



Counseling and Advising Clients Exclusively on Laws of the Workplace

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March 19, 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: 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. Pursuant to Your Honor's February 17, 2015 Order issued during the parties' telephone conference, Defendants annex their objections to Plaintiff's proposed testimony for trial as Exhibit A and Defendants' proposed testimony for trial as Exhibit B (Plaintiff's designated portions are highlighted in yellow, and Defendants' designated portions are highlighted in blue).

Generally, Defendants' objections to Plaintiff's proposed testimony are based upon relevance and/or hearsay. Pursuant to Federal Rule of Evidence ("FRE") 401, "evidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." FRE 402 provides "[i]rrelevant evidence is not admissible." Here, a number of Plaintiff's designated portions of the proposed testimony carry no weight towards the outcome of this action. Thus, they are irrelevant and not admissible. Likewise, FRE 801(c) defines hearsay as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Notwithstanding the circumstances in this case, Plaintiff designates portions of testimony that include statements made by individuals other than Plaintiff. These statements are not admissible because they constitute hearsay, and as such, should be excluded.

In addition, we write in response to Plaintiff's March 3, 2015 motion *in limine*. [ECF Doc. No. 190] For the following reasons, we respectfully submit Plaintiff's motion should be denied in its entirety.



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After careful review of Plaintiff's motion, it remains unclear to Defendants as to what, specifically, Mr. Antollino requests in connection with Lauren Callanan ("Ms. Callanan"). [ECF Doc. No. 190] Mr. Antollino appears to indicate that in order for Ms. Callanan to appear at trial as a witness, he must issue her a subpoena because pursuant to Federal Rules of Civil Procedure 32 and 45, Ms. Callanan is both available and within the Court's jurisdiction. Despite these facts, Mr. Antollino endeavors to demonstrate that requiring him to subpoena Ms. Callanan would be an "abuse of Court power." [ECF Doc. No. 190]

Mr. Antollino's logic for utilizing Ms. Callanan's deposition testimony, rather than producing her as a live witness at trial is flawed. First, The Federal Rule of Civil Procedure 32(a)(4) provides in relevant part:

[a] party may use for any purpose the deposition of a witness, whether or not a party, if the court finds . . . that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition.

Mr. Antollino states that he has Ms. Callanan's "last known address," but proceeds to provide the Court with a range of 94 to 102 miles between Central Islip and Sparta, New Jersey, the town in which Ms. Callanan resides. [ECF Doc. No. 190] Even with Mr. Antollino's efforts to construe the language of Rule 32(a)(4) in his favor, the Rule provides that the measurement is between the witness and the place of trial, not just the general vicinities where each is located. Here, the most direct route between Ms. Callanan's residence in Sparta, New Jersey and the Federal Court Building in Central Islip, New York is 93.8 miles. (Ex. C) As such, Ms. Callanan is within 100 miles of the Federal Court Building and Rule 32(a)(4) does not apply.

Second, the preference for live testimony is well-settled within the Circuit. *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas*, 262 F.R.D. 293 (S.D.N.Y. 2009) (citing *Napier v. Bossard*, 102 F.2d 467, 469 (2d Cir. 1939)). "The deposition has always been, and still is, treated as a substitute, a second-best, not to be used when the original is at hand." *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas*, 262 F.R.D. 293, 300 (S.D.N.Y. 2009) (quoting *Napier v. Bossard*, 102 F.2d 467, 469 (2d Cir. 1939)). Following that logic, Ms. Callanan should be called as a witness to provide live testimony because Plaintiff presented no evidence proving that she is unavailable for trial. *See* Fed. R. Civ. P. 32 (stating that a witness is unavailable when he or she is deceased, more than 100 miles from the courthouse, aged, infirm, imprisoned, or unable to be subpoenaed). In attempting to create the illusion that Ms. Callanan is unavailable, Mr. Antollino states when he called Ms. Callanan asking her if she wanted to speak about the case, she responded "[n]o, "that part of my life is behind me." Ms. Callanan's response alone does not qualify Ms. Callanan as unavailable. *See* Fed. R. Civ. P. 32.

Mr. Antollino continues and suggests that securing Ms. Callanan's attendance at trial through a subpoena will "deter truthful testimony, not only by current employees, but also former



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employees” and further that a Court issued subpoena will “re-enforce the stereotype of a disgruntled employee: a stereotype that hurts former employees as a class, makes people ‘not want to become involved,’ and embarrasses one person for such a tiny reason – to authenticate a few words and sentences?” Here, Mr. Antollino presents statements that are without merit. His strenuous opposition to calling Ms. Callanan suggests that their conversation did not go well and that he, in fact, does not want Ms. Callanan to testify at trial. However, that does not render Ms. Callanan unavailable and Mr. Antollino’s stated interest in not presenting a “disgruntled employee” does not outweigh Defendants’ interest and right of cross-examination. *See* Fed. R. Evid. 403. Defendants should have the opportunity to cross-examine Ms. Callanan. *See* Fed. R. Evid. 611 & 901. Therefore, Defendants respectfully request Your Honor deny Plaintiff’s motion in its entirety.

Additionally, we seek to exclude Ira Helfand (“Mr. Helfand”) as a potential witness in this case. Under Federal Rule of Civil Procedure 26(a), a party’s initial disclosures must identify witnesses who are “likely to have discoverable information . . . that the disclosing party may use to support its claims or defenses.” Fed. R. Civ. P. 26(a)(1)(A). There is also an affirmative obligation to supplement these initial disclosures “in a timely manner” if they become incomplete or incorrect. Fed. R. Civ. Pro. 26(e)(1)(A). Failure to satisfy these obligations precludes a party from using the withheld information as evidence at trial. *Alfano v. Nat’l Geographic Channel*, No. CV 06-3511 (NG) (JO), 2007 WL 2982757, at \*1 (E.D.N.Y. Oct. 5, 2007).

Here, Mr. Helfand was not included in Plaintiff’s Rule 26 Disclosure Statement. Only after the close of discovery did Plaintiff, for the first time on October 29, 2012, disclosed Ira Helfand as a potential witness in Plaintiff’s Amended Rule 26 Disclosure Statement. In fact, throughout the entire discovery process, Ira Helfand was only mentioned once during Plaintiff’s deposition in response to being asked “who were friends that you spoke to” after he was suspended, but prior to his termination. Plaintiff responded “I spoke to another friend that I’ve known in Massachusetts that’s dealt with situations complex – complex situations.” (Pl. Dep. pp. 113-14) As such, Plaintiff should be precluded from calling Mr. Helfand as a witness at trial.

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**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**DONALD ZARDA,**

**Plaintiff,**

**- against -**

**ALTITUDE EXPRESS, INC. d/b/a SKYDIVE  
LONG ISLAND, and RAY MAYNARD,**

**Defendants.**

**CASE NO.: 10-CV-4334(JFB)(ARL)**

**Defendants' objections to Plaintiff's proposed deposition testimony to be read at trial:**

- 4:2-11 – Defendants object on the grounds that this is not the deponent's words;
- 5:13-22 – Defendants object on the grounds that this testimony is wholly irrelevant;
- 6:2-13 – Defendants object on the grounds that this testimony is irrelevant;
- 21:3-23 – Defendants object on the grounds that this testimony contains impermissible hearsay;
- 40:2-11; 17-25 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 12 through 14 to provide the jury with the entire context of the testimony;
- 44:17-25; 45:2-6 – Defendants object on the grounds that this testimony contains impermissible hearsay;
- 52:9-25; 53:3-2 - Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 2 on page 53 to provide the jury with the entire context of the testimony;
- 40:7-25 – Defendants object on the grounds that this testimony contains impermissible hearsay;
- 67:2-17; 67:23-25; 68:2-7 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 18 through 20 on page 67 to provide the jury with the entire context of the testimony;
- 74:21-25; 75:2-11 – Defendants object on the ground that this testimony is wholly irrelevant and contains impermissible hearsay;

- 78:2-11; 78:18-22 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 11 through 17 to provide the jury with the entire context of the testimony;
- 81:20-21 – Defendants object on the ground that this testimony is irrelevant;
- 85:21-22; 86:2-16 - Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 23 through 25 on page 85 and line 2 on page 86 to provide the jury with the entire context of the testimony;
- 109:2-4; 109:12-15 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 5 through 11 to provide the jury with the entire context of the testimony;
- 113:12-19 – Defendants object on the ground that this testimony contains impermissible hearsay;
- 119:3-9 – Defendants object on the ground that this testimony is wholly irrelevant;
- 130:16-25 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 18 through 23 to provide the jury with the entire context of the testimony;
- 131:22-22; 131:25; 132:2-10 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 23 through 24 on page 131 to provide the jury with the entire context of the testimony;
- 133:2-5 – Defendants object on the ground that this testimony beginning with the word “but” on line 2 contains impermissible hearsay;
- 133:13-24 – Defendants object on the ground that this testimony beginning with the word “I felt” on line 13 contains impermissible hearsay;
- 134:12-22 – Defendants object on the ground that this testimony contains impermissible hearsay;
- 137:18-24; 138:2-25; 139:2 - Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 2 through 12 on page 138 to provide the jury with the entire context of the testimony;
- 139:8-10 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 11 to provide the jury with the entire context of the testimony;
- 147:18-25; 148:2-10 – Defendants object on the ground that this testimony is wholly irrelevant;

- 183:15-25; 184:2-25 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 2 on page 184 to provide the jury with the entire context of the testimony;
- 210:25; 211:2-13 – Defendants object on the ground that this testimony contains impermissible hearsay.
- 226:2-14 – Defendants object on the ground that this testimony is wholly irrelevant;
- 227:6-22 – Defendants object on the ground that this testimony is wholly irrelevant;
- 229:16-18; 230:16-25; 231:2-25; 232:2-7 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 19 through 23 on page 229 to provide the jury with the entire context of the testimony;
- 252:7-15; 254:20-15; 255:2-22 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 2 through 25 on page 253 and lines 2 through 19 on page 254 to provide the jury with the entire context of the testimony; and
- 281:21-25; 282:3-15 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 2 on page 282 to provide the jury with the entire context of the testimony.

# **Exhibit B**

1

2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 -----X

5 DONALD ZARDA,

6 Plaintiff,

7 -against- Index No.  
8 10-CV-04334

9 ALTITUDE EXPRESS, INC., d/b/a/ SKYDIVE LONG  
10 ISLAND, and RAY MAYNARD,

11 Defendants.

12 -----X

13 December 9, 2011  
14 10:15 a.m.

15 4875 Sunrise Highway  
16 Bohemia, New York

17 EXAMINATION BEFORE TRIAL OF DONALD ZARDA,

18 the Plaintiff herein, taken by the  
19 Defendants, pursuant to Article 31 of the  
20 Civil Practice Law and Rules of Testimony,  
21 and Notice and order, held at the  
22 above-mentioned time and place, before Karen  
23 LaMendola, a Professional Court Reporter and  
24 Notary Public of the State of New York.  
25

1

2 APPEARANCES:

3

4 GREGORY ANTOLLINO, ESQ.  
Attorney for Plaintiff  
5 18-20 West 21 Street, Suite 802  
New York, New York 10010

6

7

ZABELL & ASSOCIATES, P.C.  
8 Attorneys for Defendants  
4875 Sunrise Highway  
9 Bohemia, New York 11716

10 BY: SAUL ZABELL, ESQ.

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20 ALSO PRESENT:  
William L. Murphy

21

22

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24

25

1

2 STIPULATIONS

3

4 IT IS HEREBY STIPULATED AND AGREED by and

5 between the attorneys for the respective

6 parties herein, that filing, sealing and

7 certification be and the same are hereby

8 waived.

9 IT IS FURTHER STIPULATED AND AGREED

10 that all objections, except as to the form of

11 the question shall be reserved to the time of

12 the trial.

13 IT IS FURTHER STIPULATED AND AGREED

14 that the within deposition may be signed and

15 sworn to before any officer authorized to

16 administer an oath, with the same force and

17 effect as if signed and sworn to before the

18 Court.

19

20

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22

23

24

25

1

2 DONALD ZARDA, the witness

3 herein, having been first duly sworn

4 by a Notary Public in and of the

5 State of New York, was examined and

6 testified as follows:

7 EXAMINATION BY

8 MR. ZABELL:

9 Q Would you please state your full

10 name for the record.

11 A Donald Zarda.

12 Q What is your current address?

13 A P.O. Box 312, Richmond, Virginia

14 64085.

15 Q Good morning, Mr. Zarda. How

16 are you?

17 A Good morning. How are you?

18 Q Good. You know my name is

19 Saul Zabell. We've met before; correct?

20 A Correct.

21 Q We haven't had much of a

22 conversation before, but we've met in the

23 context of this case; correct?

24 A Correct.

25 Q And you know me to be the

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5

1 D. Zarda

2 attorney who represents Altitude Express;

3 correct?

4 A I do.

5 Q You also know me to be the

6 attorney who represents Ray Maynard; is that

7 correct?

8 A Yes.

9 Q Today I am conducting this

10 deposition on behalf of Altitude Express. Do

11 you understand that?

12 A Yes.

13 Q You know that I'm going to be

14 asking you questions; correct?

15 A Correct.

16 Q You're going to be providing

17 answers to those questions; correct?

18 A Yes.

19 Q And you are swearing that the

20 answers that you are providing are truthful

21 and accurate?

22 A Yes.

23 Q Do you understand that?

24 A To the best of my recollection;

25 yes.

6

1 D. Zarda

2 Q Do you understand that you took

3 an oath today to swear to tell the truth?

4 A Yes.

5 Q And you understand that if you

6 provide answers that are not truthful, you

7 are subject to charges of perjury?

8 A Yes.

9 Q Giving false answers in this

10 deposition today would be no different than

11 providing false testimony before a Court. Do

12 you understand that?

13 A Yes.

14 Q And have the ramifications of

15 that been explained to you by your Counsel?

16 A Yes.

17 MR. ANTOLLINO: Objection.

18 Anything that you've discussed with me

19 is not going to be asked or answered.

20 MR ZABELL: I believe the answer

21 is on the record.

22 MR. ANTOLLINO: Motion to

23 strike.

24 MR. ZABELL: To the extent I

25 can, your motion is denied.

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7

1 D. Zarda

2 MR. ANTOLLINO: Okay.

3 Q How are you feeling today?

4 A Great.

5 Q Are you currently taking any  
6 medications?

7 A None other than prescribed.

8 Q What prescribed medications are  
9 you taking?

10 MR. ANTOLLINO: Well, I'm going  
11 to object on the grounds that that is  
12 not relevant. I'll let you ask him  
13 whether there is any medications that  
14 he takes that would affect his ability  
15 to testify or recall events truthfully.

16 MR. ZABELL: Counsel, what  
17 you're doing now is making an improper  
18 objection. If you would like, I would  
19 be more than happy to provide you with  
20 a copy of the Federal Rules of Civil  
21 Procedure to familiarize yourself  
22 before you continue.

23 I can also tell you that we will  
24 allow each other to finish speaking  
25 before we interrupt each other. Am I

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8

1 D. Zarda

2 clear on that?

3 MR. ANTOLLINO: Mr. --

4 MR ZABELL: Am I clear on that?

5 MR. ANTOLLINO: Mr. Zabell,

6 Mr. Zabell, you're not going to

7 denigrate or derisive me or make any

8 more accusations or criticisms about my

9 knowledge of the Federal Rules, or

10 whatever.

11 I'm trying to get through the

12 deposition. I'm not going to let you

13 ask him, generally, what medications he

14 takes, and we can mark that for a

15 ruling if you deem it necessary.

16 MR. ZABELL: No, no, we'll not

17 mark it for a ruling.

18 MR. ANTOLLINO: Okay.

19 MR. ZABELL: We will stop this

20 deposition right now, and we will call

21 the Judge if you feel it is absolutely

22 necessary.

23 MR. ANTOLLINO: I do.

24 MR. ZABELL: If you'd like, I

25 think the prudent thing is to ask me

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1 D. Zarda

2 why I need to ask him those questions.

3 MR. ANTOLLINO: All right. Do

4 you want to explain why you need to ask

5 those questions?

6 MR. ZABELL: Sure.

7 MR. ANTOLLINO: Okay, go ahead.

8 MR. ZABELL: There are claims

9 for emotional damages. I have an

10 absolute right to explore what

11 medications this individual was taking,

12 A, to ensure that those medications do

13 not affect his ability to testify

14 truthfully and accurately, and, B, to

15 determine if those medications are

16 related to illnesses that have not been

17 disclosed pursuant to discovery, and if

18 any of those medications he's taking

19 can be related in any possible way to

20 emotional distress.

21 If you maintain your position,

22 and I strongly suggest that after I

23 finish explaining this to you that you

24 ask for a short break to discuss it

25 with your client, if you maintain the

1 D. Zarda

2 position that you will not allow him to  
3 answer that question, then it is my  
4 intention to call Judge Bianco and get  
5 a ruling.

6 MR. ANTOLLINO: Why don't you  
7 ask him the question that you just  
8 asked me. If you ask those questions,  
9 those questions would not be  
10 objectionable, but to ask him,  
11 generally, what medications he's on,  
12 that's a violation of what I've  
13 asserted in this lawsuit as medical  
14 privilege. I have no problems with  
15 those questions whatsoever, and if you  
16 had asked those questions, I wouldn't  
17 have objected, but you asked a very  
18 open-ended question which could go into  
19 something that is, you know, completely  
20 irrelevant and medically privileged.

21 MR. ZABELL: You have my  
22 position.

23 MR. ANTOLLINO: All right.

24 MR. ZABELL: Again, I strongly  
25 recommend that you take a moment to

11

1 D. Zarda  
2 speak to your client. Beyond that, I  
3 will call Judge Bianco.

4 MR. ANTOLLINO: Okay. I don't  
5 have any reason to speak to my client.  
6 I think there's a compromise, there's a  
7 compromise. I have sent the Judge the  
8 medical records with my objections  
9 under that case that came down in the  
10 Second Circuit, okay, he hasn't ruled  
11 yet. I think there is a compromise  
12 here.

13 I'm allowing you to ask those  
14 questions more particularly, but to ask  
15 a general, open-ended question invades  
16 the doctor/patient privilege in a way  
17 that hasn't been waived in this  
18 lawsuit, so I ask you to compromise on  
19 that, and what I'd also ask you to do  
20 is let's call the Judge once rather  
21 than --

22 MR. ZABELL: No.

23 MR. ANTOLLINO: -- several  
24 times.

25 MR. ZABELL: No.

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1 D. Zarda

2 MR. ANTOLLINO: I know you like  
3 to do it your way, Mr. Zabell. You  
4 don't like to compromise, so let's just  
5 call the Judge.

6 (Whereupon, a call was made to  
7 Judge Bianco, and the following  
8 colloquy was had:)

9 LAW SECRETARY: Judge Bianco's  
10 chambers.

11 MR. ZABELL: Good morning. It's  
12 Saul Zabell. How are you?

13 LAW SECRETARY: Good. How about  
14 you?

15 MR. ZABELL: I'm well, thanks.

16 I'm calling from a deposition  
17 with my adversary, Gregory Antollino,  
18 in the matter of Zarda against Altitude  
19 Express. Do you want the CV Number?

20 LAW SECRETARY: Yes, please.

21 MR. ZABELL: It's 10-04334.

22 We are about four questions into  
23 the deposition, and my adversary has  
24 objected and advised the deponent not  
25 to answer a question.

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1 D. Zarda

2 LAW SECRETARY: Hold on one

3 second, please.

4 Let me talk to the clerk that's

5 assigned to this case; okay?

6 MR. ZABELL: Thank you.

7 MS. MAXWELL: Hi, this is

8 Ms. Maxwell.

9 MR. ZABELL: Hi. Saul Zabel,

10 and I'm here with my adversary,

11 Gregory Antollino. We're at a

12 deposition, and I'm deposing the

13 Plaintiff, Donald Zarda.

14 As part of my introductory group

15 of questions, I asked him if he's

16 currently taking only prescription

17 medications. He said, only

18 prescription medications, and I asked

19 him to identify them. Counsel gave a

20 speaking objection and advised his

21 client not to answer in what I believe

22 to be a contradiction of the Federal

23 Rules of Civil Procedure, and

24 apparently, I need a ruling on this

25 issue.

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14

1 D. Zarda

2 MS. MAXWELL: As I recall, there

3 were issues with medical records on

4 this case; correct?

5 MR. ANTOLLINO: Yes.

6 MR. ZABELL: Yes, Counsel

7 refused to provide them and provided

8 them to His Honor for an in camera

9 inspection.

10 MS. MAXWELL: Okay. I

11 understand that you guys are not that

12 far into the deposition; is that right?

13 MR. ZABELL: About three

14 questions.

15 MS. MAXWELL: Would it be

16 possible for you guys to take maybe a

17 ten-minute break while I try to get the

18 Judge's attention?

19 MR. ZABELL: Absolutely.

20 MR. ANTOLLINO: If I could just

21 say something.

22 MS. MAXWELL: Sure.

23 MR. ANTOLLINO: I objected to

24 the question based entirely on the fact

25 that I have made, essentially, a

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1 D. Zarda  
2 protective order for this type of  
3 information. Furthermore, I allowed  
4 Mr. Zabell to ask more particularized  
5 questions. He explained the reason why  
6 he wanted to ask the question. He  
7 asked three questions that I thought  
8 were reasonable, and then I offered him  
9 the opportunity to ask those questions  
10 and he refused.

11 I also asked him if we could  
12 continue the deposition and go to the  
13 Judge once towards the middle of the  
14 day because I bet we're going to have  
15 more disputes later on, but he refused  
16 to do that, as well.

17 Furthermore, since he's insisted  
18 on calling the Judge, I want to explain  
19 to the Judge that I want Mr. Zabell to  
20 be admonished because he has  
21 continually been snide, condescending,  
22 and rude to me. He has insulted my  
23 attire. He has insulted me in front of  
24 witnesses. He has insulted the way  
25 that I deal with my client. He offered

1 D. Zarda  
2 me, on the record, a copy of the  
3 Federal Rules so I could familiarize  
4 myself with them. I'm not going to  
5 take any more of this snide,  
6 condescending behavior, and I want the  
7 Judge to admonish him to not do that  
8 anymore.

9 MS. MAXWELL: Well, it sounds  
10 like there is a lot going on here, so  
11 it may be a little bit longer than ten  
12 minutes, so what I would suggest is  
13 that you guys take a break. Give me a  
14 number where I can reach you.

15 MR. ZABELL: Sure. You can  
16 reach my office. It's (631) 589-7242,  
17 and I can say that everything that has  
18 transpired today is on the record, so  
19 we have a transcript, including what  
20 we're discussing right now, as well.

21 MS. MAXWELL: All right. We'll  
22 be in touch.

23 MR. ZABELL: Thank you.

24 MR. ANTOLLINO: Thank you.

25 MS. MAXWELL: Goodbye.

17

1 D. Zarda

2 MR. ZABELL: Goodbye.

3 Let's take a short break.

4 (Whereupon, a recess was taken  
5 from 10:26 a.m. to 10:55 a.m.)

6 (Whereupon, Judge Bianco's  
7 chambers called and the following  
8 colloquy was had:)

9 MR. ZABELL: Good morning, Saul  
10 Zabell here.

11 MS. MAXWELL: I spoke to the  
12 Judge, and he asked me to let you know  
13 that given that he has not ruled on the  
14 medical issue, there should be no  
15 medical questions, other than whether  
16 the witness is taking any medications  
17 that would affect his ability to  
18 remember, and the Judge warns both  
19 Counsel to be civilized, and also that  
20 he will be reviewing the transcript.

21 MR. ZABELL: Very well. I'll  
22 ensure that at the conclusion of the  
23 transcript, as soon as I receive a  
24 copy, to send it on to His Honor.

25 MS. MAXWELL: Okay.

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18

1 D. Zarda

2 MR. ZABELL: Thank you kindly.

3 MS. MAXWELL: Thank you.

4 MR. ZABELL: We hope to not have

5 to bother you again.

6 MS. MAXWELL: Okay.

7 MR. ZABELL: Have a good day.

8 MS. MAXWELL: Have a good day.

9 MR. ZABELL: You, as well.

10 MS. MAXWELL: Thank you.

11 (Whereupon, the call was

12 concluded.)

13 MR. ANTOLLINO: I would like you

14 to read back to my client what the

15 Judge ruled.

16 (Whereupon, the requested

17 portion of the record was read by the

18 court reporter.)

19 Q Mr. Zarda?

20 A Yes, sir.

21 Q You just provided testimony that

22 you are currently taking prescription

23 medications; is that correct?

24 A Yes.

25 Q How many prescriptions --

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1 D. Zarda

2 MR. ANTOLLINO: No, no, no, no,

3 come on. No, no, no. You heard what

4 the Judge said.

5 Q How many are you taking?

6 MR. ANTOLLINO: Don't answer

7 that question. Don't answer that

8 question, Don.

9 Q Are you familiar with the

10 prescription medications that you are taking?

11 A I have some familiarity. I do

12 not --

13 MR. ANTOLLINO: Just answer the

14 question.

15 A -- carry the list with me, so I

16 don't have them all in my head.

17 MR. ANTOLLINO: Answer just the

18 question.

19 Q Are you aware of any of the side

20 effects that are listed for each prescription

21 medication that you're taking?

22 MR. ANTOLLINO: Don't answer the

23 question.

24 Q Do you know if any of the side

25 effects for the prescription medications that

1 D. Zarda

2 you're taking impact your ability to

3 remember?

4 A I do not believe that they do.

5 Q Well, do you know from reading

6 the side effects from each medication that

7 they do not affect your memory?

8 A It's been a long time since I've

9 read the side effect information that you get

10 with the medication, so I can't recall at

11 this time.

12 Q So as you're sitting here today,

13 you don't know if any of the side effects of

14 the medications that you're taking would

15 affect your memory; is that correct?

16 A I don't believe they would.

17 Q The question that I asked you

18 is: As you're sitting here today, you don't

19 know if any of the side effects of the

20 medications you're taking affect your memory;

21 is that correct?

22 A I can't say that I have specific

23 knowledge about the medications as I sit

24 here. I'm not a doctor or pharmacist.

25 Q Do you have a memory?

21

1 D. Zarda

2 A Yes, we all have memories.

3 Q How would you characterize your

4 memory?

5 A Good.

6 Q Why would you characterize your

7 memory as good?

8 A My sister says I have a very

9 good memory, and I remember things very well

10 from the past. She reminds me of that all

11 the time, and I think I have a good memory.

12 Q So you have a good memory

13 because you think you have a good memory and

14 because your sister reminds you that you have

15 a good memory --

16 MR. ANTOLLINO: Objection to

17 form.

18 Q -- is that correct?

19 A She tells me I have a good

20 memory, both of them. My friends tell me I

21 remember things quite well from the past; fun

22 events and things we have done together, and

23 I remember things well.

24 Q Have you always had a good

25 memory?

1 D. Zarda

2 A As far as I know.

3 Q As far as you remember?

4 (Whereupon, the witness's  
5 cellphone began ringing and the  
6 following colloquy was had:)

7 MR. ZABELL: Let the record  
8 reflect that the deponent's cellphone  
9 is ringing, and I'm just going to ask  
10 that it be put on vibrate, please.

11 THE WITNESS: (Witness  
12 complies.) Sorry. Okay, I got it.  
13 All right. There we go.

14 Q Everything all right?

15 A Yes.

16 Q Getting back to the procedure of  
17 the deposition.

18 I'm going to be asking you  
19 questions; do you understand that?

20 A Right, yes.

21 Q You are required to give verbal,  
22 word responses to the questions I ask you; do  
23 you understand that?

24 A Yes.

25 Q I say verbal, word responses

1 D. Zarda

2 because sometimes in depositions, people will

3 grunt to signify a yes or a no, and it's

4 difficult for the court reporter to take that

5 down.

6 Do you understand what I'm

7 saying?

8 A Yes.

9 Q If you give a verbal response

10 that is not a word, we're going to prompt you

11 to give a word response; do you understand

12 that?

13 A Yes.

14 Q Have you ever been deposed

15 before?

16 A No.

17 Q Do you know what a deposition

18 is?

19 A Yes.

20 Q Have you prepared for this

21 deposition in any way?

22 A Yes.

23 Q How have you prepared for this

24 deposition?

25 A Well, I discussed how a

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1 D. Zarda

2 deposition would be conducted.

3 Q Okay. I just want to caution

4 you now, as I'm sure your attorney is going

5 to want to caution you, you can tell me when

6 you met with your attorney, how long you met

7 with your attorney, and where you met with

8 your attorney. You cannot discuss with me,

9 or you should not discuss, you can if you'd

10 like, what was said between you and your

11 attorney.

12 Do you understand that?

13 A Okay.

14 Q That is your right to keep

15 private between your attorney and yourself.

16 If you choose to waive that right, you may do

17 so.

18 Do you understand that?

19 A Yes.

20 Q When did you meet with your

21 attorney in preparation for this deposition?

22 A We've met a few times, but

23 coming up here for this trip, prior to this

24 deposition.

25 Q When was the last time you met

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1 D. Zarda

2 with your attorney to prepare for this

3 deposition?

4 A When we talked about it

5 yesterday.

6 Q For how long did you talk about

7 it yesterday?

8 A We talked about it on and off,

9 here and there. There wasn't one specific

10 sitting. There wasn't one specific session

11 just about the deposition.

12 Q Did you review any documents in

13 preparation for this deposition?

14 A I reviewed the interrogatories

15 that I submitted to you, I believe, and the

16 admissions.

17 THE WITNESS: Can I turn this

18 (indicating) off because that was an

19 alarm?

20 MR. ZABELL: Yes, you may

21 absolutely turn your phone off.

22 THE WITNESS: Thank you.

23 MR. ANTOLLINO: Don, just do it.

24 THE WITNESS: I'm doing it.

25 MR. ZABELL: He's fine. He's

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1 D. Zarda

2 doing fine. There's no need to caution

3 or yell at him.

4 Q Okay, sir. Are you all set?

5 A Yes.

6 Q When you were explaining to me

7 the documents that you reviewed, you pointed

8 to a folder in front of you; correct?

9 A Yes.

10 Q Are those the documents that you

11 reviewed?

12 A They are.

13 Q May I see them?

14 A Yes. (Handing.)

15 Q I see some notes. Did you

16 review those in preparation for this

17 deposition?

18 A No, I didn't. They're just

19 sitting in the folder.

20 Q What we're going to do is, we're

21 going to take copies of these documents and

22 introduce them as exhibits, and this way I

23 can give you your originals back; okay?

24 A Okay.

25 (Four-page document consisting

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1 D. Zarda  
2 of a copy of a Supplemental Response to  
3 Requests for Admissions was marked as  
4 Defendants' Exhibit A, for  
5 identification, as of this date.)

6 (Thirteen-page document  
7 consisting of a copy of Amended  
8 Response to Demand for Interrogatories  
9 was marked as Defendants' Exhibit B,  
10 for identification, as of this date.)

11 Q We're going to call Supplemental  
12 Response to Requests for Admissions as  
13 Defendants' Exhibit A, and that is a one,  
14 two, three, four-page document, and then we  
15 have Amended Response to Demand for  
16 Interrogatories, which we've identified as  
17 Defendants' Exhibit B. That is a one, two,  
18 three, four, five, six, seven, eight, nine,  
19 ten, eleven, twelve, thirteen-page document;  
20 is it not?

21 A (No verbal response.)

22 MR. ANTOLLINO: Don?

23 THE WITNESS: Yes.

24 (Whereupon, Mr. Antollino took  
25 witness's phone off conference table.)

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1 D. Zarda

2 Q Is everything all right?

3 A Yes.

4 Q Do you want a moment to speak to  
5 your attorney about him taking your phone  
6 away?

7 A I do, yes.

8 Q While you talk to your attorney,  
9 we're just going to make copies.

10 A That's perfect. That's perfect  
11 timing.

12 (Whereupon, a recess was taken  
13 from 11:05 a.m. to 11:10 a.m.)

14 MR. ZABELL: You guys had your  
15 moment?

16 MR. ANTOLLINO: We're good.

17 MR. ZABELL: Everything is all  
18 right?

19 MR. ANTOLLINO: Yes.

20 Q You have in front of you a  
21 document that you reviewed in preparation for  
22 today's deposition; is that correct?

23 A I believe they are.

24 Q Are those the only documents  
25 that you reviewed in preparation for today's

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1 D. Zarda

2 deposition?

3 A They are.

4 Q Yesterday you were at a

5 deposition; were you not?

6 A I was.

7 Q Whose deposition was that?

8 A That was for Rich Winstock.

9 Q Is Mr. Winstock someone you

10 would characterize as a friend of yours?

11 A Yes.

12 Q He was also a colleague;

13 correct?

14 A Yes.

15 Q Was he a supervisor, as well?

16 A Yes.

17 Q Where was he a supervisor?

18 A At Skydive Long Island.

19 Q Do you currently maintain a

20 friendly relationship with him?

21 A I would say so.

22 Q And you had an opportunity to

23 hear Mr. Winstock testify yesterday; did you

24 not?

25 A I did.

1 D. Zarda

2 Q Do you think Mr. Winstock lied

3 at all during his deposition?

4 A I have no way to be able to

5 access that. That's only something

6 Mr. Winstock could answer.

7 Q Well, as you were sitting next

8 to Mr. Winstock during his deposition, do you

9 think he was wrong about anything he

10 testified about?

11 MR. ANTOLLINO: Objection to

12 form.

13 Q You may answer.

14 A I can't characterize whether

15 Mr. Winstock was lying or whether -- I don't

16 know what facts that he had, so I was

17 learning what facts that he had at the same

18 time that you were and that everybody was in

19 the room, so that's the first time I was able

20 to hear anything that he's had to say about

21 it, so there is no way for me to really be

22 able to judge that.

23 I think he has maybe some

24 different views about the way things and

25 procedures might be done for doing our job,

1 D. Zarda

2 perhaps, but I can't say whether he was lying

3 about something or not.

4 Q Are you referring to the grading  
5 of the 97 out of 100 that he gave you on your  
6 jump?

7 A That would be one item.

8 Q Did that bother you?

9 A It didn't bother me at all.

10 Q Because if I relayed to you that  
11 Mr. Winstock, after the deposition, relayed  
12 to me that a 97 out of 100 is pretty damn  
13 good, would that surprise you?

14 A It wouldn't make any difference  
15 either way. We're both highly experienced  
16 instructors who've been doing this a really  
17 long time. I think we both hold each other  
18 in the same regard.

19 Q Do you find that Mr. Winstock is  
20 qualified to, essentially, grade your jumps?

21 A Yes, he is.

22 Q In fact, at Long Island Skydive,  
23 he was the most qualified person to grade  
24 your dives; is that correct?

25 A Well, as he defined what most

1 D. Zarda

2 qualified and senior is and was, he's one of  
3 the higher qualified people there. He's an  
4 examiner, an evaluator for the manufacturers  
5 that give the licenses to us for the gear  
6 that we use, so I would say a decent,  
7 qualified individual to that.

8 Q Other than the 97 out of a 100  
9 that he gave you on the jump, did you  
10 disagree with anything he said yesterday?

11 MR. ANTOLLINO: Objection to  
12 form.

13 A I would have to be able to go  
14 over the transcript of everything he said, so  
15 I can't, as a blanket statement, say that I  
16 don't disagree with anything he said because  
17 he said a lot of things over the course of  
18 five hours.

19 As far as his characterization  
20 of that one jump, a 97 out of a 100, I think  
21 the issue that we were discussing was handle  
22 checks that are performed when the tandem  
23 instructor leaves the aircraft. I just don't  
24 think that he was able to see from the  
25 vantage point of that camera person that I

1 D. Zarda

2 had actually, in fact, done the required  
3 handle checks at the appropriate time, so  
4 that was the only reason that he gave that  
5 assessment.

6 Q I think he'd probably agree with  
7 you on that, and, in fact, the videotape of  
8 that specific jump that he graded you on  
9 where you stuck the landing, and he commented  
10 that you stuck the landing perfectly, there  
11 were parts of that full jump that you  
12 couldn't see; correct?

13 A Yes, that's true.

14 Q It wasn't videotaped; correct?

15 A Well, all the jump is videotaped  
16 from the time you leave the plane until the  
17 time that you land. It's just that sometimes  
18 there's separation in free fall from the time  
19 you leave the aircraft, or the cameraman is  
20 not close enough to really be able to see  
21 some things.

22 Q Okay.

23 A Then it also depends on the  
24 camera person. Each individual camera person  
25 does things a little differently. Some of

1 D. Zarda

2 them may record all of the footage. Some of  
3 them may not, just to save space on their  
4 cards or on their tapes, and then they edit  
5 it later.

6 Q From your memory from yesterday,  
7 was there anything that sticks out in your  
8 mind that you disagree with that Mr. Winstock  
9 testified about?

10 MR. ANTOLLINO: Objection to  
11 form.

12 Q You may disregard the objection  
13 and provide an answer.

14 A There were some things. I would  
15 have to reflect for a moment.

16 Q Please do.

17 A Yeah, there were some things.  
18 Starting at the beginning. When we discussed  
19 the matter, Mr. Winstock and I, about what  
20 had happened with my employment situation,  
21 where that actually took place versus where  
22 Mr. Winstock said it took place and some of  
23 the details about that. That's one thing.

24 Q Where did that discussion take  
25 place?

1 D. Zarda

2 A Where did Mr. Winstock and I

3 talk about it?

4 Q Yes.

5 A We talked about it in the

6 drop zone classroom, specifically.

7 Q When did you talk about it?

8 A It was, approximately, five

9 minutes after Mr. Maynard had suspended me.

10 Q What did you discuss?

11 A I asked Mr. Winstock outside of

12 the classroom on the way into the classroom,

13 it was dark. He was talking to another

14 instructor. I think that was where he was

15 mentioning that we had discussed it maybe

16 because he doesn't remember it as clearly,

17 you know, it being a year-and-a-half later,

18 if we could discuss the matter, and he said

19 sure, and then we moved over to the left

20 where the drop zone classroom is, and it was

21 a private area, and we went into there, and

22 we discussed it.

23 Q What exactly was discussed?

24 A Everything that Ray had just

25 told me in the video briefing room that the

1 D. Zarda

2 passengers sit in, which is also an extension

3 of his office. His office is next door to

4 the video room, and he often holds meetings

5 in that room, as well, when it's not being

6 used for video briefing, and that is where

7 Mr. Maynard and I had the suspension meeting.

8 Q What was discussed at that

9 suspension meeting?

10 A What was discussed was he was

11 asking me questions about a jump that took

12 place on June 18, 2010.

13 Q What questions?

14 A Well, there were a lot of the

15 questions. He was asking me --

16 Q I want you to take your time,

17 and relate to me all the questions that you

18 recall.

19 A He was asking me if I remembered

20 a jump with a Miss Rosanna. I don't

21 recall -- I don't think he provided the last

22 name at that time, and he asked me if I

23 remembered the jump I did on that day on

24 Friday, which was June 18, and I told him

25 that I did several jumps on June 18, so if I

1 D. Zarda

2 look back at the records, I did, I think, ten

3 jumps that day. So, no, I didn't remember a

4 specific jump at that time that he was

5 referring to, so it started with that.

6 Q Continue.

7 A Okay. And so after telling him

8 that, he asked me if I remembered the jump.

9 He said I took a girl named Rosanna, and I

10 said okay, and he asked me if I remembered

11 anything about it, and I said no, I did

12 several jumps. This was on a Monday, so this

13 was about three days later after a long

14 weekend of jumping. It was a routine land.

15 At that time, I didn't remember

16 anything specific about that jump, so then he

17 proceeded to tell me what he knew about the

18 jump, and he told me that there were some

19 customers that came out and jumped, and it

20 was a boyfriend and a girlfriend, and that I

21 had taken the girl, and they had called and

22 made a complaint.

23 Q Continue.

24 A I said okay, and so he was going

25 to ask me questions about what the

1 D. Zarda

2 complaint -- or about the complaint that was  
3 made, and I didn't have any knowledge about  
4 anything, because there was nothing out of  
5 the ordinary that took place that I could  
6 recall at that time.

7 Q What questions did he ask you?

8 A He asked me if anything about my  
9 sexual orientation came up or anything about  
10 being gay came up, and I said I don't know.

11 Q Continue.

12 A Okay. I remember telling him  
13 that that comes up all the time around here,  
14 because it was often joked about at the drop  
15 zone all the time by staff. It was even by  
16 some other customers which are experienced  
17 skydivers that were mixed in with the jump  
18 operation while the jump operation is going  
19 on, and so I said that I don't know how it  
20 came up or who brought it up at that time.

21 Q Did you know that it was brought  
22 up?

23 A I only knew that because he said  
24 it was brought up, Ray Maynard said that.

25 Q Okay, continue.

1 D. Zarda

2 A So what am I continuing on

3 again?

4 Q You were telling me all of the

5 questions that Ray Maynard asked you when he

6 was investigating this customer complaint.

7 MR. ANTOLLINO: Objection to the

8 characterization.

9 Q You may disregard the objection

10 and provide an answer.

11 A I think he was -- I don't think

12 he was investigating what I knew about it.

13 Q You don't think he was, or he

14 was?

15 A No. I said I think he was just

16 investigating what I knew about it at that

17 point.

18 Q What other questions did he ask

19 you?

20 A He had asked me, we already

21 covered it, if I remembered anything about

22 the jump, and I said no. Then he went on to

23 tell me what the complaint was, and so -- do

24 you want me to tell you what that was?

25 Q Please.

1 D. Zarda

2 A He said the subject of my sexual  
3 orientation had come up in front of the  
4 customers and that they were offended by it,  
5 and he was forced to give them all their  
6 money back, and I was off for a week, and he  
7 was going to take it out of my paycheck, the  
8 full price for two tandem jumps with two  
9 video, which he later did take that out of my  
10 check, and he was very angry.

