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March 2, 2015

VIA ELECTRONIC CASE FILING

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

Re: Donald Zarda v. Altitude Express, Inc. and Raymond Maynard
Case No.: 10-CV-04334 (JFB)(GRB)

Your Honor:

We are counsel for Defendants in the above-referenced matter. We respectfully submit the following in opposition to Plaintiff's motion only to the extent that Ira Helfand should not be allowed to testify.

As noted in the Parties' Joint Pre-Trial Order, Defendants object to Plaintiff calling Ira Helfand as a witness during trial. [ECF Doc. No. 169] After the close of discovery, on October 29, 2012, Plaintiff for the first time disclosed Ira Helfand as a potential witness in Plaintiff's Amended Rule 26 Disclosure Statement. Ira Helfand was never offered for deposition, and therefore, his testimony should not be offered during trial and is subject to a Motion in Limine.

In addition, we respectfully request the issuance of an order preventing Mr. William Moore from testifying at trial. As Your Honor may recall, during the February 17, 2015 teleconference, Plaintiff sought permission for Mr. Moore to testify, and Your Honor granted that request so long as Mr. Moore was first deposed. Mr. Antollino now states that he will not call Mr. Moore to testify during trial and will not allow Defendants to depose Mr. Moore. (Ex. A) Based upon Mr. Antollino's representations, we requested Mr. Antollino stipulate to that effect, but he refused. As such, we respectfully request an Order from Your Honor prohibiting Mr. Moore from testifying at trial.

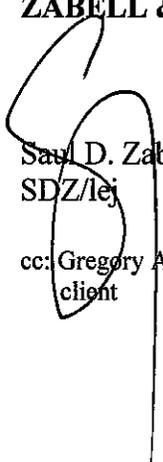


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Defendants' counsel remains available should Your Honor require any additional information regarding this submission.

Respectfully submitted,

ZABELL & ASSOCIATES, P.C.



Saul D. Zabell
SDZ/lej

cc: Gregory Antollino, Esq. (via Electronic Case Filing)
client

EXHIBIT A

Laura Johnson

Subject: FW: William Moore

AmicusFileIds: 1354
AmicusFileName: Skydive Long Island
AmicusId: 2044893
AmicusStatus: Saved

From: Gregory Antollino [<mailto:gregory10010@verizon.net>]

Sent: Wednesday, February 18, 2015 11:09 AM

To: Saul D. Zabell

Subject: William Moore

We've decided we're not calling Mr. Moore to testify, and will rely only on those witnesses on the JPTO and that were revealed before discovery closed. So no depositions need be scheduled and I'll have the citations to Zarda's deposition within two weeks.

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