the terms and phrases utilized in the requests. See Coleman v. Dydula, 175 F.R.D. 177, 180 (W.D.N.Y. 1997); Johnson v. Kraft Foods North America, Inc., 238 F.R.D. 648 (D. Kan. 2006). Thus the answering party should generally attribute to allegedly ambiguous terms their common, everyday meaning. Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co., 105 F.R.D. 16, 1 Fed. R. Serv. 3d 167, 79 A.L.R. Fed. 763 (S.D.N.Y. 1984); Roesberg v. Johns-Mansville Corp., 85 F.R.D. 292, 298 (E.D.Pa.1980). Should Plaintiff require further clarification of the term, Defendants request documents provided during the beginning of the application process of any sought after employment subsequent to Plaintiff's termination with Defendants.

Request No. 53: "Provide a properly executed HIPAA Compliant Medical Authorization for any and all health care providers Plaintiff has treated or consulted with during his term of employment with Defendant, including but not limited to therapists, psychologist, psychiatrists and /or other mental health practitioners."

Plaintiff objects to this document request on the grounds of, "doctor-patient and/or therapist privilege. See In re Sims, 534 F.3d 117 (2nd Cir. 2008)." However, it is a longstanding



tenet of New York law that by claiming emotional damages in an employment discrimination lawsuit, the plaintiff has placed his mental state in issue, thus waiving his right to confidentiality of probative medical documentation relevant to his mental state. See, e.g., Anderson v. City of New York, No. 05 Civ. 54422(ERK)(MDG), 2006 WL 1134117, at *1 (E.D.N.Y. Apr. 28, 2006) (where plaintiff claims to have suffered emotional distress as a result of the defendant's conduct, "plaintiff has placed her mental condition at issue ... and consequently has waived her right to prevent the disclosure of her mental health records"); Cuoco v. United States Bureau of Prisons, No. 98 Civ. 9009(WHP), 2003 WL 1618530, at *2 (S.D.N.Y. Mar. 27, 2003) ("[Plaintiff] directly put her mental and emotional state at issue when she claimed damages for emotional distress in this action. That damages claim consequently waived any psychotherapist-patient privilege for ... psychologist's notes and statements relevant to the time and subject matter of this action."). Should Plaintiff provide an affidavit stating that he is not pursuing emotional damages in this case, and claims to not suffer severe and lasting embarrassment, humiliation and anguish due to any conduct by Defendants, we will agree to withdraw the request. See Hodge v. City of Long Beach, 2006 WL 1211725 (E.D.N.Y. 2006)(stating that upon placing his mental state at issue, the plaintiff had the option of either producing a HIPAA compliant release form or withdrawing any and all claims for emotional damages).

Request No. 54: "Produce a properly executed authorization for the release of Plaintiff's employment records for each position held subsequent to the cessation of Plaintiff's employment with Defendant."

Plaintiff's objection to this request states that, "the demand is retaliatory, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." Defendants' inquiry into Plaintiff's employment subsequent to his termination by Defendants is relevant. Defendants' request is probative of Plaintiff's efforts to mitigate his damages and directly relate to the causes of action outlined in Plaintiff's Complaint and, when applicable, his corresponding damage calculations. As such, it is evident that the purpose of Defendants' document request is not retaliatory and is relevant to the case at bar. Moreover, the timeframe established by the request is sufficiently narrow. Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 63: "Produce any and all documentation concerning, relating to, and/or reflecting income earned by Plaintiff from 2004 through the present, including but not limited to a) 1099 and/or IRS Form W-2's, (b) payroll records, (c) pension documents, (d) 401(k) documents, (e) pay stubs, (f) deposit records and the like, and (i) any other compensation-related documents."

Plaintiff's objection to this request states that, "the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." Again, Defendants' inquiry into Plaintiff's income subsequent to Defendants' termination of Plaintiff is relevant. Defendants' request is probative of Plaintiff's efforts to mitigate his damages and directly relate to the causes of action outlined in Plaintiff's Complaint and, when applicable, his corresponding damage calculations. As such, the purpose of Defendants' document request is relevant to the case at bar, as it evidences Plaintiff's earned income both before and after his termination. Moreover, the timeframe established by the request is sufficiently narrow and not overbroad. Accordingly, Plaintiff must provide a full and complete response immediately.



Request No. 64: “Produce any and all of Plaintiff’s banking records, including statements, notices, and other similarly responsive documentation, from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” Again, Defendants’ inquiry into Plaintiff’s income subsequent to Defendants’ termination of Plaintiff is relevant. Moreover, the timeframe established by the request is sufficiently narrow and not overbroad. Additionally, Plaintiff has placed his mental state at issue by alleging damages in this action. Courts have held that a Plaintiff’s spending patterns and financial activity provide evidence of their activity and mental state. *Chiquelin v. Efund Corp.*, 2003 WL 21459581 (S.D.N.Y, 2003) (Complete credit card statements of former employee relevant to age discrimination lawsuit, since statements reflected employee’s activity and mental state). Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 65: “Produce any and all of Plaintiff’s credit card statements from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” For the reasons outlined in Defendants’ response to Plaintiff’s objection to document request No. 64, Defendants’ inquiry is clearly relevant. *Chiquelin v. Efund Corp.*, 2003 WL 21459581 (S.D.N.Y, 2003) (Complete credit card statements of former employee relevant to age discrimination lawsuit, since statements reflected employee’s activity and mental state). Moreover, the timeframe established by the request is sufficiently narrow and not overbroad. Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 66: “Produce all documents concerning Plaintiff’s application and qualifications for employment with Defendant, including, but not limited to, (a) application forms, (b) notes, (c) memoranda, (d) e-mails, and (e) verification forms.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, and unduly burdensome.” Contrary to Plaintiff’s assertion, the request is not overbroad and is sufficiently narrowed to documentation relating to Plaintiff’s employment with Defendants. Moreover, the requested documentation is probative of Plaintiff’s employment with Defendants, and as such, materially relevant to the case at bar. Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 67: “Provide all documentation concerning the termination of Plaintiff’s employment with any employer (whether by discharge, layoff, mutual agreement, resignation, voluntary quit, or any other matter) including, but not limited to, all documents concerning any charges, complaints, claims, or applications made or filed with any federal, state, or local government agency, court, or other tribunal concerning any such termination, from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is



irrelevant and not calculated to lead to admissible evidence.” The requested documentation is clearly relevant and is probative of his employment application with Defendants and the allegations in Plaintiff’s Complaint regarding claims made about his employment history. As such, the demand is discoverable and Plaintiff’s objection is improper. Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 72: “Produce all documents concerning any communications with any individual(s) whom Plaintiff believes possesses knowledge of the facts, allegations, and claims involved in this case, from 2004 through the present.”

Plaintiff’s objection to this request states that, “the demand is duplicative of other demands, overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence.” In an effort to resolve this discovery dispute, Defendants agree to narrow their request to those communications relating to or concerning the allegations in Plaintiff’s Complaint and Plaintiff’s claims for damages.

Request No. 83: “Produce any and all documentation supporting any alleged emotional damages suffered by plaintiff from 2004 through the present.”

Plaintiff objects to these document requests on the grounds of, “doctor-patient and/or therapist privilege. See *In re Sims*, 534 F.3d 117 (2nd Cir. 2008).” However, it is a longstanding tenet of New York law that by claiming emotional damages in an employment discrimination lawsuit, the plaintiff has placed his mental state in issue, thus waiving his right to confidentiality of probative medical documentation relevant to his mental state. See, e.g., *Anderson v. City of New York*, No. 05 Civ. 54422(ERK)(MDG), 2006 WL 1134117, at *1 (E.D.N.Y. Apr. 28, 2006) (where plaintiff claims to have suffered emotional distress as a result of the defendant’s conduct, “plaintiff has placed her mental condition at issue ... and consequently has waived her right to prevent the disclosure of her mental health records”); *Cuoco v. United States Bureau of Prisons*, No. 98 Civ. 9009(WHP), 2003 WL 1618530, at *2 (S.D.N.Y. Mar. 27, 2003) (“[Plaintiff] directly put her mental and emotional state at issue when she claimed damages for emotional distress in this action. That damages claim consequently waived any psychotherapist-patient privilege for ... psychologist’s notes and statements relevant to the time and subject matter of this action.”). Should Plaintiff provide an affidavit stating that he is not pursuing emotional damages, and claims to not suffer severe and lasting embarrassment, humiliation and anguish due to any conduct by Defendants, we will agree to withdraw the request. See *Hodge v. City of Long Beach*, 2006 WL 1211725 (E.D.N.Y. 2006)(stating that upon placing his mental state at issue, the plaintiff had the option of either producing a HIPAA compliant release form or withdrawing any and all claims for emotional damages).

Request No. 84: “Produce all documents concerning, relating to and/or regarding consultation with and/or treatment by any medical and/or mental health professional concerning and/or regarding Plaintiff’s allegations and/or claims for emotional distress and psychological injuries.”

Plaintiff objects to these document requests on the grounds of, “doctor-patient and/or therapist privilege. See *In re Sims*, 534 F.3d 117 (2nd Cir. 2008).” For the reasons outlined in Defendants’ response to Plaintiff’s objection to document request No. 83, Defendants’ inquiry

Z **Zabell & Associates, P.C.**
EMPLOYMENT COUNSELING, LITIGATION, LABOR & BENEFITS LAW

is clearly relevant. Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 85: "All documents concerning any other claims and/or complaints of harassment and/or discrimination made and/or filed by Plaintiff against any prior or current employer."

Plaintiff's objection to this request states that, "the demand is overbroad, unduly burdensome and seeks information of a private nature that is irrelevant and not calculated to lead to admissible evidence." The requested documentation is clearly relevant and is probative of the allegations in Plaintiff's Complaint regarding claims made about his employment history. As such, the demand is discoverable and Plaintiff's objection is improper. In an effort to resolve this discovery dispute, Defendants agree to narrow their request from 2005 through the present. Accordingly, Plaintiff must provide a full and complete response immediately.

Failure to produce complete and adequate responses to these demands within ten (10) days of the date of this letter will result in Defendants seeking judicial intervention to compel discovery in this matter

Kindly contact me should you have further questions regarding these matters.

Very truly yours,

ZABELL & ASSOCIATES, P.C.

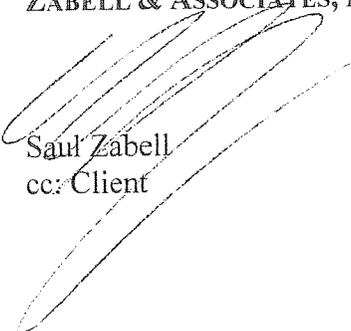

Saul Zabell
cc: Client

EXHIBIT F

Counseling and Advising Clients Exclusively on Laws of the Workplace



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FAX. 631-563-7475
www.Laborlawsny.com

Saul D. Zabell
SZabell@laborlawsny.com

February 7, 2011

**VIA FIRST CLASS MAIL &
ELECTRONIC MAIL**

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

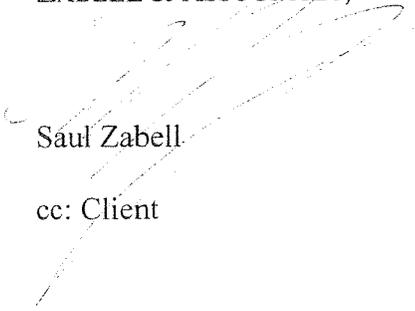
Dear Mr. Antollino:

We write in furtherance of our letter of February 3, 2011 and to confirm that we are in receipt of Plaintiff's document production bates stamp No. 000001 – 000081 and two (2) audio files. Upon review, we find that Plaintiff's document response is again violative of F.R.C.P. 34 (b)(2)(E). The documents are not produced as they are maintained in the ordinary course of business and further, Plaintiff failed to identify which documents are responsive to each of Defendants' numbered requests. Accordingly, Plaintiff must amend his document response and comply with the rules of document production as outlined in the F.R.C.P. 34.