11 Q Did he say anything else?

12 A I'm sure he did, if you just  
13 give me minute to recall that. I was in a  
14 bit of -- I was shocked at the time, so --

15 MR. ANTOLLINO: Just answer the  
16 question.

17 A I said that you can't be  
18 serious. I might have said something like  
19 that. I do remember mentioning to him  
20 something about my sexual orientation coming  
21 up on the drop zone so frequently, and I  
22 can't say whether I brought it up or not. I  
23 said, you know, Ray, people bring that up  
24 around here all the time, and if you don't  
25 want that to come up, I think you should have

1 D. Zarda

2 a staff meeting and talk about it with the  
3 other staff. And he was very angry, and he  
4 said, there will be a staff meeting, all  
5 right. He shouted that because he was very  
6 angry, and I don't know if he was angry at me  
7 or the situation, but that's what he said,  
8 and I think he was saying that in reference  
9 to while I was gone, having a staff meeting,  
10 so that was my response to the issue about me  
11 being gay coming up, so I was pretty  
12 surprised, and I didn't know how to respond  
13 to that.

14 At the very beginning of that  
15 entire suspension conversation, for the first  
16 few seconds of it, I actually thought it was  
17 a gag, they were messing with me. I couldn't  
18 believe this could even be real, so I  
19 actually thought it was a joke, but it became  
20 very clear, very soon that Ray wasn't joking.

21 Q Was that all that was discussed  
22 with you --

23 A No.

24 Q -- at that meeting?

25 A No, it was not.

1 D. Zarda

2 Q Please continue.

3 A After we got through the part

4 where I said that you're going to have to

5 have a staff meeting, and he shouted what I

6 just told you, there'd be a staff meeting,

7 all right, I said, Ray, there must be video

8 of the jumps because you just said you're

9 going to take the full price of two tandems

10 and two videos out of my paycheck.

11 He was, you know -- I don't

12 know, and he was flustered and angry, and I

13 said, well, if you're going to charge me for

14 two videos, there must be video. Can I see

15 the video of the jumps? And he said, no,

16 it's irrelevant. And I paused for a moment,

17 and I said, Ray, I think it's relevant

18 because you're taking action against me right

19 now about something that you said happened on

20 a jump, and it sounds to me like there's

21 video of the jump, in fact, both jumps, and I

22 would like to take a look at it, and I think

23 I'm entitled to take a look at it, and he

24 said no.

25 I said, well, can't we just go

1 D. Zarda

2 back to the manifest records since it was  
3 just on Friday and look at the records and  
4 see who the cameramen were and then go to  
5 them and see if we could just look at their  
6 footage? And he, again, denied me being able  
7 to look at the video. That was the end of  
8 the discussion about the video. He wouldn't  
9 let me see it, so I said, is that it? And he  
10 said, no, there's something else. And I  
11 said, what, and he said, she said that you  
12 touched her in a way that made her feel  
13 uncomfortable. So I said, really, and I  
14 said, Ray, did you just tell me that I took  
15 the girl or the guy in this, and he said, you  
16 took the girl.  
17 I said, okay, I said, so what  
18 you're telling me is that me, the gay guy  
19 that they complained about and they're  
20 offended by, touched the girl  
21 inappropriately; that's what you're going  
22 with? And he said, that's right, and then he  
23 was headed towards the door, and he was mad,  
24 and I said, where, Ray, where, as in I was  
25 wanting him to define to me where on the girl

1 D. Zarda

2 that I had touched her inappropriately, and

3 he said, flustered, like, it was at the hips.

4 I said, ah, okay, and then Ray stormed out of

5 the office, and I was left sitting in there

6 for a minute stunned, and then I sat there

7 for just -- I don't know exactly how long I

8 sat there, but Ray had left, it was dark, he

9 went out of the room, and he went out of the

10 building.

11 I got my composure. It took me

12 a few moments. Then I went out of the room,

13 and when I went out of the room and out of

14 the building, it was dark outside. That was

15 when Rich Winstock was having a conversation

16 with another instructor over to the left, and

17 that's when I said, Rich, I got to see you

18 for a second right now, and he said, okay,

19 just a minute, and I said, it's important;

20 now.

21 I started to get really upset

22 because this was just all hitting me at that

23 moment, what had just happened, it was pretty

24 amazing, if I have to say, and I was in

25 disbelief at what all had just transpired,

1 D. Zarda

2 and I'm just getting pretty angry. My anger  
3 was building and I was getting really upset.  
4 Rich saw that and that's when he pulled me  
5 into the classroom, and that's when we began  
6 discussing it.

7 Q What started then, this whole  
8 line of testimony, was that you believed that  
9 Rich testified that this discussion happened  
10 in a different location; is that correct?

11 A It sounded to me like yesterday,  
12 you know, that this is probably not as  
13 important to him. This whole case was just  
14 another day at work for him. It sounded like  
15 he hasn't really discussed this much, or if  
16 at all during this time, and maybe he just  
17 doesn't remember the specifics as well, since  
18 he's not so closely involved as to where we  
19 had the discussion.

20 That's what I believed from what  
21 Rich said yesterday, and why there might be a  
22 little bit of difference.

23 Q Was there anything else about  
24 Rich's testimony that you believe was  
25 inaccurate?

46

1 D. Zarda

2 MR. ANTOLLINO: Objection.

3 Q You may disregard the objection  
4 and provide an answer.

5 MR. ANTOLLINO: You may  
6 disregard all my objections, unless I  
7 put my hand out and tell you not to  
8 answer.

9 THE WITNESS: Got it.

10 A As we go through this  
11 conversation and I try to remember the five  
12 hours or three hours or so yesterday, I might  
13 remember some more things that come up  
14 because this is relevant, so I'm just going  
15 to try to go chronologically down what was  
16 discussed yesterday.

17 There are some things. I've  
18 known Rich for quite a long time. I think he  
19 had -- some of the facts he may have  
20 remembered wrong about how long we've known  
21 each other, where we met, his knowledge of me  
22 being gay, some of those things because we've  
23 talked about some of those things in 2009,  
24 2010, in social settings after work, so, you  
25 know, he has more knowledge about some of

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1 D. Zarda

2 that stuff than I think he let on yesterday

3 or what he was able to recall yesterday.

4 Q Okay, continue.

5 A For instance, when he was asked

6 if the subject of my sexuality came up during

7 work and if he had heard it or knew anything

8 about it, I think that was inaccurate.

9 Q What was his answer, and what

10 about that answer do you believe was

11 inaccurate?

12 MR. ANTOLLINO: Objection.

13 A I believe he said something more

14 close to the fact that it didn't come up that

15 frequently or around him or he didn't

16 remember specific examples, so that's what

17 was inaccurate. I think, if you recall, when

18 he brought up a couple of times about the

19 jokes, you know, there were so many jokes

20 that he couldn't come up with one right then,

21 do you remember that part?

22 Q I do.

23 A It's like that. It's when

24 something happens so frequently, you almost

25 can't remember a specific instance of it at

1 D. Zarda  
2 that moment. It was like that because it was  
3 so routine and so ordinary. It came up all  
4 the time that it was just like any other  
5 thing that comes up, so I think that that was  
6 why he probably might have answered that way.

7 It's not one of those things  
8 that somebody, I think, is going to make the  
9 highlight of their day of things that they  
10 remember about, the joke about Don being gay;  
11 it's was just another thing, so that's why I  
12 don't think he remembered. Probably if we  
13 were able to go back and think about specific  
14 jokes at specific times, he'd be like, oh,  
15 yeah, I remember that.

16 Maybe then, but there were  
17 numerous times when it came up. It came up  
18 almost every day, if not every day by various  
19 people at various times mixed in with  
20 customers and other instructors and other fun  
21 jumpers that were around. It's all very  
22 close. Especially in the aircraft, it's even  
23 closer.

24 Q Continue.

25 A So that characterization or that

1 D. Zarda

2 recollection, I think he just didn't remember

3 everything, so that would be another thing.

4 Let me just think for a minute

5 what else was said.

6 The issue or the matter of the

7 nickname, Gay Don and what he said about

8 that. I don't know where exactly the

9 nickname came from, so I don't know if he

10 recalled where it came from exactly or if

11 that was something that was discussed, but

12 that was a name that I heard a lot. I heard

13 it from everybody, and I think I've heard it

14 from him, and I didn't think that he meant it

15 in any kind of derogatory way.

16 I think it just became -- if you

17 were to look at the manifest computer at the

18 drop zone, you would actually see a list of

19 nicknames on the screen when they assign you

20 who your passengers are going to be. Rich

21 Winstock's nickname is Winnie. There's

22 another gentleman that's from Texas, his name

23 was Texas, so I mean, a bunch of people had

24 nicknames that they would go by at the drop

25 zone.

1 D. Zarda

2 In fact, a few people whose  
3 names I can't even remember because it was  
4 always their nickname, so that sort of became  
5 my nickname by a lot of the people, so  
6 therefore, that would come up, that would be  
7 said in front of customers, it would be said  
8 in front of anybody. What does somebody  
9 think about that? I don't know, so --

10 Q Well, I think -- go ahead. I'm  
11 sorry.

12 A Rich's recollection and  
13 characterization of how often Gay Don came  
14 up, where it came up, and who said it, I  
15 think, was a little light. That's all.

16 Q Do you remember the interaction  
17 at the deposition yesterday where I indicated  
18 on the record that you were shaking your head  
19 side to side?

20 A I do remember that.

21 Q What do you recall from that?

22 A Well, what I'd like for you to  
23 do is, for the record, to go ahead and state  
24 what it is you would like to ask me about  
25 that since that was yesterday, and I want to

1 D. Zarda

2 make sure we're clear about what I was

3 shaking my head about.

4 Q Do you recall Rich testifying

5 yesterday that, yes, he knew you as Gay Don,

6 and he may have referred to you as Gay Don,

7 and he didn't know if you were offended by

8 it, and at that point, I believe you were

9 shaking your head side to side indicating

10 that you were not offended by him referring

11 to you as Gay Don?

12 Is that a fair characterization

13 of what occurred yesterday?

14 A That's pretty close. That's

15 acceptable. What I was shaking my head about

16 was to Rich because Rich is a friend that

17 I've known for a long time. I didn't want

18 him to feel like I felt that he, as a friend

19 of mine, was offending me. That's what I

20 meant.

21 Q When Rich referred to you as Gay

22 Don, you weren't offended by that?

23 A I wasn't offended by that. I

24 know he meant no malice. I know he meant no

25 derogatory meaning towards me. I know that

1 D. Zarda

2 we respect each other, and so he wasn't  
3 demeaning me by saying that, and I didn't  
4 want him to feel like he was being put on the  
5 spot with that question to determine whether  
6 or not he was saying that in a demeaning  
7 manner to me. I didn't want him to feel that  
8 way.

9 Q Did you ever feel that  
10 Rich Winstock treated you differently because  
11 of your sexuality?

12 A Could you be more specific in  
13 what you mean by treated differently?

14 Q Treated differently in the  
15 workplace then someone whose sexuality was  
16 different than yours.

17 A No, I think Rich Winstock  
18 treated me like anybody else.

19 Q You are gay; correct?

20 A I am.

21 Q What is your understanding of  
22 the definition of the word gay?

23 A Well, I don't have a dictionary  
24 in front of me, but one that is sexually  
25 attracted to members of the same sex;

1 D. Zarda

2 homosexual, or prefers.

3 Q Well, when you say "prefers,"

4 does that mean that there are or have been

5 times of your life where you've been

6 attracted to someone of the opposite sex?

7 A When I say that, I was trying to

8 define what gay might be in the dictionary.

9 I wasn't necessarily defining what gay is to

10 me, so if you want to ask whether I'm

11 100 percent gay, then I would say that I

12 100 percent prefer males.

13 Q Has that always been the case?

14 A It has always been since my

15 youngest knowledge of an understanding of

16 sexual preferences took place whenever that

17 was back in, you know, when you're a child.

18 Whenever that cognitive or that part of

19 development in your brain takes place, it's

20 been that way since that point.

21 Q Have you, since that point, that

22 early point in your life, have you always

23 expressed to others your preference for

24 same-sex relationships?

25 A No, I have not.

1 D. Zarda

2 Q Did there come a point in time

3 where you, for lack of a better term,

4 "came out" about your sexuality?

5 A Yes, there was.

6 Q When was that?

7 A There was a transitory phase.

8 There wasn't just one day where I opened the

9 door and said, I'm gay, so that transitory

10 phase began in around 1999 into 2000, and

11 kind of through the course of that year, it

12 came out.

13 Q When were you born?

14 A I was born in 1970.

15 Q Prior to 1999 to 2000, were you

16 involved in any relationships with people of

17 the opposite sex?

18 A I was.

19 Q Do you characterize those

20 relationships as romantic in nature?

21 A I would say that they were

22 friendly in nature, but as far as romantic, I

23 would have to fall short on that because I

24 really couldn't deliver in a romantic way

25 because my heart was not able to do that

1 D. Zarda

2 because I was not heterosexual, so I was just

3 in the paradoxical situation of being a

4 closeted gay person, trying to interact in a

5 heterosexual world which just doesn't work

6 sometimes, and so, no, there was no real

7 romance that could take place in those

8 involvements.

9 Q Were any of the close

10 involvements physical relationships?

11 A There was some physical contact;

12 yes.

13 Q Where were you born?

14 A I was born in Independence,

15 Missouri.

16 Q When did you first start working

17 at Long Island Skydive?

18 A Well, it's Skydive Long Island.

19 I want to make sure we don't get these

20 centers mixed up. Skydive Long Island is

21 Ray Maynard's drop zone while Skydiving

22 Center is down in East Moriches. That was

23 Ray's competitor.

24 Q When did you start working at

25 Skydive Long Island?

1 D. Zarda

2 A The first time I came to Skydive

3 Long Island was in the summer of 2001.

4 Q I'm sorry?

5 A It was in the summer of 2001.

6 The summer of the Trade Center.

7 Q Is it safe to say that you

8 started working at Skydive Long Island

9 shortly after your transition period, and I'm

10 going to use the term "came out." Is that

11 offensive?

12 A It's not offensive; no.

13 Q So shortly after you came out in

14 the summer of 2001, you started working at

15 Skydive Long Island; is that correct?

16 A That is correct.

17 Q Who hired you at Skydive Long

18 Island in 2001?

19 A Ray Maynard makes the ultimate

20 decisions in hiring people, so he hired me.

21 Q You worked beginning in the

22 summer of 2001 through what period of time?

23 A It was about midsummer through

24 just before the Trade Center disaster.

25 Q How did your employment come to

1 D. Zarda

2 an end in or around September of 2001?

3 A As I recall, from clear back a

4 decade ago, I was terminated by the general

5 manager, then Brian Petretti, who is now one

6 of Ray's part-time employees, and he does,

7 almost exclusively, video work at the drop

8 zone on weekends.

9 Q Why were you terminated?

10 A From the best I can recall,

11 because Ray didn't discuss the matter with

12 me, it had something to do with a customer

13 being unhappy about not being able to do

14 flips out of the airplane, or something to

15 that effect. I wouldn't do something that

16 they wanted me to do out of the aircraft.

17 Q And you were terminated in or

18 around September of 2001; is that correct?

19 A Yes.

20 Q Did you think that you were

21 being discriminated against when you were

22 terminated in September of 2001?

23 A I was confused about that, why I

24 was told that I was being terminated, because

25 Brian, at the time, didn't say a whole lot

1 D. Zarda

2 about it because he was doing it on Ray's  
3 orders, and again, I'm thinking back on  
4 something a decade ago that I thought was old  
5 business when Ray rehired me in 2009, so I  
6 haven't really thought much about that, so --

7 MR. ANTOLLINO: Just answer the  
8 question.

9 Q I think you are. You're doing  
10 fine.

11 A Repeat that part of the  
12 question, please.

13 Q My question was: On or about  
14 September of 2001, did you think you were  
15 being discriminated against by your  
16 termination?

17 A I'm going to have to say that I  
18 don't recall what I thought at that time,  
19 2001, about that matter, about being  
20 discriminated against or whether I was being  
21 discriminated against at that time.

22 Q In your response, you mentioned  
23 that you were rehired in 2009; is that  
24 correct?

25 A That is correct.

1 D. Zarda

2 Q You were rehired by Skydive Long

3 Island; correct?

4 A That is correct.

5 Q Who rehired you?

6 A Ray Maynard.

7 Q Can you tell me how you came to

8 be rehired in 2009?

9 A Can you be a little more

10 specific about -- are you asking who I talked

11 to about it?

12 Q What I'm really asking you for

13 is a narrative. At what point did you say,

14 you know what, I'd like to start working

15 there? And explain to me how that all came

16 about.

17 A Okay.

18 MR. ANTOLLINO: Objection. It

19 calls for a narrative.

20 Q And you may go ahead and

21 disregard that objection and provide a

22 narrative.

23 A It wasn't just a one, pick up

24 the phone, call Ray, and ask if I could work

25 there kind of thing. It was something that

1 D. Zarda

2 had built over the course of a few months. I

3 know a lot of the people that work at Skydive

4 Long Island for a long time. Some of those

5 people are there from 2001, like Rich and

6 Curt and a friend from New Zealand, Duncan

7 Shaw, and I had spoken to Duncan in

8 late 2008, about how things were going at

9 Skydive Long Island and that I was working

10 full-time again in the summer and about

11 coming to work there.

12 We discussed it, and he thought

13 that I should go ahead and contact Ray and

14 talk to him about it, and Duncan said that at

15 that time, that he would like to have me come

16 back to work there because he knew that I'm a

17 good instructor, he knew my qualifications,

18 and he said something to the effect of that

19 he didn't know where Ray was getting some of

20 these people, and he was frustrated and tired

21 of working with, what sounded like,

22 unqualified people that were less than up to

23 par to do the job.

24 And so he was trying to prod me

25 to go ahead and talk to Ray about coming back

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1 D. Zarda

2 to work there, because I think he wanted me

3 to come back and work there. I said, okay,

4 and when I came down from the end of the

5 season in May -- excuse me -- in Maine from

6 working at Jumping Route, the season ends up

7 there just a few weeks earlier because it's

8 so far north.

9 On my way back through to head

10 to Missouri, I came out to Skydive Long

11 Island and made some fun jumps, and then I

12 also talked to Ray in person about that

13 prospect.

14 Q And you spoke to Ray because you

15 thought, you know what, you like the people

16 here, and you wanted to work here; correct?

17 A That is correct.

18 Q This is all in 2009?

19 A This is in 2008.

20 Q Continue.

21 A So, it wasn't an appointment or

22 anything or a specific meeting that I had set

23 up with Ray. I just picked a day that was a

24 nice day to come out, do some fun jumps,

25 socialize a little bit with some of the

1 D. Zarda

2 jumpers I knew, and talk to Ray, if he was

3 there, about it. He just mentioned -- I

4 think I spoke to Lauren, as well, going ahead

5 and sending an e-mail over the winter or

6 something when he puts his advertisement out

7 over the winter for staff to contact.

8 Q When you spoke to Ray in 2008,

9 did the issue of your sexuality come up?

10 A I cannot recall if we spoke

11 in 2008 at that time about my sexuality. I

12 don't know why it would come up because he

13 probably, you know, remembered it, so I don't

14 know. I can't recall if it came up

15 specifically at that time.

16 Q Why would he remember your

17 sexuality?

18 A Well, it was brought up in 2001.

19 Q By whom?

20 A By everybody. It was the same

21 scenario as what we just discussed. It was

22 out and about on the drop zone and joked

23 about.

24 Q In 2001 when you were working at

25 Skydive Long Island, you had disclosed your

1 D. Zarda

2 sexuality to your coworkers; is that correct?

3 A It was out. It was known. I

4 don't know if I can -- you know, we're

5 talking about ten years ago. I can't say

6 that I came in and said, I'm gay, or people

7 just figured it out, you know, or could tell

8 because I went to these locations like Fire

9 Island, you know, for the weekend. Oh, you

10 must be gay, or are you gay, you know,

11 whether somebody might have asked me. I

12 can't tell you from a decade ago exactly how

13 the knowledge of my sexuality came out in

14 2001.

15 Q Did you tell people that you

16 went to Fire Island?

17 A People would -- again, I don't

18 know specifics about something a decade ago,

19 you know, like if somebody came up to me and

20 asked, did you go to Fire Island? I can't

21 say for sure. People would ask generally,

22 you know, what did you do this weekend? Oh,

23 we went to the game or we jumped into

24 Neptune's or, you know, I might have said --

25 this is just conjecture. This is speculation

1 D. Zarda

2 of how it could have come up. I went to

3 Fire Island, or I went to the Pines, that

4 kind of thing.

5 Q So when you discussed Fire

6 Island, you discussed certain communities at

7 Fire Island, not just Fire Island, in

8 general?

9 A More than likely. If I said I

10 went to Fire Island, I probably said I went

11 to the Pines.

12 Q And that was --

13 A I was out. I didn't have

14 anything to hide. I wasn't afraid. I

15 wouldn't have been afraid to tell anybody

16 where I went or what I did, if asked.

17 Jumpers routinely ask each other what you did

18 this weekend or where you're going this

19 weekend or what you did; did you have fun,

20 you know, whatever.

21 Q In 2001, you experienced a

22 certain amount of comradery with your

23 colleagues; is that correct?

24 A There was a lot of comradery.

25 Q That comradery lasted with some

1 D. Zarda

2 of those coworkers who actually encouraged

3 you in 2008 to speak to Ray and come back to

4 work in 2009; is that correct?

5 A It did.

6 Q That was Duncan --

7 A Duncan Shaw was the primary

8 person.

9 Q And then there was Rich Winstock?

10 A Yeah, but not so much Rich, but

11 more Curt, Curt Kellinger, who you mentioned

12 yesterday. I've known him for a long time,

13 as well, and I'm trying to think if there is

14 anybody else that -- you know, it was mostly

15 Duncan that I kept in most contact with

16 through those years between 2001 and 2008,

17 where it was pretty quiet.

18 I was involved in other things

19 and wasn't working full-time skydiving, but I

20 still contacted and had some relationship

21 with Duncan during that time.

22 Q Do you remember any of the other

23 coworkers that you worked with in 2001?

24 A I do.

25 Q Who are they?

1 D. Zarda

2 A Well, they don't work there now.

3 Q Who were they?

4 A Brandon Spadero, Orin Perry --

5 gosh, off the top of my head, there was quite

6 a few.

7 Q Just the ones you can remember.

8 A That aren't there anymore, is

9 that what you're asking?

10 Q That are either there currently

11 or aren't there. Anybody you remember

12 working with?

13 A Well, those two that I

14 mentioned, I do remember very well. Brian

15 Petretti, who was the general manager at the

16 time. I remember Curt. I remember Duncan.

17 Who else? Brandon doesn't work there

18 anymore. Don doesn't work there anymore.

19 Off the top of my head, there's so many

20 people who came through there that I can't

21 remember everybody right now.

22 Q In 2001, these were people you

23 worked with that you were looking forward to

24 working with again in 2009; is that correct?

25 A That's right.

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1 D. Zarda

2 Q At some point before the 2009

3 season, Ray Maynard hired you; is that

4 correct?

5 A We discussed it, if I recall, on

6 or about November 15, 2008, which would be

7 preseason 2009.

8 Q What did you discuss with

9 Mr. Maynard?

10 A Just that he had agreed to have

11 me come back to work there.

12 Q Did he put any conditions on

13 you?

14 A Not that I can specifically

15 recall. Any conditions like -- could you be

16 more specific?

17 Q Any behavioral conditions?

18 A Any behavioral conditions, no, I

19 don't think he said anything specific. Are

20 you referring to like, did he ask --

21 MR. ANTOLLINO: Just answer the

22 question.

23 A I don't remember anything

24 specific.

25 Q Did you make any behavioral

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1 D. Zarda  
2 representations to Mr. Maynard in order to  
3 obtain your employment in November of 2008?

4 A Behavioral representations...

5 Q Such as, if I'm hired, I will do

6 X, or if hired, I will not do Y.

7 A No, no, I --

8 MR. ANTOLLINO: That's the  
9 answer.

10 MR. ZABELL: Counselor, please.  
11 You're restricted to just objecting,  
12 nothing more.

13 MR. ANTOLLINO: I just want to  
14 take a minute break, just one minute.  
15 Do you mind?

16 MR. ZABELL: I do mind, but  
17 you're entitled to take a break.

18 MR. ANTOLLINO: I'd just like  
19 one minute. That's it. Is that all  
20 right?

21 MR. ZABELL: That's fine.

22 (Whereupon, a recess was taken  
23 from 11:55 a.m. 11:56 to a.m.)

24 Q You just took a break and spoke  
25 with Counsel?

1 D. Zarda

2 A We had a brief discussion, yes.

3 Q You went back to work for

4 Skydive Long Island in 2009; is that correct?

5 A Correct.

6 Q How was that?

7 A Could you be more specific?

8 Q Sure. How was the work

9 experience in 2009 at Skydive Long Island?

10 A Could you even be more specific?

11 Are you talking about how was the airplane

12 and the equipment, or how were the people, or

13 how was the weather? I mean, what --

14 Q You could start with the

15 equipment, move to people, talk to weather,

16 and then we'll get to your injury.

17 A It sounds like you want to talk

18 about my injuries, so --

19 Q No. I want to talk about

20 everything, including your injury.

21 A I just want to make sure --

22 Q Let's start with the equipment.

23 A The equipment was fine. It was

24 good equipment. I was satisfied with the

25 equipment.

1 D. Zarda

2 Q Let's talk about Rich Winstock.

3 In 2008, did you work with Rich?

4 A I did.

5 Q How was Rich in 2009?

6 A He was the same Winnie that he'd

7 always been. He was great.

8 Q Your interactions were

9 completely appropriate?

10 A Yes.

11 Q Duncan Shaw, how was Duncan?

12 A He was just like I remembered

13 him.

14 Q Your interactions were

15 completely appropriate?

16 A It was good.

17 Q Appropriate?

18 A It was -- well, what do you mean

19 by "appropriate"?

20 Q Appropriate for a workplace.

21 A It was -- I will say this. It

22 was appropriate for a drop zone. It was

23 normal as far as the way people act at the

24 drop zone. It was to be expected.

25 Q Who was the other individual

1 D. Zarda

2 that you talked about? I believe he's

3 jumping in Utah now.

4 A Oh, Curt Kellinger.

5 Q Yes. How was Curt Kellinger in

6 2009?

7 A Crazy as ever.

8 Q Inappropriate crazy?

9 A Curt has his own category. He

10 was -- inappropriate towards me, no.

11 Q Did you enjoy working with those

12 three individuals?

13 A Yes, yes.

14 Q Was there anybody that you did

15 not enjoy working with in 2009?

16 A There is personalities at all

17 drop zones. There is some people that I

18 didn't enjoy as much as others.

19 Q Who are the people that you did

20 not enjoy?

21 A Ben Lowe.

22 Q Continue.

23 A Well, let me think for just a

24 minute.

25 In general, I got along with

1 D. Zarda

2 everybody, so there were just some people

3 that required a little bit more work than

4 others to be able to get along with, and he

5 was one of those people.

6 Q I think I understand that

7 concept.

8 A Yes.

9 Q Ben Lowe required more work to

10 get along with.

11 Were you able to get along with

12 him?

13 A Yes, I was.

14 Q Who else?

15 A At the very beginning, Willie.

16 That's one of those nicknames. For the life

17 of me, I can't remember his full name right

18 now, but I'm sure we have a record of it

19 somewhere. I remember him very well, but

20 this is one of those situations where people

21 go by their nickname. He required a little

22 bit of extra work, as well, and by the end of

23 the season, it was good.

24 Q So your relationship, by the end

25 of the season, was great with everyone; is

1 D. Zarda

2 that correct?

3 A I think so.

4 Q So much so that would you

5 characterize you enjoyed working in 2009 at

6 Skydive Long Island?

7 A I enjoyed working in 2009 up

8 until I broke my ankle, so I didn't enjoy

9 that.

10 Q How did you break your ankle?

11 A It was at work, and it was on a

12 landing.

13 Q Do you recall when that was?

14 A The specific date?

15 Q Yes.

16 A Yeah, you don't forget that. It

17 was July 2, 2009 at, approximately, 2 o'clock

18 in the afternoon.

19 Q When you broke your ankle, you

20 were casted; correct?

21 A Eventually.

22 Q How soon after July 2 were you

23 casted?

24 A In a splint, in a cast, or in a

25 boot because there's -- be more specific,

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1 D. Zarda

2 please.

3 Q Which started first?

4 A The very first thing was a

5 splint.

6 Q When were you splinted?

7 A That was later on that evening

8 after I had drove myself to the hospital.

9 Not sure even what the situation with my

10 ankle was at that point.

11 Q You banged it up, you weren't

12 sure if it was broken or sprained, so they

13 splinted it for you; is that correct?

14 A They confirmed later that

15 evening that, in fact, it was fractured

16 which, since I hadn't broken anything, other

17 than a thumb in my entire life, I thought

18 that just meant it was cracked, and I didn't

19 realize that it was, you know, that it was

20 broken, as in broke.

21 Q How long were you told that you

22 would be out of the jumping business?

23 A That's a good question, because

24 that answer kept changing as things with my

25 ankle changed, and there were just opinions

1 D. Zarda

2 from various people about that from six weeks

3 on up.

4 Q How long were you --

5 A I was being optimistic.

6 Q Is it safe to say that July 2 landing

7 injury took you out of jumping for the

8 remainder of 2009?

9 A It took me out of -- yeah, it

10 did.

11 Q You didn't work at Skydive Long

12 Island after --

13 A Let me --

14 Q -- you have to let me finish my

15 question, sir.

16 A Fine.

17 Q You didn't work at Skydive Long

18 Island in 2009 after July 2; is that correct?

19 A That is correct. The injury --

20 what I was going to say was that it took me

21 out of work jumping for the remainder of the

22 season, completely.

23 Q You came back in 2010?

24 A I did.

25 Q With a vengeance?

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1 D. Zarda

2 MR. ANTOLLINO: Objection to

3 form.

4 A No.

5 Q You came back in 2010 looking

6 forward to jump again; correct?

7 A I did. I came back with a

8 positive, high-spirited attitude ready to go

9 to work.

10 Q When were you cleared to begin

11 jumping in 2010?

12 A By my doctor, I was cleared to

13 begin work jumping on -- now, this may be off

14 a couple of days -- on or around January 22

15 or 24. It was in that range right there.

16 That was -- let me continue so

17 that I make sure I get this straight.

18 Q Please, go ahead.

19 A That was on my doctor's initial

20 orders that I begin work jumping six months

21 following my surgery. That was six months.

22 We had been in contact on the phone, but when

23 I returned to Long Island, because I knew I

24 was coming back to work for Ray because we

25 had already established that, he still wanted

1 D. Zarda

2 to have an office visit with me for a final

3 check-up to clear me out, and that was in

4 June.

5 Q The "he" is your doctor, or the

6 "he" is Ray that you just referred to?

7 A My surgeon.

8 Q Your surgeon?

9 A Yeah, that did the work.

10 Q Did you have the surgery done

11 here on Long Island?

12 A It was.

13 Q Good surgeon?

14 A Thank goodness, yes, he was.

15 Q When were you rehired by Skydive

16 Long Island 2010?

17 A Well, Ray and I discussed me

18 coming back before I went back home in 2009

19 just after I started walking again. I asked

20 him about coming back to work in 2010, and he

21 said that would be fine; just get healthy,

22 and I said okay.

23 Q You found that response to be

24 appropriate; correct?

25 A Sure.

1 D. Zarda

2 Q When did you start working again

3 at Skydive Long Island in 2010?

4 A It was on or about May 15, 2010.

5 That was my report date, and I do believe

6 that was the first day I reported.

7 Q Now, when you started working at

8 Skydive Long Island in 2001, do you know if

9 Ray Maynard was familiar with your sexual

10 orientation when he hired you?

11 A I don't know. I can't remember

12 back that far directly if we discussed it or

13 if he knew about it via Curt or Rich or if he

14 knew about it at all. I think he knew about

15 it possibly from one of them and then if he

16 didn't know about it when he hired me, he

17 certainly didn't take long to figure it out.

18 Q And you were rehired in 2009

19 with full knowledge of your sexuality; is

20 that correct?

21 A Unless he forgot about it, then

22 I would say he would have know.

23 Q Is it possible that he may have

24 forgotten about it?

25 A It's possible.

1 D. Zarda

2 Q Then, in 2010 when you began

3 working again, was he aware of your

4 sexuality?

5 A I would say certainly he would

6 have to have been still aware.

7 Q Let's talk about how you acted

8 at work in 2009.

9 A Okay.

10 Q How did you act?

11 MR. ANTOLLINO: Objection to

12 form.

13 A Could you actually be a little

14 more specific? How did I act in -- just

15 break that down, please.

16 Q In your daily mannerisms, did

17 you act just like every other employee?

18 A I think I did.

19 Q If we were watching a video of

20 you, just a video with no volume and we saw

21 your daily interactions, would we be able to

22 distinguish your interactions from any of

23 your coworkers?

24 A I doubt it.

25 Q Was that the same in 2010?

1 D. Zarda

2 A It was.

3 Q Your work activities throughout

4 your employment at Skydive Long Island were

5 indistinguishable from any of your coworkers;

6 is that correct?

7 A I would say -- there's no way I

8 could say whether indistinguishable or not,

9 because I am the one that is performing the

10 work actions, and I would be viewed by a

11 third person, so it would be strictly up to

12 whoever was watching me and what they

13 thought, but I would say that I acted

14 normally just like everybody else. I didn't

15 do anything special that I can think of.

16 Q In your perception, you acted

17 just like everybody else?

18 A As far as I can tell.

19 Q In 2009, you testified that you

20 got along with everybody; is that correct?

21 A I believe, unless we were to

22 read back what I said, I think I said

23 something to that effect.

24 Q I think what you said is that

25 Ben Lowe and maybe Willie required a little

1 D. Zarda

2 bit of extra attention, but you won them over

3 by the end of the season; is that correct?

4 A I didn't say I won them over;

5 you just said that.

6 Q I did just say that. That was

7 my characterization.

8 A Well, I think the relationship

9 developed positively by the end of the

10 season. It required a little extra work, but

11 it got to a good place.

12 Q Would you say that in 2009, you

13 had positive working relationships with all

14 of your colleagues?

15 A I would say so, for the most

16 part.

17 Q What about 2010, did you have

18 positive working relationships with your

19 colleagues?

20 A There were some new characters

21 in 2010, so there's a high turnover rate for

22 seasonal employees at Skydive Long Island, so

23 there were some new people that were brought

24 into the mix, different attitudes and

25 different personalities, and most of the same

1 D. Zarda

2 people were there, but I would say that yes,

3 I did have a good experience. There were a

4 couple of personalities that needed a little

5 extra work.

6 Q In 2010, you had a good

7 experience, but some of the personalities

8 needed extra work; is that correct?

9 A I'd say so.

10 Q Who were those personalities?

11 A First, a guy named Monkey John.

12 Q Did his mom give him that name?

13 A I have no idea.

14 Q I'm making a joke.

15 A Oh, all right. He required a

16 little extra work.

17 Q What was Monkey John's problem?

18 A You know, it was kind of funny.

19 His problem was when I returned to my same

20 digs in the staff room, which is already

21 crowded, and I was going to take the same

22 spot that I had the previous year, he didn't

23 like it, so he made a little to-do about it,

24 and that was my first meeting with John, with

25 Monkey. His girlfriend Carmen, at the time,

1 D. Zarda

2 was in the room, and Monkey kind of actually

3 got a little bit angry and sort of went off

4 on me a little bit, and some of the other

5 staff were in the room like Sean Tierney, I

6 think Marco was in there, and they dismissed

7 and resolved it and said, don't worry, Don,

8 just put your stuff over here, and I was

9 like, okay, no problem.

10 Q So your coworkers came to your

11 defense?

12 A They did, and, in fact, Monkey's

13 girlfriend, Carmen, also came to my defense

14 in the room by telling Monkey that he was

15 being, quote, a dick and to stop it.

16 The thing about that is that

17 it's not a good way for me to start a new

18 relationship with a coworker on the first

19 day, but I didn't have anything to do with

20 it, so I was just present, so that's why that

21 relationship probably needed a little extra

22 attention as opposed to the other people I

23 was working with.

24 Q Did you have any negative

25 interactions with any of your other coworkers

1 D. Zarda

2 in 2010?

3 A No, not that I can recall.

4 Q Just Monkey Jim?

5 A Monkey John.

6 Q John, Monkey John.

7 A I think his real name is John.

8 I don't know his last name. He's the only

9 Monkey there.

10 Q From what you've told me, Monkey

11 John was acting like, and I quote, per

12 Carmen, a dick?

13 A Yes, that's what she said.

14 Q But then your coworkers and

15 Carmen came to your defense; is that correct?

16 A They did.

17 Q That must have been a good

18 feeling; right?

19 A None of it was a good feeling

20 because it was awkward for me because I was

21 coming to work, going back to the same spot

22 that I was in, and I've got somebody that I

23 don't know that's confronting me about that,

24 and so it's the first day, not something

25 anybody really wants to start out that way

1 D. Zarda

2 with a new relationship, so what -- you're

3 asking me if I felt good about it? I didn't

4 feel good about it.

5 Q Well, did you appreciate your

6 coworkers coming to your defense?

7 A I did appreciate that.

8 Q There was some discussion

9 yesterday about weight, how much people

10 weighed as it applied to jumping and certain

11 weight restrictions. Now, I can tell you as

12 I sit across this table from you, you appear

13 to be someone who is physically fit; are you?

14 A I am.

15 Q Have you always been?

16 A I have.

17 Q You started jumping for Skydive

18 Long Island in 2001; is that correct?

19 A I first worked there in 2001 for

20 Skydive Long Island.

21 Q Do you recall how much you

22 weighed then?

23 A I can't tell you, specifically,

24 but I've weighed pretty close to the same

25 weight for most of my adult life, so it was

1 D. Zarda

2 about what I weigh now. It would have been

3 between 170 and 180.

4 Q Does your weight normally

5 fluctuate between 170 and 180?

6 A It stays around 175 or 180.

7 Right now I think I'm actually 185 because I

8 did some mountain climbing this summer.

9 Q Mountain climbing increases your

10 weight?

11 A Well, it's just a form of

12 working out. I suppose I put on some extra

13 muscle.

14 Q And you view that as a good

15 thing?

16 A It is a good thing.

17 Q Has anything since 2001 to now,

18 affected your weight?

19 A Has anything?

20 Q Yes.

21 A No. I need you to be really

22 more specific about that.

23 Q Anything; holidays, workout

24 routines?

25 A Not much. I've really been in

1 D. Zarda

2 that range, I just told you, most of my adult

3 life. I've been right there. I lost a

4 little bit of weight over the broken ankle

5 because this (indicating) leg got smaller.

6 That was temporary.

7 Q You lost weight when you broke

8 your ankle?

9 A In this (indicating) leg.

10 Q You see, if someone like me was

11 to break my ankle, I'm sure I would gain

12 weight.

13 A I lost weight a little bit.

14 Probably about ten pounds, and it was

15 temporary.

16 Q Were you able to exercise when

17 you broke your ankle?

18 A I was. I was at the gym on

19 crutches.

20 Q You workout frequently?

21 A I do.

22 Q How often do you workout?

23 A Depending on whether I'm

24 traveling or what I'm doing. It could be

25 anywhere between three and five times a week.

1 D. Zarda

2 Q Was that consistent since 2001

3 to now?

4 A It's been over the last twenty

5 years. Ever since high school, so you can

6 include that timeframe.

7 Q Has anything during that

8 timeframe interfered with your consistent

9 working out of three to five times a week?

10 A Yes.

11 Q What was that?

12 A I had a back injury in 2002.

13 Q Could you explain that to me?

14 A It was an injury that I suffered

15 in the gym doing squats, and as a result of

16 that, I had to cut back my workout routine

17 for about six months or so.

18 Q When you cut it back, you cut it

19 back to how many times a week?

20 A Well, for a little bit there, I

21 don't remember exactly how long; it felt like

22 forever, but I couldn't do anything for, you

23 know, two or three weeks in a row, and I

24 wasn't supposed to be doing anything, but I

25 kind of was able to lightly do some very

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1 D. Zarda

2 light weight throughout that four to six

3 months where I was really not supposed to be

4 doing anything.

5 Q So you still worked out; you

6 just used much lighter weights?

7 A I did some alternative

8 exercises, not weightlifting, you know, some

9 light weights, machines, stuff to keep me

10 moving and try to keep in shape. I'm not one

11 that does very good with just lying around,

12 so those kind of instructions don't work too

13 well for me.

14 Q That was the only thing

15 from 2001 to now, 2011, that interfered with

16 your working out; is that correct?

17 A That, and the broken ankle

18 interfered just for a little bit because,

19 obviously, I couldn't go to the gym right out

20 of surgery. I actually ran into the nurse,

21 one of the nurses that was in my surgery, at

22 the gym.

23 Q She yelled at you for being

24 there so soon?

25 A He.

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1 D. Zarda

2 Q "He"? He yelled at you for

3 being there so soon?

4 A He was surprised to see me in

5 there that quickly and just told me to take

6 it easy.

7 Q Did he scold you?

8 A He just said to be careful, take

9 it easy, don't get too carried away.

10 Q Did you listen to his advice?

11 A I did listen to it. I still

12 went, but I heeded -- you know when somebody

13 tells you something like that, and you've

14 never been through what I was going through,

15 I definitely didn't want to mess anything up,

16 but I didn't want to get out of shape because

17 I sitting around on the sofa.

18 Q Do you still suffer from the

19 effects of that back injury?

