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June 5, 2014

VIA ECF

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 represents Defendants in the above-captioned matter. We write in response to Plaintiff's motion for an extension of time to file the Joint Pre-Trial Order filed earlier today. [ECF Doc. 159] Primarily, Defendants note that the Joint Pre-Trial Order has not been submitted and Plaintiff's request is pre-mature. Defendants provided Plaintiff with their portion of the Joint Pre-Trial Order yesterday, June 4, 2014. Pursuant to Your Honor's Individual Rules IV(A)(8), the parties must include a list of witnesses "whose testimony is to be offered in its case in chief . . . . Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown."

In light of this Rule, Defendants seek to protect their collective interests at trial by naming any potential witnesses. In addition to the individuals whose depositions were taken, the list includes employees of Defendants during the relevant time period as well as individuals discussed during depositions and/or referenced in documentation. Each employee on this witness list was identified to Plaintiff during the course of discovery either through a response to a discovery demand or through deposition testimony. At this juncture, Defendants cannot determine whether there exists a need to call each witness, however, by listing these witnesses in the Joint Pre-Trial Order Defendants are reserving their right to do so, should the need arise.

To date, Defendants have not received Plaintiff's portion of the Joint Pre-Trial Order for review. Plaintiff's counsel has represented that he will not provide his portion until we further discuss our witness list. As we maintain that Defendants' witness list is proper and necessary to preserve Defendants' interest, we believe no further discussion is necessary. By withholding Plaintiff's portion, Defendants have thus far been unable to



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evaluate Plaintiff's documents for any and all objections that may be interposed at trial. Further, Plaintiff's tactics prevent the parties from formulating a Stipulation of Facts for inclusion in the Joint Pre-Trial Order.

Each party is responsible for providing their own witness list and Plaintiff's attempt to dictate who Defendants reserve the right to call is patently improper.

Counsel for Defendants remain available should Your Honor require additional information in connection with this submissions.

Respectfully submitted,

**ZABELL & ASSOCIATES, P.C.**

Saul D. Zabell

Sdz/nch

cc: Gregory Antollino, Esq. (via ECF)

Client