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May 5, 2011

VIA ELECTRONIC CASE FILING

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

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

Your Honor:

This firm is counsel to Altitude Express, Inc., d/b/a Skydive Long Island, and Ray Maynard, Defendants in the above-referenced action. We write in opposition to Plaintiff's May 5, 2011 letter application seeking to advise Your Honor of a purported additional discovery dispute.

As an initial matter, in violation of both the Local Rules and Your Honor's Individual Rules of Practice, Plaintiff, for the fifth time, failed to meet and confer with the undersigned prior to making an application. Additionally, rather than seeking a pre-motion conference to compel, Plaintiff affirmatively asks Your Honor to issue an Order compelling the production of certain contact information. As such, his application is procedurally defective.

Regarding the substance of Plaintiff's application, it is important to note that, as he has repeatedly done in the past, Mr. Antollino presents Your Honor with "facts" that are nothing more than unsupported supposition. Specifically, Mr. Antollino states Defendants have been in possession of contact information for Rosanna (the complaining witness) and her boyfriend (identified by Mr. Antollino only as "Steve"), but have deliberately withheld same. Frankly, this purported "fact" is simply untrue. Mr. Antollino was advised on numerous occasions throughout discovery that Defendant was searching through its corporate records for this information.



Upon obtaining this documentation, in or about April 2011, Defendants advised these non-party witnesses they intended to produce their personal contact information in connection with this lawsuit. The witnesses objected to the production, and requested that we do not disclose this information, instead authorizing this office to accept service of any and all subpoenas on their behalf. We advised Mr. Antollino of this fact on April 20, 2011 *via* letter. Mr. Antollino never sought to discuss this matter telephonically; rather, he decided to seek immediate judicial intervention from Your Honor. Based upon the foregoing facts, it is clear the undersigned did not solicit representation of either third party witness. Rather, as his track record in this matter already shows, Mr. Antollino came to an improper conclusion, and presented his theory to Your Honor as fact.

Regarding the additional discovery matters pending before Your Honor, it is important to note Defendants' outstanding motion to compel discovery set a return date of May 11, 2011 (barring any scheduling changes by Your Honor). Notwithstanding the fact the return date is less than one (1) week away, Plaintiff has yet to file any opposition, instead assuming his improperly filed motion to strike has stayed his obligation to do so. Inasmuch as Your Honor has issued no such Order, Plaintiff is required to file opposition papers.

Concerning Mr. Antollino's attempts to compel a deposition of Plaintiff in approximately two (2) weeks, Your Honor should not entertain such a request. As has already been discussed with Mr. Antollino, we should not be forced to depose Plaintiff without having the necessary paper discovery we would use during the course of Plaintiff's deposition. Plaintiff's dilatory actions have caused this delay. Should we be forced to depose Plaintiff without having all necessary paper discovery in our possession, we would be forced to recall Plaintiff for deposition, thus requiring him to travel from Missouri once again. Plaintiff chose the forum of this lawsuit. Any purported inconvenience on the part of Plaintiff, or his counsel, is self-inflicted. Defendants should not be prejudiced by Plaintiff's improper behavior in discovery.

Based upon the foregoing, Defendants respectfully request Your Honor deny Plaintiff's application in its entirety, and compel Plaintiff to issue a response to Defendants' pending motion to compel. In the alternative, we respectfully request an in-person conference before Your Honor to address these issues.



Counsel remains available should Your Honor require additional information regarding this submission.

Respectfully submitted,

ZABELL & ASSOCIATES, PC

A large, handwritten signature in black ink, which appears to be 'Saul D. Zabell', is written over the typed name and extends across the page.

Saul D. Zabell

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