Kindly contact me should you have further questions regarding this matter.

Very truly yours,

ZABELL & ASSOCIATES, P.C.



Saul Zabell

cc: Client

EXHIBIT G

Tdomanick@laborlawsny.com

From: SZabell@laborlawsny.com
Sent: Thursday, February 10, 2011 2:00 PM
To: Tdomanick@laborlawsny.com
Subject: Fwd: Zarda v. Altitude Express, Inc.

Sent from a mobile location

Saul D. Zabell
Zabell & Associates, P.C.
4875 Sunrise Highway
Bohemia, NY 11716

631-589-7242

Begin forwarded message:

From: Gregory Antollino <gregory10010@verizon.net>
Date: February 10, 2011 1:37:30 PM EST
To: "SZabell@laborlawsny.com" <SZabell@laborlawsny.com>
Subject: Re: Zarda v. Altitude Express, Inc.

Mr. Zabell,

In response to your letter, I do not intend to give you an explanation for the amendment, which should be readily apparent with the modified and additional causes of action, as well as the more detailed pleading of facts. Leave to amend is freely given. Let me know your position on amendment: consent or no consent. Based on your representation about the videotape, I intend to clean up those allegations to denote deliberate loss of custody rather than destruction.

As for your bilious letters about discovery, I do not intend to waste time answering them and address each of your frivolous exhaltations of form over substance - i.e., the idea that plaintiff must reproduce documents as "kept in the regular course of business." What could that mean for an individual who likely keeps his documents in a box in his closet? I've skimmed your other points and won't be responding. If you want to discuss any individual item that you believe I am withholding, you pick up the phone and call. I don't intend to get into a letter writing campaign so that you can bill your client more and attempt to impress him by cc'ing him lots of letters. If after discussing the items you don't like what I'm willing to do, then you have your recourse.

Gregory Antollino

On 2/9/11 4:57 PM, "Robert Garafola" <RGarafola@laborlawsny.net> wrote:

Please see attached.

Zabell

Robert M. Garafola, Paralegal

& Associates, PC

4875

<blocked::blocked::blocked::blocked::http://maps.google.com/maps?f=q&hl=en&geocode=&q=945+E+Jericho+Turnpike,+Huntington,+New+York+11746&sl=37.0625,-

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<blocked::blocked::blocked::blocked::http://maps.google.com/maps?f=q&hl=en&geocode=&q=945+E+Jericho+Turnpike,+Huntington,+New+York+11746&sl=37.0625,-95.677068&sspn=42.310334,82.265625&ie=UTF8&z=16&iwloc=addr&om=1>

Bohemia, NY 11716 Office: 631-589-7242

E-mail: SZabell@laborlawsny.com

Fax: 631-563-7475

Website: LaborLawsNY.com

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IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Gregory Antollino, Esq.

18-20 West 21st Street, Suite 802

New York, NY 10010

(212) 334-7397

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EXHIBIT H

Saul D. Zabell, Esq.
ZABELL & ASSOCIATES, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel. (631) 589-7242
Fax (631) 563-7475

**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)

**DEFENDANT ALTITUDE
EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND'S SECOND
REQUEST FOR THE
PRODUCTION OF DOCUMENTS
TO PLAINTIFF**

PLEASE TAKE NOTICE that, Defendant ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND (hereinafter, "Defendant"), by and through their attorneys, ZABELL & ASSOCIATES, P.C., hereby requests, pursuant to Federal Rules of Civil Procedure 26 and 34 and Local Civil Rule 26.3, which are incorporated by reference herein, that Plaintiff produces for inspection and copying all documents as that term is defined by Local Rule 26.3. Production is to be made at the offices of ZABELL & ASSOCIATES, P.C., attorneys for Defendant, located at 4875 Sunrise Highway, Suite 300, Bohemia, NY 11716 within thirty (30) days from the date of service hereof.

DEFINITIONS and RULES of CONSTRUCTION

The following definitions and rules of construction apply throughout these Document Requests:

1. This request for documents is addressed to Plaintiff and his attorneys. If the requested documents are known by Plaintiff to exist, but are not in his or his attorneys' possession, custody or control, Plaintiff shall so indicate or produce documents which show the name of the person(s) or entity/entities having custody of such documents and the location of the documents.
2. "Documents" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and Local Rule 26.3, including without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate

document within the meaning of this term.

3. "Concerning" means relating to, referring to, describing, evidencing or constituting.
4. If any document responsive to any requests has been lost, mutilated or destroyed, so state and identify each such document and state to which request the document would have been responsive.
5. Each document shall be clearly labeled individually or by group to indicate to which specific request for production herein it is responsive and, if it is intended to be responsive to more than one request, it shall be clearly labeled individually or by group to indicate all requests for production to which it is responsive. If there are no documents in your possession, custody or control which are responsive to a particular request, so state and identify each such request.
6. (a) Where a claim of privilege is asserted in objecting to any means of discovery or disclosure, and an answer is not provided on the basis of such assertion;
 - i. Plaintiff shall identify the nature of the which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked;
 - ii. The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information; and
 - iii. For documents: (i) the type of document (e.g., letter or memorandum); (ii) the general subject matter of the document, (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addresses of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addresses, and recipients to each other;(b) Where a claim of privilege is asserted in response to discovery or disclosure, and information is not provided on the basis of such assertion, the information set forth in paragraph (a) above shall be furnished in writing at the time of the response to such discovery or disclosure, unless otherwise ordered by the court.
7. "And" or "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the disclosure request all documents that might otherwise be construed as outside the scope. "Each" shall be construed to include the word "every," and "every" shall be construed to include the word "each." "Any" shall be construed to include the word "all", and "all" shall be construed to include the word "any."
8. "Complaint" means the complaint filed by Plaintiff in this action.

9. "Answer" means the answer filed by Defendant in this action.
10. "Concerning," "referring," "relating," "concern," "relate" or "refer" means and includes: with respect to, referring to, relating to, purporting, pertaining, involving, embodying, mentioning, establishing, evidencing, comprising, connected with, commenting on, responding to, prepared in connection with, prepared as a result of, showing, discussing, describing, analyzing, reflecting, presenting, or constituting.
11. "Person" means all individuals and entities including, without limitation, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, or any governmental body, agency or official.
12. References to the plural shall include the singular, and references to the singular shall include the plural. Any pronoun shall include the masculine, feminine or neutral gender, as in each case may be appropriate.
13. "Plaintiff" means the Plaintiff in this action, **DONALD ZARDA**, as well as his agent(s), or any other person or entity acting on her behalf or with his knowledge and/or authorization.
14. "Defendant" means the Defendant in this action, **ALTITUDE EXPRESS, INC., dba SKYDIVE LONGISLAND**, (hereinafter "Defendant"), including, but not limited to, its directors, administrators, agents or employees.
15. "Social networking site" means any web site that enables users to create a public and/or semi-public profile within the website, and to articulate or generate a list of other users with whom users share a connection. Social networking sites include but are not limited to Bebo, Classmates.com, Facebook, Flickr, Friendfeed, Friendster, Myspace, Smugmug, Tumblr, Twitter, and YouTube.
16. If any responses are withheld under a claim of privilege or work product doctrine, set forth the privilege, identify each person having knowledge or information for which you claim the privilege, and identify each document containing the information for which you claim the privilege, including (1) the type of document, (2) a description of the subject matter of the document, (3) the date of the document, (4) the name(s) and address(es) of each person who viewed the document, and (5) a statement of the basis upon which the privilege is claimed.
17. All Document Requests herein are continuing in nature, so as to require Plaintiff to supplement or amend his responses in accordance with Federal Rule of Civil Procedure 26(e).

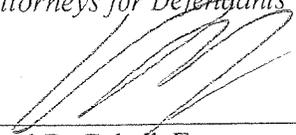
DOCUMENTS REQUESTED

1. Produce any and all documentation regarding communication between Plaintiff and Advanced Skin Fitness, its principals, managing partners, and/or employees, including but not limited to letters, emails, Facebook messages, Myspace messages, memoranda and other similarly responsive documentation, from 2005 through the present.
2. Produce any and all documentation regarding communication between Plaintiff and William Moore, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation, from 2005 through the present
3. Produce any and all documentation regarding salary or monies earned by Plaintiff from Advanced Skin Fitness, including but not limited to checks, W-2 forms, financial reports, and other similarly responsive documentation, from 2005 through the present.
4. Produce any and all documentation regarding Plaintiff's ownership interest, employment with and/or work performed for Advanced Skin Fitness, including but not limited to invoices, employee time records, employee agreements/contracts, employee manuals, memoranda, correspondence, and other similarly responsive documentation from 2005 through the present.
5. Produce any and all documentation regarding Plaintiff's ownership of and/or interest in Advanced Skin Fitness, including but not limited to corporate filings, certificates of incorporation, corporate taxation documents, shareholder agreements, partnership agreements, and other similarly responsive documentation, from 2005 through the present.
6. Produce any and all correspondence between Plaintiff and Marko Markovich, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation from 2005 through the present.

7. Produce any and all correspondence between Plaintiff and Marko Markovich regarding Plaintiff's employment with Defendants and his termination thereof, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation from 2005 through the present.

Dated: Bohemia, New York
February 9, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

Saul D. Zabell, Esq.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel: (631) 589-7242
Fax: (631) 563-7475
szabell@laborlawsny.net

AFFIDAVIT OF SERVICE

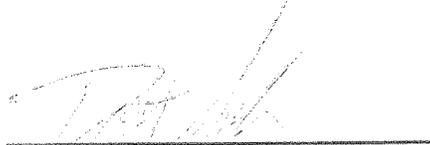
STATE OF NEW YORK)
)
COUNTY OF SUFFOLK) ss:

ROBERT GARAFOLA, being duly sworn, deposes and says:

1. That I am over eighteen years of age and am not a party to this action.
2. That on the 9th day of February, 2011, I served a copy of Defendant's Second Request for the Production of Documents and Defendant's Supplemental Response to Plaintiff's First Request for the Production of Documents, annexed hereto, upon:

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

3. *via* First Class Mail at the address listed above, same being the address designated for that purpose, by depositing a true copy of the same enclosed in a properly addressed wrapper in a depository under the exclusive care and custody of the United States Postal Service.



ROBERT GARAFOLA

Sworn to before me
this 9th day of February, 2011.



NOTARY PUBLIC

Rosemary Emrick
Notary Public State Of New York
Lic. 01EM6190848
Qualified in Suffolk County
My Commission Expires 08/04/2012

EXHIBIT I

Counseling and Advising Clients Exclusively on Laws of the Workplace

Z **Zabell & Associates, P.C.**
EMPLOYMENT COUNSELING, LITIGATION, LABOR & BENEFITS LAW

ZABELL & ASSOCIATES, P.C.
4875 SUNRISE HIGHWAY
SUITE 300
BOHEMIA, NEW YORK 11716
TEL. 631-589-7242
FAX. 631-563-7475
www.Laborlawsny.com

Saul D. Zabell
SZabell@laborlawsny.com

March 18, 2011

VIA ELECTRONIC MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

Dear Mr. Antollino:

To date, we have yet to receive a response to Defendant's Second Request for the Production of Documents, dated February 9, 2011. Pursuant to F.R.C.P. 26 and 34(b) and Local Civil Rule 26.3, Plaintiff was required to respond within thirty (30) days of the service of Defendant's Request. Accordingly, due to Plaintiff's failure to respond timely, Plaintiff has waived any and all objections to Defendant's Request and must provide full and complete responses immediately. Should you fail to do so, we will seek judicial intervention.