20 A I do.

21 MR. ANTOLLINO: Objection. I

22 think we're getting into the medical

23 privilege. Would you agree?

24 MR. ZABELL: No.

25 MR. ANTOLLINO: I think that we

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1 D. Zarda  
2 are, so with the Judge's instruction, I  
3 kindly ask you to move on to another  
4 subject.

5 MR. ZABELL: Are you directing  
6 him not to answer the question?

7 MR. ANTOLLINO: Yes, yes.

8 MR. ZABELL: You need to just  
9 make that clear.

10 MR. ANTOLLINO: All right. I'm  
11 just trying to make it smooth also.

12 THE WITNESS: Good to go.

13 Q Do you smoke?

14 A No.

15 Q Have you ever smoked?

16 A I've smoked a clove on occasion,

17 but I've never smoked a regular nicotine

18 cigarette.

19 Q Within the last two years, have

20 you smoked clove cigarettes? Is it

21 cigarettes, or just cloves?

22 A It's called cloves. Yeah, I

23 have.

24 Q Why have you smoked cloves?

25 A Social setting. Something along

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1 D. Zarda

2 that line. Just smells good. Somebody had

3 one.

4 Q Have you smoked marijuana within

5 the last two years?

6 MR. ANTOLLINO: I don't know the  
7 answer to that, but I'm going to direct  
8 him not to answer that question on the  
9 grounds that he has a right not to  
10 incriminate himself.

11 MR. ZABELL: Well, his answer is  
12 either no, I haven't, or --

13 MR. ANTOLLINO: If his answer  
14 were yes, then --

15 MR. ZABELL: I tell you what.  
16 We can designate it as confidential and  
17 that will allay any of your concerns,  
18 but I have an absolute right to ask him  
19 that question.

20 MR. ANTOLLINO: Let me speak to  
21 him outside. I think that his Fifth  
22 Amendment Right is a basis for me to  
23 direct him not to answer, and that's  
24 going to be my objection at this point.

25 If you'd like, I can speak to

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1 D. Zarda

2 him outside. I might reconsider it,

3 and I might not.

4 MR. ZABELL: I'll tell you what.

5 Why don't I leave you alone and this

6 way you don't have to leave.

7 MR. ANTOLLINO: All right.

8 Sounds good.

9 (Whereupon, a recess was taken

10 from 12:21 p.m. to 12:28 p.m.)

11 MR. ANTOLLINO: We're still

12 discussing this issue, you and I,

13 before you ask him any questions?

14 MR. ZABELL: I don't know if

15 we're discussing anything. Would you

16 like to discuss something?

17 MR. ANTOLLINO: Yes, I would

18 like to discuss something.

19 MR. ZABELL: What would you like

20 to discuss?

21 MR. ANTOLLINO: I would like to

22 direct the witness not to answer, and I

23 am going to ask the witness not to

24 answer on the grounds that an answer

25 could violate his right against

1 D. Zarda

2 self-incrimination.

3 MR. ZABELL: Well, you can  
4 certainly advise him to say that I  
5 refuse to answer that question on the  
6 grounds that it may incriminate myself,  
7 but he has to assert that. You can't  
8 assert that for him.

9 MR. ANTOLLINO: I'm not so sure  
10 about that. I'm going to direct him  
11 not to answer.

12 MR. ZABELL: I understand what  
13 you're saying, and we're going to get  
14 to the same place, but he has to say, I  
15 am refusing to answer that on the  
16 grounds that I may incriminate myself.

17 MR. ANTOLLINO: It's a  
18 deposition. It's different. It's  
19 not --

20 MR. ZABELL: He still has to say  
21 it because this is his sworn testimony,  
22 and it gets cited to in the record, so  
23 if that's what you're advising him,  
24 that's fine. I'm going to ask him if  
25 he's refusing to answer the question on

1 D. Zarda  
2 the grounds that the answer may  
3 incriminate him.

4 MR. ANTOLLINO: Let me speak to  
5 my client outside, Saul.

6 MR. ZABELL: You may do so.

7 (Whereupon, a recess was taken  
8 12:28 p.m. to 12:29 p.m.)

9 MR. ANTOLLINO: I'm asserting a  
10 privilege on the grounds of his Fifth  
11 Amendment Right against  
12 self-incrimination. You can ask him,  
13 and he's going to give you an answer.  
14 I don't want to go around in circles  
15 with this all day long. That's the  
16 on-the-record reason for not answering  
17 the question. Go ahead.

18 Q Mr. Zarda, are you refusing to  
19 answer my question?

20 A I'm not going to answer any  
21 questions that my attorney has advised me not  
22 to answer.

23 Q Are you refusing to answer the  
24 question on the grounds that your answer may  
25 incriminate you criminally?

1 D. Zarda

2 A (No verbal response.)

3 Q Yes or no?

4 MR. ANTOLLINO: Objection. I've

5 instructed him not to answer the

6 question. I'm directing him not to

7 answer the question for the reason that

8 I have put on the record that he has

9 the right not to incriminate himself.

10 Let's not go around in circles on this.

11 Q Are you refusing to answer the

12 question on the grounds that you may

13 incriminate yourself?

14 A I can't answer the question,

15 because I'm not going to answer any questions

16 that my attorney has advised me not to

17 answer, and that is one of those questions.

18 Q Are you familiar with the term

19 "illegal drugs"?

20 A I've heard the term.

21 Q What is your understanding of

22 what the drugs are that are encompassed by

23 that term?

24 MR. ANTOLLINO: Objection. You

25 can answer.

1 D. Zarda

2 A There's a whole book full of  
3 drugs that could be illegal. It can be drugs  
4 that -- it can be prescription drugs that  
5 don't have your name on it. That would be  
6 illegal drugs. You could have too many  
7 antiallergy pills in your backpack. That  
8 would be illegal, so I mean, there's a whole  
9 list of drugs that would be considered  
10 illegal, I presume.

11 Q Can you identify some of the  
12 those drugs?

13 A Well, I think the one you hear  
14 about in the media the most would be like  
15 marijuana, cocaine. Those would be a couple  
16 of examples. Methamphetamine, I suppose.

17 Q Ecstasy, is that another one?

18 A I'm sure it would be considered  
19 illegal.

20 Q Within the last two or three  
21 years, have you taken methamphetamines?

22 MR. ANTOLLINO: I'm going to  
23 direct the witness not to answer the  
24 question for the reason stated before.

25 Q In the past three years, have

1 D. Zarda

2 you used cocaine?

3 MR. ANTOLLINO: I'm going to

4 direct the witness not to answer the

5 question for the reason stated before.

6 Q Have you used ecstasy in the

7 last three years?

8 MR. ANTOLLINO: I'm going to

9 direct the witness not to answer the

10 question for the reason I stated

11 before.

12 Q Have you used any item that has

13 altered your thought process within the last

14 three years that is not prescribed?

15 MR. ANTOLLINO: Wait. Hold on.

16 Okay, again, I'm going to direct the

17 witness not to answer the question for

18 the reason stated before.

19 Q Do you drink alcohol?

20 A I do on occasion.

21 Q Do you ever drink to excess?

22 A No, I do not.

23 Q Have you ever drank to excess?

24 A I have, but it was a long time

25 ago.

1 D. Zarda

2 Q About how long ago?

3 A I was done with that back in

4 around 2000.

5 Q You know, when you fill out

6 certain forms for insurance, they ask you how

7 often you drink. They'll ask you if it's one

8 drink a week or two drinks a week.

9 How many drinks a week would you

10 characterize your usage as?

11 A It just depends on where I'm at.

12 If I'm at a drop zone working and I'm hanging

13 out with a bunch of jumpers after work having

14 a couple of beers after work, or if I'm doing

15 school for a solid week and I'm doing

16 homework, I may not have any, so a per week

17 thing, I think maybe per night or something

18 might be a better way to answer the question.

19 Q Okay, please.

20 A I don't get drunk. I don't like

21 the feeling of being drunk, so I would stick

22 to the rule of no more than a drink an hour

23 or a beer an hour, not even that much. You

24 know, so a person might see me have a couple

25 of beers in a social setting, and that would

100

1 D. Zarda

2 be it.

3 Q Has that remained consistent

4 over the last three years?

5 A It has.

6 Q Has anything occurred within the

7 last couple of years to change that?

8 A No, I'm not a drinker.

9 Q At Skydive Long Island when you  
10 worked there in 2009 and 2010, was there one  
11 employee there that you knew you were  
12 supposed to report complaints to?

13 A Say that one more time.

14 Q Was there one employee at  
15 Skydive Long Island in 2009 and 2010, that  
16 you knew you were supposed to bring your  
17 complaints to?

18 A Are you asking if there was a  
19 supervisor that if you have problems, you're  
20 supposed to go to?

21 Q Yes.

22 A Not clearly, no. There was  
23 not -- there were staff meetings in which Ray  
24 held, so he would want people to bring  
25 complaints to him, if you had them. There

1 D. Zarda

2 wasn't a specific chain of command that was

3 outlined to the staff or in any kind of staff

4 manual that dealt with that.

5 So Ray was the drop zone owner,

6 so if there was a problem with an employee or

7 anything, it went to Ray. Typically, if

8 there was a problem with gear, you went to

9 the rigger or Rich. If there was an issue

10 with procedures, something on a jump, like

11 that, a person would typically go to Rich and

12 talk to him about it, but it wasn't outlined,

13 specifically.

14 Q But you knew you could go to

15 Rich with your problems; correct?

16 A I felt like I could.

17 Q Did you go to Rich with any

18 problems?

19 A I did.

20 Q What problems did you go to Rich

21 about?

22 A I went to Rich about this

23 problem with Ray firing me.

24 Q Did you go to Rich with any

25 other problems?

1 D. Zarda

2 A In 2009 and 2010, are you

3 asking?

4 Q Yes.

5 A Let me think about that for just

6 a moment, if there was anything else.

7 No, I can't think of anything

8 specifically that there was a problem that I

9 went to Rich for. The only thing we really

10 discussed work-wise, I don't know if they

11 were problems, was just me getting back on

12 board with the training program at Skydive

13 Long Island, getting me up to date because

14 some things changed over the years.

15 It wasn't a problem. It was

16 just a matter of since he was the chief

17 instructor, working me back into the system.

18 Q You felt comfortable with Rich;

19 correct?

20 A I did.

21 Q You felt you could bring any of

22 your problems to Rich's attention; correct?

23 A I did.

24 Q In fact, there were times when

25 you would confide about personal issues with

1 D. Zarda

2 Rich; is that correct?

3 A Be more specific about "personal

4 issues," if you would.

5 Q There came a point in time where

6 you suffered a personal loss?

7 A Be more specific, please.

8 Q I believe a pet.

9 A Okay. Yes, there was a time

10 that that happened.

11 Q Do you recall when that

12 occurred?

13 A I do recall when that occurred.

14 That was June 22, 2009.

15 Q What occurred?

16 A My pet, my cat had a heart

17 attack in the middle of the night.

18 Q Was your cat with you on Long

19 Island at that time?

20 A She was.

21 Q How did that affect you?

22 A It was very upsetting. I think

23 anybody would be upset. It was unexpected,

24 out of the blue, in the middle of the night,

25 2 o'clock in the morning, so I was upset.

1 D. Zarda

2 Q Did you share that with Rich?

3 A I don't specifically remember

4 going to Rich or having a meeting or pulling

5 him aside and saying, hey, Rich, this

6 happened. I'm sure that I shared it with

7 people. I have no doubt that I shared it

8 with people.

9 Q And you shared it with people at

10 work; correct?

11 A I'm sure I did.

12 Q Did there come a time where

13 people at work told you that they felt that

14 you were unable to jump as a result of the

15 grief that you were experiencing?

16 A No.

17 Q Did you ever feel that the grief

18 that you were experiencing was preventing you

19 from effectively doing your job?

20 A No, it didn't. I did my job.

21 Continued on.

22 Q Did there come a time in 2009,

23 where you were crying at work?

24 A Where I was crying at work?

25 Q Yes.

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1 D. Zarda

2 A I don't recall crying at work.

3 I certainly didn't -- let's see, 2009. No.

4 I didn't cry when I broke my ankle. That's

5 for sure. I don't recall. I don't recall

6 crying at work.

7 Q Did anybody at work make fun of

8 you when you lost your cat?

9 A Nobody made fun of me. Alex

10 Allen thought that he diminished it a little

11 bit. Maybe that's just his personality.

12 It's just a cat, and he didn't like cats, so

13 it's to be expected.

14 Q What was your cat's name?

15 A Little Cat.

16 Q Is that the full name?

17 A That was her full name,

18 Little Cat Moore Zarda.

19 Q Little Cat --

20 A Moore Zarda.

21 Q Moore?

22 A M-O-O-R-E, Zarda.

23 Q Is Moore a family name?

24 A It is.

25 Q As a side note, I did have a dog

1 D. Zarda

2 that my son named Little Bear.

3 A She was a little cat.

4 Q My son liked the TV show Little

5 Bear.

6 Did the loss of Little Cat

7 affect you emotionally?

8 A At the time, yes.

9 Q Does it still affect you

10 emotionally?

11 A I've since gotten over it. I

12 have another cat that we've added to the

13 family. I don't like the fact that she's

14 gone, but people die too. I'm used to that

15 all the time, so you get over that, and move

16 on.

17 Q When do you believe that you've

18 moved on for this?

19 A Well, I don't want to make

20 myself sound cold, but within two days, I had

21 gone to the cattery in New Jersey, and I

22 picked up and got a new cat, so I wouldn't

23 say I was over it the day we picked up the

24 new cat, but I felt it necessary to have

25 another cat with me.

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1 D. Zarda

2 Q You believe you started to get

3 over it two days later; is that your

4 testimony?

5 A It began the healing process.

6 It helped having another cat, the same type

7 of cat. It helped out quite a bit, but yeah.

8 Q When you disclosed at Skydive

9 Long Island that you had lost your cat, were

10 your coworkers supportive?

11 A They were sympathetic and

12 empathetic. They know I'm a cat person, a

13 cat fan. They knew I had Little Cat for

14 seven years. Ray, at one time, was a cat

15 person. He even made liter boxes or cat

16 boxes. He did cat boxes at one time. He

17 knew my previous cat from 2001, and he

18 enjoyed that cat, so I think people were

19 supportive.

20 Q Was Ray supportive?

21 A I didn't directly tell Ray.

22 Lauren, I told Lauren, and Lauren said that

23 she told Ray just so Ray would know about it.

24 Q Did you require any time off

25 from work as a result of that?

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2 A I did not.

3 Q Did you take any time off from

4 work because of that?

5 A I did not.

6 Q You're sure of that?

7 A I am sure of that. There was a

8 possible two-day gap, but it was

9 weather-related, I believe. Little Cat died,

10 I believe, it was on a Tuesday. I'd have to

11 look at a calendar to verify that, and I

12 think we were back jumping again on the next

13 Thursday, so I think Wednesday was a weather

14 day because I'm pretty sure it rained all day

15 the next day, so I'd have to look back, but

16 I'm pretty sure of that. The next available

17 day to be at work jumping, I was there.

18 Q Are you in the habit of taping

19 conversations that you have with individuals?

20 A No, I'm not in the habit of

21 that; no.

22 Q Have you ever taped

23 conversations that you've had with

24 individuals?

25 A I have.

1 D. Zarda

2 Q Under what set of circumstances

3 have you taped conversations that you've had

4 with individuals?

5 A In my entire life, or --

6 Q Yes, in your entire life.

7 A You realize I'm forty-one years

8 old, so it would be difficult for me to

9 recount in this seating each and every

10 instance I've ever recorded a conversation.

11 Q As best you can.

12 A Well, the most recent would be,

13 you know, when Ray fired me, so that comes to

14 mind the most, because this is what I'm

15 focused on thinking about. I don't think

16 about some of the other things that I might

17 have recorded such as customer service calls

18 or calls to the bank or calls to Apple

19 computer regarding my computer, getting them

20 to fix it, or something like that, so I can't

21 recall every instance of recording a

22 conversation. It would be almost impossible.

23 It's pretty broad.

24 Q Why would you record a telephone

25 conversation?

1 D. Zarda

2 A Several reasons. There could be  
3 legal reasons that come to mind. I did  
4 record a phone call between me and Ray's  
5 wife. I did record that, and again, there  
6 could be legal reasons for recording a phone  
7 call.

8 The best reason is just to  
9 remember what was said during a phone call  
10 because unless you type really fast or are a  
11 court reporter or you take good notes, it's  
12 just easier to record the call, and then if  
13 you need to go back and listen to what was  
14 said, it's right here. Sort of refresh  
15 yourself, so, you know, that's the most  
16 useful tool that I can think of for it.

17 Q Where were you when you tape  
18 recorded your telephone conversation with  
19 Ray's wife?

20 A Where in the world, or where in  
21 the country?

22 Q Where, geographically?

23 A I was in the State of Missouri.

24 Q Do you know where she was?

25 A She was -- I don't know exactly

1 D. Zarda

2 where she was. I believe she was in

3 New York.

4 Q Did you tell her that you were

5 taping your phone call with her?

6 A I did not.

7 Q So you taped it surreptitiously?

8 A Define "surreptitiously." I

9 know what the word means to me, but --

10 Q Well, why don't you tell me what

11 it means to you.

12 A Well, I think what it means to

13 me is, was I taping it covertly or to be able

14 to use it against her without her approval,

15 or something to that effect. I think that's

16 what you mean.

17 Q Well, I just mean covertly.

18 A What do you mean by "covertly,"

19 exactly?

20 Q What I mean exactly by that is

21 that the fact that it was being taped was not

22 disclosed to her.

23 A Okay, then yes. It was being

24 taped. I did not disclose it to her. It was

25 for my personal use to be able to reflect

1 D. Zarda

2 back on to remember and to go over what did  
3 she just tell me without me having to write  
4 it all down as she's telling it to me because  
5 I, obviously, could not keep up with that.  
6 I'm not a court reporter. I don't type fast,  
7 so to me for my own personal needs, it's no  
8 different than if I was taking notes while  
9 talking to her on the phone, and that was the  
10 purpose.

11 Q Do you know if you violated any  
12 laws --

13 A I checked.

14 Q -- by doing that?

15 A I don't believe I did. I did a  
16 check with some of the statutes online to see  
17 if that was legal for me to do from my state,  
18 and from the research that I did online, it  
19 was legal for one party to be recording the  
20 conversation, so I do not believe I violated  
21 any laws.

22 Q Now, there came a time where you  
23 tapped a conversation that you had with Ray,  
24 is that correct?

25 A That is also correct; yes.

1 D. Zarda

2 Q How many conversations with Ray

3 did you tape?

4 A That is the only conversation

5 that I can recall taping with Ray.

6 Q Why did you tape that

7 conversation?

8 A This was the termination. I

9 taped it because I knew that I had a week on

10 suspension. I knew that Ray had broke

11 several laws and made several rash decisions,

12 and I was speaking about the matter during

13 the week with some close friends and told

14 them what had happened to me. And they said

15 when you go back to work on Monday, you need

16 to document what is said when you go back to

17 work just in case something goes wrong, and

18 so I thought about that, and I heeded that

19 advice.

20 Q Who were friends that you spoke

21 to?

22 A I spoke to my partner,

23 William Moore. I spoke to another friend

24 that I've known in Massachusetts that's dealt

25 with situations complex -- complex

1 D. Zarda

2 situations.

3 Q Who was that person?

4 A His name is Ira Helfand,

5 H-E-L-F-A-N-D, and I spoke, obviously, with

6 my mom and sisters, of course. I'm sure I

7 spoke to -- well, I know I spoke to the owner

8 of the condo that I was leasing about it.

9 Told him -- I mean, he wanted to know why I

10 wasn't going to work, so we talked about it.

11 Q Who is that; what is his name?

12 A Sal, which is S-A-L. Falcone,

13 F-A-L-C-O-N-E. Sal Falcone, and they would

14 come out on, you know, periodically from

15 their condo from Westchester, so his

16 boyfriend, his name is Mike, but I can't

17 think of his last name, and they were

18 together, and Mike has his own business, and

19 I can't remember what it is, so just the fact

20 that he is a business owner in New York, we

21 talked about it some.

22 And I don't remember the details

23 of it, but they knew I was suspended, and I

24 was going back to work the following week for

25 Ray, and that I should be prepared.

1 D. Zarda

2 Q Did you tell your partner,

3 William Moore, your friend Ira Helfand, your

4 mother, sisters, and Sal Falcone why you were

5 suspended from Skydive Long Island?

6 A I'm sure I told them what I knew

7 at the time.

8 Q What did you tell them?

9 MR. ANTOLLINO: Objection. Go

10 ahead.

11 A I can't remember. I can't

12 recall each conversation I had in detail with

13 each of those individuals during that time.

14 That would be overly broad and impossible for

15 me to tell you, but I can just say I was

16 suspended and that I had spoken to those

17 people, and I told them what had happened,

18 you know.

19 Whatever it was to whatever

20 level of detail and specificity that I would

21 have told each individual, I don't know.

22 There's no way. It was a tense moment, and

23 there's no way for me to remember that.

24 Q Did you tell them that you were

25 suspended because you were gay?

1 D. Zarda

2 A I don't recall exactly the  
3 reason that I told them. I would have told  
4 them -- I most likely told them what I told  
5 you about what Ray said, so you're asking me  
6 to recall exactly what my conversation was  
7 with five different individuals during a week  
8 that I had, so I can't recall that.

9 Q Do you believe you were  
10 suspended because you're gay?

11 A I believe that was the primary  
12 reason.

13 Q Do you know what the secondary  
14 reasons were?

15 A Well, I think there were some  
16 gender issues in there, as well.

17 Q What gender issues were those?

18 A How I would conform to sex  
19 stereotypes, how I act as a man. I think  
20 that was a problem.

21 Q Did you act like a man?

22 A I think so.

23 Q Did you act like a woman?

24 A I don't think so, but other  
25 people may think that. I don't know what

1 D. Zarda

2 people think.

3 Q Did you give anybody reason to

4 think that you acted like a woman?

5 A Who knows if they saw me throw a

6 softball? I don't know.

7 Q Did anybody comment on how you

8 threw a softball?

9 A I can't remember specifically

10 who and where, but people have seen me throw

11 a ball before during those times between

12 jumps when we're not jumping, we're on

13 weather hold, or whatever, and it was just

14 laughed about in the same realm as my gayness

15 being laughed about, and I just shrugged it

16 off because it does look a little funny.

17 Q So when you throw a softball,

18 you look a little funny?

19 A If I throw a softball, yes, it

20 looks a little funny.

21 Q Are you saying you throw a

22 softball like a spastic man or like a woman?

23 A I would say that if you saw me

24 throw a softball, somebody might think I was

25 gay.

1 D. Zarda

2 Q Why?

3 A Because of the way it looks.

4 Q Does it look like you're

5 spastic?

6 A No. It just looks, I mean, if

7 you've ever seen the stereotypical gay person

8 throw a ball, you know, the way it's thrown,

9 there's a certain look to it.

10 Q Could you explain to me that

11 look?

12 A I've never been asked to explain

13 the look. Maybe I should go out here and

14 throw the ball. It just kind of has a little

15 toss to it like I'm showing you right here

16 (indicating). It doesn't look like a

17 pitcher, a typical baseball pitcher or

18 softball pitchers, how you see straight guys

19 playing catch with the ball and the mitt. It

20 just looks different.

21 Q So straight guys have a

22 stereotype of how they play ball?

23 A I think you can tell the

24 difference when some gay people are throwing

25 a ball and playing ball versus some straight

1 D. Zarda

2 people; yeah, I think you can say that.

3 Q Do you know if there are any gay

4 professional baseball players?

5 A I don't follow professional

6 sports at all. Unfortunately, I cannot

7 answer that. I mean, I don't even know who

8 the major teams are. I get asked stuff like

9 that all the time, but I don't know.

10 Q Do you assume that there are?

11 MR. ANTOLLINO: Don't assume.

12 Objection.

13 Q You can assume if I asked you.

14 MR. ANTOLLINO: Objection.

15 Q You may disregard the objection.

16 A Statistically speaking, if

17 there's a group of ten people in a room, one

18 of us is gay, so I would have to say that

19 statistically speaking, probably so.

20 Q Other than maybe being teased

21 about how you threw a ball, can you think of

22 any other specifics?

23 A We're talking about specifics

24 of...

25 Q Of how you acted, I believe, in

1 D. Zarda

2 context of differently than other men at

3 work.

4 A Maybe some people enjoyed,

5 noted, commented on my pink hat, pink cap. I

6 had a pink ball cap. I don't know if it was

7 a ball cap or just a regular hat, but it was

8 pink, and it said rebel on it, and it was

9 bright pink, and I wore it. I wore it on

10 occasion at work. I have no hair. I would

11 wear it sometimes until about 1:00 or

12 2:00 p.m. when the sun would go behind the

13 building and I didn't need it anymore. It

14 was viewed as a feminine thing.

15 Q Your pink hat was viewed as a

16 feminine thing?

17 A It was.

18 Q Who commented on it?

19 A Everybody commented on it at

20 some point that they saw me wearing that hat.

21 Q I'd like for you to identify for

22 me the names of the people who commented on

23 it and what they specifically said, if you

24 remember.

25 A Rich put it best yesterday.

1 D. Zarda

2 It's so many jokes that it's almost

3 impossible to come up with one right now

4 because it was just a regular, routine thing.

5 A hat, a nice pink hat. There were various

6 comments on it. I mean, I look the way I do.

7 I don't look like a lot of gay people might

8 look. The condition that I'm in, I look more

9 athletic looking.

10 Q Are you saying that all gay men

11 don't look athletic?

12 A Not all gay men do, so I get

13 mistaken for being straight sometimes, and

14 here I was in a pink hat, so it kind of

15 didn't make sense to some people, or they

16 didn't know what to do with it.

17 Q Are you saying that outwardly,

18 you believe your appearance leads people to

19 believe that you're straight?

20 A It does oftentimes, as long as I

21 don't have any accessories on that might lead

22 people to think otherwise. People do.

23 Sometimes even when I'm out at a gay club,

24 people come up to me to ask me if I'm gay.

25 Yeah, sometimes I get mistaken for being

1 D. Zarda

2 straight just on my appearance.

3 Q Are you saying that you are of

4 the belief that your outward appearance

5 indicates to people that you are straight?

6 A I get told that a lot.

7 Q Is that offensive?

8 A I don't say that it's offensive,

9 because I can't hold somebody accountable

10 just because I might look a certain way and

11 they are mistaken about it. It surprises me

12 sometimes, and it doesn't offend me. I

13 wouldn't be offended for looking straight.

14 It's just kind of funny sometimes.

15 Q When people at work, who you

16 can't really identify by name, would say,

17 hey, nice pink hat, were you offended by

18 that?

19 A No, I wasn't offended.

20 Q Did Rich --

21 MR. ANTOLLINO: Wait, wait. He

22 hadn't finished answering yet.

23 Q -- Winstock say to you, nice

24 pink hat?

25 MR. ANTOLLINO: He had not yet

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1 D. Zarda

2 finished answering the question.

3 A Let me finish answering.

4 Q Did Rich Winstock say to you,

5 nice pink hat?

6 A Again, I can't specifically

7 recall specific times and moments when the

8 pink hat was discussed. It was discussed or

9 mentioned or commented on regularly. I wore

10 it regularly in the mornings, as I said, to

11 protect my head. It drew attention. People

12 saw it. People commented on it.

13 MR. ANTOLLINO: All right. Can

14 I just say something on the record?

15 MR. ZABELL: No.

16 MR. ANTOLLINO: Not the last

17 question, but the one before that, I'm

18 going to move to strike, because

19 Mr. Zabell interrupted the witness as

20 he was finishing the question. And I

21 even tried to get Mr. Zabell to allow

22 the witness to finish answering the

23 question, but he continued to ask the

24 next question which my client fully

25 answered, and I had no objection.

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2 MR. ZABELL: Counselor, pursuant  
3 to the Federal Rules of Civil  
4 Procedure, what you have just done is  
5 called a speaking objection. You are  
6 not entitled to make a speaking  
7 objection. If you'd like, I will give  
8 you an opportunity to review the  
9 Federal Rules of Civil Procedure so you  
10 may confirm the representations I have  
11 made are completely accurate, and that  
12 you will learn to remain silent  
13 throughout the rest of deposition and  
14 only object in a manner which is  
15 appropriate pursuant to the Federal  
16 Rules of Civil Procedure.

17 To the extent that I am  
18 empowered to, I deny your request to  
19 strike the question and the answer and  
20 ask that you remain silent throughout  
21 the rest of this deposition.

22 MR. ANTOLLINO: I will make  
23 objections that are appropriate.

24 MR. ZABELL: Thank you. You  
25 have been doing so.

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2 MR. ANTOLLINO: I have.

3 MR. ZABELL: That's why I'm  
4 going to request that you take me up on  
5 my offer to review the Federal Rules of  
6 Civil Procedure.

7 MR. ANTOLLINO: You've, once  
8 again, made a derisive comment,  
9 Mr. Zabell. I have made an appropriate  
10 objection. I have made very few  
11 objections in this deposition, and I  
12 will make what I feel are appropriate  
13 objections.

14 Q When in 2010, did you wear your  
15 pink hat?

16 A Be more specific, if you would,  
17 please. When as in, what; days of the week,  
18 time of the day?

19 Q What days in 2010, while you  
20 worked at Skydive Long Island, did you wear  
21 your pink hat?

22 A Can't remember every specific  
23 time that I took a pink cap out of my bag or  
24 out of my cubbyhole in the video room and put  
25 it on my head, but in general, I would wear

1 D. Zarda

2 my pink hat when the sun was shining.

3 Particularly, in the morning hours from when

4 we began work until about 1:00 or 2:00 p.m.

5 when the sun would go behind the building

6 where the gear area is and I no longer needed

7 protection from the sun.

8 I would wear it while I was

9 gearing up passengers on the ground. Any

10 time I was running around on the ground and

11 the sun was shining, I would wear the hat to

12 protect my head.

13 Q Have you ever seen a straight

14 man wear a pink hat?

15 A I can't say that I recall a

16 specific time I've seen a straight man wear a

17 pink cap, but I don't see it often.

18 Q But you have seen it; is that

19 what you're saying?

20 A I can't recall. I mean, you're

21 asking me to think back over the course of --

22 I'm forty-one years old -- to the time that I

23 could remember if I've ever seen a straight

24 man wear a pink hat. I will tell you that I

25 probably have seen a straight person wear a

1 D. Zarda

2 pink hat at some point in my life. When,

3 during this forty-one-year-old process, I

4 can't say right now at this seating.

5 Q When people would say to you the

6 one comment you were able to relay to me,

7 hey, nice pink hat, do you recall who those

8 people were that said that to you?

9 A It's a close-quarters

10 environment. The key players that I worked

11 with, the full-timers, have all said

12 something. Probably most at the beginning of

13 the season when they seen the hat and they

14 seen me we wearing it.

15 I mean, either a sleeveless

16 shirt on because it's hot, or whatever, or

17 there was this guy wearing a pink hat, you

18 know. I can't remember exactly who said

19 what/when about the pink hat.

20 Q Would Rich say anything to you?

21 A It would be in that same

22 category of questioning of me not being able

23 to say specifically if Rich said something,

24 what he said, and when. I just know that it

25 was talked about a lot.

1 D. Zarda

2 Q As you're sitting here today,

3 you can't identify who specifically said

4 anything about your hat?

5 A Not at this seating. To ask me

6 to think about the number of comments that

7 were made and who made them and exactly what

8 they said, that would be pretty broad.

9 Q Did you maintain a diary during

10 your employment at Skydive Long Island?

11 A No, I'm not graced with the time

12 to keep up with diaries.

13 Q Did you ever take written notes

14 of the occurrence of your days while you were

15 employed at Skydive Long Island?

16 A No. The only kind of

17 documentation that we have are jump logs.

18 Q Did you make any notations in

19 your personal jump logs?

20 A About pink hats, or just period?

21 Q About anything.

22 A My jump logs are really not

23 caught up, and there are printouts in Ray's

24 computer about how many jumps I did on a

25 given day, and that's my jump log right now,

1 D. Zarda

2 so there are no addendums or notes written

3 onto those. I just trust that that's the

4 number of jumps I made, and they're in a file

5 somewhere.

6 Q You made contemporaneous notes

7 of your jump logs, of your days while

8 employed at Skydive Long Island?

9 A Not that I can recall right now.

10 Q Where do you currently reside?

11 A My home of record is in

12 Missouri; Richmond, Missouri.

13 Q Can I have your actual address?

14 A Well, the actual address I

15 receive correspondence and everything at is

16 the Post Office Box that's I've had for about

17 seventeen years. That's my actual address.

18 Q Do you have an actual home where

19 you sleep when you are in Missouri?

20 A I do.

21 Q Where is that?

22 A That is located on a skydiving

23 center which is private airport called

24 Lexington Memorial Airport, and that is in

25 Henrietta, Missouri, which is just down the

1 D. Zarda

2 road from Richmond.

3 Q You actually sleep there?

4 A When I'm there, I do.

5 Q How often are you there?

6 A I haven't been home in awhile.

7 Over the course of seventeen years that that

8 place has been there, I estimate I've

9 probably been there twenty to thirty percent

10 of that entire time. It varies. It depends

11 on where I'm going to be, what I'm doing, if

12 I'm traveling, working, if I'm in Dallas for

13 an extended stay. It really varies. I have

14 no set schedule for when I'm going to be

15 there.

16 Q Beginning in July of 2010, where

17 did you reside?

18 A Beginning in July of 2010.

19 That's -- oh, beginning in July of 2010. My

20 home of record remains in Richmond, Missouri

21 at that airport.

22 Q Where were you physically

23 residing?

24 A Where I was physically in July

25 of 2010 was, I guess, in Coram, New York.

1 D. Zarda

2 Q Where in Coram, New York did you  
3 live?

4 A I was leasing a condo from the  
5 aforementioned Sal Falcone that we talked  
6 about, and that was -- I can remember the  
7 address but not the zip code. Three  
8 Appomattox, A-P-P-O-M-A-T-T-O-X, Court,  
9 Coram, New York, and I believe the zip code  
10 might have been 11727, but you'll have to  
11 look that up yourself.

12 Q You resided there until when?

13 A In 2010?

14 Q Correct.

15 A I stayed there until, I believe,  
16 September 17, and if it wasn't exactly  
17 September 17, it was real close to that, real  
18 close. Probably within a day, which I don't  
19 remember which day exactly, but it was just  
20 after the time period that I was supposed to  
21 leave anyway.

22 Q Where did you go after that?

23 A I have to think about it for a  
24 second.

25 I believe I proceeded back

1 D. Zarda

2 towards Missouri. Yes, I did. I was in my  
3 truck, and then I went back home to Missouri,  
4 but along the way, I stopped at some other  
5 drop zones.

6 Q Where did you stop?

7 A What drop zone I stopped at was  
8 a drop zone that I sought employment at after  
9 Ray fired me in July, and that was

10 Chicagoland Skydiving Center. At the time,  
11 Chicagoland, they just moved this past  
12 season, and you may have to look that up. I  
13 can't remember exactly which city. I think  
14 it was Hinckley, Illinois at the time.  
15 They've moved.

16 Q When did you stop by  
17 Chicagoland?

18 A It would have been in the third  
19 week or so of September.

20 Q And you asked them for  
21 employment; is that correct?

22 A At one time, I did; yes.

23 Q That September, did you ask them  
24 for employment?

25 A I did not ask for employment in

1 D. Zarda

2 September, but rather I discussed the matter  
3 of him not offering me employment in July in  
4 response to Mr. Maynard terminating me in  
5 June.

6 Q Why did you drive there in  
7 September then?

8 A Because it is on the way home,  
9 directly on the way home, and because I  
10 wanted to have a face-to-face conversation  
11 with the owner of the drop zone.

12 Q Did you?

13 A I did. I felt we were both  
14 entitled to have a conversation about the  
15 matter face-to-face.

16 Q What did your conversation with  
17 him consist of?

18 A Mostly it was about the e-mail  
19 exchange that we had regarding me responding  
20 to his ad for help and his denying me  
21 employment and the action that had taken  
22 place at Skydive Long Island with Ray. We  
23 discussed that and what I was going to do  
24 about it, primarily.

25 Q What was discussed about what

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2 happened with you at Skydive Long Island?

3 A Well, we have the e-mails

4 between Mr. Doug Smith, he's the drop zone

5 owner, and I just told him my side of the

6 story.

7 Q What was your side of the story?

8 A I mean, what we already talked

9 about when you asked me about what Ray said

10 when he suspended me that day. I told them

11 all of that.

12 Q Did you tell Doug Smith that you

13 felt you were terminated from Skydive Long

14 Island because you were gay?

15 A I did, and I also supplemented

16 that with the ridiculous accusation that was

17 made that I inappropriately touched a female

18 passenger which he had, I think, enjoyed and

19 could appreciate my frustration with that

20 situation, based on the interaction that we

21 were having while we were having this

22 man-to-man talk.

23 Q Well, you were at the deposition

24 of Rosanna Orelana; were you not?

25 A I was.

1 D. Zarda

2 Q In her deposition, she testified

3 that she did complain about you; did she not?

4 MR. ANTOLLINO: Objection.

5 Q You may answer.

6 MR. ANTOLLINO: You can answer.

7 A Umm --

8 Q Yes or no?

9 A It's not a yes or no.

10 MR. ANTOLLINO: If this is going

11 to be a yes or no --

12 MR. ZABELL: It is a yes or no.

13 A I'd have to look back on the

14 record, but I think her boyfriend complained.

15 Q You don't remember any testimony

16 about her complaining?

17 A I do remember testimony about

18 her complaining.

19 Q Do you doubt that a complaint

20 was made to Ray Maynard about you?

21 A I doubt that the complaint came

22 from Ms. Orelana, and she was the passenger

23 that I took on the tandem. I doubt that.

24 Q Well, who do you think the

25 complaint came from?

1 D. Zarda

2 A I think it was clear that day

3 that the complaint came from Mr. Kengle,

4 which was Ms. Orelana's boyfriend.

5 Q Why do you think Mr. Kengle

6 complained about you?

7 A Well, he said during his

8 deposition what his reasons were.

9 Q What do you believe those

10 reasons to have been?

11 A Well, he said that I was getting

12 familiar with his girlfriend.

13 Q Do you think that that's what he

14 complained to Ray?

15 A Well, he said that that was one

16 of the reasons that he felt -- I'd have to

17 look back and see exactly what he said, but

18 that was one of the reasons. I mean, that's

19 what he said. He felt I was getting familiar

20 with his girlfriend.

21 Q Do you believe that he actually

22 conveyed that to Ray Maynard?

23 A Be a little bit more specific,

24 if you would, on what you're asking me to

25 answer there, if I -- how I believe he --

1 D. Zarda

2 Q Do you believe that Mr. Kengle

3 actually called up Ray Maynard and

4 complained?

5 A Oh, yes, I believe he called.

6 Q Do you believe that he

7 complained that you were getting familiar

8 with his girlfriend on the jump?

9 MR. ANTOLLINO: Objection.

10 Asked and answered.

11 A Yes, I believe he made a

12 complaint. I believe that he was testifying

13 under oath the day he said that. I wasn't

14 privy to the conversation that he had with

15 Ray, so I have to take him at his word under

16 oath that that is what he said when he called

17 Ray. To that extent, yes.

18 Q Do you believe it was that

19 complaint that Mr. Maynard was acting on when

20 he suspended you?

21 A Not entirely.

22 Q Is the complaint that Mr. Kengle

23 made about you consistent with your sexual

24 orientation?

25 MR. ANTOLLINO: Objection.

1 D. Zarda

2 A Okay, I think I understand the  
3 question somewhat. Could you maybe be a  
4 little more specific?

5 Q I'd like you to try and answer  
6 the question, if you can.

7 A You're asking me if the  
8 complaint -- let me just reword your  
9 question.

10 Q Well, I'd like you to just  
11 answer my question, if you can, and if we  
12 need to clarify thereafter, we will.

13 MR. ANTOLLINO: I'm going to  
14 object.

15 MR. ZABELL: And you may object.

16 Q You're free to disregard the  
17 objection.

18 A I want to make sure that I  
19 understand the question clearly so that I can  
20 give you an accurate answer. I think what  
21 you're asking me is if Mr. Kengle's complaint  
22 was about me getting familiar with his  
23 girlfriend is consistent with me being gay?

24 Q Yes.

25 A No, I don't think that it is

1 D. Zarda

2 consistent.

3 Q It doesn't sound like Mr. Kengle

4 complained about you being gay; correct?

5 MR. ANTOLLINO: Objection.

6 A In that one complaint, no, no,

7 not in that part.

8 Q You, in fact, testified that

9 Mr. Kengle complained that you were getting

10 familiar with his girlfriend; correct?

11 A That's what he said.

12 Q If he, in fact, complained, as

13 he testified he complained, then he didn't

14 complain about you being gay; correct?

15 MR. ANTOLLINO: Objection.

16 A He said that. Ray did not say

17 that. Ray said something different when Ray

18 suspended me. Ray said that they complained

19 about my sexuality coming up and that they

20 were offended by it, and that was

21 inappropriate. He said that.

22 Q Did you disclose to Rosanna Orelana

23 your sexuality?

24 A I believe I did.

25 Q Did you disclose your sexuality

1 D. Zarda

2 to Ms. Orelana because you sensed that she

3 was uncomfortable?

4 A I believe so.

5 Q Did you disclose your sexuality

6 in an effort to allay her discomfort?

7 A I believe so, yes, and to make

8 me more comfortable, as well.

9 Q Who was the customer on that

10 jump?

