

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

DECLARATION

Plaintiff,

-against-

10-cv-04334-JFB

**ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,**

Defendants.

-----X

GREGORY ANTOLLINO, being duly sworn, does hereby declare under penalty of perjury as follows:

1. I make this declaration in support of the simultaneously filed motion for discovery and sanctions.
2. This is a discrimination action in which plaintiff is suing under various causes of action for being fired because he told a customer of the defendant that he is gay. I have provided the Court with the entirety of all relevant depositions in "minuscrit" form. If for any reason the Court wants the single page version for one or more deposition transcript, please let me know. I have included the entirety of the deposition transcripts because I anticipate making a summary or partial summary judgment motion later on in this litigation, and would ask that the transcripts be kept on file for that purpose.
3. Attached as Exhibit A is the deposition transcript of Raymond Maynard.

4. The deposition was recorded stenographically and simultaneously videotaped on December 14, 2011. Attached as Exhibit B is the videographer's counter showing that he had recorded 5 hours and 31 minutes on the record as of 5:30 PM when Saul Zabell shut down the deposition and left with his client.

5. Attached as Exhibit C is the deposition transcript of Richard Winstock, plaintiff's supervisor at the defendant company.

6. Attached as Exhibit D is the deposition transcript of Rosanna Orellana, the person whom plaintiff told he is gay. She has signed her deposition transcript with no changes.

7. Attached as Exhibit E is the deposition transcript of David Kengle, Orellana's boyfriend, who complained to Maynard when Orellana told him that plaintiff told her that he is gay. He has signed his deposition transcript with no changes.

8. Attached as Exhibit F is the deposition transcript of Lauren Callanan, an administrative employee of the defendant company.

9. Attached as Exhibit G is defendant's response to plaintiff's second combined demand. The response contains both the demand and the answer, however, as part of the demand, there were two attachments, specifically, a complaint against Sky Dive Long Island, and a response by someone purporting to be Ray, the owner of Sky Dive Long Island. Neither of these was disclosed to plaintiff earlier on in the litigation. The complaint and the

response are attached as Exhibits H and I, respectively. In the original demand demand H & I were referred to as Exhibits A and B.

10. Attached as Exhibit J is the sworn declaration of Saul Zabell, dated July 6, 2011. The relevance of this declaration is discussed in Point VI(A) in the accompanying memorandum.

11. Before the Court entered into the scheduling order that governs this motion, I emailed Saul Zabell (and later left a voice message) asking him to call me about discussing a resolution to his near complete rejection of anything I had asked for in the second combined demand. I wanted to talk about resolving as much as possible to reduce the burden on the Court – and the work I would have to do in making this application to the Court. Mr. Zabell did not return my phone call. The conference is required under Local Rule 37.3.

12. Mr. Zabell refused because he wanted to me write a letter setting down specifics, with references to case law, as to what my objections to his objections were. It was as if he wanted me to make a motion to him before we had oral argument and he made a decision. As I argue in the accompanying memorandum, the rules do not require me to write a letter; they require a verbal conference. The emails are attached collectively on two pages, in order, as Exhibit K.

13. Attached as “Exhibit L” is a portion of a deposition in a different lawsuit, which was settled confidentially and the names are redacted, an employment discrimination action that was heard, and later settled on confidential terms, in the Southern District of New York. The reasons for

attaching this portion of a seemingly unrelated deposition are explained in the accompanying memorandum of law, Point VI (B).

14. Attached as Exhibit M is page 7 of defendant's response to plaintiff's first discovery demand, whose relevance will be explained in Point II.

15. Attached as Exhibit N is a letter by Saul Zabell wherein he states that defendants' employees are represented by counsel.

16. Attached as Exhibit O is a letter from Saul Zabell indicating that the witnesses Rosanna Orellana and David Kengle had authorized him to accept service of a subpoena, something that he also swore as true to the Court that turned out not to be true.

17. Attached as Exhibit P is an electronic document that plaintiff found in his materials that defendant did not find in its electronic search.

18. Attached as Exhibit Q is a letter by Saul Zabell to the Court dated April 12, 2011.

19. Attached as Exhibit R is the declaration of Jhon Sanchez, Esq.

20. Attached as Exhibit S is a portion of the deposition of Don Zarda, plaintiff.

For the reasons set forth in the accompanying memorandum of law, plaintiff asks that the motion be granted in its entirety.

Dated: New York, New York
March 21, 2012

_____/s/_____
GREGORY ANTOLLINO
Attorney for Plaintiff
18-20 West 21st Street Suite 802
New York, NY 10010

1

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK
 3 -----X
 4 DONALD ZARDA,
 5 Plaintiff,
 6 -against-
 7 ALTITUDE EXPRESS, ET ANO.,
 8 Defendant,
 9 Civil Action No.: 10-9334
 10 -----X
 11 90 John Street
 12 New York, New York
 13 December 14, 2011
 14 10:15 a.m.
 15
 16 Videotaped Deposition of RAYMOND
 17 MAYNARD, pursuant to Notice, before Sophie
 18 Nolan, a Notary Public of the State of New
 19 York.
 20
 21
 22
 23 ELLEN GRAUER COURT REPORTING CO. LLC
 24 126 East 56th Street, Fifth Floor
 25 New York, New York 10022
 212-750-6434
 REF: 99061

2

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 22
 23 ALSO PRESENT:
 24 VINCENZO PETULA, Legal Videographer
 25