Additionally, we are available to confer with you telephonically on March 24, 2011 at 2:30 p.m. regarding the outstanding discovery issues.

Kindly contact me if you have questions regarding the content of this letter.

Very truly yours,

ZABELL & ASSOCIATES, P.C.


Saul Zabell

EXHIBIT J

Tdomanick@laborlawsny.com

From: Gregory Antollino [gregory10010@verizon.net]
Sent: Friday, March 18, 2011 4:16 PM
To: Robert Garafola
Cc: Tdomanick@laborlawsny.com
Subject: Re: Zarda v. Altitude Express

I'm sorry. I've gotten many things from you but no second demand. Please resend and I'll be happy to respond as soon as possible, assuming its not another 85 demands. I obviously disagree that objections have been waived.

On 3/18/11 3:18 PM, "Robert Garafola" <RGarafola@laborlawsny.net> wrote:

Please see attached.

Robert Garafola

Zabell & Associates, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
631-589-7242

www.LaborLawsny.com <<http://www.laborlawsny.com/>> <blocked::<http://www.laborlawsny.com/>>

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Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010
(212) 334-7397
www.antollino.com

EXHIBIT K

Counseling and Advising Clients Exclusively on Laws of the Workplace



ZABELL & ASSOCIATES, P.C.
4875 SUNRISE HIGHWAY
SUITE 300
BOHEMIA, NEW YORK 11716
TEL. 631-589-7242
FAX. 631-563-7475
www.Laborlawsny.com

Saul D. Zabell
SZabell@laborlawsny.com

March 18, 2011

VIA ELECTRONIC MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

Dear Mr. Antollino:

We write in response to your March 18, 2011 email. We find your statements to be dishonest and divergent to objective written correspondence between our respective offices. Notwithstanding your claims to the contrary, you indeed received Defendant's Second Request for the Production of Documents. See Exhibit "A." These demands, dated February 9, 2011, were served upon you *via* email by Robert Garafola at 4:57 p.m. and by first class mail in connection with Defendants' Supplemental Responses to Plaintiff's First Request for the Production of Documents. See Exhibit "B" – "C."

Inasmuch as you have indicated email is your preferred method of contact, we find it hard to believe you did not receive: (1) our February 9, 2011 cover letter; (2) our February 9, 2011 regarding Plaintiff's Proposed Amended Complaint; (3) Defendants' Supplemental Document Production; and (4) Defendants' Second Request for the Production of Documents: all of which were attached to our February 9, 2011 email. See Exhibit "C." You obviously did receive this email, and all attachments thereto, as on February 10, 2011, you responded directly to the February 9, 2011 email from Robert Garafola and our February 9, 2011 regarding Plaintiff's Proposed Amended Complaint *via* email. See Exhibit "D." Assuming, *arguendo*, you experienced technical difficulties, we even served these documents *via* the "old school" method of first class mail. See Affidavit of Service attached to Exhibit "A."

Based upon the foregoing, you have been in possession of Defendants' Second Request for the Production of Documents since February 9, 2011, and have failed to respond in a timely manner. As such, Plaintiff has waived any and all objections to these demands, and must provide complete and adequate responses immediately. Should you fail to do so by March 22, 2011, we will seek judicial intervention.

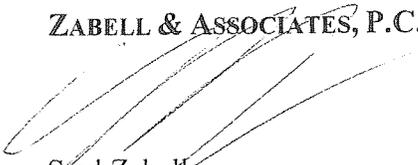


Moreover, you have yet to respond to our proposed telephone conference date of March 24, 2011.

Kindly contact me if you have questions regarding the content of this letter.

Very truly yours,

ZABELL & ASSOCIATES, P.C.



Saul Zabell

Encl.

cc: Client

EXHIBIT A

Saul D. Zabell, Esq.
ZABELL & ASSOCIATES, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel. (631) 589-7242
Fax (631) 563-7475

**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)

**DEFENDANT ALTITUDE
EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND'S SECOND
REQUEST FOR THE
PRODUCTION OF DOCUMENTS
TO PLAINTIFF**

PLEASE TAKE NOTICE that, Defendant ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND (hereinafter, "Defendant"), by and through their attorneys, ZABELL & ASSOCIATES, P.C., hereby requests, pursuant to Federal Rules of Civil Procedure 26 and 34 and Local Civil Rule 26.3, which are incorporated by reference herein, that Plaintiff produces for inspection and copying all documents as that term is defined by Local Rule 26.3. Production is to be made at the offices of ZABELL & ASSOCIATES, P.C., attorneys for Defendant, located at 4875 Sunrise Highway, Suite 300, Bohemia, NY 11716 within thirty (30) days from the date of service hereof.

DEFINITIONS and RULES of CONSTRUCTION

The following definitions and rules of construction apply throughout these Document Requests:

1. This request for documents is addressed to Plaintiff and his attorneys. If the requested documents are known by Plaintiff to exist, but are not in his or his attorneys' possession, custody or control, Plaintiff shall so indicate or produce documents which show the name of the person(s) or entity/entities having custody of such documents and the location of the documents.
2. "Documents" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and Local Rule 26.3, including without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate

document within the meaning of this term.

3. "Concerning" means relating to, referring to, describing, evidencing or constituting.
4. If any document responsive to any requests has been lost, mutilated or destroyed, so state and identify each such document and state to which request the document would have been responsive.
5. Each document shall be clearly labeled individually or by group to indicate to which specific request for production herein it is responsive and, if it is intended to be responsive to more than one request, it shall be clearly labeled individually or by group to indicate all requests for production to which it is responsive. If there are no documents in your possession, custody or control which are responsive to a particular request, so state and identify each such request.
6. (a) Where a claim of privilege is asserted in objecting to any means of discovery or disclosure, and an answer is not provided on the basis of such assertion;
 - i. Plaintiff shall identify the nature of the which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked;
 - ii. The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information; and
 - iii. For documents: (i) the type of document (e.g., letter or memorandum); (ii) the general subject matter of the document, (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addresses of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addresses, and recipients to each other;(b) Where a claim of privilege is asserted in response to discovery or disclosure, and information is not provided on the basis of such assertion, the information set forth in paragraph (a) above shall be furnished in writing at the time of the response to such discovery or disclosure, unless otherwise ordered by the court.
7. "And" or "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the disclosure request all documents that might otherwise be construed as outside the scope. "Each" shall be construed to include the word "every," and "every" shall be construed to include the word "each." "Any" shall be construed to include the word "all", and "all" shall be construed to include the word "any."
8. "Complaint" means the complaint filed by Plaintiff in this action.

9. "Answer" means the answer filed by Defendant in this action.
10. "Concerning," "referring," "relating," "concern," "relate" or "refer" means and includes: with respect to, referring to, relating to, purporting, pertaining, involving, embodying, mentioning, establishing, evidencing, comprising, connected with, commenting on, responding to, prepared in connection with, prepared as a result of, showing, discussing, describing, analyzing, reflecting, presenting, or constituting.
11. "Person" means all individuals and entities including, without limitation, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, or any governmental body, agency or official.
12. References to the plural shall include the singular, and references to the singular shall include the plural. Any pronoun shall include the masculine, feminine or neutral gender, as in each case may be appropriate.
13. "Plaintiff" means the Plaintiff in this action, **DONALD ZARDA**, as well as his agent(s), or any other person or entity acting on her behalf or with his knowledge and/or authorization.
14. "Defendant" means the Defendant in this action, **ALTITUDE EXPRESS, INC., dba SKYDIVE LONGISLAND**, (hereinafter "Defendant"), including, but not limited to, its directors, administrators, agents or employees.
15. "Social networking site" means any web site that enables users to create a public and/or semi-public profile within the website, and to articulate or generate a list of other users with whom users share a connection. Social networking sites include but are not limited to Bebo, Classmates.com, Facebook, Flickr, Friendfeed, Friendster, Myspace, Smugmug, Tumblr, Twitter, and YouTube.
16. If any responses are withheld under a claim of privilege or work product doctrine, set forth the privilege, identify each person having knowledge or information for which you claim the privilege, and identify each document containing the information for which you claim the privilege, including (1) the type of document, (2) a description of the subject matter of the document, (3) the date of the document, (4) the name(s) and address(es) of each person who viewed the document, and (5) a statement of the basis upon which the privilege is claimed.
17. All Document Requests herein are continuing in nature, so as to require Plaintiff to supplement or amend his responses in accordance with Federal Rule of Civil Procedure 26(e).

DOCUMENTS REQUESTED

1. Produce any and all documentation regarding communication between Plaintiff and Advanced Skin Fitness, its principals, managing partners, and/or employees, including but not limited to letters, emails, Facebook messages, Myspace messages, memoranda and other similarly responsive documentation, from 2005 through the present.
2. Produce any and all documentation regarding communication between Plaintiff and William Moore, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation, from 2005 through the present
3. Produce any and all documentation regarding salary or monies earned by Plaintiff from Advanced Skin Fitness, including but not limited to checks, W-2 forms, financial reports, and other similarly responsive documentation, from 2005 through the present.
4. Produce any and all documentation regarding Plaintiff's ownership interest, employment with and/or work performed for Advanced Skin Fitness, including but not limited to invoices, employee time records, employee agreements/contracts, employee manuals, memoranda, correspondence, and other similarly responsive documentation from 2005 through the present.
5. Produce any and all documentation regarding Plaintiff's ownership of and/or interest in Advanced Skin Fitness, including but not limited to corporate filings, certificates of incorporation, corporate taxation documents, shareholder agreements, partnership agreements, and other similarly responsive documentation, from 2005 through the present.
6. Produce any and all correspondence between Plaintiff and Marko Markovich, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation from 2005 through the present.

7. Produce any and all correspondence between Plaintiff and Marko Markovich regarding Plaintiff's employment with Defendants and his termination thereof, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation from 2005 through the present.

Dated: Bohemia, New York
February 9, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

Saul D. Zabell, Esq.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel: (631) 589-7242
Fax: (631) 563-7475
szabell@laborlawsny.net

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)
COUNTY OF SUFFOLK) ss:

ROBERT GARAFOLA, being duly sworn, deposes and says:

- 1. That I am over eighteen years of age and am not a party to this action.
- 2. That on the 9th day of February, 2011, I served a copy of Defendant's Second Request for the Production of Documents and Defendant's Supplemental Response to Plaintiff's First Request for the Production of Documents, annexed hereto, upon:

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

- 3. *via* First Class Mail at the address listed above, same being the address designated for that purpose, by depositing a true copy of the same enclosed in a properly addressed wrapper in a depository under the exclusive care and custody of the United States Postal Service.



ROBERT GARAFOLA

Sworn to before me
this 9th day of February, 2011.



NOTARY PUBLIC

Rosemary Emrick
Notary Public State Of New York
Lic. 01EM6190848
Qualified in Suffolk County
My Commission Expires 08/04/2012

EXHIBIT B

Counseling and Advising Clients Exclusively on Laws of the Workplace

Z **Zabell & Associates, P.C.**
EMPLOYMENT COUNSELING, LITIGATION, LABOR & BENEFITS LAW

ZABELL & ASSOCIATES, P.C.
4875 SUNRISE HIGHWAY
SUITE 300
BOHEMIA, NEW YORK 11716
TEL. 631-589-7242
FAX. 631-563-7475
www.Laborlawsny.com

Saul D. Zabell
SZabell@laborlawsny.com

February 9, 2011

**VIA FIRST CLASS MAIL &
ELECTRONIC MAIL**

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

Dear Mr. Antollino:

Enclosed please find Defendants' Supplemental Response to Plaintiff's First Request for the Production of Documents. Additionally, enclosed please find Defendants' Second Request for the Production of Documents

Kindly contact me should you have further questions regarding this matter.