11 A Who was the customer?

12 Q Yes.

13 A My particular customer on that

14 particular lift, on that load, was Ms. Orelana.

15 Q Did you agree with Mr. Winstock

16 yesterday when he said your primary role is

17 to go from the airplane to the ground safely?

18 A That is correct. That is our

19 number one priority, to bring the customers

20 back safely --

21 Q Did you --

22 A -- above all else.

23 MR. ANTOLLINO: Let him finish.

24 Q Did you agree with him that your

25 secondary role is to make the jump experience

1 D. Zarda

2 enjoyable for the customer?

3 A I agree that that is another

4 goal. Whether or not it's two or three, I'd

5 have to think about a little bit, but it is

6 one of our primary goals. Our other primary

7 goal is to make sure the customer is having a

8 good time, to the best of our ability, and to

9 the extent that we can do so without breaking

10 any rules or regulations of the FAA, the

11 United States Parachute Association, our

12 licensing manufacturers that give us our

13 licenses.

14 All of those things that we have

15 to take into account when we're trying to

16 give our customers that good experience. We

17 have to think about every single one of those

18 things on every single jump, so that is a

19 goal. We want to have a good time, and

20 whatever we can do to do that, but sometimes

21 it's not necessarily the second priority. It

22 might be three or four. There could be other

23 things going on that you have to worry about

24 that's number two.

25 Q You chose to disclose your

1 D. Zarda

2 sexuality to Ms. Orelana because you sensed

3 that she was uncomfortable; is that correct?

4 A I believe so, yes.

5 Q It came back to you that it did

6 not allay her discomfort; correct?

7 A Apparently not, if they called

8 and complained about it. She -- they must

9 not have -- and when I said "they," I mean

10 Mr. Kengle called and complained, but they

11 were together in it. I think Mr. Kengle was

12 mentioned as the brains of the operation, or

13 something to that.

14 MR. ANTOLLINO: Adding insult to

15 Ms. Orelana.

16 MR. ZABELL: Counselor, remain

17 silent, please.

18 Q I believe you testified that in

19 the third week of September of 2010, you

20 stopped by the Chicagoland Skydive Center; is

21 that correct?

22 A Chicagoland Skydiving, yes.

23 Q How long did you stay at

24 Chicagoland Skydive Center?

25 A Our conversation was about one

1 D. Zarda

2 hour, so I was at the drop zone probably

3 about two hours. Mr. Smith was flying the

4 aircraft. I had to wait for him to land the

5 aircraft for me to have an opportunity to be

6 able to talk to him.

7 Then sunset came, and I

8 discussed staying the next day and making

9 another jump or making a fun jump because I

10 didn't make another jump. I said, you know,

11 I'm within eight hours of home, maybe I

12 should just go for it, and he said, you

13 probably ought to try to just get home,

14 sounds like a long trip, so I decided to

15 leave and go home.

16 Q Then you went home to Missouri?

17 A I did. I made it that far.

18 Q Is it safe to say that in the

19 third week of September, you made it back to

20 Missouri?

21 A I would say closer to the fourth

22 week, the end of the September. Looking

23 back, it was in the late 20s of the calendar.

24 Q How long did you stay in

25 Missouri for at that time?

1 D. Zarda

2 A Before I went somewhere else,

3 you mean?

4 Q Yes.

5 A Approximately -- I'm pretty

6 busy. I do a lot of traveling, so I don't

7 have my travel itinerary exactly in front of

8 me, so I can't tell you for sure if I went

9 somewhere else between the next trip, but the

10 next trip that I can remember that I went on

11 was a cruise.

12 Q A cruise?

13 A Yes.

14 Q From when to when did you go on

15 a cruise?

16 A That year -- it shifts every

17 year by a week, so the dates, I don't -- it's

18 typically the third week in October, so I

19 believe that I would have left somewhere

20 around the middle of October because I

21 usually go a little early. It's a yearly

22 event, and I come back a little after the

23 event, so I usually go out there before I go

24 on the cruise ship and make some fun jumps,

25 and then go on the cruise.

1 D. Zarda

2 Q Where do you cruise from?

3 A It's typically from L.A. to

4 Mexico and then back to L.A. Although,

5 sometimes it's from San Diego, but most of

6 the time, it's from L.A.

7 Q What kind of a cruise is this?

8 A It's a seven-day Mexican Riviera

9 cruise.

10 Q Who do you go on this cruise

11 with?

12 A Fellow passengers on the cruise.

13 Depending on the cruise ship and the size of

14 the ship, which varies from year to year, it

15 could be anywhere between 2,000 and 3,400

16 other passengers.

17 Q Do you go with a group?

18 A I do not go with a group. I go

19 by myself, but there are people that I know

20 on the cruise ship.

21 Q How do you know these people?

22 A From previous cruises and from

23 introductions from their friends to other

24 friends. It's over the years. I've gotten

25 to know a lot of people.

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1 D. Zarda

2 Q How did you get from Missouri to

3 L.A. in October of 2010?

4 A I'm sure I flew. I normally

5 fly. The only time I drove was in 2009.

6 Q Where did you stay in California

7 in October of 2010?

8 A Before or after the cruise?

9 Q Before the cruise.

10 A Typically, I would stay at the

11 drop zone in Paris, California; Paris Valley

12 Skydiving Center. It's a very large

13 commercial facility, and they have bilitines

14 for visiting skydivers.

15 Q They have what?

16 A Bilitines. Bilitine is housing

17 or places to sleep. Bilitine, buildings,

18 bunkhouses, accommodations, work

19 accommodations. They have accommodations for

20 visiting jumpers.

21 Q Do you pay?

22 A You do pay a small fee. It's

23 minimal.

24 Q Did you work while you were out

25 there?

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1 D. Zarda

2 A No, I did not.

3 Q Did you attempt to work while  
4 you were out there?

5 A No.

6 Q You stayed there for how many  
7 weeks before your cruise?

8 A It's not weeks. I would have to  
9 go back and look at the itinerary  
10 specifically, but typically, I'll go out  
11 there a few days, so that can be four or five  
12 days, so I can jump, and I like to leave  
13 myself some leeway in case we have crappy  
14 weather. I don't want to show up a day  
15 before the cruise or two, and not get to  
16 jump. Typically, it's four to five days, and  
17 then we go on the cruise.

18 Q The way you talk about jumping,  
19 it almost seems like you need to get your  
20 jumps in in order to keep your head on  
21 straight, in order to maintain your mental  
22 health; is that accurate?

23 A No, I won't say that at all. I  
24 won't say that that's accurate. I would say  
25 that I've been jumping for almost twenty

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1 D. Zarda

2 years, just like Rich Winstock yesterday.

3 We're almost the same age. We started in the

4 same year. We are dedicated to it. We are

5 passionate about it. We're professionals,

6 and we both share the same feeling in it, and

7 it's typically a comradery of a relatively

8 small group of society, the population, that

9 we all enjoy. I won't say that I need it. I

10 enjoy it.

11 Q Do you get depressed if you

12 don't get to jump for a period of time?

13 A Be more specific about do I get

14 depressed; about what?

15 Q About jumping.

16 A Do I get depressed about

17 jumping? Well, if I haven't jumped for a

18 period of time, then I seek and want to jump

19 soon.

20 Q What period of time is that?

21 A It varies. It depends on, you

22 know, if I'm really busy with school or if

23 I've had a hectic couple of weeks, or you

24 know, some people, you know, fun jumpers have

25 a hard time getting through the work week

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1 D. Zarda

2 without thinking about jumping. They come  
3 out during the week, in fact, after work and  
4 make a jump to calm themselves down. It just  
5 varies. It depends. I know I can feel when  
6 I need to go make a jump.

7 Q Have you ever made a jump just  
8 to calm yourself down?

9 A What do you mean by calm myself  
10 down?

11 Q Exactly how you just used the  
12 term.

13 A I plan on making a jump tomorrow  
14 or Sunday or several jumps, so it's been a  
15 little while already. I've got a lot of  
16 things going on, and it's a nice, relaxing  
17 thing. I think we're going to have great  
18 weather, and I'm going to be with some  
19 friends, and I'm going to have a good time.

20 Q Where are you jumping tomorrow?

21 A Likely, if the weather does hold  
22 out, I will go to The Ranch which is in  
23 Gardiner, New York. It's a large commercial  
24 drop zone.

25 Q You went out to California in

1 D. Zarda

2 the third week of October for some fun dives;

3 is that what you call them; fun jumps?

4 A Just to clarify for the record.

5 Typically, jumpers that work in the industry

6 will call work jumps, work jumps, and jumps

7 when we're not working, where we are actually

8 customers of the drop zone and we're actually

9 paying for a spot on the airplane and we're

10 just jumping for fun, we call those fun

11 jumps.

12 All jumps are fun, but there's a

13 distinguishing -- we distinguish between work

14 jumps when we're actually working and getting

15 paid and jumps where we're actually just

16 playing, and those are fun jumps. Just to

17 make it easier for us to have this dialogue.

18 Q So you went to California in the

19 third week of October for some fun jumps

20 before your cruise; is that correct?

21 A Yes, that's correct.

22 Q Then you went on the cruise for

23 seven days; is that correct?

24 A That is also correct.

25 Q Then you stayed in California

1 D. Zarda

2 for another couple more fun jumps; is that

3 correct?

4 A That's correct. Some people

5 jump after the cruise, as well, about the

6 same period of time.

7 Q Where did you go after those fun

8 jumps at the conclusion of your cruise?

9 A 2010; right?

10 Q Correct.

11 A I just went through this

12 routine, so I have to think about it for a

13 second. Okay. All right. Yeah, it's coming

14 back to me here. I went back to Missouri.

15 Q What did you do in Missouri?

16 A I was taking care of things I

17 needed to do around the house before it got

18 too cold to do; maintenance outside because

19 November, and, you know, cut the grass last

20 time, do maintenance, painting, whatever, you

21 know, anything that needed to be done outside

22 before it got too cold. I was doing that and

23 getting prepared for school.

24 Q You went back to Missouri in the

25 end of October, early November to do some

1 D. Zarda

2 maintenance; is that correct?

3 A Yes, and prepare for school.

4 Q What school did you go to?

5 A I did go to, and I am currently

6 going to Embry-Riddle Aeronautical University.

7 Q Where is Embry-Riddle

8 Aeronautical University?

9 A Well, it's a worldwide school.

10 It's the largest aeronautical university, so

11 they have locations, you know, primary

12 campuses; Daytona Beach, Florida and

13 Prescott, Arizona. However, I'm a worldwide,

14 online student.

15 Q You were preparing to attend

16 Embry-Riddle via computer?

17 A That's right. These are

18 compressed terms that move very quickly, so

19 once they get started, you really do need to

20 prepare before classes start so you can be

21 seamlessly able to go through it.

22 Q When did you start going to

23 Embry-Riddle, initially?

24 A The very first class I think I

25 ever took with them was back in 2006 or 2007.

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1 D. Zarda

2 Q What is the course of study that  
3 you're pursuing?

4 A It's a Bachelor's of Science in  
5 aviation management, logistics technical  
6 specialty, and I'm also seeking a minor with  
7 that in international relations.

8 Q The classes that you started  
9 taking in 2010 or in and around November of  
10 2010, when you did sign up for those classes?

11 A Enrollment is between the 1st of  
12 November and when classes start, which is  
13 always on the 15th of the month, so I would  
14 have enrolled in that window, or I would have  
15 e-mailed my advisor a few days prior or so.  
16 I would have to look back and see, but it's  
17 in that window.

18 Q And you had intended to take  
19 those classes; correct?

20 A Yes, I did.

21 Q For how long did you intend to  
22 take those classes?

23 A How long did I plan on going to  
24 school for that term, do you mean?

25 Q Yes, in November of 2010.

1 D. Zarda

2 A Until this is done. Until my  
3 degree is done. I go to school every  
4 November, so it's just planned.

5 Q So since 2006, every November,  
6 you're going to be attending school online?

7 A I hadn't made that commitment to  
8 that level back in '06 or '07, but certainly,  
9 in the last, I think, four Novembers, I've  
10 been at that, yeah.

11 Q So from November of 2008 --

12 A I believe so, and I'd have to  
13 look and see about that, but I think that's  
14 right. Eight, nine, ten, eleven; yes.

15 Q So from November 2008, you  
16 committed yourself to begin going to school  
17 every November; is that correct?

18 A Definitely for that term, yes.

19 Q How long does a November term  
20 last for?

21 A It's eleven weeks.

22 Q You know for that eleven-week  
23 period since 2008, you're going to be going  
24 to school, and you're not going to be doing  
25 anything else; is that correct?

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1 D. Zarda

2 A I know that -- yeah, I know that

3 it's -- I'm going to be going to school and

4 that the likelihood of being able to do much

5 of anything else was pretty slim.

6 Q Did anything in November of 2010

7 affect your ability to concentrate on your

8 classes?

9 A Yes.

10 Q What was that?

11 A This situation that I'm involved

12 in with Ray.

13 Q You mean the situation where you

14 were terminated?

15 A The whole thing; the

16 termination, the suspension, the false

17 accusations, this case, all of it.

18 Q Did Ray falsely accuse you of

19 something?

20 A Yes, he did.

21 Q What did he falsely accuse you

22 of doing?

23 A He falsely accused me of

24 inappropriately touching a tandem passenger

25 at the hip, and he knows better that that

1 D. Zarda

2 didn't happen.

3 Q Didn't Mr. Kengle accuse you of

4 that?

5 A Well, we just learned that four

6 weeks ago, so that's the first time that I've

7 heard anybody else, other than Mr. Kengle say

8 that, so up until that point, that verbatim

9 came from Ray Maynard, and so Ray accused me

10 of it, and what's even worse is that Ray is

11 also an instructor. He's been jumping around

12 forty years, tandem instructor and an owner

13 of a drop zone, and he knows better. He

14 knows better. He knows better that that

15 didn't take place.

16 Q But you know that Mr. Kengle

17 complained about it taking place; correct?

18 A I know now that Mr. Kengle

19 complained about it, but before Mr. Kengle

20 testified, the only thing I knew was what Ray

21 said, so that's all I have to go on, so Ray,

22 in effect, is the person that accused me of

23 it.

24 Q But Ray said to you that he

25 received a complaint, and he told you what

1 D. Zarda

2 the complaint was; correct?

3 A Through that line of questioning

4 that we talked about earlier where I was

5 asking if there was anything else, and Ray

6 said, yeah, and he mentioned -- if we have to

7 look back to see exactly what I said -- where

8 he mentioned the inappropriate touching,

9 well, Ray said that.

10 Q Ray said that the customer

11 complained about it; correct?

12 A He said the customer complained

13 about it, yes. I would still --

14 Q In November --

15 MR. ANTOLLINO: I'm sorry. The

16 witness hasn't finished answering the

17 question --

18 MR. ZABELL: Excuse me. You

19 have a right to object. Other than

20 that, your role is to remain silent.

21 MR. ANTOLLINO: My role is to

22 allow the record to be clear to let the

23 witness answer the question. Just like

24 you don't want him to interrupt you,

25 you need to let him finish answering

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1 D. Zarda

2 the question.

3 MR. ZABELL: You, sir, are

4 interrupting the record, and you were

5 doing nothing to keep the record clear

6 and straight.

7 Again, you may object to the

8 form of a question. Beyond that, your

9 role is to remain silent --

10 MR. ANTOLLINO: No, that's not --

11 MR. ZABELL: -- please do so.

12 MR. ANTOLLINO: I'm allowed to

13 insist that you allow the witness to

14 answer the question, and I will

15 continue to do so if you continue to

16 interrupt the witness.

17 Q In November of 2010 when you

18 started taking your classes, do you know what

19 classes you took?

20 A If I could, I would like to

21 finish answering the question.

22 Q I just asked you a question, so

23 you can start by --

24 MR. ANTOLLINO: Just answer his

25 question.

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1 D. Zarda

2 Q -- answering that.

3 A All right. Repeat that

4 question, please.

5 Q In November of 2010 when you

6 started taking classes, do you know what

7 classes you took?

8 A Yes.

9 Q What classes did you take?

10 A From memory, I'll have to think

11 about this a little bit. Business

12 information systems, business law -- give me

13 just a minute -- and some other management

14 class. I can't...

15 Q One other management class?

16 A Yeah. It was management

17 production operations, or something to that

18 effect. It was a management-driven aviation

19 class. The specific title of that class, I

20 can't remember, but the other two, because

21 they were hard, I remember. Business law and

22 business information systems.

23 Q Do you know what your grade was

24 in the business information systems class?

25 A Yes. I got an A in all three

1 D. Zarda

2 classes.

3 Q That's pretty good; right?

4 A I guess. I suppose it is.

5 Q Were you happy with your grades

6 in all three classes?

7 A I was happy and surprised.

8 Q You were surprised that you did

9 so well?

10 A I was surprised I made it, yes.

11 Q But you did?

12 A I did.

13 Q Do you take classes other than

14 in November of each year?

15 A Yes.

16 Q When is the next period of time

17 that you take classes?

18 A Following the eleven-week term

19 that begins on November 15, I take classes in

20 the next term.

21 Q When does the next term run

22 from?

23 A It runs from February 15 until

24 the first week of May. Terms start on the

25 15th of every month all year long, but if

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1 D. Zarda

2 you're already in a term, obviously, you're

3 going to finish that term, and then start

4 another one, so that's how I do it.

5 Q If you started a class

6 November 15, you would have gone to school

7 from November through December through

8 January; correct?

9 A That's right.

10 Q Did you do anything between the

11 end of the November term and the beginning of

12 the February term?

13 A So what you're asking me is in

14 the little break there?

15 Q Yes. What did you do?

16 A I went on a cruise.

17 Q Where did you cruise to?

18 A That was a Caribbean cruise; one

19 that I had booked a year in advance.

20 Q Did you have fun on the cruise?

21 A It was very refreshing after

22 what I'd just been through, so yes, I had a

23 good time.

24 Q You know, I didn't even ask

25 before, and it was rude of me. Did you have

1 D. Zarda

2 a good time when you cruised from L.A. to

3 Mexico?

4 A It's a fun cruise, yes. I go on

5 it every year, you know, if it wasn't fun, I

6 wouldn't go on it.

7 Q You had fun when you cruised

8 from L.A. to Mexico; is that correct?

9 A I had fun on the cruise, yes.

10 Q You enjoyed the cruise?

11 A I did.

12 Q Was it refreshing, as well?

13 A It is. It takes me away from

14 these worldly problems and gives kind me of a

15 moment where I can be with some good friends

16 and good people and do some jumps and get

17 away from it.

18 Q How did you pay for the cruise

19 from L.A. to Mexico?

20 A Specifically, what payment

21 method or --

22 Q Where did you get the money to

23 pay for it?

24 A That would be an accounting

25 thing that I wouldn't be able to tell you

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1 D. Zarda

2 exactly what account I paid the money from,  
3 but I typically buy those cruises a year in  
4 advance, so if it was 2010, I probably paid  
5 for it somewhere in late 2010 or early 2011  
6 on a credit card because you have to put a  
7 deposit down.

8 I think for the 2010 one, I went  
9 ahead and signed up on the ship before  
10 getting off actually for that particular  
11 year. Sometimes I do that. Sometimes I  
12 don't. Sometimes they make you a deal if you  
13 sign up on the ship before you disembark, so  
14 it just depends on what the deal is. If it's  
15 good, then I'll sign up.

16 Q Is it safe to say that one of  
17 your hobbies is going on cruises?

18 A No, it isn't, because I wouldn't  
19 define that as a hobby.

20 Q What would you define it as?

21 A Going on a cruise?

22 Q Yes.

23 A Social experience. Maybe a  
24 short vacation. I wouldn't call it a hobby.

25 Q Is it your preferred social

1 D. Zarda

2 experience or a preferred social experience

3 for you?

4 A It's not my preferred, but it is

5 a social experience that I enjoy. I mean, I

6 have lots of social experiences I enjoy.

7 Jumping is certainly one of them, so it's one

8 of them. I enjoy it.

9 Q This cruise to the Caribbean in

10 that break between January and February,

11 where did that leave from?

12 A Fort Lauderdale, Florida.

13 Q Did you arrive early and stay

14 late again so you could jump?

15 A I didn't get that luxury on that

16 one. The terms, again, are compressed.

17 They're very difficult. They're eleven

18 weeks. I had three finals to take and a term

19 paper to write and prepare for this case, the

20 interrogatories and admissions that you

21 requested, all in that time frame, so there

22 was some -- I had a number of things going

23 on, so I wasn't able to book any previous

24 time for anything other than making it to the

25 cruise ship terminal one day in advance to

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1 D. Zarda

2 get on the ship.

3 Q That February to May courses

4 that you took, how many courses did you take?

5 A I took a full-time course load

6 of two courses and two courses is full-time

7 because of the compressed nature of the

8 classes.

9 MR. ANTOLLINO: Can we take a

10 bathroom break?

11 MR. ZABELL: Once I'm finished

12 with this line of questioning.

13 MR. ANTOLLINO: Okay.

14 Q So the previous semester you

15 took three classes. This semester you took

16 two classes; correct?

17 A I took three, and that was

18 overkill, and I'd never done that before, so

19 two classes is full-time, and I'm sticking

20 with the two classes.

21 Q What two classes did you take?

22 A In the February one?

23 Q Yes.

24 A There were more aviation

25 management, 400-level courses, and again,

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1 D. Zarda

2 without having it in front of me, one of them

3 was operations. They were so similar in the

4 title that particular term that I kept

5 getting them almost mixed up, but Management 420

6 and Management 424, I can tell you, if you

7 want to look up the course syllabus.

8 Q What kind of grades did you get

9 in those classes?

10 A I received an A.

11 Q In both of them?

12 A Yes.

13 MR. ZABELL: I think your

14 attorney wants to take a bathroom

15 break.

16 THE WITNESS: Sounds like a good

17 idea.

18 (Whereupon, a recess was taken

19 from 1:44 p.m. to 1:54 p.m.)

20 MR. ANTOLLINO: All right,

21 Mr. Zabell, since you've mentioned it

22 in the previous three depositions, I

23 just want to make sure that I put on

24 the record that my client would like to

25 review a copy of the transcript and

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2 have thirty days to return it to you

3 sworn and signed by the three.

4 MR. ZABELL: We'll make it

5 available for him to review.

6 Are we exchanging deposition

7 transcripts?

8 MR. ANTOLLINO: Let's talk about

9 it later. I tend not to proceed too

10 unreasonably, but I'd like to talk

11 about that later.

12 MR. ZABELL: Wait. You tend to

13 not to proceed unreasonably?

14 MR. ANTOLLINO: I tend not to

15 proceed unreasonably with most of my

16 adversaries, but I want to make a deal

17 with you, if you're asking me for

18 something.

19 This is wasting our time here

20 today, so let's finish with the

21 questions, and let's talk nicely after

22 the deposition about it; okay?

23 MR. ZABELL: I will endeavor to

24 talk nicely after the deposition with

25 you.

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2 Does that work for you, Mr. Zarda?

3 THE WITNESS: Yup, I'm good.

4 Q Before the break, we were

5 talking a little bit about why you were upset

6 with Mr. Maynard in that until you heard

7 Mr. Kengle's deposition testimony, you blamed

8 the complaint on Mr. Maynard; is that

9 correct?

10 MR. ANTOLLINO: Objection,

11 characterizes.

12 Q You many answer.

13 A I don't want to have you put

14 words in my mouth. Did I blame -- the only

15 information -- the only person I could hold

16 accountable for the accusation that was being

17 made to me at that time was Mr. Maynard,

18 because I didn't hear the customers complain

19 to me or my supervisor.

20 It wasn't written up on a piece

21 of paper for me to sign in the form of a

22 reprimand by Ray. There wasn't a statement,

23 letter, an e-mail, or anything generated by

24 the client for me to see that's tangible or a

25 recording or anything. This was just words

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1 D. Zarda

2 from Ray's mouth that the customer said.

3 That's it.

4 Q Did you not believe Ray when he

5 relayed this information to you?

6 A It was hard to believe that

7 somebody could have said something like that,

8 so that led me to quite a few things. I was

9 angry myself because I thought it was so

10 ridiculous. I didn't understand it

11 completely, and so I didn't know what to make

12 of it. It was an unbelievable thing to hear,

13 so whether it was truth or not, to hear that,

14 it was an unbelievable thing to hear.

15 Whether that means Ray Maynard

16 was lying or not, that was a big question

17 mark that's been hanging over the whole

18 thing. What did the customer say; what did

19 they not say? Well, I think we found a

20 little bit of it out of what they said in

21 that deposition, so we know a little bit more

22 now about what was said, but for a long time,

23 I really wasn't sure whether Ray was flat-out

24 lying or exaggerated it or what.

25 Q Now that you heard Ms. Orelana

1 D. Zarda

2 and Mr. Kengle testify, do you think that Ray  
3 made up what he relayed to you in that  
4 meeting?

5 A I'm still not sure how I feel  
6 about the truth of the testimony that was  
7 given because so much time has passed.  
8 There's been opportunities for the customer  
9 and Ray to speak. There has been  
10 opportunities for them to have their stories  
11 corroborate, so I'm not sure that I'm  
12 convinced as to the truthfulness of that  
13 testimony that was given.

14 Q So now you doubt the  
15 truthfulness of Ms. Orelana and Mr. Kengle?

16 A I doubt the truthfulness of the  
17 whole thing. I know they made a complaint.  
18 Whether it was genuine or not is probably  
19 what's most in doubt.

20 Q Do you know why they would  
21 fabricate a complaint against you?

22 A It could be for a number of  
23 reasons. It could be -- do you want me to go  
24 through some of the reasons that I think it  
25 might be?

1 D. Zarda

2 Q Please.

3 A It could be just that Mr. Kengle  
4 is insecure and maybe his insecurity led him  
5 to say things and behave and act in a manner  
6 that an otherwise normal person would not in  
7 that situation. That's one reason. Another  
8 reason could be, and I brought this up in the  
9 termination to Mr. Maynard, maybe they were  
10 just looking for a free jump, and they ended  
11 up getting one, so that was stricken down  
12 quite abruptly by Mr. Maynard as even a  
13 possibility, so that could have been a  
14 motivation. I don't know, beyond those two  
15 things, what the motivations might have been.

16 Q Do you know what Mr. Maynard's  
17 motivation may have been for terminating you?

18 A What his motivation may have  
19 been? Be a little more specific on  
20 terminating me in relation to me touching the  
21 girl inappropriately, please.

22 Q Do you know what Mr. Maynard's  
23 motivation was for terminating you in or  
24 about July of 2010?

25 A All I know is what he said, so I

1 D. Zarda

2 can only attest to his motivations being

3 associated with what he said, so I can't

4 superimpose anything on Mr. Maynard's thought

5 processes, because they're rather abstract at

6 times, and they don't always make sense.

7 Q So you think he terminated you

8 for the reasons he told you he terminated

9 you; is that correct?

10 A Sounds like that's what I'm

11 saying.

12 Q What were those reasons again?

13 A Well, because I'm gay and that I

14 brought that up, or it was mentioned before

15 the customers and they were offended by it,

16 and that that was inappropriate and for

17 touching my female passenger in a way that

18 made her feel uncomfortable at the hips.

19 Q Both of those things actually

20 occurred on the jump; is that correct?

21 MR. ANTOLLINO: Objection.

22 A No. Let's be more specific when

23 you say this occurred.

24 Q As part of the jump, you had to

25 touch the customer in the hip area; is that

1 D. Zarda

2 correct?

3 A As part of the jump, yes, you do

4 have to touch the customer in the area of the

5 hips, but you don't have to touch them

6 inappropriately.

7 Q And you sensed that the client,

8 Ms. Orelana, was uncomfortable when you were

9 touching her in the hips; is that correct?

10 A No, that's not correct. I did

11 not sense that she was uncomfortable when she

12 was being touched around the hips. I just

13 sensed at some point, that she was

14 uncomfortable.

15 Q In an effort to allay her

16 discomfort, you revealed your sexual

17 orientation; is that correct?

18 A I believe that to be correct;

19 yes.

20 Q So those things happened during

21 the jump that you had to touch her hips, that

22 she felt discomfort, and that you revealed to

23 her your sexual orientation. Those three

24 things happened, and they may have happened

25 abstractly, but they happened over the course

1 D. Zarda

2 of her jump experience; is that correct?

3 MR. ANTOLLINO: Objection to

4 form.

5 A The way the question -- I think

6 it was a multiple question. The way it was

7 asked to me had different parts, so I broke

8 it down to make sure that they don't get

9 confused or inflated.

10 Q Let me break it down again.

11 A Okay, break it back down.

12 Q During the jump with Ms. Orelana,

13 at some point, you put your hands on her

14 hips; is that correct?

15 A I would put my hands in the

16 location around the hips that's necessary to

17 be able to perform the functions that I am

18 required to do as a tandem instructor.

19 Q And at some point, you sensed

20 that Ms. Orelana was uncomfortable; is that

21 correct?

22 A At some point, I sensed that she

23 was uncomfortable, but I can't say it was

24 because I was putting my hands anywhere near

25 her hips, so those two things are too close

1 D. Zarda

2 to each other in that question, and I'm  
3 making sure that those thoughts are separate  
4 so that they don't get inflated. I did not  
5 sense that she was uncomfortable, because I  
6 was putting my hands close to her hips.

7 Q But you don't recall when you  
8 sensed that she was uncomfortable; correct?

9 A That's not correct either. We  
10 haven't gotten to discuss much about what  
11 happened in the airplane, so we haven't  
12 talked about that. I believe that she became  
13 uncomfortable around the time when I  
14 mentioned something about my sexuality, and  
15 so how close that was to the point when I  
16 have to touch around her hips, I don't know,  
17 because touching around the hips can take  
18 place from the time that we sit down on the  
19 benches from when we get in the airplane,  
20 through the airplane ride, up to altitude,  
21 through the hookup process, through sliding  
22 down the benches to the door and out the  
23 door, so that encompasses a time period of  
24 fifteen to twenty minutes.

25 Q You know you testified before

1 D. Zarda

2 that you only disclosed your sexuality in an

3 effort to allay her discomfort; right?

4 A I think that's what I said

5 earlier.

6 Q So the discomfort came first,

7 and then the discussion about your sexuality

8 came second; correct?

9 A Sounds that way, yes.

10 Q Not the other way around?

11 A The other way around would have

12 been -- tell me what the other way around

13 would have been.

14 Q The other way around would have

15 been what you just testified; that first you

16 discussed your sexuality, and then she became

17 uncomfortable.

18 A Then she became uncomfortable.

19 That would be --

20 Q It didn't happen that way;

21 right?

22 A No, I don't think so. I'm not

23 real sure what the order of her discomfort

24 was. What I'm saying is this -- let me make

25 this clear. I don't think that her

1 D. Zarda

2 discomfort came from me touching her around  
3 the hips.

4 Q Even though that's what she  
5 testified to; correct?

6 A I don't think that's exactly  
7 what she was saying that day in her  
8 testimony. I think her boyfriend was the one  
9 that was really saying that.

10 Q But the one thing that you are  
11 sure about is that, first, the discomfort  
12 came, and then came the conversation about  
13 your sexual orientation; correct?

14 A First the discomfort came, and  
15 then I brought that up to allay her  
16 discomfort. Sounds like it.

17 Q That February to May group of  
18 classes, aviation management and one of the  
19 operations classes, you got As in those, as  
20 well; correct?

21 A I did.

22 Q What was the next set of classes  
23 you took?

24 A Well, that brings us to this  
25 term, I believe.

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1 D. Zarda

2 Q So from May --

3 A No, wait a minute. Let's see.

4 We're talking -- yeah, this term because it's

5 2011, so yeah, that brings us to this term.

6 Q What did you do from May of 2011

7 to this current term, the November 15, 2011,

8 term; what did you do?

9 A I did a lot of the things.

10 Q A couple of cruises?

11 A No, no cruises. Well, I just

12 went on a cruise, so...

13 Q Stop lying to me, sir.

14 A No, I cannot lie.

15 Q Now, you know that I said that

16 as a joke.

17 A Oh great. I'll take it as a

18 joke.

19 Q Okay. I see you're starting to

20 warm up to me. It's okay.

21 A No, I'm just --

22 MR. ANTOLLINO: I told him not

23 to, but go ahead.

24 MR. ZABELL: He clearly has. I

25 would imagine that that's the case.

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1 D. Zarda

2 MR. ANTOLLINO: He warms up to  
3 everyone, actually.

4 MR. ZABELL: I'm not really a  
5 bad guy. Just Mr. Antollino doesn't  
6 care for me all that much.

7 THE WITNESS: I don't think  
8 anybody said you're a bad guy.

9 MR. ZABELL: I would hazard to  
10 guess that Mr. Antollino, if he hasn't  
11 said it, he certainly thought it.

12 THE WITNESS: Maybe.

13 A So when classes ended in May of  
14 this year, I had plans made to go on a trip  
15 overseas.

16 Q You had plans?

17 A I had made plans, and then I  
18 executed those plans.

19 Q With precision?

20 A I wouldn't say it was with  
21 precision, but I would say it was kind of a  
22 sloppy buildup to it, but we had some  
23 roadblocks along the way.

24 Q Where did you go?

25 A I went to Norway.

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1 D. Zarda

2 Q Did you have fun?

3 A I had fun, yes.

4 Q Any chance you met your attorney

5 overseas?

6 A No, I did not.

7 MR. ANTOLLINO: I would have

8 liked it to have, but it didn't work

9 out that way.

10 MR. ZABELL: Well, I know you

11 had told me on several occasions that

12 you were out of the country.

13 MR. ANTOLLINO: Yes, we were in

14 different parts of Europe.

15 Q How long were you in Norway for?

16 A It ended up turning into two

17 months.

18 Q Two months. Now, I have to say

19 that the way you're saying that it turned out

20 to be a little over two months, you had a

21 very guilty look on your face, so that's

22 causing me to ask --

23 A Guilt is a relative term.

24 Q -- what's that?

25 A It's a relative term.

1 D. Zarda

2 Q Guilt is?

3 A That's a relative, relative

4 term.

5 Q Tell me what you did for the two

6 months, and why you're smiling when you're

7 talking about it.

8 A The reason I'm smiling when I

9 talk about it is because it was a very good

10 trip. I had a great time that allowed me to

11 get away from the horrible winter that I had

12 which was dealing with this case and the

13 classes and other things that were going on

14 that were difficult, and it was an

15 unbelievable breath of fresh air, a nice

16 place.

17 Q I've got to stop you. You said

18 some other things that were going on this

19 winter?

20 A Just minor stuff.

21 Q I'm going to need to know what

22 they are; you know that, right?

23 A Okay, go ahead. Ask me.

24 Q What were those some other

25 things that you just referenced?

1 D. Zarda

2 A My partner, his father died over  
3 the holidays, so that was tough. That just  
4 added on to all this other stuff. I was out  
5 there living on an airport, going to classes,  
6 and we had an unusual run of bad weather and  
7 a lot of the snow, and it's very rural. I  
8 literally got in a situation where I was  
9 snowed in to my house, and I couldn't even go  
10 get food several times, and I didn't have  
11 some water for part of time because  
12 everything froze up.

13 Just when you add all that  
14 together with classes, trying to deal with  
15 this situation --

16 Q "This situation" being the  
17 lawsuit?

18 A -- the lawsuit, getting these  
19 interrogatories and these demands met that  
20 were needed for this, my partner needing, you  
21 know, strength from me for his loss. It was  
22 a lot in a short amount of time.

23 The class load alone. I took  
24 nine hours. That's a very heavy load for an  
25 eleven-week term. They're compressed. Six

1 D. Zarda

2 hours is considered full-time, twelve hours

3 is maximum. They don't even let you take

4 more than twelve, so that just gives you an

5 idea of what kind of class load it is with

6 this university, and it's a leading

7 university, and they don't mess around.

8 Q How did you do on your classes,

9 by the way?

10 A I did good. I struggled. It

11 was very hard. It took a lot out of me, but

12 I did okay.

13 Q You got As on them; right?

14 A I did.

15 Q Prior to 2009, how were your

16 grades?

17 A They were the same.

18 Q All As?

19 A I've been getting good grades.

20 I wouldn't say all As. I think I got a

21 couple of Bs in there somewhere, but mostly

22 As.

23 Q Is it safe to say that after

24 July of 2010, you've only gotten As in your

25 coursework?

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1 D. Zarda

2 A I think so.

3 Q You finished that February to

4 May class, May, your classes end; you have a

5 scheduled trip to Norway?

6 A Yes.

7 Q Two fabulous months of Norway?

8 A They were good moments.

9 Q Any bad moments?

10 A During that time?

11 Q Yes.

12 A Couple fatalities. Some people

13 injured. I mean, you got to take the good

14 with the bad. You know, it's not good when

15 you meet people on a trip where you're having

16 a good time and they end up dead. That's

17 not, you know, a great thing.

18 Q Some of the people that you went

19 on the trip with ended up dead?

20 A People that I met.

21 Q How did they die?

22 A Within the activities I was

23 participating in.

24 Q May I inquire?

25 A Yes, BASE jumping.

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1 D. Zarda

2 Q You were actually BASE jumping,

3 and on a BASE jump, somebody died?

4 A Yes.

5 Q And you were there?

6 A I was in the area.

7 Q That must have been devastating.

8 A Yeah, that sucks when that

9 happens; without a doubt. We don't like that

10 to happen, but it does happen. I've been

11 jumping for almost twenty years, so you kind

12 of get a little used to some of that stuff

13 happening, but it's never pleasant when that

14 happens.

15 Q How many fatalities were there?

16 A During my trip, there were two

17 that I knew. As far as total, I don't know.

18 For the summer, I don't know.

19 Q That must have weighed heavily

20 on you?

21 A We don't like it, but it's part

22 of the nature of the activity that people

23 accept, like it or not, and it's something

24 that happens. It's just part of the reality

25 of it, and you deal with it, and you go on.

1 D. Zarda

2 It's kind of like dealing with losing a pet.

3 Q Kind of like Disney's Circle of

4 Life?

5 A I'm not familiar with that.

6 Q No?

7 A I'm not a big Disney follower.

8 Q Any reason why?

9 A As far as mainstream sports,  
10 things like that, along with ball games, I'm  
11 not into that, TV programs, and the main  
12 reason is that I don't have time in my life  
13 for much else. Cannot connect with much  
14 mainstream things. It's a time thing.

15 Q The two fatalities, were they

16 people you actually knew?

17 A They were.

18 Q People you had conversations

19 with?

20 A Yes.

21 Q People you shared a meal with?

22 A Yes.

23 Q People you shook hands with?

24 A Yes.

25 Q You were actually physically

1 D. Zarda

2 present when both of the fatalities occurred?

3 A When the first one occurred,

4 that person had gone down to another place to

5 jump and had his fatality there, and the

6 second one occurred just around the corner at

7 another exit point from the exit point that I

8 was jumping from.

9 Q And there were other injuries

10 besides the fatalities?

11 A There were.

12 Q How many other injuries?

13 A You know, I don't have a

14 specific number. Injuries, they come and go.

15 I mean, they range from minor to major, and

16 anything in between. There were some

17 injuries. Some people got hurt and had their

18 trips shortened or delayed or had to take a

19 break or had to cut short.

20 Q Over this two-month period, did

21 you see a grief counselor?

22 A No.

23 Q You came back from overseas in

24 June or July of this year?

25 A No, I did not. I came back

1 D. Zarda

2 around the end of August.

3 Q August. So you went from --

4 A June to August.

5 Q Okay. Where did you return to

6 in August?

7 A Let me think. Oh, that's easy.

8 Dallas.

9 Q How is Dallas?

10 A Then, it was freaking hot.

11 Q How were the stars at night?

12 A Well, it's pretty polluted down

13 there and lit.

14 Q Not big and bright?

15 A No, not there.

16 Q What did you do in Dallas in

17 August of 2011?

18 A Well, for one, I was very hot

19 because it was 110 degrees, and I was not

20 adjusted or accustomed to that type of

21 weather change, so it took me just a little

22 bit -- you know, a week to get myself

23 acclimated because it was really hot. It was

24 one of the hottest summers on record with

25 more than ninety days of over 100-degree days

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1 D. Zarda

2 in a row.

3 Fortunately, I was overseas

4 during much of that, but having returned from

5 being in Norway where it's just the polar

6 opposite of that, it was hot, so I went back

7 to Dallas in August to be with my partner, my

8 ex-husband for a moment.

9 Q What is your ex-husband's name?

10 A William Moore, M-O-O-R-E.

11 Q Therein, is the family name

12 for --

13 A Little Cat.

14 Q -- Little Cat Moore?

15 A Right.

16 Q You said ex-husband?

17 A Yes.

18 Q When were you married to

19 William Moore?

20 A As you may be familiar, gay

21 marriage is not legally recognized in most

22 parts of the country, so the term "married"

23 and use of the word "husband" and so forth

24 are, in the gay community, sort of used

25 interchangeably, even though they don't carry

1 D. Zarda

2 the legal status.

3 Q When did you begin the period of  
4 your relationship with William Moore wherein  
5 you referred to each other as husbands?

6 A Well, we met in September of  
7 2000, September 8, 2000, in Dallas, Texas,  
8 and so we were together for quite a few  
9 years, and we started a business together and  
10 so forth.

11 Q Right. But my questions is --

12 A When did we consider ourselves  
13 married?

14 Q Yes.

15 A I'd almost have to ask Bill.

16 Q Why; did you not consider  
17 yourself married during a period of time  
18 where he did?

19 A Probably within two or three  
20 years of our relationship because we acquired  
21 things together and had significant trips and  
22 things like that together.

23 Q When was that; what year was  
24 that?

25 A I'm going to say in the

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1 D. Zarda

2 neighborhood of 2002, 2003. I think that  
3 would probably be about the right time.

