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U.S. District Judge Joseph Bianco
U.S. District Court
Central Islip, NY

Re: Zarda v. Altitude Express, 10-4334

Dear Judge Bianco:

I represent plaintiff in this matter. As I am out of the country, please allow this brief letter to serve as a reply to defendant's opposition papers to disqualify Saul Zabell from representing third party witnesses, and for assessing such sanctions as the Court deems appropriate for defendants' and Mr. Zabell's obstructionist behavior. They have delayed *basic access to witnesses* and have prevented a single deposition from taking place nearly a year into this action. Mr. Zabell has the gall, the audacity to suggest that plaintiff is the cause of the delay, but this is a bald-faced lie. I, on behalf of Mr. Zarda, have importuned Mr. Zabell to take my client's deposition, but he has refused as well as refused me the opportunity to take Mr. Maynard's deposition. He has ignored four non-party subpoenas, although the last of these I withdrew as a form of compromise to get something done in this case before the summer. All to no avail; there are now multiple disputes on your plate, and we'll be lucky if we finish this case in 2012.

Briefly stated, Mr. Zabell's opposition papers say nothing that we already did not know, yet provide no excuse for the behavior. To wit:

- Mr. Zabell does not deny that he refused to tender names of employee witnesses to me on the grounds that they "are represented by counsel." Then, after my pre-motion letter, he backed away from that statement, nevertheless suggesting that he intended to. To the suggestion that he had solicited witnesses, he has now twice told the Court that he has not "directly" solicited these witnesses. Please, Judge, I hope you see through this thin veil of plausible deniability and will rule forthwith that Mr. Zabell shall not represent third party witnesses. No employee has any need for any representation from Mr. Zabell; none is at risk of suit. Zabell's and Maynard's "indirect" solicitation, rather, is a thinly veiled attempt to control the flow of information, obstruct my client's access to evidence, and intimidate witnesses.

- Mr. Zabell does not deny, further, that to represent third party employees would constitute a conflict of interest because of Mr. Zarda's unpaid wage claim. All skydive instructors must sit around for hours unpaid, and are compensated only if paying customers show up. Thus, the employees' interest directly conflicts with that of Mr. Maynard.
- As for the third party complainers, the couple who caused Mr. Maynard to fire Mr. Zarda because he revealed to them that he is gay: First, Zabell does not deny that the witnesses' addresses were available to him and his client in the release form that each of them signed. Yet, without an affidavit of any person with personal knowledge, Zabell maintains that the "search of corporate records" took between December, when initial disclosures were due and May, when I was finally informed that the defendant would refuse to tender the addresses. More importantly, Zabell did not have the right to withhold the addresses, under any interpretation of law.
- While simultaneously refusing to give me the addresses and agreeing to accept a subpoena on the witnesses' behalf, he refused to comply with said subpoena when it was served. This was not his right. He had the choice to move to comply with the subpoena, move to quash the subpoena, or negotiate an alternative date for the depositions. In fact, as Mr. Zabell does not inform you, my client arranged his flight only after the subpoenas were served and was here in New York for a ten-day period. After his flight was booked, Zabell rejected the subpoenas. The witnesses did not have the right to restrict their attendance to Wednesdays – but even at that, I was willing to depose them on June 1, which was a Wednesday. Mr. Zabell refused that alternative, and every other one I proposed for the period that Mr. Zarda was in New York.
- Finally, noticing the deposition for Brooklyn was not a legal reason to ignore the subpoena. I had no idea where the witnesses lived, and for all I knew Brooklyn was a better location for them. The location of the deposition was in the Eastern District and the witnesses would have been tendered mileage fees as required by statute (if they revealed their whereabouts). Notwithstanding this, I was willing to take the non-parties' depositions in Suffolk after learning of their residence.

For these reasons, the Court should grant the motion, order Mr. Zabell disqualified from representing third-party witnesses (and otherwise obstructing my access to them), and the addresses tendered to me forthwith to avoid further delay. The Court should also order sanctions, such as the cost of the deposition bust fee, attorneys' fees, as well as the cost of Mr. Zarda's flight back to New York.

Sincerely,

/s/

Gregory Antollino