Very truly yours,

ZABELL & ASSOCIATES, P.C.


Saul Zabell

cc: Client

EXHIBIT C

Robert Garafola

From: Robert Garafola [RGarafola@laborlawsny.net]
Sent: Wednesday, February 09, 2011 4:57 PM
To: 'gregory10010@verizon.net'
Cc: 'Saul D. Zabell'; 'tdomanick@laborlawsny.com'
Subject: Zarda v. Altitude Express, Inc.
Attachments: 2-9-11 ltr to adv.pdf; 2-9-11 ltr to adv re discovery.pdf; Def's Supplemental Doc Respons.pdf; Def's Second Doc Demands.pdf

Please see attached.

Robert M. Garafola,
Paralegal

Please direct questions
regarding this Email to Saul
D. Zabell

**Zabell &
Associates, PC**
4875 Sunrise Highway
Bohemia, NY 11716

Office: 631-589-7242
E-mail:
SZabell@laborlawsny.com
Fax: 631-563-7475

Please direct all questions
regarding this Email to

Saul D. Zabell

Website: LaborLawsNY.com

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EXHIBIT D

Tdomanick@laborlawsny.com

From: SZabell@laborlawsny.com
Sent: Thursday, February 10, 2011 2:00 PM
To: Tdomanick@laborlawsny.com
Subject: Fwd: Zarda v. Altitude Express, Inc.

Sent from a mobile location

Saul D. Zabell
Zabell & Associates, P.C.
4875 Sunrise Highway
Bohemia, NY 11716

631-589-7242

Begin forwarded message:

From: Gregory Antollino <gregory10010@verizon.net>
Date: February 10, 2011 1:37:30 PM EST
To: "SZabell@laborlawsny.com" <SZabell@laborlawsny.com>
Subject: Re: Zarda v. Altitude Express, Inc.

Mr. Zabell,

In response to your letter, I do not intend to give you an explanation for the amendment, which should be readily apparent with the modified and additional causes of action, as well as the more detailed pleading of facts. Leave to amend is freely given. Let me know your position on amendment: consent or no consent. Based on your representation about the videotape, I intend to clean up those allegations to denote deliberate loss of custody rather than destruction.

As for your bilious letters about discovery, I do not intend to waste time answering them and address each of your frivolous exhortations of form over substance - i.e., the idea that plaintiff must reproduce documents as "kept in the regular course of business." What could that mean for an individual who likely keeps his documents in a box in his closet? I've skimmed your other points and won't be responding. If you want to discuss any individual item that you believe I am withholding, you pick up the phone and call. I don't intend to get into a letter writing campaign so that you can bill your client more and attempt to impress him by cc'ing him lots of letters. If after discussing the items you don't like what I'm willing to do, then you have your recourse.

Gregory Antollino

On 2/9/11 4:57 PM, "Robert Garafola" <RGarafola@laborlawsny.net> wrote:

Please see attached.

Zabell

Robert M. Garafola, Paralegal

& Associates, PC

4875

<blocked::blocked::blocked::blocked::http://maps.google.com/maps?f=q&hl=en&geocode=&q=945+E+Jericho+Turnpike,+Huntington,+New+York+11746&sll=37.0625,-95.677068&sspn=42.310334,82.265625&ie=UTF8&z=16&iwloc=addr&om=1> Sunrise Highway

<blocked::blocked::blocked::blocked::http://maps.google.com/maps?f=q&hl=en&geocode=&q=945+E+Jericho+Turnpike,+Huntington,+New+York+11746&sll=37.0625,-95.677068&sspn=42.310334,82.265625&ie=UTF8&z=16&iwloc=addr&om=1>

Bohemia, NY 11716 Office: 631-589-7242

E-mail: SZabell@laborlawsny.com

Fax: 631-563-7475

Website: LaborLawsNY.com

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Gregory Antollino, Esq.

18-20 West 21st Street, Suite 802

New York, NY 10010

(212) 334-7397

www.antollino.com

EXHIBIT L

Tdomanick@laborlawsny.com

From: Gregory Antollino [gregory10010@verizon.net]
Sent: Friday, March 18, 2011 5:36 PM
To: SZabell@laborlawsny.com
Cc: Tdomanick@laborlawsny.com
Subject: Re: Zarda
Attachments: response_second demand.pdf

Here's the response, which, at your insistence, shall be put in the mail.

GA

On 3/18/11 5:16 PM, "Gregory Antollino" <gregory10010@verizon.net> wrote:

You are right. I did get the email, but this is the first time I am seeing this demand, which apparently got lost in the shuffle of multiple documents in one email, and I don't have a paper copy here. Whatever the explanation, it has been overlooked, and will be responded to shortly. If you want to take the position that any objections have been waived for something I overlooked, you can make that argument to the judge. It seems obvious that you will stop at nothing to protect the bad advice you gave your client to fire mine. That is what is fueling this litigation – justifying your bad advice. Perhaps a disinterested attorney should look at this case with fresh eyes to advise both you and your client as to whether a scorch-the-earth litigation, which is lining your pockets at your clients expense, is the best way to approach this dispute. But that is between you and your malpractice carrier.

For what it is worth, we will have a discussion on the 24th at 230, but I can see now that you don't give in on the slightest formality, so I doubt it will result in any mutual compromise. I will however read your comments and be prepared to discuss them with you then.

GA

On 3/18/11 5:01 PM, "Robert Garafola" <RGarafola@laborlawsny.net> wrote:

Please see attached.

Robert Garafola

Zabell & Associates, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
631-589-7242

www.LaborLawsny.com <<http://www.laborlawsny.com/> <blocked::http://www.laborlawsny.com/> >

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New York, NY 10010
(212) 334-7397
www.antollino.com

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

**RESPONSE TO
SECOND REQUEST
FOR DOCUMENTS**

10-cv-04334-JFB -ARL

Plaintiff, through his attorney, hereby responds to defendants' second request for documents as follows:

1. Produce any and all documentation regarding communication between Plaintiff and Advanced Skin Fitness, its principals, managing partners, and/or employees, including but not limited to letters, emails, Facebook messages, MySpace messages, memoranda and other similarly responsive documentation, from 2005 through the present.

Response: Plaintiff objects on the grounds that the demand is overbroad and seeks documents that are irrelevant to this litigation and not calculated to lead to the discovery of admissible evidence.

2. Produce any and all documentation regarding communication between Plaintiff and William Moore, including but not limited to letters, emails, Facebook messages, MySpace messages and other similarly responsive documentation, from 2005 through the present.

Response: Plaintiff objects on the grounds that the demand is overbroad and seeks

documents that are irrelevant to this litigation and not likely to lead to discoverable evidence.

Additionally, insofar as William Moore was plaintiff's lover during much of this time, the demand is a bad faith and patent invasion into plaintiff's and Mr. Moore's personal privacy.

3. Produce any and all documentation regarding salary or monies earned by Plaintiff from Advanced Skin Fitness, including but not limited to checks, W-2 forms, financial reports, and other similarly responsive documentation, from 2005 through the present.

Response: Plaintiff objects on the grounds that the demand is overbroad and seeks documents that are irrelevant to this litigation and not likely to lead to discoverable evidence. Without waiving this objection, plaintiff will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.

4. Produce any and all documentation regarding Plaintiffs ownership interest, employment with and/or work performed for Advanced Skin Fitness, including but not limited to invoices, employee time records, employee agreements/contracts, employee manuals, memoranda, correspondence, and other similarly responsive documentation from 2005 through the present.

Response: Plaintiff objects on the grounds that the demand is vague overbroad and seeks documents that are irrelevant to this litigation and not likely to lead to discoverable evidence. Without waiving this objection, plaintiff will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.

5. Produce any and all documentation regarding Plaintiff's ownership of and/or interest in Advanced Skin Fitness, including but not limited to corporate filings, certificates of incorporation, corporate taxation documents, shareholder agreements, partnership agreements, and other similarly responsive documentation, from 2005 through the present.

Response: Plaintiff objects on the grounds that the demand is vague overbroad and

EXHIBIT M

Counseling and Advising Clients Exclusively on Laws of the Workplace



ZABELL & ASSOCIATES, P.C.
4875 SUNRISE HIGHWAY
SUITE 300
BOHEMIA, NEW YORK 11716
TEL. 631-589-7242
FAX. 631-563-7475
www.Laborlawsny.com

Saul D. Zabell
SZabell@laborlawsny.com

March 21, 2011

VIA ELECTRONIC MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

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

Dear Mr. Antollino:

We write in connection with Plaintiff's response to Defendants' Second Request for the Production of Documents received at 5:36 pm on Friday, March 18, 2011. In light of the fact the response was generated a mere twenty (20) minutes after you acknowledged prior receipt of the demands, we could not have been surprised by its deficient content and haphazard construction. We were however surprised by your indictment of our firm which precipitated your service of discovery response which is indisputably deficient and untimely. Regardless of your *post-hoc* efforts to rationalize or qualify your failures in discovery, Plaintiff has waived any and all objections and complete responses are immediately due and owing.

After pondering the ever-deteriorating level of discourse between our respective offices and Plaintiff's latest shortcoming in discovery, one can only conclude you are either unwilling to comply with the requirements imposed by the Federal Rules or, in the alternative, are unable to do so. To the extent the answer is found in the later, rather than embark in baseless attacks fueled by unqualified supposition, perhaps you might consider an alternative approach. Specifically, to the extent you lack the necessary resources to respond to Defendants' discovery demands and/or deficiency letters in a timely manner, you would be well served to contact us to coordinate dates certain by which you will respond. As is our practice, should an adversary take such an affirmative step toward compliance, we typically respond in-kind. However, as this litigation has advanced, our willingness to do so has subsided in large measure to your personal attacks and self-styled rhetoric regarding the manner in which this office practices. As unpalatable as the discovery process may be to you and your client, you have yet to cite an instance where we were not in full compliance with the applicable rules of practice. Accordingly, be advised, our efforts to elicit complete discovery from your client will not be deterred by your actions. To that end, we refer to the following deficiencies, all of which must be cured on or before March 25, 2011:



I. Plaintiff's Response to Defendants' Second Request for the Production of Documents:

Request No. 1: "Produce any and all documentation regarding communication between Plaintiff and Advanced Skin Fitness, its principals, managing partners, and/or employees, including but not limited to letters, emails, Facebook messages, Myspace messages, memoranda and other similarly responsive documentation, from 2005 through the present."

Plaintiff objected to this Request on the grounds that "the demand is overbroad and seeks documents that are irrelevant to this litigation and not calculated to lead to the discovery of admissible evidence." To the contrary, Plaintiff's employment history and related communication are relevant to the case at hand: they directly correspond to the measure of and mitigation of Plaintiff's damages. Additionally, in light of Plaintiff's attempt to collect unemployment and Workers' Compensation benefits, the requested documentation will demonstrate any employment Plaintiff may currently or have previously had with Advanced Skin Fitness. Accordingly, Defendants' request is proper and sound. Please provide the requested documentation immediately.

Request No. 2: "Produce any and all documentation regarding communication between Plaintiff and William Moore, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation, from 2005 through the present."