4 Q Did you live together during  
5 that period of time?

6 A Yes, we did.

7 Q From when to when?

8 A I've always maintained my home  
9 of record at the location I mentioned  
10 earlier, and I still have, but we lived off  
11 and on together from shortly after we met in  
12 late 2000, off and on through 2003, and  
13 then -- there's been an awful lot -- and then  
14 from 2005 to 2007, and then we've been mostly  
15 separated most of the time from late 2007  
16 through now.

17 Q You referred to him as your  
18 ex-husband.

19 At what point did you consider  
20 him to be your ex-husband?

21 A I think we both technically  
22 would say as of late 2007.

23 Q How is your relationship with  
24 him now?

25 A Complicated.

1 D. Zarda

2 Q Is that a fancy way of saying  
3 sometimes good; sometimes bad?

4 A I think the word "complicated"  
5 is the best choice for describing it.

6 Q At times, does he cause you  
7 aggravation?

8 A Yes.

9 Q And at times, do you cause him  
10 aggravation?

11 A Yes.

12 Q But it's always his fault;  
13 right?

14 A Well --

15 Q I said that as a joke. You  
16 don't have to answer that.

17 A I don't want to get myself in  
18 any more trouble.

19 Q You know that I'm going to show  
20 him this transcript immediately, so...

21 I'm not. I'm kidding you.

22 A I hope so. It is what it is.

23 Q Not unlike how Ray Maynard's  
24 relationship was with his ex-wife; correct?

25 A I've only heard hearsay and

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1 D. Zarda

2 rumors about it, but it sounded pretty

3 treacherous by some of the things I heard

4 floating around.

5 Q Well, you actually had an

6 opportunity to speak to Ray about it; didn't

7 you?

8 A Well, Ray actually had an

9 opportunity to speak with me about it, or at

10 least speak about it in my presence.

11 Q And you had the chance to speak

12 to Ray Maynard's ex-wife, as well; correct?

13 A I did, yeah.

14 Q Would you characterize their

15 relationship anything other than complicated,

16 as well?

17 A I have no way to be able to

18 answer that because I don't know the nature

19 of their relationship beyond that. They had

20 been together a number of years and that they

21 were getting a divorce and that Ray had left

22 her shortly before he terminated me.

23 Q I'm sure that you'll agree that

24 when relationships are breaking up, people

25 are never at their best.

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1 D. Zarda

2 A Probably is true. That's

3 probably true.

4 Q When you came back in August of

5 2011, you went and spent some time with your

6 ex-husband; correct?

7 A That's right.

8 Q How much time did you spend with

9 your ex-husband?

10 A I'm going to say -- let me just

11 think because I've been pretty busy. What

12 did I do? The next few weeks.

13 Q From August 2011 to September of

14 2011?

15 A Until towards the end of

16 September, yeah. We're looking at four to

17 five weeks.

18 Q How was his air conditioning?

19 A Good.

20 Q Helpful?

21 A Needed.

22 Q What did you do for that four or

23 five weeks?

24 A Reflected on a great trip, for

25 one.

1 D. Zarda

2 Q Did you work?

3 A I did some work for the company

4 that we are involved in together that needed

5 to be done with the computers and with our IT

6 infrastructure that we have in place, and so

7 I worked on some of that and began to prepare

8 for getting ready to enroll in some of these

9 classes that I'm in now.

10 Q Did you look for any work, other

11 than working for that company, during that

12 four or five weeks?

13 A No, I didn't look for any, so I

14 did some tandems, you know, a couple of

15 weekends at a drop center in Texas, which is

16 another drop zone that I worked at part-time.

17 I did do some of those.

18 Q From October to November 15, you

19 just cut the lawn and got yourself ready to

20 go to classes; is that correct?

21 A No, that's not correct this

22 year. That was the routine the previous two

23 years. This year, I've yet to make it back

24 to Missouri, so the grass is about two feet

25 high, and if you'd like to come cut it, fly

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1 D. Zarda

2 out there, and cut it for me. I'd appreciate

3 it because I haven't been able to get anybody

4 to do that yet.

5 Q I think it's down, but okay.

6 A It's laid over, but it's pretty

7 tall.

8 Q I wouldn't be flying up to

9 Missouri; I'd be flying down, but we'll let

10 that go.

11 A Yeah, I guess you're right.

12 It's actually across, but we'll let that go.

13 So no, I haven't been back to

14 the airport yet since I left in June and here

15 we are, it's December.

16 Q How are you taking your classes?

17 A Online.

18 Q Where are you residing now?

19 A I am in Dallas.

20 Q Why did you not go from Dallas

21 to Missouri?

22 A Literally because I just could

23 not work it in timewise between doing what I

24 was doing there, getting caught up from the

25 summer, coming up here for the depositions

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2 that we had in November, which was right  
3 before school just started, and all those  
4 things. I mean, just simply didn't have time  
5 to make it happen.

6 Q Where are you living in Texas  
7 now?

8 A I'm staying at the office.

9 Q The office where you run your  
10 business?

11 A There is an apartment attached  
12 to it, and I'm sleeping upstairs currently.

13 Q You keep referencing how this  
14 case is causing you stress.

15 A Sure.

16 Q Is that correct?

17 A Yes.

18 Q That's the stress of responding  
19 to interrogatories and document demands and  
20 admissions?

21 A Well, last winter when that was  
22 going on, it was just a lot of administrative  
23 stuff. Obviously, you requested a lot of  
24 things to try to come up with in a short  
25 amount of time, and simultaneously taking an

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2 extra heavy load of classes, so yeah, that  
3 created quite a bit of stress, just to get  
4 all that together. That was quite a bit of  
5 information, a lot of things to think about.

6 At the same time, I was trying  
7 to do these classes, and you can really only  
8 focus on one or the other. You can't be  
9 doing homework at the same time as you're  
10 doing that, so that created a lot of stress.

11 Q You're doing all right with it  
12 now?

13 A With the case, or with the  
14 stress?

15 Q The stress.

16 A This case and this situation and  
17 what happened has -- no, I'm not doing okay  
18 with it.

19 Q Let's take this in a couple of  
20 different directions.

21 A Okay.

22 Q Let's talk about the stress  
23 involved in preparing for this case.

24 A Okay.

25 Q Are you doing okay with that

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2 now?

3 A Better, better.

4 Q The fact that now you know that

5 someone actually complained to Ray about your

6 conduct, did that add more stress or detract

7 from the stress?

8 A I think that now that I'm being

9 able to learn some of the things and get some

10 information. I think some of the truth is

11 starting to come out more and more, so it's

12 making me feel a little better about what

13 happened. For me, from my perspective,

14 there's not as much of a big question mark as

15 to who said what, when, and who's going to

16 say what, when, so I think that now that

17 things are getting documented, testimony is

18 being given, and we're finding things out,

19 I'm starting to feel a little better about

20 it.

21 Q What things did you find out

22 that you're feeling better about?

23 A Specifically about the testimony

24 or -- why don't you break that down a little

25 bit?

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2 Q You said that now that things

3 are coming out, I'm starting to feel a little

4 better about it.

5 A Right.

6 Q So what things are coming out

7 that you're now feeling better about?

8 A As I said, when Ray suspended me

9 and when he fired me, there was no

10 documentation. There were no letters of

11 reprimand that I signed or offered or any of

12 that kind of thing, so that everything that I

13 was told about the incident came from Ray, so

14 we established that.

15 So he was the only source, and

16 his motives, to me, were not pure and unclear

17 and uncertain, so I had nothing else to go

18 on, other than what Ray said and what was Ray

19 thinking, and, you know, did he lie, did he

20 exaggerate, you know, all these things.

21 So now that Ms. Orelana and

22 Mr. Kengle have testified, it's helped to

23 refresh me about the jump. I've been

24 actually able to see the videos for the first

25 time that I asked to see when Ray suspended

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2 me, and he denied me access, and he had the  
3 ability to let me see those videos right then  
4 and there when he suspended me. We could  
5 have done it. It could have happened and he  
6 refused. He said it was irrelevant, and I  
7 could have looked at it right then, so I  
8 finally got to see that and see that the jump  
9 was routine, the customers were happy, it  
10 looks in the video, and there wasn't any  
11 crazy thing hanging out there that I didn't  
12 know about to be hidden from me, so stuff  
13 like that makes me feel a little better.  
14 And then also finding out from  
15 both the customers' testimony, and they're in  
16 complete agreement, that somebody else in the  
17 airplane cracked a joke that could be deemed  
18 inappropriate, and it wasn't me, causing me  
19 to react the way I reacted with what I said.  
20 So I feel vindicated some. It's actually a  
21 little bit of a relief.

22 Q What is it that was said that  
23 caused you to say something?

24 A Well, what they said was -- if  
25 you recall, the boyfriend, Mr. Kengle, was

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2 bringing Ms. Orelana out to Skydive Long  
3 Island to make a tandem jump for her  
4 birthday. I think we agree on that. I think  
5 even Ray agrees with that. That was the  
6 circumstance, and I was taking Ms. Orelana on  
7 her tandem and that the joke was to the  
8 boyfriend that somebody else made, which was  
9 Mr. Kengle, he's the boyfriend, how do you  
10 feel about your girlfriend being strapped to  
11 another man or another guy? It was either  
12 man or guy, same thing.

13 So that was the joke that was  
14 made, and they're a young couple, so that's  
15 the not first time that joke has been used.  
16 It's a golden oldie. It's been used several  
17 times before, you know, at many drop zones.  
18 It's a pretty routine, boring joke for us.

19 Q Is that a gay joke?

20 A That, itself, is not a gay joke,  
21 but if everybody is okay with it, then it's  
22 not even inappropriate, but apparently in  
23 this case, Mr. Kengle is not okay with it or  
24 maybe Ms. Orelana, or maybe neither one of  
25 them were okay with it.

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2 I think, if I recall in their  
3 testimony, they were saying, well, we're  
4 young, we can take a joke, and they were okay  
5 with that joke, but me saying something like,  
6 don't worry, I'm gay, they were okay with  
7 that, and I think they said that. That has  
8 to make me kind of scratch my head a little  
9 bit, so I'm being put in this situation where  
10 I have sort of in my possession, because I'm  
11 taking this girl on a tandem jump, and I'm  
12 strapping her body to my body in an intimate  
13 situation.

14 I have her and I have her  
15 boyfriend sitting right over here  
16 (indicating) with somebody else cracking a  
17 joke about me strapping his girlfriend to my  
18 body, and so I was not comfortable with that.

19 Q Couldn't you have just said,  
20 don't worry, they're being silly?

21 MR. ANTOLLINO: Objection. You  
22 can answer.

23 A You can speculate all the  
24 different things that a person could say, but  
25 I could have said nothing, or I could have

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2 said anything, so I said what I felt was the  
3 best thing to say, at the time, for me and  
4 for her and for him.

5 Q And in hindsight, was that the  
6 best thing to say?

7 MR. ANTOLLINO: Objection. Go  
8 ahead.

9 A In hindsight, if it were a  
10 perfect world, then I suppose nobody could  
11 make any jokes about anything because  
12 somebody might get offended or be upset by  
13 it.

14 So your questions was, in  
15 hindsight, would I say it again; is that what  
16 you're asking me?

17 Q Sure. Knowing what you know  
18 now.

19 A About their complaint?

20 Q Yes.

21 A If I knew -- I don't think there  
22 would be any way to know that the boyfriend  
23 would get upset by that or that they would be  
24 anti-gay or offended by gay remarks, you  
25 know. There would be no way to know that, so

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2 I can't say. I can say this about it: I've  
3 used that comment before in situations just  
4 like that over the years to sort of resolve  
5 or calm a situation, and it's worked for me,  
6 and it's taken me out of the hot seat. It's  
7 made me feel more comfortable to be able to  
8 say, in that situation where I got somebody  
9 else's girlfriend, I'm strapping them to my  
10 body and somebody says something like that,  
11 don't worry about me, I'm gay, I have an  
12 ex-husband for proof, don't worry, to disarm  
13 the situation, so if he hears me say that, he  
14 can know, okay, he's not going to hit on my  
15 girlfriend. He's gay anyway. So I don't  
16 think I would change it.

17 Q So, wait a minute. Are you  
18 saying that Mr. Kengle didn't know you were  
19 gay before that joke was made?

20 MR. ANTOLLINO: Objection.

21 A Just re-ask that. Rephrase that  
22 a little bit.

23 Q Did you know if Mr. Kengle knew  
24 you were gay before you told his girlfriend  
25 you were gay?

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2 MR. ANTOLLINO: Objection.

3 A Definitely, I have no way to

4 know if he knew. He didn't tell me he knew,

5 so he's sitting over here (indicating). We

6 all met in an instant, in a flash. It's just

7 like normal kind of like a conveyer belt. I

8 don't know.

9 Q It seems to me like maybe you

10 were being accused of being straight as

11 opposed to being gay.

12 A Nobody accused me when that joke

13 was made. Maybe people had assumptions. The

14 staff certainly knows I'm gay, so I don't

15 know if it has anything to do with who

16 cracked that joke, you know, cracking the

17 joke and trying to get a response for fun out

18 of all of us, because, generally, when that

19 joke is made, it is to get a response from

20 the customers in a fun way and not to make

21 anybody upset, and generally, people laugh

22 that off, oh, yeah, ha, ha, ha. Don't worry,

23 she comes home to me, you know. A lot of

24 times you'll hear the customer say that. I'm

25 her only man, or just stuff like that.

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2 Q Now, did you --

3 A That's the normal response.

4 People don't normally get upset.

5 Q In July of 2010, did you ask

6 Rich to intercede on your behalf and try and

7 convince Ray not to terminate you?

8 MR. ANTOLLINO: I believe it was

9 June.

10 A It was the end of June of 2010,

11 yes.

12 Q And why?

13 A Why did I ask Rich,

14 specifically?

15 Q Yes.

16 A Well, Rich is the person that

17 just a few minutes after Ray suspended me

18 that I went to with, as I've said earlier,

19 with the problem.

20 Q Were you asking him that because

21 you enjoyed working at Skydive Long Island?

22 A No, not specifically, no. I

23 wasn't asking him for that reason. I sought

24 his counsel immediately because I was upset.

25 That's the first thing when it happened, and

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2 I thought him knowing Ray for so long, him

3 being the chief instructor there and so

4 forth, his position there, he should know

5 about it, and so I went to make him aware of

6 what just happened, and he offered to, in

7 that conversation, to advocate on my behalf,

8 to talk to Ray and reason with Ray and calm

9 Ray down, and he told me Ray was on a

10 tangent, just let him calm down.

11 This is what Rich said he didn't

12 remember yesterday. Rich didn't remember

13 that conversation very well. I remember it

14 better than he does. Rich probably hasn't

15 thought about it that much anymore. I

16 obviously have, but Rich told me to go on

17 home, let me talk to Ray, and I'll get back

18 with you.

19 Q But in 2010, you wanted to

20 continue to work at Skydive Long Island;

21 correct?

22 A After the suspension, is that

23 what you're asking?

24 Q Yes.

25 A Yes, yes. I didn't want to lose

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2 any job. I didn't even want to lose that

3 week. I didn't want to lose a day.

4 Q In 2010, did you enjoy working

5 at Skydive Long Island?

6 A Up until that point.

7 Q What was it about that job that

8 you liked working, that you liked; what was

9 about it?

10 A There was a lot of things I

11 liked about it.

12 Q Did you like the people you

13 worked with?

14 A I liked the people I worked

15 with.

16 Q Did you like the work

17 environment?

18 A The work environment could be

19 better, but it could be worse. Work

20 environments at skydiving centers vary

21 widely, so none of them are perfect, but the

22 work environment, they all have areas where

23 they are dysfunctional. The work environment

24 was okay. I liked being able to make good

25 money.

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2 As you probably can see, the

3 instructors make pretty good money in that

4 short amount of time to work there, so that's

5 a good thing. I like the fringe benefits of

6 having being able to come to New York for a

7 season and be with friends that I have up

8 here and be able to go do things with friends

9 I have in New York, friends that I've met on

10 some of these trips. That, itself, was a

11 little bit of a driver to making me want to

12 come up here, and I made some relationships

13 with some friends, so it's like, hey, I think

14 I'll be working in Long Island next year, you

15 know, great. We're going to have a great

16 time, and so, yeah.

17 Q Could you tell me where you've

18 applied for skydiving work since being

19 terminated in June of 2010?

20 A Well, the first place I applied

21 was directly or pretty soon after Ray

22 terminated me was the one we mentioned

23 earlier, Chicagoland Skydiving in Hinckley,

24 Illinois.

25 Q Do you know why you didn't get

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2 the job there?

3 A Yes.

4 Q Why didn't you get the job

5 there?

6 A I didn't get the job there,

7 because the owner found out or was told by

8 somebody that I was suing Skydive Long

9 Island, and he felt I would be too much of a

10 liability for him to take on because of that.

11 And those are not exact quotations, but

12 that's what he said in an e-mail that he sent

13 to me which, I believe, has been forwarded on

14 to you and Ray.

15 Q Do you know if he found out

16 about it because your lawyer had press

17 releases made of the lawsuit?

18 A I know --

19 MR. ANTOLLINO: Objection.

20 Q You may answer.

21 MR. ANTOLLINO: Objection to the

22 characterization.

23 A I can say that that was

24 impossible because when he denied me that

25 employment, that was like two months before

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2 any legal action was taken.

3 Q Are you sure of that?

4 A I'm sure of that, because I

5 answered an ad for work at his drop zone in

6 July of 2010, and he denied me employment

7 right then, and no legal action had been

8 taken against Skydive Long Island or Ray at

9 that point.

10 When I finally got to talk to

11 Mr. Smith face-to-face, like I think I

12 mentioned I was going to do to him on the

13 phone at some point, he corroborated part of

14 that.

15 Q Did you ask him how he found out

16 about the lawsuit?

17 A I did ask him how -- or no, he

18 didn't tell me how he found out about the

19 lawsuit. I asked him when we were talking

20 face-to-face, I said, who told you that I had

21 filed a lawsuit against Skydive Long Island?

22 And he said that he had sources that he

23 wasn't willing to reveal, and I said that the

24 reason I'm asking you is because at that time

25 that you sent me that e-mail, I hadn't taken

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2 any legal action whatsoever, so basically,  
3 what I was telling him is that somebody is  
4 talking shit on me, and I'm pissed off.

5 Q Did you ever find out who was  
6 talking that shit on you?

7 A I did not find out. I pressed  
8 Mr. Smith, as far as I felt was gentlemanly,  
9 and he wasn't willing to offer the source.  
10 He just said he had sources, and apparently,  
11 his sources were incorrect. For one, because  
12 of the timing, and I don't know, you know,  
13 how they're related to Ray or Ray's drop zone  
14 or anybody that knows anything about what  
15 happened.

16 All I can say is that I applied  
17 because of what happened at Skydive Long  
18 Island. I didn't get the job, and it was a  
19 major drop zone, a major skydiving center,  
20 and that upset me very much.

21 Q Where else did you apply for  
22 work?

23 A I didn't directly apply, but I  
24 went and had a meeting with the owner of Long  
25 Island Skydiving Center, which is Ray's

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2 competitor on Long Island and that guy's  
3 name was Brian Erler. Don't quote me on it.  
4 He's the only owner. I can't remember the  
5 guy's name. I just can't remember.

6 Q When did you speak to him?

7 A I spoke to him probably around  
8 that same time.

9 Q Around July of 2010?

10 A Around the end of July.

11 Q The end of July?

12 A Yeah. Because it was around the  
13 third week of July, I think, if we look in  
14 the e-mail from Doug Smith where we were  
15 going back and forth talking about me working  
16 for him. I think it was around maybe the  
17 third week of July when he said no. It was  
18 after that I think I talked to Long Island  
19 Skydiving Center, and I drove out there in my  
20 truck and sat down and discussed the matter  
21 in detail with the owner of Long Island  
22 Skydiving Center.

23 Q What matter did you discuss?

24 A I told him everything that we've

25 discussed right here today. I told him about

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2 me being complained about. I told him about  
3 the accusations. I told him about the gay --  
4 what Ray did to me. I told him about the  
5 Chicagoland thing. I mean, I just told him  
6 the whole thing.

7 Q What did Ray do to you?

8 A Ray fired me for being gay. He  
9 accused me of something I didn't do. He  
10 stole money from me and then gave it back.  
11 He humiliated me in the skydiving community.  
12 I'm trying to -- maybe the list of what Ray  
13 didn't do to me might actually be shorter. I  
14 have to think about it. He did a lot of  
15 things.

16 Q You were fired not for being

17 gay; you were fired because there were  
18 customer complaints about you; correct?

19 MR. ANTOLLINO: Objection.

20 A I disagree. I said that I think

21 it's a -- it's not -- you know, people don't  
22 always get fired for just one thing. It  
23 could be a culmination of things. I think  
24 this was a culmination of all these things  
25 we've discussed.

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2 Q This wasn't the first time you

3 were fired by Ray; was it?

4 A It wasn't.

5 Q And you were fired the first

6 time because of an apparently inappropriate

7 interaction between yourself and a customer;

8 correct?

9 MR. ANTOLLINO: Objection.

10 A I won't say that was

11 inappropriate interaction. I'd say that it

12 sounds like to me that the customer wasn't

13 satisfied, for whatever reason, in that

14 incident that was ten years ago, but I'm not

15 going to say it was inappropriate. I don't

16 agree that it was inappropriate.

17 Q You had a customer that wasn't

18 satisfied then, and you had a customer that

19 wasn't satisfied now; correct?

20 A The customer then, I believe,

21 wasn't satisfied with something about the

22 jump, and then in this case, the customer,

23 she didn't say that she wasn't satisfied with

24 the jump. She looked satisfied to me,

25 sounded like she said she was satisfied. She

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2 had a good time. She smiled in the video.

3 She got a picture with me. I think she was

4 satisfied with the jump. I think she just

5 had a complaint about something that happened

6 on the jump.

7 Q Well, if you have a complaint

8 about something that happened on the jump, it

9 means you were dissatisfied with it, right?

10 MR. ANTOLLINO: Objection.

11 A I disagree.

12 Q So you think she was satisfied

13 but just had a complaint?

14 A Yes.

15 Q Okay. You say Ray stole money

16 from you?

17 A He did.

18 Q How did he steal money from you?

19 A He docked my paycheck for the

20 full price of two tandem jumps and two

21 videos, and it really sucks because that's

22 just sort of like throwing gas on the fire

23 and really just sticking it to you.

24 You know, on top of all this

25 other stuff, whether it's just a bunch of BS,

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2 now he's going to take money out of my  
3 paycheck for a tandem that I didn't even do,  
4 and that was Mr. Kengle's tandem. I wasn't  
5 his instructor, and for work performed by two  
6 other of his employees, which were the video  
7 guys, that I had nothing to do with. It  
8 didn't make any sense to me that he was doing  
9 that.

10 Q And he immediately refunded you  
11 that money; did he not?

12 MR. ANTOLLINO: Objection.

13 A Not immediately.

14 Q Did he refund that money before  
15 the lawsuit was filed?

16 A He did before the lawsuit was  
17 filed.

18 Q When did he refund that money to  
19 you?

20 A One week later when he  
21 terminated me after he spoke to his lawyer,  
22 which I think is kind of the key thing about  
23 that, after he spoke to his attorney, which  
24 he admitted when he terminated me, that he  
25 did.

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2 Q You think there's something  
3 wrong with speaking to his attorney before  
4 terminating you?

5 A No. I think he has a right as a  
6 business owner to make business decisions,  
7 and if that involves seeking Counsel and  
8 getting advice from an attorney, that's his  
9 right to do so. I think if it's for the  
10 purpose of trying to backtrack or maybe cover  
11 his tracks for mistakes he might have made,  
12 it's probably still legal to speak to your  
13 attorney in that matter, but I think that's  
14 what he was doing.

15 Q What mistakes do you think he  
16 made?

17 A Well, he stole money from my  
18 paycheck. He didn't pay me for the jump that  
19 I did with Ms. Orelana, and then he actually  
20 took money from me for the other jump with  
21 Mr. Kengle and the two video people out of my  
22 paycheck. We have it documented. We have a  
23 record that he actually did that, and then,  
24 of course, we have it where he gave the money  
25 back after he either spoke to his attorney

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2 and learned that what he did was either wrong

3 or, perhaps, it might even have been illegal

4 and it was, you know, unethical, as well.

5 Q What other mistakes did he make?

6 A What other mistakes did he make

7 in relation to --

8 Q You said he made mistakes, so

9 I'm asking you what mistakes were made.

10 A Oh, okay. I see where you're

11 going. I'm sorry. It just took me a moment

12 to focus. My opinion what the mistakes were?

13 Q I'm asking you what mistakes he

14 made because you said he made mistakes.

15 A He didn't, to my knowledge,

16 investigate these complaints made by the

17 customers. What he did was he just took

18 action against me, his employee, without

19 investigating and asking anybody else in the

20 airplane, any of the other instructors, the

21 cameraman, without reviewing the video, any

22 of those things to perform an investigation.

23 He just took adverse action in

24 an angry manner against me as soon as he

25 learned of the complaints. I think that was

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2 a mistake. And he wouldn't even let me, when  
3 he was questioning me about whatever it was  
4 the incident was, he wouldn't even let me  
5 reflect upon the videos that were readily  
6 available. He wouldn't let me see them. He  
7 was asking me questions, he was angry, he  
8 wasn't calm, about a jump that took place,  
9 who knows, twenty to thirty jumps ago and  
10 three days ago.

11 He's asking me details about  
12 this, and yet, he wouldn't stop long enough  
13 to let me look at the videos and say, hey,  
14 okay; oh, yeah, I think I remember those  
15 people. Okay, all right. You know, that's a  
16 mistake.

17 If you're going to take action  
18 against an employee, you should at least give  
19 them the common courtesy of being able to  
20 look at their records and give them an  
21 opportunity to respond. He didn't give me  
22 that. He just brought me in that room that  
23 day to tell me what he was going to do to me,  
24 and then he did it.

25 Q Any other mistakes he made?

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2 A Any other mistake he made, let  
3 me think. Is this a general,  
4 all-encompassing question?

5 Q Yes.

6 A Mistake about how he runs his  
7 business, or just anything?

8 Q We're talking about mistakes  
9 having to do with your employment.

10 A Just having to do with my  
11 employment, okay.

12 I think a mistake that he made  
13 was to mention at any time, either in the  
14 suspension or the termination, this issue  
15 about personal information in front of  
16 customers. Seems to be something he's  
17 concerned about. Seems to be something he's  
18 passionate about, not having happened yet.

19 He has the -- what's the word  
20 I'm looking for -- I'm getting tired. He had  
21 the leeway to discuss his marriage in front  
22 of staff, when he was leaving his wife, when  
23 there was other customers standing around.  
24 I'm trying to understand what this whole  
25 business is about me saying something

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2 personal about myself, personal information,

3 like he said in the termination, and then him

4 talking about his personal life in earshot of

5 customers, so it seems like that's a mistake.

6 If you're going to fire somebody

7 and use that as part of the reason and then

8 you do it yourself, it seems a little

9 hypocritical.

10 Q Did you tell him that?

11 A No, I didn't have an opportunity

12 to tell him that.

13 Q What other mistakes?

14 A Well, okay. I'm thinking about

15 some more things because Ray has made a lot

16 of mistakes, in my opinion, so to come up

17 with all of them in one seating... I need to

18 take a moment.

19 I think that Ray had some

20 concerns about the issue of my ankle, and so

21 the way that he handled that he could have

22 been handled better. He had questions for me

23 about the Workers' Comp that I received, and

24 all of that. And his mistake was, instead of

25 asking me questions and calling me on the

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2 phone or sending me e-mails or when he had a  
3 question, having a dialogue with me about it,  
4 he saved up all this stuff until a week  
5 before I came to work for him in 2010 -- he  
6 calls me about six days -- I have my vehicle  
7 packed, I have everything ready to go so I  
8 can report to work on time on May 15, 2010,  
9 and I get this blistering phone call, and  
10 it's Ray Maynard, in my ear, shouting at me  
11 about this Workers' Comp stuff that was over,  
12 as far as I'm concerned, four months prior,  
13 and so I think that was a mistake.

14 If you can imagine my surprise,  
15 I'm getting this phone call from the guy I'm  
16 going to work for another season, and he's  
17 yelling at me, in my ear, just before going  
18 up there. I conferred with my drop zone  
19 owner at the airport I live about it and got  
20 his opinion, and he said he thought that was  
21 odd. I said, what do you think I should do,  
22 and he said, well, he didn't tell you not to  
23 come up to go to work, so go up there and do  
24 your job and come home, so I said, okay,  
25 because I don't really have a choice at this

1 D. Zarda

2 matter.

3 But what was a mistake was, he

4 just went off on a tangent, like he has a

5 history of doing, without getting the facts

6 and without asking the questions that needed

7 to be asked so he can get the facts to find

8 out what really happened. Just like in this

9 case, where he suspended and fired me. It

10 was just a prelude to that with the Workers'

11 Comp thing.

12 He didn't know what he was

13 talking about when he called and yelled at

14 me. He didn't have the information in front

15 of him. He was just reacting to either --

16 whatever it was that he was reacting to.

17 I'm not able to talk to Ray when

18 he's being irrational like that and yelling.

19 You can't talk to Ray. Both when Ray

20 suspended me, he stomped out of the room, and

21 when he fired me, he stomped out of the room.

22 I mean, it gets to a point where you can't

23 deal with him. You can't talk to him. What

24 are you supposed to do? I think that's a

25 mistake.

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1 D. Zarda

2 If you're going to be a CEO, if  
3 you're going to run a company, you're going  
4 to have to be able to make rational  
5 decisions. You're going to have to listen to  
6 what your employees say. If you've got a  
7 problem with an employee or something comes  
8 up, you need to investigate it from all  
9 angles. You need to get the information, and  
10 once you get the information, then you're at  
11 a position where you can discuss the  
12 information with the person and then make  
13 decisions. Ray didn't do that. That's a  
14 mistake.

15 Q Anything else?

16 A Unfortunately, yes.

17 I believe after kind of talking  
18 to some people, that Ray -- Lauren Callanan,  
19 she is the manifest person and the office  
20 person at Skydive Long Island, that Ray may  
21 have been upset that his Workers' Comp  
22 insurance went up drastically as a result of  
23 the claim for my injury, and so I think Ray  
24 was taking that out on me, and I don't think  
25 it was fair.

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1 D. Zarda

2 Q Do you think you were terminated  
3 because his Workers' Comp premiums went up?

4 A No. He terminated me for the  
5 reasons that we discussed.

6 Q Which you were accused of  
7 inappropriately touching a woman and then  
8 sharing the fact that you don't like women  
9 with her?

10 MR. ANTOLLINO: Objection.

11 A I didn't say I didn't like  
12 women. You said it.

13 Q Sharing with her your sexual  
14 orientation --

15 A Yes.

16 Q -- which indicated that you  
17 didn't like women in that respect.

18 A I don't like that wording being  
19 on the record because I didn't say that. I  
20 never said I didn't like women. Women in  
21 that manner, I need you to break that down.

22 What do you mean by that manner?

23 Q You were accused by Ms. Orelana  
24 of touching her inappropriately --

25 A Right.

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1 D. Zarda

2 Q -- and then disclosing to her

3 your sexual orientation, which indicated that

4 you are not sexually attracted to women?

5 A I would say that that would

6 indicate that. By me saying, don't worry I'm

7 gay, would convey that idea.

8 Q It's somehow saying, don't

9 worry, if I'm touching you in a manner that

10 makes you feel uncomfortable, I'm not acting

11 on it; correct?

12 A No, not correct.

13 Q Can a gay man ever touch a woman

14 inappropriately?

15 A They can. They could. So no,

16 it's not to convey that idea. It's to

17 resolve the situation about the joke that was

18 made in front of the boyfriend about the

19 girlfriend being strapped to another man,

20 which was me, and to quell that situation and

21 to calm that situation down.

22 Q And you felt that that needed to

23 be calmed down?

24 A Say that once more, please.

25 Q You felt that that situation

1 D. Zarda

2 needed to be calmed down; correct?

3 A Yes.

4 Q Because at some point, you

5 sensed Ms. Orelana was uncomfortable;

6 correct?

7 A Yes.

8 Q You just don't know when --

9 A I don't.

10 Q -- you just don't know when it

11 was in relation to the joke being made?

12 A No. I mean, there's a lot of

13 things going on in the airplane. It's a

14 fifteen- to twenty-minute ride up, depending

15 on the load. It's a pretty routine process.

16 Q During that process, did you

17 ever rest your head on Ms. Orelana's shoulder

18 or neck?

19 A No. And I know what she said

20 about that. We can discuss this for a

21 second, but before we do, do you want me to

22 finish talking about Ray's mistakes?

23 Q We'll get to that.

24 MR. ANTOLLINO: Just answer the

25 question.

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1 D. Zarda

2 THE WITNESS: All right. I just  
3 didn't want to get --

4 MR. ANTOLLINO: Answer the  
5 question.

6 THE WITNESS: -- to where I was  
7 forgetting where I was going thinking  
8 about all Ray's mistakes --

9 MR. ANTOLLINO: Okay, answer the  
10 question.

11 THE WITNESS: -- because it  
12 takes awhile.

13 A The question was about me  
14 resting my head on her shoulder?

15 Q Correct.

16 A No, I didn't rest my head on her  
17 shoulder, and after hearing her testimony,  
18 after seeing the video, it's very easy for me  
19 to see what that's about.

20 Q What's that about?

21 A Well, what that is about is me  
22 leaning forward to give her instructions  
23 prior to leaving the aircraft, like I've done  
24 thousands and thousands of times before, in  
25 her ear so that she could understand and hear

1 D. Zarda

2 them without having to shout at them or  
3 without having to be yelling at them, at the  
4 customer, because the airplane is noisy, and  
5 all the other instructors are talking and  
6 they're doing the same things, so everybody  
7 is talking in the plane.

8 It gets to be really noisy in  
9 there, plus the noise of the aircraft, and  
10 then the door is coming open, so there is  
11 even more noise. When you have a customer,  
12 and you've seen the video, strapped to you  
13 shoulder to shoulder, hip to hip, their head  
14 is right here (indicating) in my face.

15 If you're going to talk to  
16 somebody with their head right here  
17 (indicating) in your face, you're talking to  
18 the back of their hair or the back of their  
19 neck, so if you want to talk to them where  
20 they can hear you, then you're going to lean  
21 over and talk to them in their ear, and it's  
22 right here (indicating). So her ear, or a  
23 customer's ear -- you try the harness on  
24 yourself and you'll see, when you're sitting  
25 on the bench -- it's right here (indicating),

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1 D. Zarda

2 so this, what did he say,

3 whispering-in-your-ear thing that Mr. Kengle

4 was upset about, there was no whispering in

5 her ear. There was only me giving her

6 instructions that she needed to have to make

7 the jump, in her ear.

8 Q She might have been completely

9 wrong --

10 A She --

11 Q -- wait. You have got to let me

12 finish.

13 A Okay.

14 Q She might have been completely

15 wrong and misread all of the things that she

16 complained about; is that correct?

17 A That's very possible.

18 Q In fact, is it more than

19 possible; is it probable?

20 A It's probable. It's probable.

21 Q Everything she complained about

22 is probably wrong?

23 A Yes, it's probably wrong.

24 Q But she complained about it

25 anyway?

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1 D. Zarda

2 A She did, and customers complain  
3 about all kinds of things. They complain  
4 about stuff that you can do nothing about  
5 involved in this thing called tandem jumping.  
6 It's hot in the airplane. It's too loud.  
7 It's too cold. The harness is too tight.  
8 The harness is too loose. It can go on and  
9 on and on, and they can be wrong about it.  
10 The harness can be just the way it's supposed  
11 to be, or they could just not like it.

12 Q Do you think that Ray Maynard  
13 took the opportunity to take Ms. Orelana and  
14 Mr. Kengle's mistaken complaints about you  
15 and coupled that with his being upset about  
16 his Workers' Compensation premiums going up  
17 and taking that opportunity to fire you?

18 MR. ANTOLLINO: Objection to

19 form.

20 Q Is it possible?

21 A I think it's possible.

22 Q Do you think it's probable?

23 A I think it's just possible. I

24 think it's possible that it's a package deal.

25 Q Okay.

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1 D. Zarda

2 A If he did that, that's awful.

3 It's just as bad as if he didn't do it, and I

4 think it's even illegal, so I hope he didn't

5 do that.

6 Q But you don't know if that was

7 his motivation; do you?

8 MR. ANTOLLINO: Objection.

9 A There's no way for me to know

10 that. Beyond that, he called me on the phone

11 a week before I came up there yelling at me

12 and angry and shouting about the Workers'

13 Comp thing, and it didn't make me feel very

14 good about the situation, and so I can tell

15 you a little bit about what I remember about

16 the conversation.

17 Q I have no interest.

18 A Okay.

19 MR. ANTOLLINO: Counsel, do you

20 have some of that iced tea you

21 promised? I need a little lift.

22 MR. ZABELL: You can ask me a

23 little nicer, and yes, I will get you

24 an iced tea.

25 MR. ANTOLLINO: Thank you.

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1 D. Zarda

2 MR. ZABELL: Let's get this man

3 a drink.

4 (Whereupon, a recess was taken

5 from 3:35 p.m. to 3:59 p.m.)

6 Q Before the break, I was asking  
7 you questions about the possible likelihood  
8 that you were terminated because Ray Maynard  
9 was upset that his Workers' Comp policy went  
10 up because you had filed a claim; do you  
11 recall that?

12 A I recall that.

13 Q Do you recall testifying that it  
14 was, in fact, possible that that was one of  
15 his motives?

16 A I said that it was possible.

17 Q And another one of his motives  
18 could have been that Mr. Kengle and  
19 Ms. Orelana complained about their jump; is  
20 that correct?

21 A Sounds like it, yeah. I mean,  
22 that's what he told me.

23 Q During the break there was, what  
24 I would characterize as, innocent banter  
25 between your attorney and myself, and I think

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1 D. Zarda

2 you were involved, as well; is that correct?

3 A Yes.

4 MR. ANTOLLINO: It was off the

5 record.

6 MR. ZABELL: Yes, absolutely.

7 Q One of the topics that were

8 discussed were gay jokes, jokes regarding

9 people who are gay, and I don't think anybody

10 was offended by them. I don't think I made

11 any of them, but do you engage in jokes about

12 being gay?

13 A Depends on the situation and

14 where and when, like -- could you be more

15 specific?

16 Q Sure. Could there be an

17 occasion where making a joke that has to do

18 with someone's sexuality would be

19 appropriate?

20 A Is this in a social setting, at

21 work, at home, family, or where?

22 Q In the setting that we were just

23 in during a break at a deposition --

24 A Yeah.

25 Q Were we not making a joke?

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1 D. Zarda

2 A We were.

3 Q Was it appropriate?

4 A I thought it was okay.

5 Q Who made the joke?

6 A Greg made a joke, and I

7 corroborated the joke.

8 Q And I laughed at the joke;

9 correct?

10 A Yeah.

11 Q And I laughed completely

12 appropriately?

13 A I wasn't offended by it.

14 Q What kind of setting would you

15 call that?

16 A I'd call it casual. I mean,

17 we're in an official setting, but I would say

18 that that was casual.

19 Q Are you more comfortable with

20 gay jokes being made around me because I'm a

21 Civil Rights attorney?

22 MR. ANTOLLINO: Objection.

23 A No. I didn't even know you were

24 Civil Rights attorney, to be honest, so I

25 didn't know you were a Civil Rights attorney.

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1 D. Zarda

2 Q Okay.

3 A Are you a Civil Rights attorney?

4 Q That's what we're here

5 litigating about today; correct?

6 A Oh, I know that. I didn't know

7 that was your area of specialty.

8 Q Yes, it's all I do, Civil Rights

9 and labor and employment.

10 A Oh, okay.

11 Q Have you ever had e-mail

12 correspondence with your friends where jokes

13 were made about your sexuality?

14 A I'm sure there has. I'm sure

15 there has been some. FaceBook, possibly.

16 Q Have any of your friends

17 referred to you as a homo?

18 A They have.

19 Q Have you ever referred to any of

20 them as a homo?

21 A Possibly.

22 Q Do you believe that they have

23 referred to you as a homo inappropriately?

24 A Well, technically, if they've

25 called me a homo, they're correct. I'm a

1 D. Zarda

2 homosexual.

3 Q But if I had never met you

4 before and I called you a homo, even though

5 it may be correct, it wouldn't be considered

6 appropriate; would it?

7 A That's probably on the boundary.

8 It would probably just depend on the

9 by-language, the interaction that we were

10 having, the rapport that we were having.

11 If you were walking down the

12 street and you said, hey, homo, and you

13 yelled at me and were a stranger, that would

14 probably sound derogatory. If we were just

15 hanging out with some friends, it would be

16 all right.

17 Q You're comfortable enough in

18 your sexuality that if somebody was going to

19 make jokes with you about it, it was clear

20 that their intention was just to invoke a

21 smile or some laughter, that it would be

22 fine; correct?

23 A Correct.

24 Q Did anybody at Skydive Long

25 Island bring up your sexuality in an attempt

1 D. Zarda

2 to hurt your feelings?

3 A In an attempt to hurt my

4 feelings, I can't remember specifics. I

5 don't think so. Like we just talked about,

6 some borderline stuff. I think that an

7 attempt to hurt my feelings would imply

8 malice and so that the person was wanting to

9 be malicious, and so I don't think anybody

10 there was wanting to be malicious to me, so

11 they might have done it in error or

12 ignorance, possibly, not knowing what to say

13 or how to say something; yeah, in that regard

14 possibly, but not -- I don't think anybody

15 was being malicious about it.

