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March 2, 2015

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)

Dear Judge Bianco:

I write in response to Mr. Zabell's letter in response to my motion. He really does not oppose the motion in essence, but makes certain statements that need to be addressed. First, he objects to Mr. Helfand as a witness - despite that Helfand was in the amended initial disclosures - because I did not "offer" him for deposition. I do not have to "offer" a witness for deposition. I have an obligation to list potential witnesses, and it is up to opposing counsel to "notice" a deposition. Noticing a deposition for Mr. Helfand was Zabell's job. Mr. Zabell chose not to notice a deposition on Mr. Helfand (or me), probably because he thought he could win summary judgment: he made a strategic decision not to spend the money. End of story. (Mr. Moore is a different story since we contemplated adding him after the JPTO was entered.)

Second, I find Mr. Zabell's argument on Helfand amusing, since he listed about eight witnesses on his pretrial disclosures, then 50 or more on the JPTO, some for which I was not given addresses. You allowed him to do the latter of these two actions, despite my motion to strike the names of witnesses other than those on the initial disclosures, and your ruling on the matter was something to the effect of, "Mr. Zabell, I can tell you now that you're not calling 50 witnesses." That was it. But you did not rule that he could not call any of those witnesses, despite that not only did he not list them on his pre-trial disclosures, nor "offer" them for deposition. (How does one "offer" a witness for deposition, by the way? The rules only talk about the right of a party to notice a deposition.)

Third, we have decided not to call Mr. Moore, in part, because we don't want to reopen discovery and deal with more of Mr. Zabell's shenanigans. He has been an inordinately impossible adversary: He has refused to confer when required under the rules; he has removed a witness from a deposition while a question was pending; he has poisoned a witness against us (his client's sister's partner); he initially withheld witness' addresses from us (the complainants'), saying he could accept subpoenas for them. When those subpoenas were served on him, no one showed up for deposition, costing us time

and expense. After those witnesses were finally deposed, he had them recant their deposition testimony - against his client's interest, mind you. He walked (with his client) out of his client's deposition, despite that 7 hours had not elapsed - he thought he could count lunch and colloquy. He took his client out of the room while a question was pending. He has been childishly rude to me in innumerable ways, making fun of my voice and calling me expletives in front of witnesses; he made fun of my associate and my attire. In other cases I've shown you before he has been rude to counsel and intimidated undocumented workers. In Chawla v. Metro. Oral Surgery Assocs., P.C., 2014 U.S. Dist. LEXIS 132541 (E.D.N.Y. Sept. 19, 2014), he was sanctioned by Magistrate Scanlon for almost \$4000 for violating a court order and walking out of a deposition before it was over. In Folks v. Zabell, 2010 NY Slip Op 33818(U) (Sup. Ct.), he accused a witness of embezzlement to the State Department of Insurance (the case was dismissed for failure to state a cause of action for defamation because his actions were absolutely privileged, even if completely false).

We don't know what to expect if we call Mr. Moore and bring him in for deposition. At a minimum, it will result in rancor and unpleasantry, and a complete lack of cooperation or compromise. After reconsideration, we have decided that Mr. Helfand - whom Zabell chose not to depose - is enough, and we also have Mr. Zarda's testimony to support emotional distress. We simply want to get this done without further nonsense and angst. I've never misrepresented anything to you, and I don't need an order from the court that I won't call Mr. Moore at trial. The agreement was that we would call him if we produced him for a deposition, given the close of discovery and the unusual circumstance of Mr. Zarda's death. Upon reconsideration, we don't want to go through with it. I'm not stupid enough to think you would allow us to call Mr. Moore at trial. I care about my reputation.

Since it is not opposed, I'd ask that the motion for an extension of time be granted and that the trial be scheduled for July 23rd or that you wait until I hear from Mr. Helfand before scheduling it for July 6. Thank you for your consideration.

Sincerely,



Gregory Antollino

Cc: Saul Zabell by ecf