Plaintiff objected to this Request on the grounds that "the demand is overbroad and seeks documents that are irrelevant to this litigation and not calculated to lead to discoverable evidence. Additionally, insofar as William Moore was plaintiff's lover during much of this time, the demand is a bad faith and patent invasion into plaintiff's and Mr. Moore's personal privacy." Preliminarily, the personal privacy of Mr. Moore is not relevant to the case at hand and any concerns he may have should be directed to our attention from his counsel. Inasmuch as William Moore is the clinical director and owner of Advanced Skin Fitness, the requested documentation will demonstrate potential mitigation of Plaintiff's damages vis-à-vis employment with Advanced Skin Fitness. The requested documents also relate to Plaintiff's efforts to receive unemployment and Workers' Compensation benefits. Additionally, as William Moore was Plaintiff's "lover during much of this time," the requested correspondence can also bear on Plaintiff's claim of emotional damages in connection with this action. However, should Plaintiff provide an affidavit stating that he is not pursuing emotional damages in this case, and claims to not suffer severe and lasting embarrassment, humiliation and anguish due to any conduct by Defendants, we will agree to limit the request as follows:

"Produce any and all documentation regarding communication between Plaintiff and William Moore, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation, from 2005 through the present regarding employment, monies received, salary, ownership interests with Advanced Skin Fitness."

Until the receipt of an Affidavit as outlined above, Plaintiff must provide a full and complete response to Defendants' Document Request immediately.



Request No. 3: “Produce any and all documentation regarding salary or monies earned by Plaintiff from Advanced Skin Fitness, including but not limited to checks, W-2 forms, financial reports, and other similarly responsive documentation, from 2005 through the present.”

Beyond Plaintiff’s boilerplate objections, Plaintiff states that he, “will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.” However, Defendants requested documentation from 2005, and not from the termination of Plaintiff’s employment with Defendants. This information is pertinent to Plaintiff’s measure of Damages. Additionally, Plaintiff does not state when Defendants can expect the requested documentation to be produced. Accordingly, Plaintiff must both provide documentation from the requested time period and provide a date as to when Plaintiff will serve same.

Request No. 4: “Produce any and all documentation regarding Plaintiff’s ownership interest, employment with and/or work performed for Advanced Skin Fitness, including but not limited to invoices, employee time records, employee agreements/contracts, employee manuals, memoranda, correspondence, and other similarly responsive documentation from 2005 through the present.”

Again, after boilerplate objections, Plaintiff states that he, “will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.” This response is obviously a careless copy from the previous response to Defendants’ third (3rd) Request and is wholly deficient and unresponsive. Defendants’ request for documentation regarding Plaintiff’s ownership interest, employment with and/or work performed for Advanced Skin Fitness remains unanswered. For an additional discussion, see the above response Plaintiff’s objection to Defendants’ third (3rd) Request. Accordingly, Plaintiff must provide a full and complete response immediately.

Request No. 5: “Produce any and all documentation regarding Plaintiff’s ownership of and/or interest in Advanced Skin Fitness, including but not limited to corporate filings, certificates of incorporation, corporate taxation documents, shareholder agreements, partnership agreements, and other similarly responsive documentation, from 2005 through the present.”

As in his response to Defendants’ fourth (4th) request, Plaintiff states that he, “will produce evidence of his earnings, if any, from Advanced Skin Fitness from the time of his termination from Altitude Express to the present.” Again, this response is a blatant and careless copy of Plaintiff’s response to Defendants’ third (3rd) Request and is wholly deficient and unresponsive. For an additional discussion, see the above response Plaintiff’s objection to Defendants’ third (3rd) Request. Defendants’ request for documentation regarding Plaintiff’s ownership of and/or interest in Advanced Skin Fitness remains unanswered. Accordingly, Plaintiff must provide a full and complete response immediately.

Z Zabell & Associates, P.C.
EMPLOYMENT COUNSELING, LITIGATION, LABOR & BENEFITS LAW

Request No. 6: "Produce any and all correspondence between Plaintiff and Marko Markovich, including but not limited to letters, emails, Facebook messages, Myspace messages and other similarly responsive documentation from 2005 through the present."

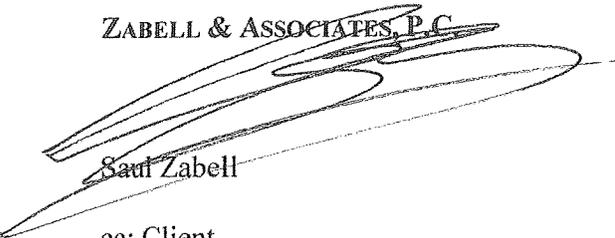
After boilerplate objections, Plaintiff states that he "will conduct a search to see if he has any emails that he has exchanged with Marko Markovich and produce them." However, this demand was not limited to e-mails, but to any and all correspondence, including social networking sites. Inasmuch as Plaintiff has admitted that he was a "friend" with Marko Markovich on Facebook for a period of time in his February 4, 2011 letter to Judge Bianco, it is likely Plaintiff corresponded with Mr. Markovich. Please advise as to when Plaintiff expects to conduct his search for correspondence and when the production of any responsive documentation will be served.

We request that Plaintiff provide full and complete responses to Defendants' Second Request for the Production of Documents within ten (10) days of the date of this letter. Should we not receive complete responses within ten (10) days, Plaintiff will seek court intervention to compel discovery in this matter.

Kindly contact me should you have further questions regarding these matters.

Very truly yours,

ZABELL & ASSOCIATES, P.C.



Saul Zabell

cc: Client

EXHIBIT N

Tdomanick@laborlawsny.com

From: SZabell@laborlawsny.com
Sent: Sunday, April 10, 2011 1:03 PM
To: Tdomanick@laborlawsny.com
Subject: Fwd: Interrogatories

Sent from a mobile location

Saul D. Zabell
Zabell & Associates, P.C.
4875 Sunrise Highway
Bohemia, NY 11716

631-589-7242

Begin forwarded message:

From: Gregory Antollino <gregory10010@verizon.net>
Date: April 8, 2011 5:07:25 PM EDT
To: "SZabell@laborlawsny.com" <SZabell@laborlawsny.com>
Subject: Interrogatories

I deem my supplementary disclosures complete.

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010
(212) 334-7397
www.antollino.com

EXHIBIT O



Donald Zarda Now that Skydive Long Island has fired me following the week long suspension for this unbelievable story the DZO came up with and then recanted after realizing how much he fucked up after talking to his lawyer, it's time to go to work!

June 28 at 5:01pm · Comment · Like



Chris Crawford I see you're still out there spreading the love out there, dude! I think Tom might be a little shorthanded if you want to try and keep up with us. It's a 206, but still gets you to 13k! Later, dude!

June 28 at 5:47pm · Like · Delete



Donald Zarda I'm staying and fighting. This just is getting started!

June 28 at 5:48pm · Like · Delete



Cynthia Becker Go get them!!

June 28 at 6:49pm · Like · Delete



Cathy Robinson Whatever doesn't kill ya (or your spirits), will only serve to make u stronger...!!! Hang in....x

June 28 at 7:52pm · Like · Delete



Calen Chrzan I know you are one tough cookie. Keep fighting.

June 28 at 8:01pm · Like · Delete



Sal Falcone don, search for Stephen Flynn on FB, he's the director of the LI Gay & Lesbian film festival on LI and also a lawyer. If he can't help you, he may have connections that can.

June 28 at 10:25pm · Like · Delete



Donald Zarda Ok, thanks. I have contacted a couple so far. The recording of the firing is interesting. It was easy to tell how much he was coached by his lawyer this week.

June 28 at 11:01pm · Like · Delete

ZARDA000221

Write a comment...

Donald Zarda
 Edit My Profile

- News Feed
- Messages 87
- Other 1
- Events 4
- Friends 174

Elect Scotty Bur...
 Create Group...
 See All

- Photos
- App Requests 27
- Game Requests 18
- More »

Friends on Chat

Joanne Maynard Search Results Actions Search This Conversation

Joanne Maynard help October 28, 2010

Joanne Maynard ray October 28, 2010
 dear donald
 as you know ray and i are divorcing, 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

Donald Zarda October 31, 2010
 Hi Joanne, thank you for contacting me about this situation. I regret your involvement with Ray has ended up poorly as has mine. This is a sensitive case I'm sure you understand and as with any pending litigation, there's not much I'm allowed to say to anyone without speaking with my attorney first.

I am not at all surprised by your remarks about Ray's behavior towards me. I felt it all along as you might imagine working alongside him daily, but I honestly felt that he could remain grounded enough to keep our relationship business first. Unfortunately, that didn't happen.

If it is possible, my attorney would like to contact you or I can give you his contact information if you prefer.

Thank you for coming forward and I am truly sorry to hear about what you are dealing with as well.

All the best,
 Don

Joanne Maynard October 31, 2010
 dear Don
 I have a feeling that anything i would say would not be taken seriously due to my law suite with ray. i just wanted you to know that there was negative feelings made by him. Ray tells everything to everybody, so i am sure someone else at the drop zone has heard his remarks. 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. also spreading the word to keep you from getting another job is awful, but that is what drop zone owners do. I wish you luck, and I am glad you just did not let this go. Ray thinks he is better than everyone else..... joanne

Donald Zarda November 9, 2010
 Hi Joanne, I appreciate your concern and communication with me about what is happening. My attorney has asked that I relay you this message:
 Dear Joanne,
 I am Don's attorney and he has let me know that you contacted

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 Joanne Maynard isn't using the new Messages yet.
 Invite Joanne to Upgrade

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Bucket List
 groupon.com
 365 Things to do in Kansas City before you die.

- Alex Funk
- Tim Heaton
- Steve Carrico
- Chris-Alexander N...
- Brian Yuen
- Aja Niemann

...as a direct witness. First, information you provide could lead to the discovery of information from other witnesses that we may not find out about. Second, the fact that you have a dispute with Ray is a factor that would be weighed in considering credibility, but it is only that, a factor. Truth is filtered by experience. Just as you have a dispute with Ray as Don does, employees that Ray's attorney is likely to line up to testify for him (or against Don) may have their own agenda - they want to keep their jobs. Moreover, along that line, it is not the case that people in the workplace are going to line up and tell a story about what Ray said about gay people. They would fear exactly what Don suffered - loss of their job and blackballing within the professional skydiving community for suing a drop zone and alleged inappropriate behavior.

What is most important is that the truth be aired. Don is a victim of homophobia; it is not exactly the same as bullying on the playground, but its effects are perhaps more far reaching and will affect Don's livelihood and career. This is completely unjust and you've made it clear that you agree. Your involvement in this lawsuit will NOT be extensive, but Don is entitled to the truth. Please let me know when it would be convenient to meet and discuss what you know about Ray's biases and what went on at the drop zone. I live and work in Manhattan but would be willing to meet you wherever it would be convenient.

Sincerely,

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010
(212) 334-7397



Joanne Maynard

February 9

dear donald
i recently received a notice from rays lawyers that he had copies of the original emails i sent you , i was wondering how he got copies of the facebook messages i sent you. i have told you that i was unable to help you. are your and ray friends again. don i will never be able to help you. ray is trying to destroy me



Joanne Maynard

February 10

once again donald, how did ray get a copy of the email i sent you. did he hire you back. i will pursue this , you had no right to give him that email. i told you i could not help you. now you will be involved in our case



Donald Zarda

February 17

Joanne, I'm sorry, I can't talk. I been unavailable to respond lately. Also, basically, on an impromptu gag order.

I should not be replying to you now but the notion that you are questioning any resolution with Ray or that i am working for him again is disquieting to me that you have had to think this for awhile as this not the case whatsoever. You can can't on that.

What he did was sickening, discusting, illegal and morally reprehensible a person of business or character and professionalism. He must be held fully accountable for his actions.

By law, any communications were required to be turned over as part of the discovery process demanded by his side and atty.