16 Q And if somebody had brought

17 something up to you in error, did you feel

18 comfortable addressing it with them?

19 A Again, specifics over this whole

20 time period is difficult for me to come to.

21 I'm just thinking back. There were some

22 social cues, you know, moments where somebody

23 like Willie, possibly, or Ben might have said

24 something that was a little off just because

25 they didn't know any better. I didn't feel a

1 D. Zarda

2 need to try and correct it beyond maybe --

3 no.

4 I mean, if there was an

5 opportunity to be able to correct it or

6 address it without causing a stink and making

7 an issue out of it because I don't want to

8 make an issue out of anything, then I

9 probably would say something, but it

10 certainly wouldn't be something I would go

11 tell Rich about or make a big deal about.

12 Q Did you find any of your

13 coworkers at Skydive Long Island to be

14 homophobic?

15 A Yes, I did.

16 Q Who was homophobic?

17 A Ray.

18 Q Ray was?

19 A Yes.

20 Q Ray, the man who hired you on --

21 A Yes.

22 Q -- three different occasions?

23 A Yup.

24 Q Do you think that your sexual

25 orientation affected whether or not you were

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1 D. Zarda

2 hired by Ray Maynard?

3 A Which time?

4 Q All three times.

5 A I think that Ray tolerated it up

6 until a point where he could no longer deal

7 with it himself, so that would be the best

8 answer I could give for that.

9 Q Are you saying he tolerated it

10 up until a point where he received a

11 complaint about you?

12 A Up until a point where he,

13 himself, for whatever reason, couldn't deal

14 with having me be gay and be there working

15 for him. For whatever reason, whether it's

16 him being a homophobic person, or he has

17 issues with homophobia or gay people.

18 Whatever the reason is, and I don't know what

19 all the reasons are. I got a little

20 information from his wife about some possible

21 reasons.

22 Q What were those possible

23 reasons?

24 A That Ray hated my sexuality, I

25 believe, is what she said in an e-mail and

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1 D. Zarda

2 spoke negatively about me often during their  
3 marriage, so I thought that was intriguing.  
4 Not completely surprised to hear that. Don't  
5 know what Ray was thinking.

6 Q So Ray's issue with you is just  
7 because you're gay; is that what you're  
8 saying?

9 A Which time; when he fired me?

10 Q When he fired you in 2010.

11 A Well, when he fired me in 2010,

12 he said it was because the issue of my  
13 sexuality came up in front of the customers.  
14 He was firing me for that. It was  
15 inappropriate, and the issue about touching  
16 this girl inappropriately came up, and that's  
17 what he said.

18 Q But you think it also may be  
19 because you caused his Workers' Compensation  
20 premiums to go up, as well; correct?

21 MR. ANTOLLINO: Objection.

22 A No. I'm not going to go down  
23 that road. I didn't cause anything. I'm not  
24 the Workers' Comp Board. I'm not the New  
25 York State Insurance Fund. I didn't cause

1 D. Zarda

2 anything that happened. Whether Ray took

3 action on that or not, that's in his head.

4 It's a possibility. That's all I can say

5 about it.

6 Q But it's something that you

7 believe is a possibility?

8 A It is a possibility. That's it.

9 Nothing beyond.

10 Q And Ray knew you were gay each

11 of the three times he hired you; correct?

12 A I think we covered that.

13 Again, back in 2001, I don't

14 specifically recall this seating if we talked

15 about it, but it was pretty clear in 2009

16 and 2010.

17 Q Talk to me about this business

18 you share with your ex-husband in Texas.

19 A Could you be a little more

20 specific; what would you like to know?

21 Q What's the name of the business?

22 A It's Advanced Skin Fitness.

23 Q What is Advanced Skin Fitness?

24 A It's a medical spa.

25 Q What happens at the medical spa?

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1 D. Zarda

2 A We do a variety of anti-aging  
3 procedures. We do laser hair removal, which  
4 is the primary thing, we do facials, we do  
5 laser skin resurfacing, and we do cellulite  
6 reduction. We do hormone therapy. We do a  
7 lot of things. I don't have the whole list  
8 of all we do.

9 Q Is it run by a doctor?

10 A We have medical directors that  
11 oversee the legal part of that part of the  
12 operation.

13 Q Is your ex-husband a medical  
14 doctor?

15 A He is not a medical doctor.

16 Q Is he a doctor?

17 A He is not a doctor. He has a  
18 Master of Science in Exercise Physiology and  
19 Kinesiology.

20 Q Are you a doctor?

21 A I am not.

22 Q But you have doctors on your  
23 board --

24 A We do.

25 Q -- to make everything kosher,

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1 D. Zarda

2 for lack of a better term?

3 A To make everything legal.

4 Q Are you familiar with that term,

5 "kosher"?

6 A I am.

7 Q What's the name of this

8 business?

9 A Well, it's Advanced Skin Fitness.

10 The incorporated name is Lush, L-U-S-H,

11 Investments Incorporated.

12 Q Are you a partner in that

13 company?

14 A Silent partner.

15 Q What percentage of the business

16 do you own?

17 A We don't have that broken down

18 like that. My ex and I started that

19 together, so for various reasons and legal

20 reasons, I don't have a legal holding.

21 Q You don't have any legal

22 holding?

23 A I don't have a legal holding.

24 Q What is the reason for you not

25 having a legal holding?

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2 A It's personal, primarily, and  
3 partly strategic. In the event that while we  
4 were together and we had started this and we  
5 didn't make it, for whatever reason, we could  
6 always start up under my name.

7 Q What's the personal reason?

8 A What is the personal reason?

9 Q Yes.

10 A Those are reasons related to our  
11 relationship.

12 Q I need to know for purposes of  
13 this deposition. I'm not prying, but I do  
14 need to know.

15 A I don't have -- I can't recall  
16 every personal thing that we've discussed  
17 over this many years that we've had this  
18 business, and we've been together in and out  
19 of the personal relationship that we've been  
20 in.

21 It's just the way we started it.  
22 We started the business. I wrote the first  
23 check. It was in an office about this  
24 (indicating) size, and then we grew and just  
25 moved forward, and some of it had to do with

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1 D. Zarda  
2 my willingness to relocate to Dallas from  
3 Kansas City, and whether we were going to be  
4 together that way or not. That was a little  
5 bit of it.

6 I maintained a place up in  
7 Kansas City, and obviously, to be more  
8 involved in that would require me to fully  
9 move to Dallas and be in Dallas. That's an  
10 example of one of the personal things that I  
11 meant.

12 Q So you're a partner in this  
13 business, you do work for this business, but  
14 nowhere in the business's records are you  
15 indicated to be a partner?

16 A That's right.

17 Q What percentage of the profits  
18 of the business do you share in?

19 A It works like this: If there is  
20 any profit left over, then we may get paid.

21 That's pretty much the long and short of it.

22 Q Is it a profitable business?

23 A It has been. It has been

24 profitable. I mean, it depends on which

25 month you want to look at. It's up and down,

1 D. Zarda

2 especially during these turbulent times.

3 People aren't as focussed on spending money

4 on how they look and getting expensive

5 treatments done, so it's up and down. It's

6 difficult.

7 Q In 2010, did the company make

8 any money?

9 A I don't have the records in

10 front of me. I don't have the books in front

11 of me. I'd have to look to see what our

12 actual profit and loss -- to what our balance

13 sheet actually reflects, but I think we did

14 make some money. I think we were somewhere

15 in the black. We certainly weren't living

16 large or anything like that, but I think that

17 we were somewhere in the black.

18 I'd have to look back at the

19 records and see what capital purchases were

20 made to be able to tell. And 2010 -- you

21 said 2010, right?

22 Q I did.

23 A I'd have to look.

24 Q Did you make any money from the

25 business in 2010?

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1 D. Zarda

2 A Did I make any money? No, I  
3 didn't make any money from the business. I  
4 received some, I guess, reimbursements from  
5 the business.

6 Q Did you get paid for the work  
7 you performed for the business in 2010?

8 A No, not yet. Maybe some day.  
9 We both have -- I mean, the business owes us  
10 a lot of money on the books, so maybe some  
11 day, if we can keep going and get through  
12 everything, get to a better place, maybe then  
13 it will pay us back. I hope for all of our  
14 hard work and the employees and the people  
15 that work for us to get their paychecks.  
16 Sometimes we don't get our paychecks.

17 Q Did the business file an income  
18 tax return in 2010?

19 A Yes, it did.

20 Q Did it file an income tax return  
21 in 2009?

22 A It did.

23 Q And for all previous years that  
24 it was in existence, did it file a tax  
25 return?

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1 D. Zarda

2 A It did.

3 Q Did you file an income tax

4 return for 2010?

5 A 2010, yes.

6 Q Did you file an income tax

7 return for 2009?

8 A It has not been filed yet.

9 Q Why is that?

10 A That was the year that I broke

11 my ankle, and I got behind, in part, because

12 of that. It was just a matter of logistics.

13 I had traveled, and I had a difficult time

14 with the whole situation; with my ankle being

15 broke and getting around, getting my records

16 together and school, and I just simply got

17 behind and didn't get to it.

18 Q But were able to get your 2010

19 filed --

20 A Yes.

21 Q -- just not your 2009?

22 A Right.

23 Q Did you make more in 2010 than

24 you made in 2009?

25 A I don't know, because I haven't

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1 D. Zarda

2 done 2009 yet, so I'll find out. It's just a  
3 matter of getting caught up on that.

4 Q Now we're at the end of the year  
5 in 2011; are we not?

6 A We are.

7 Q How did you do financially in 2011?

8 A Not very good.

9 Q Is that because you spent a fair

10 amount of time out of the country and on  
11 vacation?

12 A No, it's because I didn't take a

13 full-time job skydiving.

14 Q And why didn't you take a

15 full-time job skydiving?

16 A Because of this.

17 Q Because of this lawsuit?

18 A In part, because of this

19 lawsuit. Mostly because of the damages that

20 have been done to me because of what Ray did

21 when he fired me and accused me of something

22 I didn't do and how it's hurt me in the

23 industry.

24 Q Isn't it the accusations of

25 Ms. Orelana and Mr. Kengle?

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1 D. Zarda

2 A We've been through this I think

3 about two or three times now, so...

4 Q Well, Ray didn't accuse you of

5 doing anything. Ray just relayed to you the

6 accusations made by the customers; correct?

7 A Ray accused me when he suspended

8 me and when he fired me.

9 Q Well, specifically, what did he

10 accuse you of?

11 A Well, we went over that. He

12 accused me of touching Ms. Orelana in a way

13 that made her feel uncomfortable at the hips.

14 Q Did he say you touched Ms. Orelana

15 in a way that made her uncomfortable at the

16 hips, or did he say, I received a complaint

17 from a customer that said you touched her in

18 a way that made her uncomfortable at the

19 hips?

20 A He said that I touched her --

21 well, let me think about that for a minute.

22 There has been more than one time that this

23 has been discussed, so I can't recall how he

24 said it right now.

25 Q Because earlier today you said,

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2 (reading), he relayed to me that a customer  
3 made a complaint that I made her feel  
4 uncomfortable because I had touched her in  
5 the hip area, and I disclosed my sexual  
6 orientation to her.

7 A Okay.

8 Q That's what you said. That's  
9 different than Ray accusing you of doing it.  
10 That's Ray relaying to you that somebody else  
11 was accusing you of doing it; correct?

12 A I--

13 Q I need you to answer that  
14 question with a yes or a no.

15 A No.

16 Q No, that's not correct?

17 A No.

18 Q Okay, go ahead. What is it you  
19 wanted to say?

20 A The reason it's not correct is  
21 because what I said earlier. Ray knows  
22 better, so even if Ray is relaying that  
23 information, and that information is  
24 relatively new to this case and to us, as far  
25 as I'm concerned, because I just got to hear

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1 D. Zarda

2 that for the first time in November a month  
3 ago, Ray knowing better, knowing that I  
4 didn't do this, corroborated it and agreed  
5 with it and took action against me, based  
6 upon it, so that, to me, is the same thing as  
7 him accusing me. It is the same thing.

8 Q How does Ray know better that  
9 you didn't make this woman feel  
10 uncomfortable?

11 A It's simple. Because Ray's been  
12 doing tandems for three decades, jumping for  
13 forty years. Ray knows me. He knows my  
14 reputation. He knows my record. He knows  
15 the situation that's involved in strapping  
16 another passenger to you to take them on a  
17 tandem. He knows what's involved with  
18 strapping at the hips. He knows all of that.  
19 He knows every part of that like the back of  
20 his hand. He would be an expert in that, and  
21 he knows that I did not do anything wrong.  
22 Period.

23 Q I don't know how he would know  
24 if he wasn't there --

25 MR. ANTOLLINO: That's --

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1 D. Zarda

2 Q I do know that he received a

3 complaint --

4 MR. ANTOLLINO: We're not

5 arguing --

6 Q -- and you're aware of that; is

7 that correct?

8 A I'll agree with you that he

9 received a complaint.

10 Q Talk to me about Marco Marcovitch

11 (phonetic). Do you know him?

12 A I know Marco.

13 Q Friend of yours?

14 A I'm going to say he's a friend.

15 I'm not sure what our status of friendship is

16 right this second, though. He has been a

17 friend.

18 Q Have you referred to yourself as

19 a fag?

20 A I probably have.

21 Q What kind of situations would

22 you have referred to yourself as a fag?

23 A Probably would have been some

24 casual, loose situation.

25 Q Did Ray Maynard ever refer to

1 D. Zarda

2 you as a fag?

3 A You're asking me if he ever used

4 that word?

5 Q Yes.

6 A Not that I can recall at this

7 time in earshot of me.

8 Q Did Marco Marcovitch ever refer

9 to you as a fag?

10 A I think he has used the word in

11 a joking way somewhere along the line.

12 Q Did you ever discuss with Marco

13 Marcovitch what you would do to him if he

14 were a homosexual?

15 A What I would do to him?

16 Q Yes.

17 A Not that I can recall. No.

18 Could you break that question -- what do you

19 mean by what I would do to him?

20 Q Sexually.

21 A No, I don't recall ever

22 discussing it. Marco and I have never

23 discussed sexual relationships with each

24 other, so if you say something to the

25 contrary, I'd be interested to know what it

1 D. Zarda

2 is.

3 Q Do you have comments posted on  
4 your FaceBook site by Marco Marcovitch?

5 A I did at one time. We have had  
6 comments back and forth. They typically  
7 involved joking and banter between each  
8 other.

9 Q Did that joking and banter ever  
10 include sexual orientation?

11 A I'm sure it did.

12 Q Were you bothered by it?

13 A Well, there was a lot of it, so  
14 as a blanket statement, I can't answer to  
15 that because I'd have to see the specific  
16 comment as an example, but in general, no,  
17 because I know Marco wouldn't have been  
18 saying anything to me maliciously.

19 Q You control what you post on  
20 your FaceBook page; right?

21 A You're asking me do I control  
22 what I post?

23 Q Yes.

24 A Yes, I control what I post.

25 Q Nothing is posted on your

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1 D. Zarda

2 FaceBook page without you approving it;

3 correct?

4 MR. ANTOLLINO: Objection.

5 A Incorrect.

6 Q What's posted on your FaceBook

7 page without your approval?

8 A FaceBook has the ability to be

9 able to allow people to post things on your

10 wall or in your forum or tag photos of you

11 without you having control over that, and

12 they still have that in place, even though

13 they've made improvements to their privacy

14 controls.

15 Sometimes those privacy controls

16 aren't pushed out to the community to make

17 you aware of them, and I'm still not even

18 aware of them today, of all of them, but you

19 are not always in control over what somebody

20 puts on your FaceBook page.

21 Q If somebody put something on

22 your FaceBook page that you're unhappy with,

23 you can take it down; correct?

24 A You could if you know about it

25 and if you saw it, if you got a notification.

1 D. Zarda

2 It's a living, breathing, electronic entity

3 and things come and go, and if you don't log

4 on to your FaceBook for a week, there could

5 be a week's worth of stuff that passed

6 through there that you don't even see.

7 Q Tell me about the incident that

8 occurred at Fire Island where you picked up

9 some Brazilian boys.

10 A Sounds like I had a good time,

11 but I don't recall it.

12 Q You don't recall speaking to

13 some of your coworkers about picking up

14 Brazilian boys at Fire Island?

15 A Brazilian boys at Fire Island.

16 No, I don't. I don't recall it.

17 Q Is that something you would have

18 discussed at work had it happened?

19 A It depends on whether somebody

20 would have asked me what I did this weekend

21 or not, or one of the times or the many times

22 Brian Petretti -- I don't why he kept

23 bringing it up -- hey, Don, did you go the

24 Grove this weekend? If he would ask me that,

25 maybe I would have responded with, no, I went

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1 D. Zarda

2 to the Pines. That would be the context.

3 That would be the only context that I could

4 think of.

5 Q Did you ever discuss taking

6 Viagra with your coworkers at Skydive Long

7 Island?

8 A Did I ever discuss it?

9 Q Yes.

10 MR. ANTOLLINO: I'll object to

11 the form.

12 A I can't recall.

13 Q You can't recall?

14 A I can't recall having a

15 discussion about Viagra.

16 Q Did you have discussion about

17 Viagra and Fire Island and a sex marathon?

18 A No.

19 Q You never had the discussion

20 with Curt Kellinger?

21 A A sex marathon, no. Now that

22 you're bringing it up, it seems like that

23 Curt might have put something or made a

24 comment on a FaceBook post at some point, or

25 he might have said something like that, but

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1 D. Zarda

2 not me.

3 Q You never had a discussion with

4 Curt Kellinger about Viagra at Fire Island?

5 A Not that I can recall. I mean,

6 he might have made a joke about something at

7 some point.

8 Q Talk to me about pornography on

9 your cellphone.

10 A Talk to you about pornography on

11 my cellphone?

12 Q Yes.

13 A What about it?

14 Q Do you ever look at pornography

15 on your cellphone?

16 A Define "pornography." What is

17 pornography to you?

18 Q Do you ever look at pictures of

19 naked people on your cellphone?

20 A I've had pictures of naked

21 people on my cellphone; yes.

22 Q Did you ever look at pictures of

23 naked people on your cellphone while at

24 Skydive Long Island?

25 A I suppose it's possible that if

1 D. Zarda

2 somebody sent me a picture or over lunch or

3 something on FaceBook or something came up on

4 my cellphone, that it's possible that

5 somebody saw it.

6 Q Did John Campbell tell you to

7 stop looking at naked pictures on your

8 cellphone?

9 A You know, I think he might have

10 made a joke at one point about something like

11 that, and that's Monkey, John Campbell. I

12 think he made a joke one time or something

13 like that, and I don't even know if I was

14 looking at naked pictures on my cellphone. I

15 think he might have been assuming that.

16 Q Do you remember a time when a

17 coworker brought their child to work at

18 Skydive Long Island?

19 A There's been several people that

20 have brought children to work.

21 Q Do you remember complaining

22 about it?

23 A I don't.

24 Q Did you ever discuss at work at

25 Long Island Skydive oral sex?

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1 D. Zarda

2 A Did I ever discuss it?

3 Q Yes.

4 A No, I didn't discuss it.

5 People -- other employees they discussed

6 sexual things quite a bit, so I steered away

7 from making too many comments like that, so

8 when the conversation would turn in that

9 direction among my peers, I steered away from

10 it.

11 Those kind of things came up a

12 lot, and a lot of times, it could have been

13 straight related, or it could have been gay

14 related. Those things came up just among

15 peers, among staff in the video room.

16 I mean, if there was a girl with

17 big boobs on a jump that were bulging out of

18 her halter top, there'd be a rush, an influx

19 into the video room to hurry up and see the

20 video so they could look at the girl's boobs

21 spread apart in free fall. Ray participated

22 in that. In that setting, there would be

23 people that would make comments and jokes.

24 Who knows what was said?

25 Q Did Marco Marcovitch ever lie to

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1 D. Zarda

2 you?

3 A Did Marco ever lie to me

4 about...

5 Q Anything.

6 A Well -- I can't think of

7 anything he lied to me about directly.

8 Q Do you have any reason to

9 believe that Marco Marcovitch is not a

10 truthful person?

11 MR. ANTOLLINO: Objection.

12 Answer.

13 A No, I don't think that I have

14 any reason to believe that he's a liar.

15 Q Do you have any reason to --

16 A I think that he's vulnerable.

17 Q Do you have any reason to doubt

18 his propensity for truthfulness?

19 A Yes.

20 Q What is your reason for doubting

21 his propensity for truthfulness?

22 A I just think that he's

23 vulnerable, because he's a young kid and he's

24 not experienced in a lot of areas with life,

25 and he's working in a very unique adult

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1 D. Zarda

2 environment like it is at Skydive Long

3 Island. The kind of job that we're doing

4 there, the kind of responsibilities that we

5 have, and all those things that are going on

6 there. I just think he's vulnerable.

7 Q Do you have any reason to doubt

8 Mr. Winstock's propensity for truthfulness?

9 A I was concerned about it.

10 Q What is your reason for doubting it?

11 A Well, I was concerned about the

12 conflict of interest with his position at

13 Skydive Long Island and his position, which

14 is newly acquired with United States

15 Parachute Association, and his relationship

16 with Ray. I was concerned.

17 Q Well, you heard him testify

18 yesterday. Do you think he testified

19 untruthful about anything?

20 MR. ANTOLLINO: Objection.

21 A I feel better after hearing him

22 testify yesterday.

23 Q That's a wonderful answer. It's

24 just not the answer to the question I asked

25 you.

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1 D. Zarda

2 Do you believe that he testified

3 about anything untruthfully yesterday?

4 MR. ANTOLLINO: Objection.

5 A Let me just think and recall for

6 a moment.

7 Q Please.

8 A I think that he may have been

9 factually incorrect on some of the things

10 that he said.

11 Q And those things were?

12 A Which would be different than

13 testifying --

14 MR. ANTOLLINO: Objection.

15 A -- and that would be different

16 than testifying untruthfully.

17 Q What were the things that you

18 thought he was factually incorrect about?

19 A Just some --

20 MR. ANTOLLINO: Objection.

21 Asked and answered.

22 A -- of the questions.

23 Q I'm going to ask you to be as

24 specific as you can.

25 A This was just yesterday, so it's

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1 D. Zarda

2 a lot of information that was covered  
3 yesterday.

4 Q But you were taking notes, so  
5 I'm sure you recall --

6 MR. ANTOLLINO: Objection.

7 Asked and answered.

8 A What I was taking notes about  
9 were questions to ask --

10 MR. ANTOLLINO: Don't discuss  
11 what you were going to discuss with me.

12 A That's what I was taking notes  
13 about.

14 Q Tell me what you think he was  
15 factually inaccurate about.

16 MR. ANTOLLINO: Objection.

17 Calls for a narrative. Asked and  
18 answered.

19 Q You may disregard the comments  
20 from your attorney.

21 MR. ANTOLLINO: Like all other  
22 objections, unless I tell you not to  
23 answer, go ahead.

24 Q Feel free to disregard and  
25 continue.

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1 D. Zarda

2 A Okay. Just some things that he  
3 may not have remembered because through the  
4 passage of time, such as, gay jokes, you  
5 know, me being called Gay Don, things about  
6 safety, the handle touches. Just some of  
7 those kinds of things.

8 I don't think that he  
9 maliciously said anything that was untrue or  
10 that he lied. I just think that he may have  
11 not remembered some of the facts at all or  
12 maybe not remembered some of them 100 percent  
13 clearly.

14 Q How about Duncan Shaw; have you  
15 ever had a reason to doubt Duncan Shaw's  
16 propensity for truthfulness?

17 A I have.

18 Q What was that?

19 A Same thing. Similar problem,  
20 conflict of interest. And Duncan Shaw's  
21 position is different than Rich's. He's not  
22 a chief instructor, but he is a longtime  
23 employee of Ray's. He's worked there for  
24 awhile. He's had run-ins with Ray. In and  
25 out. He's been in and out of employment with

1 D. Zarda

2 Ray, and like many of the people that work  
3 there, they're under Ray's thumb, so they all  
4 work for him, and so I feel that -- and  
5 they're all participants, they all  
6 participated in this joking, this gay banter,  
7 this gay fun. They all participated, so  
8 they're all culpable to some extent in this,  
9 and yet we're in a situation where they all  
10 still work for Ray and they're under Ray's  
11 thumb, and Ray can hang their jobs over them.

12 Q Right. But I asked you to  
13 identify this gay banter, and you were unable  
14 to identify it.

15 A When was I unable -- I don't  
16 remember being unable --

17 Q I asked you to tell me about any  
18 of the gay banter that was made, and you were  
19 unable to state what was said and when it was  
20 said. If you've thought of something, please  
21 enlighten me now.

22 What was this gay banter?

23 A Well, I think Rich just nailed  
24 it right on the head; easy with Gay Don. I  
25 mean, that's my name, Gay Don. Everybody

1 D. Zarda

2 said it all the time. I mean, it's pretty

3 clear. You start there with that and that

4 just leads into other things.

5 Q What other things?

6 A Well, even Rich couldn't

7 remember all the jokes. It's just so much.

8 Q I know. I'm not asking Rich.

9 I'm asking you. What were the jokes?

10 A I can't remember all the jokes

11 at this seating.

12 Q Can you remember some of them?

13 A Well, let me just sit here and

14 think about it for a moment.

15 Without remembering specifically

16 who said things like this, there were times

17 when there might be guys that were muscular

18 or attractive or gay looking that were

19 customers that were around, and some of the

20 other employees would say, how about him,

21 Don? He looks like your type. What do you

22 think about him? Stuff like that.

23 Q Do you recall who said that to

24 you?

25 A It happened frequently. I do

1 D. Zarda

2 recall, and I won't be able to tell you the  
3 dates and times because that would just be  
4 impossible for me to recall, but one of the  
5 persons that did that all the time was  
6 Brian Petretti.

7 Q Do you remember the year in  
8 which it occurred?

9 A That occurred in 2001, '09, and '10.

10 Q When in 2010 did it occur?

11 A During the time I was working

12 there, so before I was fired.

13 Q Do you remember the day?

14 A No.

15 Q Do you remember the month?

16 A It would have been in June or

17 July; possibly May. I guess it would have

18 been June and May in 2010, because those are

19 the only two months I worked there.

20 Q That happened in 2010 --

21 A Yes.

22 Q -- with Brian Petretti?

23 A Yes.

24 Q Did he say it maliciously?

25 A Brian --

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1 D. Zarda

2 Q Yes or no?

3 MR. ANTOLLINO: Let him answer

4 the question.

5 Q Yes or no, Don?

6 A No, I don't think it was

7 malicious.

8 Q Do you have any reason to doubt

9 Curt Kellinger's propensity for truthfulness?

10 A Curt is a straight-shooter. I

11 think of everybody, I would feel most

12 comfortable with him.

13 Q What about Michael Goki (phonetic)?

14 A I don't really know him that

15 well.

16 Q Did Michael Goki ever lie to you

17 while you were employed at Skydive Long

18 Island?

19 A I can't recall Mike lying to me

20 about anything. I don't even really know him

21 that well. He was the rigger, and he was

22 there part-time. Technically, a full-timer

23 there, but he wasn't out there full-time.

24 Q Did Curt Kellinger ever lie to

25 you while you were employed at Skydive Long

1 D. Zarda

2 Island?

3 A Not that I recall.

4 Q Did John Campbell ever lie to

5 you while you were employed at Skydive Long

6 Island?

7 A Not that I can recall at this

8 moment.

9 Q Did Duncan Shaw ever lie to you

10 while you were working at Skydive Long

11 Island?

12 A Not that I can recall at this

13 time.

14 Q Did Rich Winstock ever lie to

15 you while you were working at Skydive Long

16 Island?

17 A Not that I can recall at this

18 time. I don't have any evidence or proof.

19 Q Did Ray Maynard ever lie to you

20 while you were working at Skydive Long

21 Island?

22 A Yes.

23 Q What did he lie to you about?

24 A He lied about me touching this

25 passenger inappropriately at the hips.

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1 D. Zarda

2 Q Is that the only thing he lied  
3 about?

4 A He lied about there being video  
5 of the jump. There was video of the jump.

6 Q Did he ever tell you there was  
7 no video of the jump?

8 A At one point -- at one point, he  
9 cast doubt on whether there was video.

10 Q So he never told you there was  
11 no video of the jump; is that correct?

12 A I can't remember him directly  
13 saying there was no video. I'm trying to  
14 remember around the time, a week later when  
15 he terminated me, or not if it came up after  
16 the termination, because I still wanted to  
17 see those videos, so that's why I'm trying to  
18 remember if it came up then or not, again,  
19 because I asked about the videos after the  
20 termination.

21 Q In fact, he never accused you of  
22 touching this woman inappropriately. He  
23 relayed to you her complaint or her  
24 boyfriend's complaint that you touched her  
25 inappropriately; correct?

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1 D. Zarda

2 A We've been through this --

3 Q Right.

4 A -- so I'm going to state it

5 again.

6 Q Please do.

7 A Okay, so I think we'll have this

8 on the record four or five times now.

9 MR. ANTOLLINO: Yes. Objection

10 to the fact that it's been asked many

11 times.

12 Q Thank you for reminding him.

13 A Good, so --

14 Q I know it probably bothers him

15 more than --

16 MR. ANTOLLINO: Actually, we

17 were doing fine, but if you want to use

18 your seven hours asking things again,

19 you can do that.

20 MR. ZABELL: I'm aware of what I

21 can and can't do, Counselor. Thank

22 you, though.

23 A Since I've answered this so many

24 times, I'm going to try to make it even a

25 little bit more condensed, in that Ray's

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1 D. Zarda

2 corroboration of that ridiculous complaint is

3 accusing me of it because he knows better.

4 Simple as that. It's just that simple.

5 Q How did Ray corroborate that

6 event?

7 A The accusation?

8 Q Yes.

9 A Because he went along with it.

10 He didn't investigate it. He didn't let me

11 see the video. He didn't ask anybody else in

12 the plane. He didn't check this out. He

13 just acted on the customer's complaint

14 immediately, didn't check anything out, so he

15 just owned it.

16 Q And that's how he lied to you?

17 A It's a lie because he knows that

18 Don Zarda did not touch the customer in a way

19 that was inappropriate whatsoever. He knows

20 that.

21 Q How does he know that?

22 A Because he has the experience in

23 the industry, in the sport, as an instructor,

24 and he knows me for ten years now. He knows

25 my record, he knows my reputation, and he

1 D. Zarda

2 knows better. Simple.

3 Q And you think he just fired you

4 because you were gay and because you drove

5 his Workers' Comp premiums up?

6 MR. ANTOLLINO: Objection.

7 A No, no. I said earlier when you

8 asked me that if that was a possibly that the

9 Workers' Comp. was an issue, and I said that

10 it's a possibility.

11 Q Is it also a possibility that it

12 was because you were gay?

13 A Yes, absolutely.

14 Q Which do you think is more

15 probable?

16 A That I'm gay.

17 Q You think so?

18 A I think that's bigger.

19 Q Do you have an opinion one way

20 or the other as to the reason why you were

21 terminated; is it because you were gay, or is

22 it because of the Workers' Comp premium --

23 MR. ANTOLLINO: Objection.

24 Q -- in your mind?

25 A It's clearly going to be the gay

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1 D. Zarda

2 issue.

3 Q As you sit here today, you

4 believe you were terminated 100 percent

5 because you are gay?

6 A I didn't say 100 percent. You

7 said 100 percent.

8 Q What percentage would you say --

9 MR. ANTOLLINO: Objection.

10 Q -- the likelihood is that you

11 were terminated because you're gay?

12 MR. ANTOLLINO: Objection.

13 A Statistically speaking, I

14 suppose if you were to crunch the numbers, if

15 there's a possibility of another reason, then

16 this reason over here can't be 100 percent,

17 so where in there is it; one percent, two

18 percent, three percent? I don't know. I'm

19 not in Ray's head, so I can't answer that.

20 The question was: Is it

21 possible that Ray could have fired me, in

22 part, for the Workers' Comp situation? Yes,

23 it's possible. How much of that weighed on

24 him when he made the decision to fire me for

25 being gay, I don't know. I wasn't in Ray's

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1 D. Zarda

2 head, so I can't answer that.

3 Q Do you believe that it could

4 have only been one of those two reasons?

5 MR. ANTOLLINO: Objection.

6 Q You may answer.

7 A Do I believe -- can you repeat

8 that?

9 Q Do you believe, as you sit here

10 today, that your termination was either the

11 result of you being gay or the result of you

12 driving up his Workers' Comp policy?

13 MR. ANTOLLINO: Objection.

14 A I'm going to say this once more.

15 I didn't do anything to drive up his Workers'

16 Comp policy.

17 Q Well, his belief that you drove

18 up his Workers' Comp policy.

19 A I still don't think that I can

20 say that is even his belief because that's

21 something that is not in my control, nor his

22 control, so I can't state to what his belief

23 is about me driving up his Workers' Comp

24 that as being a factor in whether or not he

25 wanted to let me go or not, could have been a

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1 D. Zarda

2 little part of it, but I think the bigger

3 piece, the much bigger piece, the

4 dramatically larger piece of it had to do

5 with me being gay.

6 MR. ANTOLLINO: Off the record

7 for one moment, if you don't mind.

8 MR. ZABELL: Are we talking

9 about scheduling?

10 MR. ANTOLLINO: Yes.

11 MR. ZABELL: Sure.

12 (Whereupon, a discussion was

13 held off the record.)

14 Q The dramatically large piece of

15 your termination had to do with your being

16 gay.

17 What, if any, do you believe

18 could have been the other factors?

19 MR. ANTOLLINO: Objection.

20 Asked and answered.

21 A Well, we've been down this path,

22 but to go briefly again, the accusation of

23 the inappropriate touching was in the mix and

24 the issue of me being gay.

25 Q And?

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1 D. Zarda

2 A The slight possibility that it

3 had to do with the Workers' Comp situation,

4 for which neither Ray nor me has any control

5 over because Ray doesn't work for the New

6 York State Insurance Fund or the Workers'

7 Comp Board and neither do I.

8 Q Are you finished with your

9 answer?

10 A I am.

11 Q Anything else you want to add?

12 MR. ANTOLLINO: Objection.

13 A To that question?

14 Q Yes.

15 A No, I think I answered it a lot.

16 Q Okay. Talk to me about

17 Lauren Callanan; what do you know about her?

18 A She is the manifestester, the

19 primary manifestester for the office, and I

20 don't know if she has an official title as an

21 office manager, but she certainly takes on

22 that role.

23 Q Nice person?

24 A She appears to be.

25 Q She ever lie to you?

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1 D. Zarda

2 A Let me think about that for a  
3 minute.

4 Q You do that.

5 A I can't think of a specific time  
6 where she would have just flat out said an  
7 untruth to me directly. Given that she was  
8 participating, however, in my termination, to  
9 me, might make her culpable in that, in the  
10 act of possibly committing an untruth in that  
11 situation.

12 Q But as you sit here right now,  
13 do you have any reason to believe that she  
14 lied?

15 A I do have reason to believe -- I  
16 do have a little bit of reason to believe. I  
17 just can't prove that.

18 Q We all need a reason to believe.

19 A Yeah, well.

20 Q What is your reason to believe  
21 that she lied?

22 A My reason would be because she  
23 was sitting there with Ray and me when I was  
24 terminated, for whatever reason, whether it  
25 was for Ray to have a witness or whatnot, and

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1 D. Zarda

2 for her to be there, I can't imagine her

3 believing this to be true, the reason I was

4 being fired, so that would make me feel like

5 that she could be culpable of lying by

6 corroborating with Ray, the reason Ray was

7 firing me for.

8 I guess it would be like this:

9 Lauren, do you really believe that this

10 happened? That would be my question if I had

11 to ask her, and she would have to say yes or

12 no, and depending on that would, I guess,

13 determine whether or not she was lying. I

14 can't imagine --

15 MR. ANTOLLINO: All right.

16 That's the answer.

17 MR. ZABELL: Counselor, if your

18 client is speaking and he's halfway

19 through his answer, you do not get to

20 say, all right, that's enough.

21 MR. ANTOLLINO: Yes, I

22 apologize.

23 Q You said "I can't imagine."

24 Please tell me what you can't

25 imagine with regard to that question, and

1 D. Zarda

2 disregard your attorney telling you, okay,

3 that's enough.

4 A I can't imagine her believing

5 that.

6 Q Can't believe that a customer

7 complained about you or believing that the

8 actual complaint was accurate?

9 A Believing that I did anything

10 wrong like that.

11 Q What months in the year 2001 did

12 you work for Skydive Long Island?

13 A I'll just have to give you an

14 approximate on that. It could have been the

15 months in June, July, August, and very early

16 September.

17 Q Would that have been the same

18 for 2009?

19 A No. 2009 would have been the

20 months of May, June, and the first part of

21 July.

22 Q What about 2010?

23 A Those would have been the months

24 of May and June.

25 Q And typically if you were given

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1 D. Zarda

2 the opportunity, would you have worked for

3 Mr. Maynard year round?

4 A It was a seasonal arrangement.

5 It was a seasonal engagement to come to work

6 there.

7 Q What makes it seasonal?

8 A In part, the weather and the

9 nature of the activity, and the location of

10 Mr. Maynard's drop zone is in that place

11 mentioned. I think Rich told you, the season

12 was from March to November, and that's for

13 the locals. So what I mean by that is, Rich

14 lives in this area and so do some of the

15 other employees, so they stay all year, and

16 they're able to work a little bit longer

17 outside in the busy season where instructors

18 like me come from other parts -- they're able

19 to work a little bit longer on either end of

20 the season because they live here versus

21 instructors get hired in from other parts of

22 the country. We come for the busy part.

23 Q And you understand that

24 skydiving on Long Island is a seasonal

25 business; correct?

1 D. Zarda

2 A It can be a seasonal business.

3 Technically speaking, skydiving can take

4 place 365 days a year, seven days a week, if

5 you have the weather. If the planets

6 rearrange themselves and it got to be nice

7 weather in December, they -- I wouldn't be

8 surprised if in the coming weekends, even

9 this month, if they aren't doing tandems at

10 Skydive Long Island on the weekend.

11 Q Would you work on rainy days?

12 A Would I work on a -- you're

13 asking me --

14 Q On a rainy day, yes.

15 A If I would or did?

16 Q If you would.

17 A If I would work on a rainy day?

18 Q Yes.

19 A Could you be more specific; in

20 what way would I work?

21 Q Would you actually jump out of

22 planes in the rain?

23 A We're not allowed to do that.

24 Q So on rainy days, you can't jump

25 from planes?

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1 D. Zarda

2 A You can't jump from planes while  
3 it's raining, during the part of the day that  
4 it's raining.

5 Q What other restrictions are  
6 there on when you can jump from a plane?

7 A Legally, as far as conditions?

8 Q Yes.

9 A Legally, the sky must be clear,  
10 you must have visibility of three statute  
11 miles, you must be 500 feet below clouds,  
12 there must be 1,000 feet above the clouds,  
13 and 2,000 feet separation from the clouds to  
14 be able to jump. If you don't have that kind  
15 of visibility -- that's off the top of my  
16 head. The FARs, but it's relatively close.

17 Q And that was enforced at Skydive  
18 Long Island; correct?

19 A Not all the time.

20 Q No; there were times where you  
21 would break the law and dive?

22 A Yes.

23 Q Why would you do that?

24 A Because the pilot was willing to  
25 fly the aircraft, and Ray was willing to have

1 D. Zarda

2 us do jumps in those conditions.

3 Q And you were willing to jump in

4 those conditions?

5 A Willing or -- I was willing to

6 jump. Pressured to jump, I think, would

7 probably be a better way to put it.

8 Q You had the right to refuse a

9 jump; did you not?

10 A You could. If you did and you

11 were the only one, then that would possibly

12 raise concern or draw attention to why you

13 would not be jumping when these other people

14 who have a vested interest in making as much

15 money as they possibly can are jumping, so

16 there's that paradox.

17 Q What's the paradox?

18 A Everybody else must think it's

19 okay to jump, so therefore, I should jump

20 too, even if it's illegal. That's the

21 paradox.

22 Q Did you ever complain about

23 being forced to jump illegally?

24 A In this industry, if you

25 complain about things too much, illegal or

1 D. Zarda

2 not, then you may lose your job.

3 Q That's a wonderful answer. It's

4 just not the answer to the question I asked

5 you.

6 A Okay.

7 Q Did you complain about being

8 forced to jump illegally?

9 A No.

10 Q If you wanted to complain, who

11 would you complain to?

12 A The only person I would have

13 felt comfortable with making a complaint

14 about conditions and not jumping would have

15 been Rich, himself, and if Rich wasn't there,

16 I would probably conferred next with Duncan,

17 Duncan Shaw.

18 Generally, either one of those

19 two people would be there. Collectively how

20 it would work is, if it's really crappy

21 conditions and we're talking borderline

22 dangerous, it would get to a point where the

23 herd of staff would collectively stand down.

24 Sometimes that call had to be made by

25 somebody. Oftentimes, it was not Ray. Many

1 D. Zarda

2 times it was Rich. Sometimes it would be the  
3 pilot. Everybody has a different role in  
4 this.

5 The pilot could refuse not to  
6 fly if the conditions aren't good enough, so  
7 then if the pilot doesn't fly, then,  
8 obviously, the jumpers can't make the  
9 decision not to jump.

10 Q Did you maintain a schedule of  
11 your hours worked in 2009?

12 A A written schedule, no.

13 Q Did you maintain a schedule of  
14 your hours worked in 2010?

15 A No. We were expected to show up  
16 at work at a specific time, and that time was  
17 given to us either the prior day, we'd look  
18 at the schedule, see what tandems were coming  
19 in, and we were expected to stay until the  
20 work was complete, no matter how long that  
21 was or until we were dismissed, if we were  
22 ever dismissed.

