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May 5, 2011

U.S. District Judge Joseph F. Bianco
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, New York 11722

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

Dear Judge Bianco:

I represent plaintiff in this action in which several discovery matters are pending before Your Honor. I write because at least one additional issue has arisen.

As I have previously informed you, this is a case involving the skydiver who was fired for telling a customer he is gay. In December of last year, I demanded the release (which includes the name and address) of the complaining customer and her boyfriend, who also complained. The defendant had the information and deliberately withheld it.¹ I repeatedly asked for it, and even moved to compel the information. Defense counsel did not deny that the information was relevant, even in response to plaintiff's motion to compel. Yet still, I do not have the information.

Recently, I received a letter from defense counsel indicating that he had "reached out" to the complainer and her boyfriend and they do not wish to have their addresses turned over. Any subpoenas should be served on defense counsel.

I major problems with this. First, what is most significant, is that this is further evidence that defense counsel is not only obstructing and delaying discovery, but has improperly asserted himself as attorney for non-party witnesses. Second, the information as to the complainer's addresses is not privileged by any stretch of the imagination. Defendant knew this, yet withheld the information until after soliciting input from the complainer and presumably offering to represent her, as he has the non-party employee witnesses, whose name and address information defense counsel also refuses to tender. I am loathe to serve the subpoenas on defense counsel until the issue as to whether he has solicited clients in violation of

¹ Each customer at the defendant company signs a release in which he or she tenders name and address. Plaintiff demanded the release of the complainer, but the defendant withheld the cover sheet. In its initial disclosures, the defendant falsely represented the address as "unknown."

the disciplinary rules, and whether he may represent them in this action, is ruled upon. A deposition in which a non-party witness is represented by defense counsel will be appreciably different from one in which the witness is unrepresented, or represented by truly disinterested counsel. Therefore, I ask that the addresses be ordered tendered immediately, and if Mr. Zabell actually intends to represent these non-parties, that a pre-motion conference can be held on the issue of disqualifying Mr. Zabell from representing non-party witnesses – the complaining customers or non-party, non-managerial employees. Defendant is trying to control plaintiff's access to witnesses and it is grossly improper.

Finally, as I await the Court's scheduling of a conference, oral argument or scheduling order on pending matters, I want to apprise the Court that my client, a Missouri resident, will be in New York starting on May 20 for at least a week. I had previously tried to get Mr. Zabell to agree on a deposition date while my client would be here, but Mr. Zabell refused. I would request that the Court order the defendant to take the plaintiff's deposition while he is in New York. Plaintiff can modify extend his travel schedule to accommodate Mr. Zabell, but there is no reason why, in this relatively simple case, the plaintiff cannot be deposed forthwith, notwithstanding some open disputes on paper discovery.²

Sincerely,



Gregory Antollino

Cc: Saul Zabell by ecf

² I have moved to strike the discovery motion because it is grossly in excess of what is allowable under your individual rules and the local rules. If the Court grants the motion, Mr. Zabell can choose his battles and refile. If the Court denies the motion to strike, then I would have no choice but to ask for leave to exceed your individual and local rules in my response.