This email reply, I'm sure, will end up coming back to Ray's lawyer through these proceedings. That is all I can say but I don't like you thinking that I would "make up" or ever consider any relationship with him or work for him again.

I hope this helps ease your concerns and that he ceases threatening you and intimidating you. The judge in my case was notified about this, and in paraphrasing, that "any witness intimidation would be dealt with severely."



Joanne Maynard

February 17

donald
thank you for letting me know what happened. i was thinking you and him made up, he hired you back and you gave him the email to use against me. i also have signed a confidentiality agreement . i have no intention of saying anything about him or his business to anyone. i want my case settled as soon as possible so i can move on with my live. this whole thing is very distressful and anxiety provoking.



- Donald Zarda**
Edit My Profile
- News Feed
 - Messages **85**
 - Other **1**
 - Events **4**
 - Friends **174**
 - Elect Scotty Bur...
 - Create Group...
See All
 - Photos
 - App Requests **27**
 - Game Requests **18**
 - More =

Friends on Chat

Michael Gamble

Search Results Actions

Hi! Are you in the KC area?

Donald, I didn't mean to be presumptuous with sending you a friend request. I did see your posting related to Steve Harrington's passing some time ago, and, noticed you were in the KC area (I think.)

Do you jump frequently? I'm in KC occasionally, and always look for a chance to jump. A former coworker of mine has been in KC for some time, but, I think he may be moving after a company change... We always swore we would jump together, but, I never pushed the issue and made it happen. He is Tony DiCola (aka Donk) if you know him.

Anyway... Hope to jump with you soon. I am SO ready for warmer weather.

-Bluez
Michael

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Donald Zarda January 8, 2010
Request

Hi, in an effort to not be dis-ingenuous, please refresh me on how we met. I don't want add people if I don't know who they are or how we're connected and then feel embarrassed when I meet them somewhere later. I got your message, please expound further.

Sincerestly,
Donald

Michael Gamble January 8, 2010

Donald, please disregard my friend request. It was not the most appropriate way for me to contact you.

I'm looking to build skydiving connections in the Kansas City area. I first heard of you when you posted an item related to Steve Harrington's incident. I looked to see who you were, and I noted that you were Facebook Friends with Mark Rejhon and Chris Chrzan, and thought I saw that you were in KC. I'm in St. Louis.

So, it is a convoluted path that I took to this point, and, I apologize for the confusion. We have not met before that I am aware of. Please disregard the friend request.

May I ask though, do you know Tony DiCola?

Thank you and have a great day!

Donald Zarda July 21, 2010
Rainbow Skydivers

Michael, Mark R. mentioned you as more of a spokesperson in RS for me to talk to about a recent happening to me at a DZ in NY

Alex Funk | Tim Heaton | Steve Carrico | Chris-Alexander N... | Brian Yuen | Aja Niemann

Sure, I can be available later today to talk. I host a conference call until 430 Central today, but, can be available after that.

I'm reachable at 636-395-0123 (google voice, which may ask you to say your name the first time you call it) or I can call you. Your choice.

I'm assuming this may be regarding the situation you had as a tandem instructor and the bad situation around that?

I'd be happy to do anything I can to help you.

-Michael

Michael Gamble July 22, 2010



Donald, I'm sorry I missed you today. I have houseguests in until tomorrow evening. May I call you tomorrow evening?



Donald Zarda

Please. This thing just got way worse today. Un-believable. I am being raked of the coals from all direction. about to just say fuck skydivers and skydiving and write off as bunch of biggots.



Michael Gamble

Finally my unexpected houseguests are gone. What's the best time to call today?



Donald Zarda

Michael, I just got in from the gym. I'll be around all evening as I have a homework assignment due. Probably around 9PM EST. Is that good?



Michael Gamble

Absolutely. I promise I will call then.



Michael Gamble

Don, I will have a draft together tonight. I hoped to have it ready quicker, but, this has been a hell week for me. My objective is to have the question out by the weekend.



Donald Zarda

Thank you greatly.



Michael Gamble

Don, I just sent a draft to Mark. I really want his buy in. I hope I didn't write something too vanilla, but, I wanted to get it past Mark. I will let you know ASAP if he is cool with it and get the draft to you.

Did you know this?

http://www.nj.com/news/index.ssf/2008/10/appeals_court_refuses_to_set.html ?

Lastly, Kirk did not come in to jump with us this weekend. I did talk to Gary Peek (Regional Director) to feel him out related to Rich. He was aware of him, but, didn't know much.



Michael Gamble

Don, is there an email address where I can send you a draft as an attachment?



Donald Zarda

Michael, yes, it is djzarda@gmail.com. I actually saw Rich for a moment Friday at SDLI. I had to get a signature on my renewal form in order to jump at The Ranch because I was expired. I was in and out in 5 minutes there. People were nice but it felt awkward.

And wow, no, I never heard anything about that case. Interesting. You just never know if people are in wrap or trying to beat one, I guess.



Donald Zarda

Michael, I looked at the draft. I would like to talk about it. Do you have any time soon?

I just made some arrangements last minute to go to Norway in 16 days to jump off those cliffs, hopefully in my wingsuit: since SOMEHOW I'm off work in the middle of the season and would never get to be off during the season to do this otherwise.



Michael Gamble

Don, yes, I've got windows of time today... just working on support issues for customers, with only 2 scheduled meetings.

Crazy how stuff works out... That would be one of those once in a lifetime type trips for me! I hope you are able to pull it off!

Donald Zarda

it's happening. Gawd I'm an so anxiously excited at prospect of



flying my wingsuit off a cliff i can't think!



Michael Gamble

Hope you are well!

Happy New Year Don!

I'm hoping for you that things have settled a bit. I'm so curious... did the truth ever come out regarding the SDLI incident?

-Michael



Donald Zarda

Thanks, you too. No, not at all. The mudslinging is beginning. The lawsuit is going to be ugly. Ray is fighting it, of course. He is the worse, worster, worstest person in the world! My lawyer is determined to win though. I think it will go to trial.

I feel pretty isolated right now and am seeing just how cowardly people are. People will sacrifice truth in a second for their own personal interests. We are in the discovery phase at this time. Ray's wife he is divorcing did contact me though by email and stated directly to me that Ray in fact dislike my sexual orientation and talked about me negatively often during their marriage.

He has since threatened her. Keep this private please.



Michael Gamble

I promise you I will keep it private! He does sound horrible. Sounds like he is melting down all over... This. now a divorce. What a creep.

Are other T1 jobs staying away too?



Donald Zarda

i haven't looked. I just did some part-time tandems in texas since. I have been completely bogged down with school since i returned from all my trips and from Perrine in Nov. in fact, i have not even unpacked any from the summer or my suit cases. it takes all of my time in these accelerated classes. I must get these done a week early which is even worse to go on the that largest gay cruise ever on the new allure of the seas feb. 6th. then after, new term of school for 11 weeks. then Norway for base umping for a month. sometime over winter, i have to go to NY for first round of depositions.

i am concerned somewhat about finding work FT this summer. I am going to put some feelers out. if i get rejected, it will help my case even if they don't say why since i have always been able to get work easily previously and instructors are in demand.

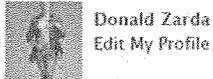
i may take summer off. skip a month of school in june and keep on trucking through school after norway, as long as i survive all that madness ok. full speed to get done sooner and just say screw skydiving and only base jump. i plan on being in norway for at least a month, maybe more instead of working and taking a school term starting in july for 11 weeks class since i doubt ill get hired anywhere while this is going on.

the dzo conference is coming up in feb. at PIA. i got a cpl ppl to keep their ears and eyes open in case that asshole is there talking shit on me.



Search

Home Profile Account



Donald Zarda
Edit My Profile

- News Feed
- Messages 84
- Other 1
- Events 4
- Friends 174

- Elect Scotty Bur...
- Create Group...
See All

- Photos
- App Requests 27
- Game Requests 18
- More

Friends on Chat

Mark Rejhon

Search Results

Actions

Search This Conversation

Loading Earlier Messages... (29)

Mark Rejhon June 30, 2010
 How it benefits me: Turn more gays into potential licensed skydivers... How it benefits DZO's: More tandem profit...

Donald Zarda July 13, 2010
 Mark, a process has begun. I must remain tight-lipped at this time. It's going to be a long one but it is necessary and absolute.
 When is your boogie at X-Keys? I am definitely off-work now. I may be going to Dallas to work for a weekend in 2 weeks though then back to Long Island.

Mark Rejhon July 13, 2010
 Understood. Good luck to whatever proceedings may go on for you....

As for Cross Keys, go to:
<http://bit.ly/RainbowBoogieInvite>
 It's the last weekend of August, a Thurs-to-Sunday timespan.

If you do decide to go, methinks tandem instructor roster is full already though but you are welcome to hang out!! I have a possible carpool from Manhattan on offer, if needed. (Jim Bifodeau and Andre Van Heerden)

Cheers,
Mark Rejhon

Donald Zarda July 13, 2010
 Ok, thanks anyway on a ride but I have my own vehicle. I have several friends that did not get to jump here last year because I got hurt and were going to jump with me at SDLI this year until this happened.

I mentioned I would see about your event since they are all NYC based but if they can't jump with me, they will just either not jump or try again on the Mexico cruise this year.

Mark Rejhon July 13, 2010
 No worries, feel free to show up!

Saturday is the must-not-miss day, including the sunset load underwear jump tradition, followed by the hangar party.

Cheers,
Mark Rejhon

Donald Zarda July 16, 2010
 I will consider it. I am still uncertain about my satisfaction of the answers we were given regarding my treatment there a decade ago. I would have to witness a different experience in order to put that to rest fully.

Back when you were looking into X-keys and I told you of the

- Alex Funk
- Tim Heaton
- Steve Carrico
- Chris-Alexander N...
- Brian Yuen
- Aja Niemann

name. Remember, I never worked there. I don't even think I made a jump. I was just inquiring then which was now 11 years ago when that treatment happened.

You mentioned wanting to see if I would be available to do tandems before last year's event to which of course was not possible due to my employment obligation alone here at SDLI aside from getting injured later. Was that something you thought of and had asked about or discussed with people in charge at X-keys?

According to my attorney, I have a responsibility to during this time attempt to mitigate my losses I am experiencing which means at least look for alternatives during the remainder of the

Invite Friends

Mark Rejhon isn't using the new Messages yet.
 Invite Mark to Upgrade

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Bucket List
 groupon.com



100 Things To Do In Kansas City!

ZARDA000175

season that are accessible. This will strengthen my case particularly if there are no possible work alternatives. Rather I am able to do anything at your boogie either way is fine. My inquiring is enough however. if I can not, I would like to get an official response to that.

Depending on my schedule around your boogie time, where I may be possibly just working some pick up boogies, the only way I might consider just coming to the boogie for a day is if I decide to go for a day in next couple of weeks and see if I like the vibe there or if doing any tandems at your events exists. I mostly am concerned with taking my gay friends on tandems since they have been denied twice now up here by some issue. I must say at this time, I am very uncertain about my feelings towards NE drop zones altogether despite my 18 years of experience traveling coast-to-coast. To be experiencing this treatment in typically "blue" states having spent most of my time in stereotyped "red" homophobic states never having anything like this happen is quite ironic and disturbing to me.



Donald Zarda

TelCon

Mark, is there a way to talk on the phone? I would like to update you as you requested on what is happening.

I would also like to know if Rainbow Skydivers would have any interest in fighting for equality. I am finding out very quickly who my friends are in skydiving after all these years. It seems some even knowing what the right thing to do is are too scared to get involved because of fear of reprisals in this small community.

This problem could not have happened at a better time or place to come up now. The only other person who knows the details of this case besides the DZO is the S&TA here who vowed to advocate for me during the week I was on suspension. He claimed to have done so when he emailed last.