23 Q Sometimes you would never be  
24 dismissed; right?

25 A Sometimes you wouldn't.

1 D. Zarda

2 Q And you would sleep there when

3 you weren't dismissed; correct?

4 A You're just waiting. You could

5 be using the computer or you could do

6 nothing, or if there was something -- there

7 was various things you could do. If you

8 needed to pack your parachute or something, I

9 suppose you could do that.

10 Q You could also drive off site

11 and just when they call you back, return;

12 correct?

13 A Sometimes they would let you do

14 that, but not all the time.

15 Q You had a cellphone when you

16 worked in 2009 and 2010; correct?

17 A Yes.

18 Q What was your cellphone number?

19 A Same as it is now.

20 Q Which is?

21 A (901)569-5860.

22 Q And that was known to Skydive

23 Long Island; correct?

24 A Yes, of course.

25 Q And they could always call you

1 D. Zarda

2 on your cellphone; correct?

3 A Yes, they could.

4 Q And, you know, there were times

5 during bad weather where you'd leave and go

6 run some errands and maybe stop back, but if

7 the skies opened up and it got more rainy,

8 you would just go home; correct?

9 A No. Typically, for me, once I

10 made the trip out there, I would stay from

11 where I had come from, so I can't think of

12 specifics, but there were not very many times

13 that I would go run errands, because there's

14 not too many things that you can do out

15 there, where you could run errands, other

16 than go get something to eat and come back.

17 So for me, that doesn't work.

18 For some of the other people

19 that live out there, have full-time homes and

20 stuff, they could kind of come and go and do

21 stuff like that, but it didn't really work

22 out for me that way.

23 Q That's just because you lived a

24 little bit of a distance away?

25 A It was a little bit of a

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1 D. Zarda

2 distance; yeah.

3 Q It was just less convenient for

4 you; correct?

5 A Yeah. It would have been kind

6 of ridiculous to drive all the back to Coram

7 and then come all the way back to that area.

8 Q Did you ever meet any of the  
9 customers of Skydive Long Island afterwards,  
10 after a jump?

11 A Did I ever meet -- be more  
12 specific about "after a jump." Are we  
13 talking the same day, like after they just  
14 made their jump and they were hanging out?

15 Q No. Did you ever make an  
16 acquaintance with a customer and then meet up  
17 with them at some later date?

18 A I made some acquaintances, but I  
19 haven't met up with them. I made a couple of  
20 acquaintances on FaceBook, one that I could  
21 think of. I haven't seen him since. I mean,  
22 we're still FaceBook friends.

23 Q Did you ever date any of the  
24 customers you met at Skydive Long Island?

25 A No, I never have.

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1 D. Zarda

2 Q Did you ever try?

3 A Nope.

4 Q Now, what was your expected work

5 schedule in 2009 at Skydive Long Island?

6 A Are you asking me what dates I

7 was expected to be there?

8 Q What days of the week were you

9 expected to work?

10 A It's a seven-day-a-week operation.

11 Q I know it's a seven-day-a-week

12 operation --

13 A You're expected to work seven

14 days a week if the weather is good.

15 Q How did you happen to spend

16 weekends over at Fire Island if you were

17 working seven days a week?

18 A I didn't spend any full weekends

19 over at Fire Island, unless it was completely

20 crappy weather and we were dismissed from

21 jumping and we were not jumping, period, or

22 we were allowed to go home or any of those

23 scenarios, if they occurred. I didn't spend

24 weekends over at Fire Island.

25 Q Really? Because you testified

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1 D. Zarda

2 before that in response to questions of, hey,

3 Don, what did you do this weekend, you would

4 share with people that you went to Fire

5 Island or you went to the Pines, or something

6 else.

7 A Yup. You can very easily get a

8 ride on down to Sayville, get on the ferry,

9 and come right back. Coram is fifteen

10 minutes from Sayville. I did it several

11 times. Come back and go to work, so I didn't

12 spend weekends on Fire Island.

13 Q Did you spend evenings there?

14 A If there was time to make it

15 over there. It just depends on the schedule.

16 If there was a way to go over there and come

17 back, then, yeah.

18 Q So some days your schedule would

19 permit it and some days your schedule

20 wouldn't; is that correct?

21 A The schedule never permitted to

22 go spend a weekend on Fire Island. It did

23 not permit that, and I did not spend any

24 weekends on Fire Island because of that. If

25 the situation warranted or the conditions

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1 D. Zarda

2 permitted you to be able to go to Fire Island

3 for any amount of time, then I may have gone,

4 and I did go on some occasions.

5 Q In 2009?

6 A Yes.

7 Q And in 2010?

8 A Yes.

9 Q How many occasions in 2010 did

10 you go to Fire Island?

11 A I can't recall a specific number

12 of occasions. There's no way of me to tell

13 you that.

14 Q More than one?

15 A Oh, yes, more than one.

16 Q More than two?

17 A I'm pretty sure it was more than

18 two.

19 Q More than three?

20 A I would say so.

21 Q More than four?

22 A Would say that it was -- we're

23 talking about 2010?

24 Q Yes.

25 A I'd say it was less than ten

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1 D. Zarda

2 times total.

3 Q Some amount between six and ten?

4 A Somewhere around there, yeah. I

5 think that's fair to say.

6 Q What about 2009?

7 A 2009, less. I'd probably say it

8 could be four to five times.

9 Q Four to five times?

10 A I managed to make it over there,

11 despite the injury, a couple of times, so

12 yeah, probably about that.

13 Q Fire Island wasn't the only

14 place you socialized on Long Island; is it?

15 A Well, there was the drop zone,

16 and then -- 2009?

17 Q 2009 or 2010.

18 A 2009, I can't think of going

19 anywhere else to socialize. 2010 on Long

20 Island, I can't think of anywhere else I went

21 to socialize.

22 Q Did you ever go to any clubs in

23 Sayville?

24 A No, never been to any clubs in

25 Sayville.

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1 D. Zarda

2 Q Did you ever enjoy any of Long  
3 Island's fine restaurants, fine dining  
4 establishments?

5 A I mean, I eat out a lot, so  
6 can't say as to what all restaurants I went  
7 to. I think in 2010, I might have gone to a  
8 restaurant -- I did go to a restaurant. I  
9 just can't remember which one it was, in  
10 Port Jeff Station right around the corner  
11 from the condo. That was nice. I don't  
12 remember which one it was.

13 Q Did you ever have occasion to go  
14 into New York City --

15 A Yes.

16 Q -- when you worked in 2009  
17 and 2010?

18 A Yes.

19 Q When would you go into the City?

20 A Whenever time permitted.

21 Q How much time would you need to  
22 get into the City?

23 A That was always a toughy. If we  
24 were busy working and we had to be at work  
25 the next morning, depending on what time we

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1 D. Zarda

2 got released from work or the last jump was  
3 would dictate on whether or not we could get  
4 down to Ronkonkoma, hop the train, get to the  
5 City and come back, so I did that a few  
6 times.

7 Q In 2009, how many times did you  
8 do that?

9 A Did I ever go to New York from  
10 Coram; is that what you're asking?

11 Q Did you ever go to New York City  
12 while you were working in 2009?

13 A A couple of times.

14 Q Three or four?

15 A I don't know if it was three or  
16 four, because I got hurt pretty early on, so  
17 we were busy, and that was during the long  
18 daylight hours, but I know I went at least  
19 once, probably twice.

20 Q How about 2010?

21 A Same thing, because the only  
22 thing different is that I was hurt in a  
23 different way in 2010. I was fired, but it  
24 was about the same amount of time.

25 Q If it was a long daylight day,

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1 D. Zarda

2 as I believe you said --

3 A Yes.

4 Q -- what does that mean?

5 A Well, in the summer solstice,  
6 the days are the longest. Skydiving goes on  
7 typically all way until one half hour before  
8 sunset. As the sunset gets longer and longer  
9 in the summer, then so does the workday.

10 Q What is the longest day in the  
11 summer?

12 A June 20.

13 Q From that point, it gets --

14 A It starts getting slowly  
15 shorter.

16 Q If there's more sunlight, does  
17 that mean you can perform more jumps in a  
18 day?

19 A It does.

20 Q What was the most amount of  
21 jumps that you had done in a day?

22 A Eighteen.

23 Q How much do you get, roughly,  
24 for each jump?

25 A \$40.

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1 D. Zarda

2 Q And that's the amount that you

3 agreed upon; correct?

4 A Right.

5 Q On a piecemeal basis, once your

6 jump is completed, that's what you get paid;

7 is that correct?

8 A Right.

9 Q Sometimes you get paid more than

10 \$40; right?

11 A As Rich was kind of explaining,

12 because the breakdown is kind of complicated

13 and depending on the kind of jump, so if it

14 was a training jump, training tandem versus

15 just a joyride, then there was a slightly

16 different schedule for that, and I don't

17 recall right off the top of my head how much

18 it was, because the majority of the jumps

19 that take place at Skydive Long Island are

20 passenger joyrides. They're not training

21 jumps, so I don't have it off the top of my

22 head.

23 There were times that if you

24 were doing a different kind of jump, you got

25 paid a different amount.

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1 D. Zarda

2 Q Did you keep track of how many  
3 jumps you did in 2009?

4 A The computer kept track of it.  
5 My altimeter has it. I'm not sure if we  
6 provided that to you or not. It's in my  
7 altimeter. It's on my computer.

8 Q What does that mean, it's in  
9 your altimeter, it's on your computer?

10 A Well, the old standard way of  
11 logging jumps, and some people still use it,  
12 some people half-and-half it, is an actual  
13 logbook, like this (indicating) spiral bound.  
14 You write down the jump number and what you  
15 do. Many professional jumpers don't do that  
16 anymore because we're just doing so many  
17 jumps, and they're all just the same thing,  
18 and we have altimeters that electronically  
19 record the jump.

20 Q Would that electronically record  
21 a fun jump for you?

22 A Yes, it would.

23 Q Would it distinguish it as a fun  
24 jump?

25 A It doesn't, but when you

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1 D. Zarda  
2 download the jumps into your software program  
3 on your computer, then you can go in and say,  
4 dive type or type of jump it is, and also  
5 typically, if you just forgot and you wanted  
6 to look, you can tell what kind of jump it is  
7 because you could look at the free fall time,  
8 free fall speeds and opening altitudes that  
9 the altimeter records, so it would really be  
10 obvious that a tandem wasn't a fun jump and  
11 you opened at 2,000 feet. That's really a  
12 no-brainer.

13 Q Now, Mr. Winstock said yesterday  
14 when he was critiquing one of your jumps that  
15 he thought you were waiting too long to throw  
16 your drogue out.

17 A Just his opinion.

18 Q Well, it's his opinion that  
19 counts; isn't it?

20 A It counts for what?

21 Q He gets to review your jumps to  
22 determine that you're jumping appropriately;  
23 correct?

24 A No. There wasn't a review  
25 process. I think that was just some

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1 D. Zarda

2 skydiving comradery. No. So no, there was  
3 not performance reviews. There was not  
4 performance evaluations.

5 Q In a tandem jump, how long are  
6 you supposed to wait before throwing out your  
7 drogue?

8 A Three to five seconds, or until  
9 stability is achieved and when the instructor  
10 deems it appropriate to be able to safely  
11 deploy the drogue chute.

12 Q Why do you not want to wait too  
13 long to deploy your drogue chute?

14 A Well, because it could get  
15 entangled with the tail of the aircraft. It  
16 could get entangled with you. It can get  
17 entangled with the passenger; any of the  
18 those things. So you need to deploy the  
19 drogue whenever the time is correct that you  
20 have achieved stability and that you have  
21 control and that it's safe to do so.

22 Q Right. And you don't want to  
23 throw your drogue out after -- the whole  
24 purpose of your drogue is to slow you down so  
25 you're not hitting terminal velocity;

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1 D. Zarda

2 correct?

3 A It's just to keep the tandem

4 pair falling at the same speed, roughly, that

5 a solo jumper would fall.

6 Q And isn't it also to lessen the

7 impact of the initial shoot opening, as well?

8 A It is also for that.

9 Q Because that would put a lot of

10 stress on you; wouldn't it?

11 A It does, yes. It does also

12 serve that purpose.

13 Q So that's why you want to open

14 it in that three to five seconds?

15 A Three to five seconds is very

16 arbitrary. It could be seven.

17 Q Really? Because I thought at

18 twelve seconds, you hit terminal velocity.

19 A Actually, at nine seconds you

20 do.

21 Q Oh, you do? Then it makes sense

22 you're going to want to do it at three to

23 five as opposed to eight because you don't

24 want to hit terminal velocity; right?

25 A No, no. It's okay to wait, you

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1 D. Zarda

2 know, up to seven seconds. It's fine.

3 Q Did Rich indicate that you did

4 it in about twelve seconds?

5 A We didn't look at the video

6 again, because I don't think there was

7 twelve seconds there.

8 Q Because there was time for you

9 wave before you did it; correct?

10 A Oh, there's time to give the

11 peace sign. There's time to do a couple of

12 flips. There's time to wave. There's time

13 to do all of that.

14 Q Do you flip while there is

15 somebody strapped to you?

16 A I have.

17 Q Is it recommended?

18 A Technically, it is not allowed.

19 And that reminds me of the

20 initial complaint in 2001 of that passenger

21 where I mentioned that there was something

22 that that passenger wanted me to do that I

23 wouldn't do, that just happens to be exactly

24 what it was. It was flips out of the

25 airplane.

1 D. Zarda

2 Q Which you've done before?

3 A Every instructor has done it.

4 Q But you're not allowed to do it?

5 A Technically, you're not allowed

6 to do it.

7 Q But you've done it.

8 A And everybody does.

9 Q So if everybody does it, then it

10 makes it all right; correct?

11 A It depends. It depends on if

12 the manufacturers are wanting to enforce that

13 or not, and during the period of time in 2001

14 when that came up, it was under very extreme

15 scrutiny at that point, and it was being

16 enforced, and there were consequences if you

17 were caught doing it.

18 Q What were the consequences?

19 A You could have your license

20 revoked.

21 Q And that's actually any time if

22 you're caught doing it, you could have your

23 license revoked; correct?

24 A It is, but I've not heard of

25 that happening in years.

1 D. Zarda

2 Q So you've escaped detection in  
3 years?

4 A Everybody has escaped detection  
5 in years, even though it's broadcast on  
6 YouTube thousands of times. Instructors  
7 doing flips and barrel rolls with tandem  
8 passengers, and somehow there still manages  
9 to be licensed instructors in the country  
10 doing tandems. It's a great thing.

11 Q You agreed specifically to get  
12 paid on the per jump basis; did you not?

13 A That is correct.

14 Q And you were paid on a per jump  
15 basis; correct?

16 A Yes.

17 Q And you were paid what you had  
18 agreed to be paid; correct?

19 A Except for the jumps that Ray  
20 withheld from my paycheck.

21 Q But then he gave them back to  
22 you; right?

23 A (No verbal response.)

24 Q You testified that he did.

25 A He stole the TV, and then he

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1 D. Zarda

2 returned it.

3 Q You got paid everything that you

4 were agreed to be paid; correct?

5 A Yup.

6 Q Did you ever collect any Social

7 Services payments in 2009 or 2010?

8 MR. ANTOLLINO: Objection to

9 form.

10 A Define "Social Services" to me.

11 Q Anything from welfare to

12 unemployment benefits to Workers' Compensation

13 Benefits.

14 A I received Workers' Compensation

15 benefits.

16 Q When?

17 A That was in 2009.

18 Q Did you ever receive

19 unemployment benefits?

20 A Not in 2009.

21 Q Did you receive unemployment

22 benefits in 2010?

23 A Yes.

24 Q From what state did you receive

25 unemployment benefits?

1 D. Zarda

2 A New York.

3 Q I assume you applied for

4 unemployment benefits; correct?

5 A I did.

6 Q Did you indicate on your

7 application for unemployment benefits that

8 you were a partner in a business?

9 A I would have to see the form. I

10 doubt it, because I'm a silent partner, and I

11 don't have any legal standing with the

12 business whatsoever, and I don't have

13 anything there, so I doubt it.

14 Q But you do receive income from

15 the business when the business has income;

16 correct?

17 A When the business is able to pay

18 for what it owes me for work that's been done

19 years ago, then we get some money.

20 Q And in 2010, you actually did

21 work for the business; correct?

22 A I haven't been paid for that

23 work.

24 Q But you did work; right?

25 A In 2010, I did some things here

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1 D. Zarda

2 and there.

3 Q What did you do for the company

4 in 2010?

5 A In 2010, I was gone a lot, so

6 just IT stuff.

7 Q Do you recall what period of

8 time to what period of time you did IT stuff?

9 A It would have been before I

10 went.

11 Q It would have been what?

12 A It would have been before I went

13 to leave for the season to go to Skydive Long

14 Island.

15 Q Well, didn't you testify before

16 that you also worked there after you left

17 Skydive Long Island?

18 A You're talking about '10; right?

19 Q Yes.

20 A I think that -- I think that you

21 were talking about '11 when I came back and

22 doing the work that you just asked me about

23 recently.

24 Q So you're saying you didn't do

25 any work for the company in 2010, or you did

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1 D. Zarda

2 do work in 2010?

3 A Before I went to Skydive Long

4 Island.

5 Q From what period of time to what

6 period of time did you collect unemployment

7 benefits?

8 A I don't have a -- that's a good

9 question because it took so long to get any

10 response in that broken system, that awful

11 system --

12 MR. ANTOLLINO: Just answer the

13 question.

14 Q It's an awful broken system. I

15 got you.

16 A It is. It's awful. I think

17 actually by the time I actually got any

18 benefits, it was the end of November of 2010.

19 It took that long.

20 Q How long did you receive those

21 benefits for?

22 A I think it was just until

23 January, the end of January. Maybe early

24 February.

25 Q Why did you stop receiving

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1 D. Zarda

2 benefits?

3 A Because we got into a dispute  
4 over a program that I applied for,  
5 599 Program, and they suspended my benefits.

6 Q What is a "599 Program"?

7 A It has to do with training. If  
8 you are in school or in an approved training,  
9 and I'm not going to speak as if I'm an  
10 expert on this, because I don't have the rule  
11 in front of me because it's all very  
12 complicated, you can receive benefits for  
13 unemployment while you are actually in school  
14 full-time, as long as you meet these specific  
15 criteria that was listed in their handbook,  
16 and I met that criteria, so we actually still  
17 have an open case to this day, and I intend  
18 to win that to get the remaining benefits  
19 with unemployment.

20 Q You do?

21 A I do.

22 Q How do you intend to do that?

23 A When the Judge -- when I finally  
24 get a hearing and I get to talk to the Judge,  
25 I think, just as in the case with the

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1 D. Zarda

2 Workers' Comp, I think the Judge will see it  
3 my way.

4 Q You do?

5 A I do.

6 Q Has anybody advised you on it?

7 A Like an attorney, you mean?

8 Q Yes.

9 A Not specifically.

10 Q Generally?

11 A No. They have not specifically  
12 advised me on that. I'm kind of handling  
13 that on my own. I think -- it's a  
14 bureaucracy. I think the facts speak for  
15 themselves, and then when it gets to a point  
16 where a Judge can look at it, it will be  
17 easy.

18 Q Do you know what the earnings  
19 are of Altitude Express or Skydive Long Island?

20 A What they make as a corporation?

21 Q Yes.

22 A I don't.

23 Q Do you know the periods of time  
24 in which they make their money?

25 A I don't know, specifically, but

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2 I think they are capable of making money year

3 round. They can sell gift certificates over

4 the winter, even though they're not jumping.

5 They can actually do jumps in January. I've

6 seen posts for jumps in the winter, so it's

7 just not the up, main season.

8 Q Do you agree that skydiving is a

9 seasonal sport?

10 A In some areas, it is, and in

11 some areas, it is not.

12 Q Would you say that Skydive Long

13 Island is a seasonal sport, dependent to

14 operate mostly in the warmer weather?

15 A Typically so for Skydive Long

16 Island; yeah, yes.

17 Q So if you actually swore to the

18 accuracy of that statement, that would be

19 correct?

20 A I think I did say that.

21 Q I think so too.

22 A Yeah.

23 Q I believe you said the last jump

24 of each day occurred a half hour before

25 sunset; is that correct?

1 D. Zarda

2 A Well, if everybody is following  
3 FAA rules and United States Parachute  
4 Association rules and all the rules that  
5 you're supposed to follow, then technically  
6 speaking, the last jump is supposed to be  
7 wheels up, which means takeoff, thirty  
8 minutes before sunset; whatever the official  
9 posted sunset is.

10 Q How long does a jump actually  
11 take?

12 A That depends on the type of  
13 jump, the type of aircraft that's being used  
14 to take the jumpers to altitude, and the  
15 altitude of the jump.

16 Q When you were at Skydive Long  
17 Island, how long did your jumps take?

18 A Well --

19 Q Generally? You can give me the range.

20 A That's better because there is  
21 two different aircrafts, and they operate at  
22 two very different speeds and they were  
23 different altitudes, so a jump could go  
24 anywhere from, I would say, ten to twenty,  
25 twenty-two minutes or so, somewhere in that

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2 neighborhood.

3 Q In a ten to twenty-minute

4 period, you would earn somewhere around \$40;

5 is that correct?

6 A That's correct. You could do

7 pretty well, depending on which plane you're

8 in. If you're lucky and in the KingAir all

9 day, you did better because it was a faster

10 plane. You could get up and down quicker and

11 do more jumps.

12 Q That was the ten-minute jumps;

13 right?

14 A Well, the reason I said ten is

15 because that's if you are doing some kind of

16 jump mastering with a student that's not a

17 tandem and they're getting out at a low

18 altitude on the way up to a higher altitude,

19 so that's why I included that. That's not

20 the typical tandem jump. A typical tandem

21 jump is going to be fifteen to twenty

22 minutes.

23 Q Okay.

24 A Tandems were, you know, were the

25 main staple. There's all kinds of other

1 D. Zarda

2 variables.

3 Q Most of the jumps took between

4 fifteen and twenty minutes for which you

5 would earn the \$40; correct?

6 A Yeah. Sometimes a little less

7 if it was in the KingAir and you didn't get

8 full altitude, for whatever reason, and

9 sometimes that happened because of traffic or

10 clouds.

11 Q And again, if it was a cloudy

12 day or a rainy day, you ended up hanging out

13 around there, but you could go run errands or

14 whatever, but you didn't go home because it

15 just didn't work out for you; correct?

16 A I typically didn't go home

17 because it was too far, but it depends on the

18 kind of clouds. I know that maybe sounds a

19 little hard to understand, and the kind of

20 weather.

21 Q No, I understand. You got your

22 nimbus, your cumulonimbus, your thunder.

23 A If it was, you know, stuff is

24 moving in, it's definitely not going

25 anywhere, then you know probably we're done

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2 for the day. If it was hit-and-miss stuff  
3 coming and going, you know, you could maybe  
4 get a few loads off in between the stuff, and  
5 then more rain would come, so it would just  
6 depend, and then it depends on the altitude  
7 of the clouds.

8 Sometimes the ceiling might be  
9 10,000 feet. We could still do jumps below  
10 10,000 feet without breaking the law. It  
11 depends.

12 Q You would judge from the weather  
13 whether or not you would hang around or not;  
14 correct?

15 A We wouldn't judge. The decision  
16 had to come down from Lauren. Lauren, a lot  
17 of times, made the call, and I think when she  
18 made the call, it was probably with Ray's  
19 approval. It would come down from Ray or  
20 Lauren and possibly Rich on whether we're  
21 done or the pilot.

22 Keep in mind, it's a little bit  
23 complicated. I want everybody to be able to  
24 understand this. Ray runs the drop zone, he  
25 owns the drop zone, he controls most things.

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1 D. Zarda

2 However, the drop zone cannot operate if the  
3 pilot does not or cannot fly the aircraft,  
4 and the pilot has the absolute final say on  
5 whether anybody goes anywhere, bar none.

6 Q What was the least amount of  
7 jumps that you had performed on a day?

8 A That would be easy. It would be  
9 zero.

10 Q And that's if you showed up and  
11 the weather just didn't permit a jump;  
12 correct?

13 A That's right.

14 Q In which case, you'd --

15 A You'd just have to see what the  
16 situation was going to be. It was an  
17 on-the-fly thing.

18 Q But while you're waiting around  
19 for the weather to clear, you can go --

20 MR. ANTOLLINO: Objection.

21 Q -- get a sandwich, order a  
22 pizza, or something?

23 A It depends. I'm not going to  
24 make a general statement about that because  
25 it just simply depends.

1 D. Zarda

2 Q Just some days you could, and

3 some days you couldn't?

4 A Some days you could, and some

5 days you couldn't.

6 Q Some days you could go home; and

7 some days you couldn't?

8 A Yeah.

9 Q You just wouldn't go home

10 because it was pretty far; right?

11 A Well, yup. If I had to go home

12 and come back, it would have been too far, so

13 really that wasn't an option for me, because

14 what if I'm on the way home and almost to

15 Coram, and then a hole opens up and we got

16 twenty or thirty --

17 Q Jumpers?

18 A -- customers standing there that

19 we can get in the air and I'm not there to do

20 it, that wouldn't be good.

21 Q Some people live pretty close to

22 the --

23 A They do.

24 Q -- jump zone; right?

25 A Yes, they do.

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1 D. Zarda

2 Q Who lived the closest to the  
3 jump zone?

4 A I think Duncan and Willie at the  
5 time and Alex Allen.

6 Q Now, you and Willie weren't that  
7 close, but Duncan was a good guy, right,  
8 Duncan liked you?

9 A Everybody was a good guy.

10 Q Everybody; all of the workers  
11 were good guys, even Willie?

12 A Even Willie. Willie was one of  
13 those people that we talked about earlier  
14 that needed a little bit of work.

15 Q Did Duncan or Willie ever invite  
16 you to their house to get something to eat  
17 during the down times?

18 A Not during those times; no.

19 Q During any other time?

20 A Yes. I've been over to their  
21 house, but not during, you know, workdays.

22 Q After work, you'd go over and  
23 socialize; right?

24 A Actually, no. Believe it or  
25 not, social as we are with those long days,

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2 the people that work there, the professional  
3 jumpers, were the ones who didn't socialize a  
4 whole lot because we were worn out. You went  
5 home. You had very little time to do what  
6 you needed to do for your person, in my case,  
7 my errands, workouts, whatever, and then you  
8 had to be back the next day, so those of us  
9 that worked full-time, we didn't really,  
10 during the heavy part, we didn't socialize a  
11 whole lot.

12 Q Did you ever get to workout at  
13 the drop Zone?

14 A No.

15 Q Do pushups, sit-ups, or  
16 pull-ups?

17 A No.

18 Q Never did that?

19 A No.

20 Q Were there shower facilities at  
21 the drop zone?

22 A Crude, but I never used it, but  
23 out behind the electrical transformer, there  
24 was a stall and I think a water hose.

25 Q Well, it's always good to keep

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1 D. Zarda

2 water hoses by electrical transformers;

3 right?

4 A Right.

5 Q But that was available for you

6 to use; right?

7 A If you felt like you could get

8 cleaner in that place, then I guess you could

9 shower there.

10 Q Were there ever beverages

11 provided in the drop zone?

12 A For sale, or -- Ray had a

13 hamburger shack that you could get soft

14 drinks from and some Coke machines.

15 Q Anybody ever bring beer to the

16 drop zone?

17 A All the time.

18 Q Who would bring beer?

19 A That could be staff, fun

20 jumpers, customers. Beer is encouraged.

21 Q But you can't jump while you're

22 drunk; can you?

23 A No, you cannot.

24 Q And you would never jump while

25 you were drunk; right?

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2 A Absolutely not.

3 Q Did you ever drink a beer at the  
4 drop zone?

5 A Yes.

6 Q On occasion, right?

7 A On occasion.

8 Q It would be like, you know, once  
9 a week, maybe once or twice a week?

10 A I wouldn't call it a per-week  
11 thing. It would just depend on the day and  
12 if there was something going on at the drop  
13 zone. Typically, in the industry, or, you  
14 know, culturally-wide, skydivers ended the  
15 day with beer. They have a beer light. They  
16 even have an actual beer light at Skydive  
17 Long Island. A lot of drop zones do. It's a  
18 green light or a light, and when it's turned  
19 on, you're allowed to drink beer.

20 Q Your attorney had mentioned  
21 something about getting laid yesterday.  
22 Do you know what he was talking  
23 about?

24 MR. ANTOLLINO: Objection. May  
25 I clarify for the record?

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2 MR. ZABELL: No.

3 MR. ANTOLLINO: When you say,

4 "laid," are were you spelling it

5 L-E-I-D or L-A-I-D?

6 MR. ZABELL: I'm just saying

7 that you were talking about getting

8 laid yesterday, and I'm asking your

9 client if he knows what you were

10 talking about.

11 A I think that he was making

12 reference to a posting that he may have seen

13 on Skydive Long Island's website about a

14 summertime party, a luau, where it mentioned

15 something about getting laid.

16 Q Do you recall how it was spelled

17 because your attorney seems to want to know?

18 A I don't recall how it was

19 spelled. I may have seen it in passing.

20 Drop zones routinely have newsletters and

21 publicize on Dropzone.com and other websites,

22 boogie-type events for things like that, not

23 every single one of them, but it sounds like

24 something that a drop zone would have.

25 Q Were you ever at a getting-laid

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2 party at the drop zone --

3 A No.

4 Q -- on Long Island?

5 A No. I didn't stick around much

6 for parties at the drop zone, because I had

7 to be at work the next day, or if I didn't

8 have to be at work the next day, then I had

9 other stuff to go do (indicating).

10 Q You're pointing to your lawyer.

11 I don't know --

12 A I'm pointing as "in a way." I

13 had other stuff to go do.

14 Once you've been at the drop

15 zone for twelve hours or more and you're

16 working there, at least for me and I think

17 for Duncan sometimes and the other full-time

18 staff, we would pretty much just end up

19 leaving. Maybe have a beer and then leave.

20 Q You're unfamiliar with this

21 getting-laid party that your lawyer was

22 referring to?

23 A I think I've seen, you know, in

24 passing, this luau that they have. They have

25 all kind of quirky parties out there. They

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1 D. Zarda

2 have some quirky parties at Skydive Long

3 Island that take place.

4 Q Did they in 2009?

5 A Yes.

6 Q What quirky parties did they

7 have?

8 A Same ones. They have the same

9 parties. The party themes tend to be similar

10 in nature or the same one regurgitated and

11 redone year after year.

12 Q What parties had occurred at

13 Skydive Long Island in 2009 when you were

14 working?

15 A Well, they have some kind of

16 disco, '80s, something-or-other party during

17 the time when the casa was supposed to be

18 there, which is a boogie that Rich mentioned,

19 and then boogie is just another word for a

20 skydiving event that involves more people and

21 typically, a specialty aircraft that doesn't

22 usually reside at the drop zone being brought

23 in for a special occasion. For those kind of

24 occasions. I think they had that luau, as

25 well. I think that was a separate occasion,

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2 but I'm not sure.

3 In 2009, I wasn't available to

4 be able to go to too many of the parties

5 because I was on crutches.

6 Q When you were on crutches, you

7 weren't working; correct?

8 MR. ANTOLLINO: Objection.

9 A I was not.

10 Q During the period of time before

11 you busted up your ankle --

12 A It was a short period because --

13 not terribly short, a couple of months, I

14 guess.

15 Q Well, there was May and June;

16 correct?

17 A May, June, and the first day of

18 July; yeah, so -- what were you asking about?

19 Q Did you go to any of those

20 parties in 2009?

21 A Not that I recall.

22 Q Were you invited to any of those

23 parties?

24 A You're all invited; yes.

25 Q And you choose not to go?

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2 A If I didn't go, then I'm sure I

3 made the choice.

4 Q Was there anything occurring at

5 the parties that made you uncomfortable?

6 A I can't say because I wasn't

7 there, but things do go on at some of those

8 parties at some drop zones that I don't

9 really feel it's part of my liking.

10 Q Does that have anything to do

11 with the disco music?

12 A No.

13 Q You're okay with the disco

14 music?

15 A I'm okay with it, but, you know,

16 I got other stuff to go do and other ways to

17 entertain myself than to hang around the drop

18 zone.

19 Q Well, what things go on at those

20 parties, at Skydive Long Island parties, that

21 you don't like?

22 A People get drunk.

23 Q You don't like people getting

24 drunk?

25 A I prefer not to be around drunk

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2 people, so I don't get drunk myself. It's  
3 just that I don't like drunkenness. It  
4 doesn't mean that you can't drink, but if  
5 you're drunk and slobbering and falling all  
6 over the place and being loud and whatever  
7 people get like when they get drunk, I don't  
8 like that.

9 Q You gave that all up in 1999 and  
10 2000; right?

11 A I did.

12 Q What else goes on at the parties  
13 that you don't like to participate in?

14 A Well, I can't say exactly  
15 everything that goes on at some of these  
16 things. I mean, you know, jumpers tend to  
17 hook up with other jumpers at events like  
18 that when people get drunk and start doing  
19 stupid things, and so, you know, there's not  
20 too many gay jumpers around, and I just got  
21 other things to go do.

22 Q Slim pickings and --

23 A If you want to call it that,  
24 then yeah.

25 Q I'm trying to get a handle on

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1 D. Zarda

2 your position here.

3 A My position is that if I have an  
4 opportunity to hangout at the drop zone at a  
5 party and listen to disco music or to go to  
6 Fire Island or something during that same  
7 time period and be around some of my gay  
8 friends and listen to that kind of music, I'm  
9 probably going to go do that.

10 Q Is there a difference between  
11 straight disco and non-straight disco?

12 A Well, disco is different than  
13 some of the kind of music that we listen to.  
14 The kind of music that I prefer is better  
15 than the music at the parties.

16 Q Okay.

17 A I guess you could say so.

18 Q So it wasn't so much the people;  
19 it was --

20 A No.

21 Q -- the music and the drinking?

22 A No, it's not so much the people.  
23 If you're there all the time already, you've  
24 been there all day, it's time to go do  
25 something else. It's just that simple.

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2 Q So you weren't excluded?

3 A No, I wasn't excluded.

4 Q You have in front of you

5 Defendants' Exhibit B; do you not?

6 A Right here (indicating).

7 Q And you reviewed that?

8 A I looked it over last night.

9 Q Do you know what that document

10 is?

11 A Yes. It's says, (reading),

12 Amended Response to Demand for

13 Interrogatories.

14 Q And you swore to its accuracy;

15 did you not?

16 A I would say I did, according to

17 page 13. Yeah, I think that says -- to the

18 best of my knowledge, yes.

19 Q Is there anything you want to

20 change in there?

21 A I'd have to look it over again

22 to answer that question right now, but while

23 I was reviewing it last night, I didn't see

24 anything that -- I didn't grab a pen or go

25 for anything to cross out, so no, I think

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2 it's probably okay.

3 Q Okay. Tell me when you made any

4 complaints about alleged gender or sexual

5 orientation discrimination while you were

6 employed at Skydive Long Island.

7 A I think we covered that -- I

8 think I covered that in here, in this

9 document, and I didn't make any complaints to

10 the owner, Ray, or Rich about that or any

11 supervisory personnel directly.

12 Q Did you make any complaints

13 indirectly?

14 A What would be an indirect

15 complaint?

16 Q I don't know. But when you

17 said, I didn't make any complaints directly,

18 you're qualifying --

19 A Oh, okay --

20 Q -- and I'm obligated to follow

21 up on your qualifier, so if your answer is, I

22 didn't make any complaints at all, then I

23 won't have to follow up on that question.

24 A Yeah, I see what you're saying.

25 Then I didn't make any complaints to anybody

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2 at Skydive Long Island about it.

3 Q Did you complain to anybody

4 else?

5 A In the world?

6 Q Yes.

7 A Yes.

8 Q Who did you complain to?

9 MR. ANTOLLINO: Don't say

10 anything you said to your attorney.

11 Other than that, you can answer the

12 question.

13 Can I take a bathroom break?

14 MR. ZABELL: I think you can.

15 COURT REPORTER: Mr. Zabell,

16 there is a question pending without an

17 answer.

18 MR. ZABELL: Yes, thank you.

19 Answer the question before we

20 break please.

21 Read back that question, please.

22 (Whereupon, the requested

23 portion of the record was read by the

24 court reporter.)

25 A I made an EEOC complaint.

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2 Q This was after your employment  
3 ended?

4 A Oh, okay.

5 Q Right?

6 A Yes.

7 Q You made no complaints while you  
8 were actually employed at Skydive Long Island  
9 to anybody?

10 A No.

11 Q Okay.

12 MR. ZABELL: Go to the lavatory.

13 MR. ANTOLLINO: Okay, great.

14 Thank you.

15 (Whereupon, a recess was taken  
16 from 5:38 p.m. to 5:58 p.m.)

17 Q Do you recall ever signing a  
18 release when you began your employment at  
19 Skydive Long Island?

20 A I signed the standard waiver  
21 release document that's required for anybody  
22 to make a skydive at any skydiving center in  
23 the United States and for most places to  
24 qualify.

25 Q Did you understand that that

1 D. Zarda

2 release releases Skydive Long Island from any

3 and all claims that you may make against it?

4 MR. ANTOLLINO: Objection.

5 A No.

6 Q Doesn't it, in fact, say that?

7 A If I could be provided with a  
8 copy of it, it says something to that context  
9 in regard to anything related to the jump,  
10 not employment. It doesn't mention anything  
11 about anything regarding employment in there  
12 whatsoever, so no.

13 And having familiarity of jump  
14 operations over almost a period of twenty  
15 years, I've come to know that the standard  
16 indemnification and waiver in release of  
17 liability for skydiving doesn't include  
18 employment matters whatsoever, and I've never  
19 seen one include an employment issue  
20 whatsoever.

21 Q You haven't even discussed the  
22 possibility as to whether or not you've  
23 waived your right to bring any claims against  
24 Skydive Long Island?

25 MR. ANTOLLINO: Objection.

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2 With anyone other than with your

3 attorney.

4 A I've discussed it with my

5 attorney.

6 Q Just so you know, that's exactly

7 what he just told you not to say, but okay, I

8 got you. I'm fine.

9 MR. ZABELL: You tried. You

10 gave it the old college try.

11 Q When you worked at Skydive Long

12 Island --

13 MR. ZABELL: Are you okay?

14 MR. ANTOLLINO: Yes, sure.

15 MR. ZABELL: Because if you need

16 a break, I'll --

17 MR. ANTOLLINO: No, we don't

18 need a break. Keep going.

19 A I stated what I said about the

20 waiver. I know what the waiver means, what

21 its intended purpose is for, and I said what

22 that was.

23 Q And its intended purpose is to

24 release claims against Skydive Long Island;

25 correct?

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2 A And indemnify the drop zone and  
3 the instructors for any claims made in  
4 relation to getting hurt or killed. It is  
5 not intended for anything related to  
6 employment.

7 Q And you're a lawyer?

8 MR. ANTOLLINO: Objection.

9 A I am not a lawyer. I am an  
10 instructor that's been in the industry for  
11 almost twenty years now and have seen this  
12 paperwork a lot of times, and I know what it  
13 means.

14 Q Have you actually seen any  
15 decisions of courts interpreting that  
16 document?

17 A Yes. Over the years, I have  
18 when customers or skydivers got hurt and  
19 actually went and sued a drop zone because  
20 they got hurt or a family has sued because  
21 somebody got killed. I have, over the years,  
22 seen it put to the test in those regards.

23 Q Were there coworkers that you  
24 were more senior to at Skydive Long Island?

25 A Yes.

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2 Q What is --

3 A That's using one of those

4 definitions that was mentioned yesterday, and

5 it can be number of jumps, number of years,

6 or number of years at a drop zone.

7 Q Were you treated better or worse

8 than those people that you were more senior

9 to?

10 A I don't think seniority has made

11 any difference.

12 Q You were all treated the same?

13 A Mostly. A newbie gets treated a

14 little differently than someone that's senior

15 in years.

16 Q You guys picked on the newbies a

17 little bit?

18 A What's that?

19 Q You guys picked on the newbies a

20 little bit?

21 A I don't.

22 Q The others do?

23 A It's just a pecking order.

24 Q Were you picked on when you were

25 a newbie?

1 D. Zarda

2 A Everybody gets picked on a

3 little bit; yeah.

4 Q But it kind of stopped after you

5 were a newbie?

6 A No. It's skydivers.

7 Q Skydivers, they just pick on

8 everybody?

9 A They do.

10 Q So all your coworkers got picked

11 on at one point or another?

12 A Skydivers -- yeah, they had...

13 Q Sometimes the bottle would point

14 to you, and sometimes the bottle would point

15 to somebody else?

16 A That's a good way to put it.

17 Q Right?

18 A That's a good way to put it, so

19 yes.

20 Q You were treated just like

21 everybody else there; right?

22 A For the most part.

23 Q So if you swore under oath that

24 you weren't, would you be lying; correct?

25 A No. I said for the most part.

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1 D. Zarda

2 Q Yes. For the most part, you  
3 were treated just like everybody else,  
4 correct; yes or no? That's a yes-or-no  
5 question, and I get to ask yes-or-no  
6 questions.

7 A You do, but that's --

8 Q You said that for the most part,  
9 you were treated like everybody else;  
10 correct?

11 A For the most part.

12 Q So that's a yes; correct?

13 A Yes, for the most part --

14 Q Thank you.

15 A -- I was treated like everyone  
16 else.

17 Q Now, could you tell me what  
18 comments John made?

19 A What comments he made?

20 Q Yes.

21 A I don't know that I specified  
22 John's comments in here (indicating).

23 Are you talking about when he  
24 got upset with me where my stuff was located?

25 Q Any comments that he made to you

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2 about your sexuality.