The reason this is important now is because this person is running in Nov. for high office in USPA where every members votes count regardless of conference as it is a board position. The candidate knows all the details AND truth as I involved him immediately when this happened. The question is will he decide to cover for the DZO on this while running for BOD? Or, if details of this come out before, what will his position be on an issue like this on a political front in USPA? I hope you see where I am going with this. 230 member votes could easily swing an election for a board member!

Don



Mark Rejhon

Hey Don,

Sorry about my delay. As you noticed in my Facebook, I am still in the middle of an intercity move.

As for telephone, I use Michael Gamble as my phone guy for Rainbow Skydivers. You can talk to me at about a reduced speaking speed through a relay operator typist (Wikipedia "Telecommunications Relay Service" for more info). It's way more efficient to talk to me by instant messaging. I have MSN, Yahoo and Google Talk.

If it came down to it at the appropriate time then perhaps, a carefully worded statement might be in order (but I don't even know where to find one that would understand our beast of a group: Rainbow Skydivers currently does not have a lawyer yet. We are still very much a grassroots / loosely knit worldwide group, and prefer to stay that way). Presently, I am leery of being personally involved in politics as many are, but you got a good point. It is something I pretty much essentially need to figure out. Also, of the 230, only about 150 are licensed, about 100 of them USPA. However, that still swings an election. Even myself, I am Canadian and not USPA. Bear this in mind I could be accused as a foreigner meddling in American affairs. However, Michael Gamble is USPA. Lots of other gay AFF's that I know of too. Gay DZO's, and a few gay-staffed DZ's. They would have considerable pull on related staff, methinks.

That said, I'm short in time right now -- did you get a response to my previous message before this one?

Mark Rejhon

ZARDA000176



Donald Zarda

Thanks Mark, I did read your email of last Tuesday and made a long reply Friday. Be best for you to refer back to that email subject Gay Discrimination.

I seen Mike Gambles name fly by a few times somewhere over the past year. I would talk with him.

I understand your concerns. I am not looking for a lawyer from Rainbow. I have representation. I would like to have some backing. This is a tough choice for me as I could just walk away from the whole thing but I cannot. This is way too wrong and should not go unchallenged.

I think there needs to be some prescedant established about how gay jumpers and instructors are treated. My being of an especially unique case as a TI that is involved in the intimacy that is a tandem jump arrangement.

I do not think there is a risk to be concerned about regarding meddling. Further, I tend to think based on postive experiences had being out on the DZ most of my jump career that the action taken at SDLI is not the norm even in more homophobic areas and will not be received well by the jumping public. if and when the appropriate time comes for a statement, I think it would strengthen the group.

My attorney has left me with the option of going public with media at any time and has suggested I think about the ramifications both ways before doing so as there is no rush. We are at the beginning stages and this could take a year. I think I to want to go public but not at this stage. We are at the EEOC filing stage seeking the right to sue letter for filing a suit in federal court. It is at that time I'd like to notify every media outlet on the planet.

For the moment, before shit really hits the fan when SDLI gets the complaint, I'd like to focus on this board candidate and his election bid coming up. I think USPA and this candidate will want to try to avoid this issue at all costs and I think it's time to call some people out on the carpet. Both myself and the SDLI DZO involved this guy in the middle of it all and he knows plenty. Unfortunately, our organization (USPA) it's no secret is quite corrupt.

I'm laying in bed typing all this crap out on this tiny iPhone keyboard. I have shitty FB chat and I never use it but I think AIM on my Mac maybe.

Your thoughts?

Don



Donald Zarda

Mark, that didn't take long. Someone has already tried to trick fuck me here on employment elsewhere. I have no idea who. It's too small of a sport and anyone could have said shit.

ChicagoIand in Hinckley, IL denied me employment despite have received good feedback about me because they heard I was suing SDLI.

I don't know where to turn now. I do know that this guy at SDLI running for BOD needs to be put under the microscope now before the election and needs to tell the electorate what he will do to combat discrimination in the organization I think.



Mark Rejhon

Donald --

Damn. Career change time for you? Let me know if you decide to go public - send me links - and I'll tweet and facebook to my audience about it as well. "Before you vote SDLI members for USPA BOD. please read these links..."

Lemme know ASAP.

Me: still overloaded with unpacking. to the point I am even overdue on the RainbowSkydivers newsletter.



Mark Rejhon

Your Facebook photo

Hey.

ZARDA000177

You have to upload that photo to the Rainbow Skydivers Facebook album sometime. Or give me permission to upload that one!



Donald Zarda

Go ahead and use it if you want. I have a full quality version. Did Michael send that letter yet by chance?



Mark Rejhon

Yep - I've approved of Michael handling these matters (he's better than I am at this!). He should have sent by now. I'll confir with him.

Even though you are in Norway and aren't able to come (lucky you...I've always wanted to jump off norway cliffs) we'd love to have you as a pin-up too on our Rainbow Boogie "who's who" board (about 30 to 40 photos). You've probably heard about last year's. You're probably the most photogenic so far.

If you'd okay, email the original photo to rainbowskydive@gmail.com ...



Donald Zarda

Current events

Mark, how did your boogie go? I was in Norway as you may know. I have some questions about the situation I'm in. I think the contact with Rich Winstock was good. He ended up cc'ing me on all communications as you may have seen. I still have some reservations about him but I do think that what we did was a net positive for everybody and the group.

I would like to talk with some of those DZO's you mentioned that are gay friendly about my situation, maybe work next year or just to get a perspective on how to battle resistance to hiring me over suing SDLI for the way their illegal firing of me.

Don



Donald Zarda

Gay skydiving teacher is suing his former company because he claims they fired for sexually harassin

well it's out there now. google "gay skydiver fired" suit was filed 4 days ago.

i guess michael gambie de-friended me and won't return my calls. what is going on? is Rainbow skydiver backing SDLI now for some reason??



Gay skydiving teacher is suing his former company because he claims they fired for sexually harassin
www.nypost.com

A skydiving instructor who joked with a female student that he couldn't be falling for her because he's gay has filed a discrimination suit, claiming he was outed to her because of the quip

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Mark Rejhon

I have no idea what the situation is between you and Michael Gamble. As far as I know, we're neutral over this. I hadn't heard anything on this topic since the reply a few weeks ago. It might be he simply just became tired of dealing with drama (in general) or didn't want to be involved legally with either side.



Donald Zarda

Ok



Mark Rejhon

I will at least confirm this is the case. I do not want Mike involved with SDLI either.



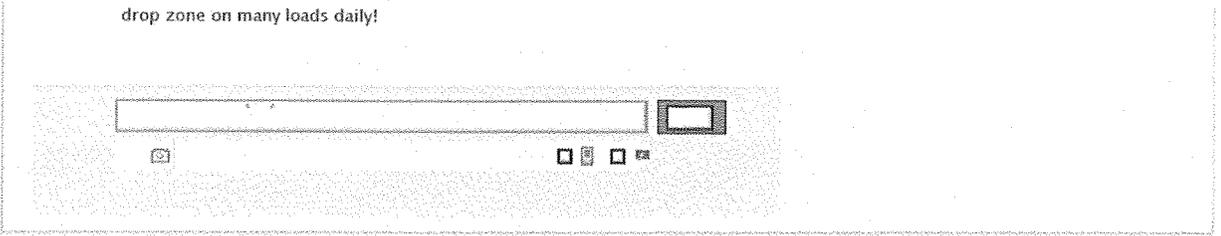
Donald Zarda

Ok. I just feel like some people are pushing out when doing the right thing gets tough. It is B.S. to hear SDLI's lawyer says, referring to Ray owner of SDLI,

"He also denied that other instructors have made joking sexual comments to students." when that happens at literally every

ZARDA000178

drop zone on many loads daily!



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Rich Winstock

August 23, 2010

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Hello

Hey Don,

I hope all is going well with you. I received a letter from Michael Gamble the other day and I responded to him. I guess he is involved with Rainbow Skydiving. I included the email below from him and my response. I just wanted you in the loop, because I respect you and do not want to get into a conversation behind your back. Again my friend I hope all is well. Read the emails from the bottom up... Sounds like a good organization not to mention I could use the 200 votes for National Director. LOL help me out..

Be Safe,
Rich

Rich, I sincerely appreciate you taking the time and interest to write back. On a personal note, I bet we would find our political thoughts line up more than one might think. My "community" as some may call it tends to be one of sheep, and follow blindly. That is not me at all. I'm also fiercely independent. This is why I describe myself as a Constitutionalist Libertarian. I support USPA for that very reason. It is our mechanism to self regulate, and limit governmental regulation.

I truly was not aware of legal actions. I understand your situation if you have heard that.

I will pass on your sincere words. Also, I know Philly is not your backyard so to say, but, please know you are welcome. NSL will be working on 20-ways that weekend there too.

Thank you Rich!
On Mon, Aug 23, 2010 at 8:13 AM, Rich Winstock <RWinstock@encorenationwide.com> wrote:
Hello Michael,

I appreciate your time and effort. Members who show a sincere interest in the betterment of our sport is exactly what keeps it moving forward. I did take a moment and browse through Rainbow Skydiving's Facebook page and was impressed at your grassroots movement. Keeping my political views objective and on the side, I am not a very big proponent of government regulation. With that being said, I have a sincere respect for all viewpoints and will always vote to keep the right for all voices to be heard. My platform for USPA National Director is slanted towards regulation in the Safety and Training arena, specifically ratings and their requirements. My background is from the point of view of a Safety and Training Advisor as well as a Chief Instructor. You can read a bit more about my personal experience at my web site www.richwinstock.com. I take serving on the board of directors extremely serious and would welcome any dialogue with you and/or your group.

In reference to any incident that took place at Skydive Long



with me and I wish him luck and safety in the path that he chooses to pursue.

In regards to your event down at Cross Keys, my schedule is fairly hectic at the moment with Saturdays and Sundays being devoted to skydiving and attempting to make a few extra dollars for my family. As the event comes closer, if we can keep an open line of communication, I will advise you if I can swing down there.

I hope I have addressed your concerns and can be looked at as a member of the skydiving community that does care.

Kind Regards,
Rich Winstock
Safety and Training Advisor
Skydive Long Island (Calverton, NY)

Chat (28)

ZARDA000180

Richard Winstock
Director of Business Development
Encore Nationwide Inc.
2980 Columbia St.
Torrance, CA 90503
P: 310-357-2848 (Ext. 1202)
C: 310-750-7767
Emergency Line: 310-944-2082
Rwinstock@encorenationwide.com

From: C. Michael Gamble [mailto:c.michael.gamble@gmail.com]
Sent: Sunday, August 22, 2010 8:28 PM
To: Rich Winstock
Subject: Rainbow Skydivers Introduction -USPA BOD Election

August 20, 2010
Rich Winstock
rwinstock@encorenationwide.com

Dear Rich,

My name is Michael Gamble. I'm a Skydiver from the Midwest, in the St. Louis area. I hope this finds you well!
I've taken a real interest in USPA, and with a group that I am a member of, the Rainbow Skydivers. I've had a very short skydiving career to date, getting started in the sport much later in life than many. That being said, I have had profound and substantial impacts on my life from skydiving, and most all have been positive!

For a bit about the Rainbow Skydivers. We are a group of Gay Skydivers, with a loose membership of more than 200 from the U.S., and several more from around the world. We are seeking to promote the sport overall, and within our community.

All Skydivers know that Skydiving can be a sport where we all tend to speak out, and speak our mind. We'd love to hear your views, and how you would shape USPA with them. Therefore, I'm reaching out in an effort to learn more about those who want to represent skydivers within USPA. Is there a message you would like sent to our group? Do you have any thoughts on growing skydiving in general that you would like to share? Likewise, do you have thoughts about gay skydivers and promotion within our community that you would like to share or offer your perspective on? How would your position, if elected, in USPA benefit gay skydivers?

We have heard, with some concern, of a situation with one of our members and his employment at Skydive Long Island. If you wanted to address anything related to that, we would also welcome the opportunity to communicate that to our members for you. It is an opportunity to have open and frank conversation which is really a great way to get in front of the conversation, and prevent the spread of hearsay which may not tell the whole story.

In addition, I would like to inform you that we are holding an annual event at Skydive Cross Keys on August 26-29th this year. There are over 60 skydivers already confirmed, with more than 100 more possibly attending. We will have jumping with newly licensed skydivers through skilled skydivers jumping big-way, free flying, and wingsuits. There are also dozens of first time tandem students from the gay community scheduled. We invite you to visit, meet us, and speak face-to-face if you would like. Please let me know and I will make sure we get a chance to talk. I truly appreciate your time!

Sincerely yours,

Michael Gamble
C-38226



<http://www.richwinstock.com/>
www.richwinstock.com

Hi Rich, My name is Rich Winstock and I work for the custom region (New Jersey) I would be developing a website to help educate the public on the skydiving community. It will also help my fellow skydivers for National Skydiving in the United States. Glad to hear you are in the area. I'll be in the area soon.

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Mark Rejhon

Need to help fellow gay Tandem Instructor friend who got suspended (gay discrimination)

Hello all,

See attached message below;

A fellow Facebook friend of mine, a tandem instructor, who is also a member of Rainbow Skydivers, need some help. I know some of you are more knowledgeable about these legal matters than I am, can you reply to this Facebook email for me and give some tips? So much appreciated,

Thanks!
Mark Rejhon

From: Donald Zarda (on Facebook)
Subject: Gay Discrimination

Mark, I have been seriously violated by the DZO here at SDLI. Do you know any organizations I can contact immediately for help? He has directly used my gay status against me in suspending me claiming that a customer was offended by it and what's more, the customer was a a couple, bf and gf. I took the GIRL, not the guy. The DZO f'd up his story by saying the girl says I inappropriately touched her which is BS. How a known at this time gay guy does this I do not know. He refuses to let me see the videos saying they are irrelevant. He has suspended me for one week and refunded both the girl and the guy their tandems and their videos and has charged my paycheck for the full cost (\$750).

I think there has to be a law broken here. The DZO never asked any other people in the pane if they saw/heard anything, nor checked with me before throwing me under the bus. He just did it. I have always known Ray is a homophobe but me making him money has always been more important.

I get harassed all the time by everyone at work about being gay but not in any kind of ugly way, just jokingly and it never has bothered me so it comes up alot.

I need help. I would love to sue his ass and embarrass him in the community at this point.

Don



Jeff Prystajko

I would contact lambda legal, they'll be best prepared to offer legal advice.

June 23, 2010



Mark Rejhon

Gond advice but any skudivers with expeience with them? A

June 24, 2010

Text input field

Icons for adding photos, videos, and links

Alex Funk

Tim Heaton

Steve Carrico

Chris-Alexander N...

Brian Yuen

Aja Niemann

Donald Zarda

If Don is considered an employee, and not a contractor of the DZ, then, I would believe this to be an employment issue. I am certainly not a NY Employment Attorney, but, it seems reasonable.



Donald Zarda

I returned from suspension today and the DZO did exactly what I expected. He fired me. He back peddled on his story moving it away from a "gay" issue to a "personal" issue. He said he spoke to his attorney and that was his decision. He obviously realized how wrong it was what he did and this is why he went back. He also did withhold from my check the full price of 2 tandems with video. At firing he returned the money in a separate check. Again realizing he broke the law after speaking to attorney which is

June 28, 2010

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ZARDA000183

why he gave the money back. I do have the proof that he withheld the money though but now he has made whole on it by returning it. It looks obvious though.

He still maintains that I inappropriately touched female passenger about the hips under canopy. He now says everything happened under canopy where there are no cameras and was just me and her. He did charge me for 2 videos when he took the money out of my check. There was video based on that but I can't see it and the manifest refuses to verify it. I doubt the camera guys will risk their jobs to get me a copy as well. The video can only prove that nothing happened during video and that the couple were smiling and having a good time the entire time which is why he does not want me to see or have it. He claims that I ruined the couples birthday present and that they can never recover from this experience. I taped the firing where he reiterated that this was not a gay issue firing. Clearly his lawyer speaking. I only wish I had the initial discussion on tape but didn't see this coming. Got him to admit that the complaint came on Monday, 3 days after the jumps and after I worked all weekend. He suspended me within a few hours of complaint with no investigation whatsoever. He continued to say I will not talk about it anymore. It's done. You are fired.

I don't know exactly how to proceed with not having the evidence from the initial suspension. I am in contact with an attorney and Lambda Legal. It will be very expensive and lengthy. I need to sue him and have as much come and as possible of it and get as much publicity as possible. He is calling my bluff I think that I won't do anything.

This is wrong on so many levels. I need SDLI brought to justice.

From: Facebook <notification+yyremwyn@facebookmail.com>
Subject: **Marko Markovich commented on your photo.**
Date: October 27, 2010 8:39:17 PM EDT
To: Donald Zarda <facebook@donzarda.com>
Reply-To: Reply to Comment <c+209lu7c000000qhdre6070000jxjstztn000000qhdre60000000000001mn09@reply.facebook.com>
▶ 1 Attachment, 387 KB

Marko Markovich commented on your photo

Marko wrote:
"gay"

Reply to this email to comment on this photo

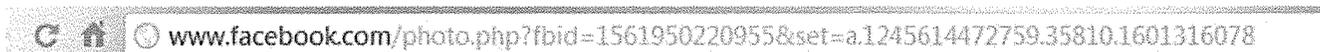
To see the comment thread follow the link below:

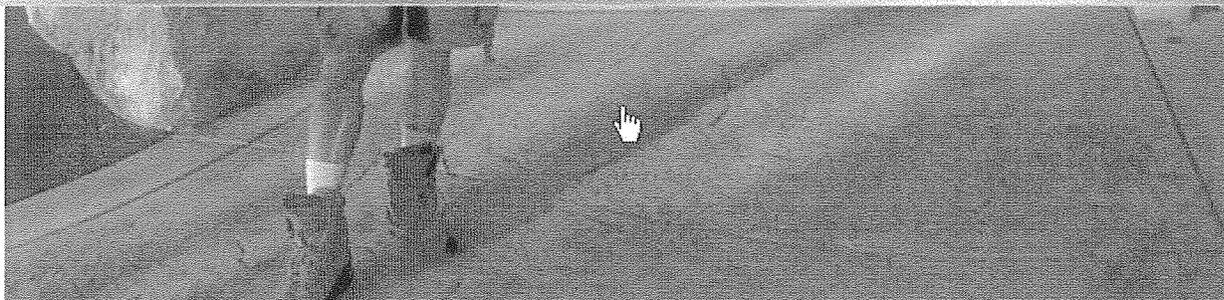
http://www.facebook.com/n/?photo.php&fbid=1561950220955&set=a.1245614472759.35810.1601316078&mid=332c363G5f7224eeG1c4ca19G9&n_m=facebook%40donzarda.com

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Finishing nice day at Elsinore. One jump on a prototype Vampire V4, (V3.5) I guess. Bitch is wicked fast and smooth and some PF track'n pants. Now I know how those are supposed to feel for next BASE trip. The end of the trip, boooo.

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Mobile Uploads

Uploaded via:
Facebook for iPhone

Added October 27, 2010 · Like · Comment

 **Marko Markovich** gay
October 27, 2010 at 6:39pm · Like

 **Donald Zarda** :-) Yup!
October 27, 2010 at 8:15pm · Like

 **Donald Zarda** Oh, you mean on my "personal escaped" as I heard that term to mean my sexuality as a "personal escapade" from some person who shall remain nameless?
October 28, 2010 at 3:09am · Like



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Raymond A. J. J. J.



Donald Zarda
Standard brief of incident

June 28, 2010

I have been seriously violated by the DZO here at SDLI. He has directly used my gay status against me in suspending me claiming that a customer was offended by it and what's more, the customer was a a couple, bf and gf. I took the GIRL, not the guy. The DZO f'd up his story by saying the girl says I inappropriately touched her which is BS. How a known at this time gay guy does this I do not know. He refuses to let me see the videos saying they are irrelevant. He has suspended me for one week and refunded both the girl and the guy their tandems and their videos and has charged my paycheck for the full cost (\$660).

Messages

I think there has to be a law broken here. The DZO never asked any other people in the plane if they saw/heard anything, nor checked with me before throwing me under the bus. He just did it. I have always known Ray is a homophobe but me making him money has always been more important.

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He still maintains that I inappropriately touched female passenger about the hips under canopy. He now says everything happened under canopy where there are no cameras and was just me and her. He did charge me for 2 videos when he took the money out of my check. There was video based on that but I can't see it and the manifest refuses to verify it. I doubt the camera guys will risk their jobs to get me a copy as well. The video can only prove that nothing happened during video and that the couple were smiling and having a good time the entire time which is why he does not want me to see or have it. He claims that I ruined the couples birthday present and that they can never recover from this experience. He suspended me within a few hours of complaint with no investigation whatsoever. He continued to say I will not talk about it anymore. It's done. You are fired.



Ori Kuper

June 28, 2010

from what you say he never really liked you, and this time was just an excuse for him. did any of the customers talk to YOU too? or they just talked to the office? or to management etc? as you know (or maybe you only now know?) customers can be sometimes bitchy. most of the time you can tell that when they are still in the dz. some other times - only after they send a bitchy email to the dz... what did you do/what did you adjust under canopy, that could have felt to her like touching? i really don't know what to tell you (other than the fact that i'm sure you didn't touch HER... fucking women...)



Donald Zarda

June 28, 2010

you nailed. no customer ever talked to me. i don't even know who they were. it was 35 tandems ago by time this came up. there were no irregularities whatsoever on any of the jumps that day. I have absolutely no recollection of anything. I know i did nothing wrong though. for all i know, they made it up for a free jump.

i did nothing under canopy than i normally do on every tandem for past 15 years. i always tell the passenger exactly what i am doing and why.

she claimed inappropriately touched at hips?? i have no idea what that would be. what a weird area to make claim. even losing hip attachments would not involve that.

i got screwed.

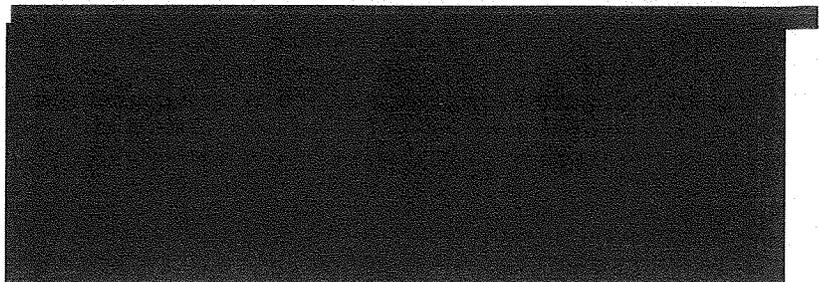


Ori Kuper

June 28, 2010

yup. sounds like. he just didn't like you. but don't worry... there's a phrase in hebrew (and in arabic) that says that 'each dog - its day will come'. it's a personal 'what goes around comes around' type of phrase. so... you got all your money for the jumps? did you get all the money he charged you for? awesome. get the fuck out of that dz..

ZARDA000185



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