3 A Any comments -- he could have

4 said anything.

5 Q I'm not asking what he could

6 have said.

7 What did he say?

8 A I don't recall at this moment.

9 Q What comments did Ray Maynard

10 make to you about your sexuality?

11 A Well, he said that my pink cast

12 looked gay.

13 Q Good thing you weren't at work

14 when you had your cast on; right?

15 A No, I didn't say that; you said

16 that. I was at work.

17 Q Right. But you weren't working

18 when you had your cast because you couldn't

19 work when you had your cast; correct?

20 A I was not working doing jumps,

21 and I wasn't working doing any other

22 functions, but I did attend a mandatory staff

23 meeting right after I got my pink cast that I

24 got an e-mail to attend while I was on

25 crutches, and I was at that.

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1 D. Zarda

2 Q Do you have that e-mail?

3 A For the mandatory staff meeting?

4 Q Yes.

5 A I think I would have provided

6 that, but yes.

7 Q And it was directed to all

8 staff, correct?

9 A It was directed to all staff.

10 Q But you weren't a staff member

11 because you couldn't work at that time;

12 right?

13 A That's not correct. I'm still

14 on the staff. Just because you get hurt

15 doesn't mean you no longer are on the staff.

16 Q Well, you're no longer working

17 and on payroll, correct?

18 MR. ANTOLLINO: Objection.

19 There is no payroll.

20 A No, you're not not on staff

21 anymore because you get hurt. Instructors

22 get hurt all the time. They're still on

23 staff.

24 Q Who heard Ray make that comment

25 to you?

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1 D. Zarda

2 A Which one?

3 Q Your pink cast looks gay.

4 A I heard him make that to me when

5 I was coming through the door to the office

6 as he was going the other way when he first

7 saw the pink cast with the pink toenails.

8 Q Who else heard him say that?

9 MR. ANTOLLINO: Objection.

10 A I don't know who else. I don't

11 know.

12 Q So nobody else; right?

13 MR. ANTOLLINO: Objection.

14 A No. I'm not saying nobody else.

15 Somebody else could have heard him.

16 Q Well, I'm asking you to identify

17 who else heard him.

18 A I can't identify who else heard

19 it. I mean, God could have heard it. I

20 mean, Lauren could have heard it. Anybody

21 that was within earshot could have.

22 Q Who was physically within

23 earshot at that time?

24 A Well, it depends on how good

25 your hearing is, so is that from here to a

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1 D. Zarda

2 mile away, or here to ten feet, twenty feet?

3 Is there walls in the middle, is there doors

4 closed? I don't know, so I can't say who

5 else could have heard that.

6 Q What else did Ray say to you?

7 A At that time?

8 Q At any time, regarding your

9 sexuality.

10 A I can't possibly recall every

11 incident at this seating.

12 He mentioned at another later

13 time when I was out at the drop zone on

14 crutches with the pink cast and I was sitting

15 on the bench by the Coke machines outside the

16 office with the pink toenails, in regard to

17 that, that I was going to have to put a sock

18 over my toe, over my foot.

19 Q Why were you at the drop zone

20 that day?

21 A Because I just came out to see

22 what was going on and to visit.

23 Q So you came out to hangout?

24 A A little bit, yeah.

25 Q And he didn't say you couldn't

1 D. Zarda

2 hangout there; he just said you had to put a

3 sock on your foot; right?

4 A He wanted me to cover up the

5 pink toenails.

6 Q Could it possibly be that he

7 didn't want any customers to see somebody

8 hobbling along with a broken foot?

9 A I think the characterization

10 that you might be drawing that from Rich's

11 testimony is flawed. It's not uncommon for

12 injured jumpers to come out and hangout at

13 the drop zone. It happens all the time at

14 drop zones all over the country. Jumpers

15 hobbling around on crutches, canes, walkers.

16 There are even some in wheelchairs. They

17 come to the parties. They come hangout at

18 the drop zone.

19 Q Great. Who else at Skydive Long

20 Island in 2009 was walking around with

21 crutches and a broken foot?

22 A I'd have to stop and think.

23 There --

24 Q I'd like you to stop and think.

25 A -- were some.

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1 D. Zarda

2 MR. ANTOLLINO: You don't need  
3 to interrupt him, and don't badger him;  
4 okay? Let him answer the question --

5 MR. ZABELL: Remember you said  
6 that you were going to remain silent?

7 MR. ANTOLLINO: No, I don't  
8 remember that I said that.

9 MR. ZABELL: You do. That's why  
10 you're giggling to yourself.

11 Does everybody else remember him  
12 saying he was going to remain silent?

13 Madam reporter, did you remember  
14 him saying that?

15 MR. ANTOLLINO: I did not say  
16 that.

17 MR. ZABELL: You did say that,  
18 sir.

19 Q Just tell me the names of the  
20 people who were hobbling around with broken  
21 legs or feet or casts, or even crutches  
22 without any of that in 2009.

23 A I don't know the names of all  
24 the people. There are a lot of people that  
25 jump there.

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1 D. Zarda

2 Q Give me the names of just one of  
3 them.

4 A I don't recall.

5 Q Okay.

6 A I'm very bad with names and it's  
7 not uncommon. I mean, people know that  
8 sometimes when I would meet a person if they  
9 just told me their name and I get distracted  
10 for a minute, I might forget their name.

11 MR. ANTOLLINO: All right.

12 We're going to take a break now.

13 (Whereupon, a recess was taken

14 from 6:09 p.m. to 6:11 p.m.)

15 Q You're crappy with names, even  
16 though you have a good memory because your  
17 sister told you so, right?

18 MR. ANTOLLINO: Objection.

19 Argumentative.

20 Q You can answer.

21 A I don't remember names very  
22 well. I do remember events pretty well, as I  
23 said before.

24 Q Do you remember somebody walking  
25 around the drop site in 2009 with a cast on

1 D. Zarda

2 their foot?

3 A There were more than one. I

4 just don't remember who. It's so common.

5 It's like asking me if you remember people

6 walking around on the drop zone in 2009 or

7 2010; who were they? It's not an uncommon

8 thing if you're jumping out of airplanes.

9 People get hurt. It's not unusual to see

10 hurt people hanging out at the drop zone

11 telling their story or whatever about their

12 injury or just to be there to socialize,

13 because it's a social group of people.

14 Q So you weren't there to work;

15 you were there to socialize; correct?

16 A I came out infrequently just to

17 say hi, let people know how I'm doing, see

18 what's going on, but I didn't spend very much

19 time there. I didn't stay long. I was on

20 crutches. It's not a friendly place to get

21 around when you are on crutches and people

22 are busy working.

23 Q And customers who were there who

24 are about to jump out of a plane; correct?

25 A That is also true.

1 D. Zarda

2 Q You can imagine how it might be  
3 off-putting for a customer to see a bunch of  
4 people bobbling around with broken feet  
5 around the drop zone; correct?

6 A No, I can't, and I can tell you  
7 why, very simply.

8 Q Go ahead. Please do.

9 A Because it's not any different  
10 than somebody hobbling around on a crutch  
11 that slipped and fell on the bathtub and  
12 broke their ankle in exactly the same manner,  
13 like I talked to people while I was on  
14 crutches with my broken ankle that had that  
15 happen to them.

16 Unless the customer knows that  
17 you got hurt skydiving, it's no different  
18 than anybody else walking around that got  
19 injured in a car accident or any other way  
20 that people can get injured to include  
21 getting out of bed.

22 Q You don't think they just  
23 assumed it?

24 A They would have had to have  
25 known that I was on staff. I didn't have a

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1 D. Zarda

2 staff shirt on.

3 Q They can't infer that just from

4 you hanging around talking to people there;

5 is that what you're saying?

6 A I supposed -- I would suppose

7 that if they listened in and cued in on just

8 what I was saying and watched my interactions

9 with the other staff, they might be able to

10 surmise that maybe I'm on staff, I have

11 something to do with the jump operation and

12 also on crutches, maybe.

13 But from what I witnessed,

14 people are more talking on their cellphones

15 and thinking about -- watching other people

16 jumping and getting ready to do their jump,

17 so they're not watching me.

18 Q Are you Catholic?

19 A I'm agnostic, but I was brought

20 up Catholic.

21 Q Are you Scottish?

22 A German.

23 Q Are you Hispanic?

24 A No.

25 Q Did you ever mention to anyone

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1 D. Zarda

2 at Skydive that you were Catholic, Scottish  
3 or Hispanic?

4 A No, I never mentioned Scottish  
5 or Hispanic. People may have asked me over  
6 the years what my religion was. Rainy day  
7 conversation possibly, so I may have  
8 mentioned that I was Catholic. That could  
9 have come up, and -- what was the first one?

10 Q Catholic.

11 A Okay, so I may have mentioned  
12 that somewhere along the way.

13 Q Were you offended by that?

14 A No, no. I've not been offended  
15 by someone calling me a Catholic.

16 Q I'm a bit confused. It seems  
17 like you were terminated because somebody  
18 complained that you were acting like someone  
19 whose sexual orientation was that of the  
20 opposite sex as opposed to the same sex; is  
21 that correct?

22 MR. ANTOLLINO: Objection.

23 A That's a little bit worded  
24 confusing, so maybe you could express that a  
25 little bit.

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1 D. Zarda

2 Q Wasn't the complaint that you  
3 were kind of hitting on Rosanna Orelana?

4 MR. ANTOLLINO: Objection.

5 A Mr. Kengle made that complaint  
6 that he thought that I was trying to get  
7 familiar with his girlfriend. That's what he  
8 thought.

9 Q And she testified that the way  
10 you were touching her made her uncomfortable;  
11 correct?

12 A I think we talked about that  
13 earlier. I'd have to review that testimony.  
14 I'm still not sure that she thought that.

15 Q Did your lawyer give you the  
16 deposition transcript yet?

17 A I haven't reviewed it, and I  
18 haven't seen it yet.

19 Q Me neither. He hasn't given it  
20 to me yet.

21 A It was just a few weeks ago, so  
22 that's not very long.

23 MR. ANTOLLINO: Yes, we'll talk  
24 about that later. Do you want to split  
25 the cost?

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1 D. Zarda

2 MR. ZABELL: No.

3 MR. ANTOLLINO: All right, then

4 why don't you get it? It's a

5 non-party.

6 MR. ZABELL: We have the option

7 of sharing, of exchanging transcripts

8 with each other or not.

9 MR. ANTOLLINO: Okay, we'll talk

10 about it later. How about that?

11 MR. ZABELL: Okay.

12 Q It seems to me like her

13 complaint was not that you were gay, it's

14 that she thought you were straight.

15 MR. ANTOLLINO: Objection.

16 Q Is that correct?

17 MR. ANTOLLINO: Objection to

18 characterization.

19 A No, no. She was --

20 Q Well, he thought you were

21 straight because you were trying to get

22 familiar with her --

23 MR. ANTOLLINO: Wait, wait.

24 You're not letting him answer the

25 question --

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1 D. Zarda

2 Q -- correct?

3 MR. ANTOLLINO: Let him answer

4 the question.

5 Q Correct? He thought you were

6 straight, because he thought you were trying

7 to get familiar with his girlfriend; correct?

8 MR. ANTOLLINO: Objection.

9 A No. And that's an if-then-us

10 question. That's an if because --

11 Q No, it's not. It's a direct

12 question to which you're required to answer.

13 A All right. Okay.

14 Q He thought you were straight,

15 because you were trying to get familiar with

16 his girlfriend; correct?

17 MR. ANTOLLINO: Objection.

18 A No.

19 Q So he thought you were gay and

20 trying to get familiar with his girlfriend.

21 A That's what he said, and he

22 said, in his testimony, that those gay guys

23 think they can get away with it because

24 they're gay. If you recall, that's what he

25 said.

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1 D. Zarda

2 Q I don't recall him saying that.

3 A Well, when you get the

4 transcripts, you'll be able to see that

5 that's what he said. I thought that that was

6 really strange, and I still think it's

7 strange.

8 Q Well, did you think you could

9 get away with being familiar with his

10 girlfriend?

11 A I don't get familiar with women

12 in the sense that he was saying that, so

13 there is nothing for me to think that I can

14 get away with. And I had no reason to be

15 trying to get away with anything, and I

16 wasn't getting away with anything. I was

17 just simply doing my job.

18 Q But he thought you were trying

19 to get familiar with her?

20 MR. ANTOLLINO: Objection.

21 A That's what he said.

22 Q And that's what he complained

23 about; correct?

24 MR. ANTOLLINO: Objection.

25 A No, that's not what -- it sounds

1 D. Zarda

2 like he called and said that the complaint  
3 was to Ray. That's what he said when he was  
4 deposed. He said that when he was deposed.

5 Q Is it your impression that he  
6 was complaining that you were gay or that you  
7 were acting straight with regard to his  
8 girlfriend?

9 A After listening to his  
10 deposition, I'm not exactly sure what.

11 Q It could have been either one of  
12 those; right?

13 A It could have been because I'm  
14 gay. It could have been because he thought I  
15 was hitting on his girlfriend. It could have  
16 been he's just so insecure that he didn't  
17 even know what he was thinking himself. I  
18 don't know what was going on in that guy's  
19 head.

20 Q Could it have been that he  
21 thought you were straight and trying to use  
22 the excuse that you're gay, so therefore, you  
23 couldn't have done what he's accusing you of  
24 doing?

25 MR. ANTOLLINO: You know what;

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1 D. Zarda

2 objection.

3 A It could have been that he was

4 so shaken by the joke made because of his

5 insecurity that he may have. He was so

6 shaken by the joke made by another staff

7 member that, hey, how do you feel about your

8 girlfriend -- that he talked about getting

9 hit on so much in his deposition because

10 she's so pretty -- being strapped to another

11 guy. Maybe it was that.

12 Q Maybe it was.

13 A Maybe.

14 Q But that's not a complaint about

15 your sexuality; is it?

16 MR. ANTOLLINO: Objection.

17 A That specifically is not.

18 Q I believe you testified at the

19 beginning of this deposition that Ray Maynard

20 asked you about your specific jump with

21 Rosanna Orelana; correct?

22 A I think we talked about that;

23 yes.

24 Q And he asked you what happened

25 there; correct?

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1 D. Zarda

2 A He was asking me questions about  
3 it, about the jump.

4 Q About the jump, okay, so he was  
5 asking you in order to find out what occurred  
6 during the jump; correct?

7 A He briefly asked me if I  
8 remembered, or he asked me about it.

9 Q And you said you don't remember;  
10 correct?

11 A I did say something to that  
12 effect, because it was three days ago and  
13 twenty-or-thirty-jumps-plus ago.

14 Q So he kind of did ask you to  
15 respond to allegations of alleged  
16 inappropriate touching; correct?

17 MR. ANTOLLINO: Objection.

18 Asked and answered.

19 A No. He just asked me if you  
20 took a girl named so-and-so on a jump on  
21 Friday; did you, you know, or did you not.  
22 He just asked me about the jump, if I took  
23 the girl on the jump, and I said I don't  
24 understand.

25 Q So he just asked you about the

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1 D. Zarda

2 jump and if you took the girl on the jump?

3 A Right, yes.

4 He didn't go into detail asking  
5 me questions about the jump and the manner  
6 like he was investigating to find out what  
7 happened. That discussion, like I mentioned  
8 before, was about bringing me in there to  
9 take adverse action against me, and that was  
10 very clear. Ray was angry, he was irrational  
11 and emotional, and he wasn't in there to find  
12 out what Don Zarda did on the jump. He was  
13 in there to tell Don Zarda what Ray Maynard  
14 is going to do to Don Zarda.

15 Q Except that you had no  
16 recollection of the jump, so you could not  
17 give him any information on it; correct?

18 A At the time, I could not  
19 remember specifics about the jump.

20 Q So even if he was just trying to  
21 investigate, you had no information to assist  
22 in the investigation; correct?

23 MR. ANTOLLINO: Objection to the  
24 characterization.

25 Q Correct?

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1 D. Zarda

2 A Say that once more.

3 Q Correct?

4 A Say that once more, please.

5 Q Correct?

6 A Just repeat the question.

7 Q Oh. Even if he was trying to

8 investigate --

9 A Okay.

10 Q -- you couldn't assist with the

11 investigation because you had no recollection

12 of the jump, correct; yes or no?

13 A Correct. I --

14 Q Thank you.

15 A -- did not recall the jump and

16 requested to see the videos to help assist me

17 in recalling anything about the jump at the

18 time, and I was denied.

19 Q Do you view women as helpless

20 and the fact that they need to be protected?

21 A No, I don't view women and

22 needing help being protected.

23 Q Do you think your attorney does?

24 A We haven't discussed that, so I

25 don't know what he thinks.

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1 D. Zarda

2 Q Do you consider yourself to be  
3 wussy?

4 A I don't.

5 Q Do you think you ever act like a  
6 wussy?

7 A Nope, I don't.

8 Q What do you understand a wussy  
9 to be?

10 A Depends on the connotation and  
11 in the context that that word is being used  
12 in saying it. Sometimes it might not mean  
13 anything. It just depends on who is saying  
14 it. If it's an adversary and they're calling  
15 you a wussy, most guys can agree that is  
16 derogatory to possibly your manliness, so I  
17 think it could take on that connotation. It  
18 depends on the context, the connotation, and  
19 the circumstance in which someone is calling  
20 you that.

21 Q Do you think you act less than  
22 manly?

23 A I don't; no.

24 Q I mean, I look at you and I see  
25 someone who looks particularly manly.

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1 D. Zarda

2 A Okay, that's good.

3 Q Do you agree that that's the

4 vibe you give off?

5 A I hear that.

6 Q So if someone looks at you, you

7 believe you appear manly; is that correct?

8 A For the most part.

9 Q And that you act manly?

10 A For the most part. I have, you

11 know, moments. If they see me in different

12 social settings, they might think a different

13 thing.

14 Q Well, did people you worked with

15 at Skydive Long Island see you in different

16 social settings?

17 A Yes.

18 Q What were those different social

19 settings?

20 A Well, they didn't go to Fire

21 Island with me and they didn't go to gay

22 events with me, but they knew about some of

23 those. They knew I went to Fire Island.

24 They know I'm gay. They don't understand how

25 we enjoy ourself socially and so forth.

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1 D. Zarda

2 Q By "we," are you referring to

3 you and myself?

4 A Gay people.

5 Q Oh, okay.

6 A Most of them don't understand

7 that, but when we jumped into Neptune's

8 bar -- you might be familiar with it. It's

9 in the Hamptons.

10 Q No.

11 A Neptune's is a bar --

12 Q Why are you assuming I'd be any

13 more familiar with Neptune's bar or

14 Jumping Jack's over at Cherry Grove?

15 MR. ANTOLLINO: He's not your

16 friend, Don.

17 A Well, you live there, so I just

18 thought that you might know of Neptune's bar.

19 It's a bar that's on the beach out by the

20 Hamptons. It's a favorite for Skydive Long

21 Island to be able to jump into that beach bar

22 sometimes at the end of the day on Friday,

23 Saturday, or Sunday.

24 Q When you say jump in, do you

25 mean jump from the sky and land at the beach

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1 D. Zarda

2 bar?

3 A Right, that's what I mean.

4 Q That's kind of a cool thing to

5 do; right?

6 A Yeah.

7 Q A good way to get attention?

8 A Good for Ray possibly and

9 advertising, I suppose. They have beer there

10 laying on the beach, and so things could be

11 worse.

12 But when we did that once, and

13 it was just twice that I did that, and that

14 was in 2010, I heard all the hype about it

15 previously from the employees about how great

16 it is and this, that, and the other thing. A

17 lot of the employees kept telling me how

18 great Neptune's is, and, Don, you're really

19 going to like Neptune's, and there's all

20 kinds of guys over at Neptune's that are just

21 your type, and on and on and on and on that I

22 heard this kind of talk in 2009 and even

23 in 2010.

24 So I finally went over there and

25 got to see it for myself, because there's a

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1 D. Zarda

2 bunch of shirtless guys running around over

3 there all with their tanning lotion on,

4 there's a bunch of muscle bods, and they just

5 would go on and on about that.

6 Q And is that not your type?

7 A I didn't say that.

8 Q Do you tan?

9 A No, I don't.

10 Q Are you a muscle guy?

11 A I am in good shape.

12 Q I look at you, and I'd say

13 you're pretty muscular.

14 A Okay. Well, good. I don't tan.

15 My partner and I are in the medical spa

16 business, and we encourage people to stay out

17 of the sun, hence my white skin.

18 Q SPF what?

19 A One million, if you can get it.

20 Q Okay. So you were encouraged to

21 go there because they thought there were guys

22 there that were your style; correct?

23 A They did.

24 Q Was that offensive?

25 A A little bit. It was a little

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1 D. Zarda

2 bit offensive, but it's just part of me

3 understanding that I know they don't

4 understand my lifestyle.

5 Q What kind of guys do you like?

6 MR. ANTOLLINO: Objection. This

7 is getting --

8 A Well, I have different

9 preferences. I don't like guys that look

10 like they're on steroids, which is what a lot

11 of people looked like they were on over

12 there. I don't like that. I'm not into

13 that. I think maybe because of the way I

14 appear that maybe they draw some kind of

15 correlation there, and they think that I'd be

16 interested in that.

17 Q You got a little muscle-head

18 look to you.

19 A Maybe, yeah, but not like what I

20 saw over there.

21 Knowing that they don't probably

22 understand my lifestyle, because they're not

23 gay and there's not a lot of gay skydivers,

24 there aren't, you know.

25 Q Well, there's a whole group of

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1 D. Zarda

2 them.

3 A Yeah. It's small when you look

4 at the numbers compared to skydivers, it's

5 small, so there's not a lot. They don't

6 interact with gay people a lot. They don't

7 know our social norms and so forth like that.

8 Q But your coworkers tried to

9 interact with you in a social setting; right?

10 A Yes, yes, they did.

11 Q And they tried to include you in

12 their socialization; correct?

13 A Yes. And the reason I'm saying

14 I wasn't offended about that so much was

15 because I know they just don't understand,

16 but I didn't like that they were trying to

17 sort of force upon me the idea that I was

18 going to be into all these greased up,

19 steroid-like, shirtless guys over at

20 Neptune's bar on the beach. I kind of didn't

21 like that. That bothered me some, but I

22 dealt with it.

23 Q Did it bother you because they

24 were wrong about the assumption of the type

25 of person you like?

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1 D. Zarda

2 A No. I had a pretty clear mental

3 image of what was going to be over there.

4 They described it well, and it turned out to

5 be exactly what was over there. It's just

6 simply not my crowd, so a lot of them

7 thought, wow, this will be great for Don.

8 This is his crowd. No, it's not my crowd.

9 Q But they were trying to make you

10 comfortable; is that correct?

11 A I don't think they were trying

12 to make me uncomfortable by pushing that

13 agenda, of jumping in over there, because

14 that would be malicious, and as I said

15 before, I don't think that there were people

16 there that were maliciously trying to make me

17 feel uncomfortable. They just couldn't

18 bridge that gap of understanding, so I think

19 that's the best way to describe it.

20 Q Okay, so --

21 A When we got over there, there

22 was a transvestite at the bar that was

23 dressed up, and they -- you know, several of

24 the staff, and I think some of them are in

25 the pictures that we submitted to you about

1 D. Zarda

2 that night at Neptune's bar when Ray and much  
3 of the staff was there on FaceBook, and so a  
4 lot of people were in there. It would be  
5 easy to identify who was there -- wanted me  
6 to get pictures with the transvestite, like  
7 it was a little bit of a spectacle. It  
8 didn't offend me. It made me feel a little  
9 uncomfortable. It made me feel a little  
10 uncomfortable that it was taking place in the  
11 setting that this is after work, but it's  
12 with all my colleagues that I work with, and  
13 it was also still in front of my boss, Ray  
14 Maynard. That made me feel a little bit  
15 uncomfortable.

16 Q But you were free to excuse  
17 yourself from the situation; were you not?

18 A Not unless I wanted to figure  
19 out how I was going to get back to the drop  
20 zone by myself.

21 Q You mean like take a cab?

22 A I would have had to have done  
23 that, but when you jump into -- we already  
24 had prearranged rides. You don't typically  
25 jump with your credit card, billfolds, and

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1 D. Zarda  
2 cellphones when you're jumping over the water  
3 in the beach, because there is a good chance  
4 that you'll lose that stuff, so I didn't  
5 have -- it was free beer. You didn't need  
6 any money. You jumped in, stashed your gear  
7 in the bag, and had some beer.

8 Then when everybody was done, go  
9 back to the drop zone and either stay there  
10 and drink some more beer or go home.

11 Q And that's kind of what you did;  
12 jumped in, stashed your stuff in a bag, and  
13 had some beer; right?

14 A That's exactly what I did, and  
15 saw Neptune's bar.

16 Q You just went there that once;  
17 correct?

18 A I went there twice.

19 Q Oh, you went there again after  
20 that?

21 A Yes.

22 Q Because it was so horrible?

23 A No. Because getting to do a  
24 beach jump at the end of the day at sunset,  
25 skydiving can be kind of like a spiritual

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1 D. Zarda

2 thing for some people. I like sunsets, I

3 like the outdoors, and it's just pretty. So

4 being able to jump in, make a skydive at

5 sunset over the water, it's gorgeous, so why

6 not?

7 Q So it was so horrible the first

8 time that you decided to try it again?

9 MR. ANTOLLINO: Objection.

10 A It had nothing to do with the

11 bar. Getting a free beer after a jump,

12 that's nice. It's about the jump.

13 MR. ZABELL: Mark this, please.

14 (Multi-page document consisting

15 of copies of various screen shots from

16 Mr. Zarda's FaceBook page was marked as

17 Defendants' Exhibit C, for

18 identification, as of this date.)

19 Q I'm going to show you Exhibit C.

20 A Okay.

21 Q Take a look at it.

22 A (Witness complies.)

23 Q Do you know what that is?

24 A Without going through each and

25 every single page just flipping through them,

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1 D. Zarda

2 it looks like a bunch of screen shots of

3 FaceBook.

4 Q Whose FaceBook is this?

5 A It looks like most of them --

6 well, there's some e-mails in here too from

7 FaceBook. It's mostly FaceBook stuff, and

8 it's my profile and e-mails from a FaceBook

9 account that I have.

10 Q Who's the bare-chested guy on

11 page 1?

12 A That's me.

13 Q In all your splendid glory?

14 A I don't know what that means.

15 Q Is that kind of like a cape that

16 you're wearing?

17 A No, that's a wingsuit.

18 Q It looks like a little flying

19 squirrel suit.

20 A For lack of a better word, since

21 the public sees that a lot, that's what they

22 think it is, but that's the slang version.

23 It's -- again, it's a wingsuit.

24 Q And you like wearing that;

25 right?

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1 D. Zarda

2 A I like jumping in it.

3 Q You like more than jumping in

4 it; you like taking your picture in it;

5 right?

6 A It was a unique prop for that

7 picture.

8 Q Who was taking your picture that

9 day?

10 A A photographer.

11 Q Oh, so you had your picture

12 professionally taken in that outfit?

13 A I did.

14 Q Was that just to post on your

15 FaceBook page?

16 A No. It was actually in trade

17 for me getting a nice photo of pictures and

18 for the photographer to be able to have a

19 subject to take photos of for his personal

20 portfolio.

21 Q So he said that if you take

22 pictures, if you allow me to take pictures of

23 you for free, all you'll have to do is strip

24 your top down and wear this, for lack of a

25 better term, squirrel suit?

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1 D. Zarda

2 A No, it wasn't like that. It was  
3 just a matter of I wanted to be able to have  
4 a photo shoot, and he wanted to be able to  
5 have a subject for his portfolio.

6 Q Are you aware of that picture  
7 showing up on any websites?

8 A Yes, you know I am.

9 Q What websites have they shown up  
10 on?

11 A I think it would probably be an  
12 easier question to say what websites they, at  
13 this point, haven't shown up on.

14 Q Are you happy with all of the  
15 websites that that picture has shown up on?

16 A I think, you know, I'm not happy  
17 that the media went to my FaceBook profile  
18 and got that picture and put it on the  
19 websites, but there certainly could have been  
20 worse pictures, like a mug shot that people  
21 would get, so I'm glad that it's not that  
22 kind of picture.

23 Q Are there any mug shot pictures  
24 of you out there?

25 A Who knows what kind of pictures

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1 D. Zarda

2 there are in this digital world where

3 everybody's got in iPhone and takes a picture

4 and puts it on FaceBook or e-mails it to

5 somebody. I have no idea what's out there.

6 Q Well, have you ever been

7 arrested?

8 A No, I haven't been arrested.

9 MR. ANTOLLINO: Well, hold on a

10 second. I think the question, have you

11 ever been arrested, is improper. You

12 can ask him --

13 MR. ZABELL: Counselor --

14 MR. ANTOLLINO: No, no, no. I'm

15 directing --

16 MR. ZABELL: Counselor,

17 objection to form, and nothing else.

18 MR. ANTOLLINO: I'm going to

19 direct him not to answer, but I will

20 allow the question: Have you ever been

21 convicted?

22 MR. ZABELL: You're smiling as

23 if you're saying something that is

24 absolutely intelligent, and it's not.

25 MR. ANTOLLINO: Okay, I've be

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1 D. Zarda

2 through this before.

3 MR. ZABELL: I don't care what

4 you think you've been through before,

5 and you're oh so successful at them,

6 I'm sure. I get to ask him this

7 question.

8 MR. ANTOLLINO: You do not.

9 Q Have you been arrested, sir?

10 MR. ANTOLLINO: Don't answer the

11 question.

12 MR. ZABELL: On what basis?

13 MR. ANTOLLINO: On the basis

14 that if an arrest was later resulted in

15 a termination in favor of the accused,

16 it's confidential; okay?

17 MR. ZABELL: No, it's not

18 confidential --

19 MR. ANTOLLINO: It is.

20 MR. ZABELL: -- and if he has

21 been arrested and it has added to his

22 stress, I am absolutely entitled to ask

23 that question.

24 MR. ANTOLLINO: No --

25 Q So sir, have you been arrested --

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1 D. Zarda

2 MR. ANTOLLINO: I'm not going to

3 let him answer --

4 Q -- within the last three years?

5 MR. ANTOLLINO: I'm not going to --

6 A No.

7 MR. ANTOLLINO: -- answer.

8 Q Thank you.

9 Have you been accused of any

10 crimes in the last three years?

11 MR. ANTOLLINO: Objection to

12 form.

13 A A speeding ticket or a seatbelt

14 violation?

15 Q No, no, no, no. You can even

16 have spoken in your car on your cellphone

17 while texting. That's not what I'm

18 interested in.

19 A I just want to be clear.

20 Q Okay.

21 A So, no.

22 Q Anybody on your website talk to

23 you about molesting people?

24 A On my website?

25 Q Yes.

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1 D. Zarda

2 A My website is DonZarda.com, so --

3 Q Oh, I'm sorry. On your FaceBook

4 page.

5 A Okay, I got you. Well, my

6 FaceBook page, that's open game for years,

7 for like two or three years now, and who

8 knows what people put on there, so --

9 Q What does "trick fuck," mean?

10 A It's a good question. Oh, okay.

11 I don't see it in here, but now I could think

12 of what it could mean. Let me think of a

13 good way to define that.

14 I think that's just a different

15 way of saying fuck somebody over.

16 Q Trick fuck means to fuck

17 somebody over?

18 A If I was going to use that and

19 maybe I have, that's probably what it would

20 have meant. Is there a place --

21 MR. ANTOLLINO: Do you want to

22 refer to something?

23 A -- that I could look and see --

24 MR. ZABELL: No. Do you want to

25 remain silent?

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1 D. Zarda

2 MR. ANTOLLINO: No.

3 MR. ZABELL: You should. That's

4 your role here today.

5 A Is there a place where I could

6 see the context of where I might have used

7 that?

8 Q It's a question based on this

9 exhibit.

10 A Okay, could I see it?

11 Q No, I mean, we'll be here a lot

12 later --

13 MR. ANTOLLINO: All right. Let

14 it go.

15 THE WITNESS: Okay.

16 Q Are there things on your

17 FaceBook page that you turned over to us that

18 you're unhappy with?

19 A Now, when you say FaceBook

20 pages, which pages?

21 Q All of this stuff, Exhibit C.

22 A Exhibit C?

23 Q Yes, C.

24 A Well, I haven't had a chance to

25 look through 185 pages.

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1 D. Zarda

2 Q This is all stuff you turned

3 over to us?

4 A Oh, did I turn this over to you?

5 Q Yes, you did. Your lawyer may

6 not have informed you of it, but yes, you

7 have.

8 A I haven't had a chance to

9 refresh myself on 185 pages of FaceBook

10 material that dates back to 2009.

11 Q Do you talk about your cat on

12 your FaceBook page or pages?

13 A I probably have something about

14 my cat.

15 Q Do you talk about how sad you

16 are on the anniversary of her death?

17 A I may have said something about

18 that. I guess while I'm sitting here, I

19 might as well just go ahead and --

20 MR. ANTOLLINO: No, no. You

21 might as well just sit, and wait for

22 the question.

23 THE WITNESS: Okay.

24 MR. ANTOLLINO: You'll wait for

25 the question.

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1 D. Zarda

2 THE WITNESS: All right.

3 Q You don't have to let him yell

4 at you like that.

5 A It's okay. He's not yelling.

6 Q He kind of is.

7 Now, there are people who

8 responded to your FaceBook page indicating

9 that they thought you were wrong when you

10 filed your lawsuit; did they not?

11 A I don't know. That was awhile

12 ago, and I can't recall.

13 MR. ZABELL: Counsel, please

14 stop hitting your client.

15 MR. ANTOLLINO: I'm not hitting

16 my client.

17 MR. ZABELL: It appears as if

18 you might be.

19 MR. ANTOLLINO: I'm not hitting

20 my client. I put his hand -- I put the

21 paper down that he was picking up.

22 You're referring to an exhibit,

23 and you're reading --

24 MR. ZABELL: Counselor, there is

25 not a set of circumstances where it is

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1 D. Zarda

2 professionally appropriate for you to  
3 hit your client or talk during this  
4 deposition, so please remain silent.

5 MR. ANTOLLINO: I did not hit my  
6 client.

7 MR. ZABELL: I'm trying to get  
8 you guys out of here at a normal time.

9 MR. ANTOLLINO: All right.  
10 Okay, fine. Continue.

11 A Anyway, so there is so much  
12 information that can be put on FaceBook, that  
13 goes through FaceBook. To have immediate  
14 recollection and knowledge of it is virtually  
15 impossible.

16 MR. ZABELL: Let's take a quick  
17 break and see if I can get you guys out  
18 of here.

19 (Whereupon, a recess was taken  
20 from 6:44 p.m. to 6:45 p.m.)

21 MR. ZABELL: I reserve the right  
22 to call you back for a deposition on  
23 behalf of Mr. Maynard.

24 In addition, I expect to be able  
25 to, in the future, call you back for

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1 D. Zarda  
2 purposes of questioning you about the  
3 various lines of questions that your  
4 attorney has directed you not to  
5 answer. Barring that, I am shutting  
6 the deposition down.

7 MR. ANTOLLINO: I would just  
8 like to mark this as Plaintiff's  
9 Exhibit A, this would be the Notice of  
10 Deposition in which you have noticed,  
11 on behalf of Altitude Express and  
12 Mr. Maynard, this deposition. I would  
13 like the court reporter, if I could --

14 MR. ZABELL: You can't.

15 MR. ANTOLLINO: I'm going to  
16 object to your recalling on the grounds  
17 that I have your signed Notice of  
18 Deposition.

19 MR. ZABELL: What's the date on  
20 that deposition notice?

21 MR. ANTOLLINO: December 16,  
22 2010, and it hasn't been amended.

23 MR. ZABELL: Okay, December 16,  
24 2010, and what's today's date?

25 MR. ANTOLLINO: It might be a

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1 D. Zarda

2 year later, for all I know. It is

3 almost; right?

4 MR. ZABELL: Off the record.

5 (Whereupon, a discussion was

6 held off the record.)

7 MR. ZABELL: This record is now

8 closed.

9 (Time noted: 6:46 p.m.)

10

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1

2 ACKNOWLEDGEMENT

3

4 STATE OF NEW YORK )

5 : ss

6 COUNTY OF )

7

8 I, DONALD ZARDA, hereby certify that I

9 have read the transcript of my testimony

10 taken under oath in my deposition of

11 December 9, 2011; that the transcript is a

12 true, complete and correct record of my

13 testimony; and that the answers on the record

14 as given by me are true and correct.

15

16 \_\_\_\_\_  
DONALD ZARDA

17

18

19

20 Signed and subscribed to

21 before me, this day

22 of \_\_\_\_\_, 20\_\_

23

24 \_\_\_\_\_

25 Notary Public, State of New York

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INDEX TO TESTIMONY

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EXHIBITS

DEFENDANTS'	DESCRIPTION	PAGE
A	Four-page document consisting of a copy of Supplemental Response to Requests for Admissions	26
B	Thirteen-page document consisting of a copy of Amended Response to Demand for Interrogatories	27
C	Multi-page document consisting of copies of various screen shots from Mr. Zarda's FaceBook page	374

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1

2

C E R T I F I C A T E

3

I, KAREN M. LaMENDOLA, a Notary Public

4

in and for the State of New York, do hereby certify:

5

THAT the witness whose testimony is

6

hereinbefore set forth, was duly sworn by me;

7

and

8

THAT the within transcript is a true

9

record of the testimony given by said

10

witness.

11

I further certify that I am not

12

related, either by blood or marriage, to any

13

of the parties in this action; and

14

THAT I am in no way interested in the

15

outcome of this matter.

16

IN WITNESS WHEREOF, I have hereunto set

17

my hand this 29th day of December, 2011.

18

19

20

KAREN M. LaMENDOLA

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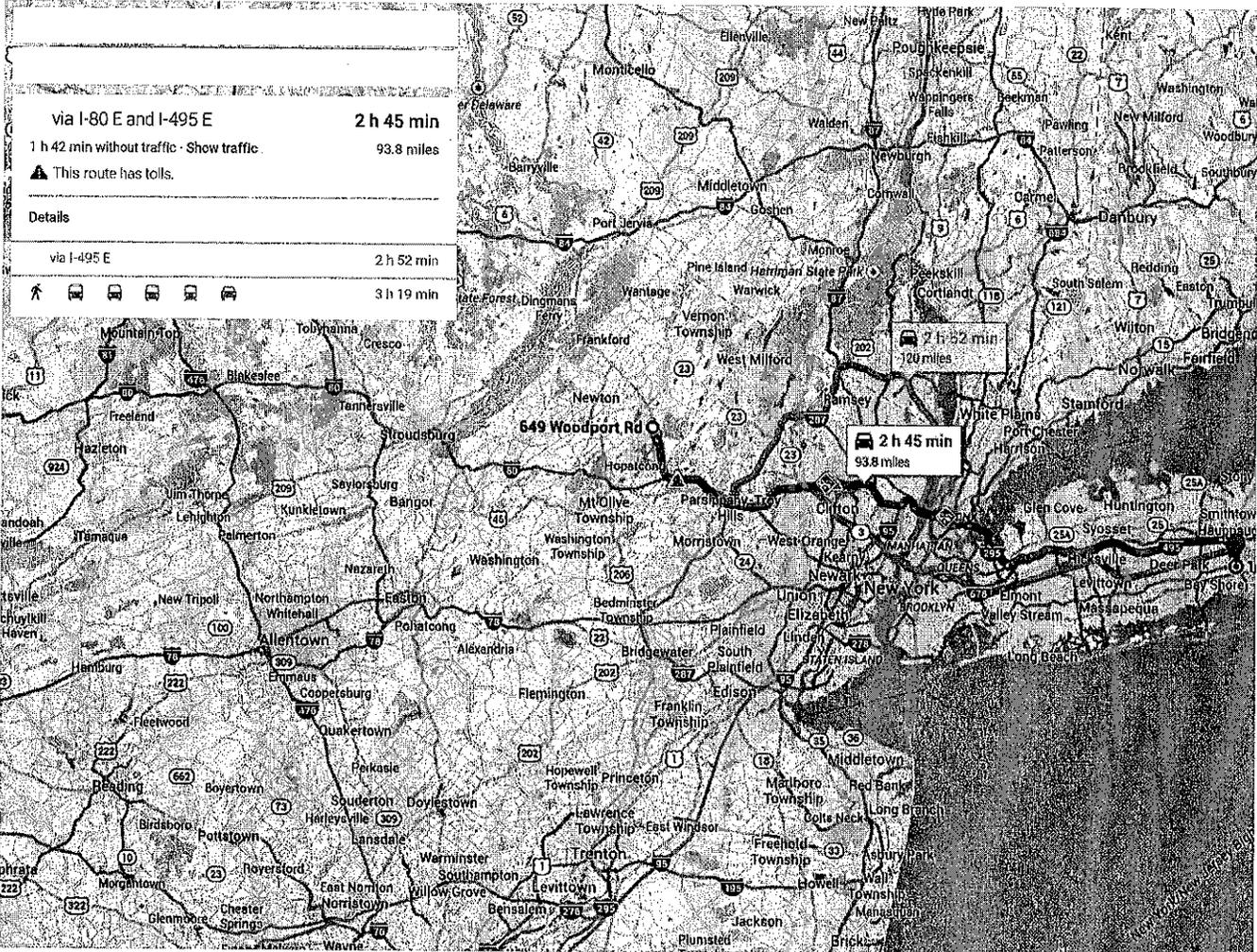
I wish to make the following changes for  
the following reasons:

PAGE LINE

\_\_\_ CHANGE: \_\_\_\_\_

REASON: \_\_\_\_\_

# **Exhibit C**



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