3

1 ----- I N D E X -----
 2 WITNESS EXAMINATION BY PAGE
 3 RAYMOND MAYNARD MR. ANTOLLINO 7
 4
 5
 6 DIRECTIONS: 101
 7 MOTIONS: 35
 8 RULINGS: 241, 305
 9
 10
 11 ----- DOCUMENTS AND/OR INFORMATION REQUESTS -----
 12 PAGE: 55 Production of instruction tapes
 13 85 Production of raw footage
 14 131 Comments made about lawsuit on
 15 Facebook page
 16 143 Production of the list of names of
 17 Employees
 18 186 Cover letter
 19 240 Production of the footage
 20 274 Last name of Super John
 21 310 Production of employee manual
 22
 23
 24
 25

4

1 ----- E X H I B I T S -----
 2 EXHIBIT DESCRIPTION FOR I.D.
 3 Exhibit R-1 Article from
 4 Hamptons.com 13
 5 Exhibit R-3 Four-page document
 6 Starting with 43:121 23
 7 Exhibit R-2 Article from the
 8 Independent 31
 9 Exhibit R-4 Waiver 42
 10 Exhibit R-5 Review 56
 11 Exhibit R-6 Review 56
 12 Exhibit R-7 Website post 72
 13 Exhibit R-8 Photographs from
 14 Facebook page 86
 15 Exhibit R-11 Photograph 89
 16 Exhibit R-12 Photograph 92
 17 Exhibit R-17 E-mail 117
 18 Exhibit R-18 Letter 120
 19 Exhibit R-19 E-mail 155
 20 Exhibit R-20 Three e-mails 156
 21 Exhibit R-21 E-mail 158
 22 Exhibit R-25 Page from the Sigma
 23 Tandem system owner's
 24 Manual 175
 25 Exhibit R-23 Transcription of tape 214

5

1 ----- E X H I B I T S (Cont'd)-----

2 EXHIBIT	DESCRIPTION	FOR I.D.
3 Exhibit R-23A	Marked-up transcription	235
4 Exhibit R-26	Letter	296
5 Exhibit R-24	Posted ads	301

6

7

8 (EXHIBITS RETAINED BY MR. ANTOLLINO)

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6

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is tape

3 one. We are now on the record at 10:15

4 a.m. on Wednesday December 14, 2011.

5 This is the deposition of Raymond Maynard

6 in the matter of Donald Zarda versus

7 Altitude Express, et ano.

8 This deposition is being held at

9 the offices of Reporters Ink located at

10 90 John Street, New York, New York. The

11 court reporter is Sophie Nolan with Ellen

12 Grauer Court Reporting. I am the legal

13 videographer, Vincenzo Petula, also with

14 Ellen Grauer Court Reporting.

15 Would counsel please introduce

16 themselves.

17 MR. ANTOLLINO: I'm Gregory

18 Antollino for Mr. Zarda and with me is

19 John Sanchez who's also an attorney

20 that's loosely affiliated with my office.

21 MR. ZABELL: Saul Zabel, the law

22 firm of Zabel & Associates for the

23 Defendant.

24 THE VIDEOGRAPHER: Will the court

25 reporter please swear in the witness.

7

1 R A Y M O N D M A Y N A R D, called as a

2 witness, having been first duly sworn,

3 was examined and testified as follows:

4 5 EXAMINATION BY

6 MR. ANTOLLINO:

7 Q. Good morning, Mr. Maynard.

8 A. Good morning.

9 Q. I'm Greg Antollino. We haven't had

10 a chance to meet before.

11 MR. ZABELL: Prior to beginning

12 questioning, I'm reserving my client's

13 rights to review this transcript at the

14 conclusion of the deposition.

15 MR. ANTOLLINO: Certainly.

16 Q. Have you ever had a deposition

17 taken before?

18 MR. ZABELL: Objection to the form.

19 You may answer.

20 A. I was in one deposition many years

21 ago.

22 Q. What kind of case?

23 MR. ZABELL: Objection to the form.

24 You may answer.

25 A. It was an air show at the airport

8

1 MAYNARD

2 that I worked closely with the organizer.

3 Q. And what happened?

4 A. There was a gentleman suing the

5 organizer because he wanted to be part of it

6 and I was at a lot of meetings so they wanted

7 to hear what I had to say.

8 Q. You were not a subject of the

9 lawsuit?

10 A. No.

11 Q. Just a witness?

12 A. Just a witness.

13 Q. Other than that, never any

14 depositions?

15 A. No.

16 Q. How about testimony in court?

17 MR. ZABELL: Objection to the form.

18 You may answer.

19 A. No.

20 Q. Do you understand that you're under

21 oath?

22 A. Yes.

23 Q. All right. And that means you're

24 sworn to tell the truth?

25 A. Yes.

9

1 MAYNARD
2 Q. Even though we're in an informal
3 setting here in this office, your answers, you
4 understand, save the same force and effect as
5 if we were in a courtroom with a judge and a
6 jury; correct?
7 A. Yes.
8 Q. Are you prepared to answer my
9 questions today?
10 A. Yes.
11 Q. And there's nothing that will
12 prevent you from giving me your full attention?
13 A. No.
14 Q. Are you taking any medications or
15 suffering from any illness that will prevent
16 you from understanding my questions and
17 answering them fully?
18 A. No.
19 Q. If you don't understand one of my
20 questions, will you let me know?
21 A. Yes.
22 Q. If you need a break at any time,
23 will you tell me and we'll take a break?
24 A. Yes.
25 Q. Okay. And your current employment

11

1 MAYNARD
2 long have you been been skydiving?
3 MR. ZABELL: Wait, wait. Are you
4 withdrawing the two previous questions
5 and now asking that question?
6 Q. The second question, the question
7 I'm asking, is how long have you been
8 skydiving?
9 A. Over 40 years.
10 Q. How many jumps have you taken?
11 MR. ZABELL: Objection to the form.
12 You may answer.
13 A. Just under 4,000.
14 Q. Do you have any certifications?
15 MR. ZABELL: Objection to the form.
16 You may answer.
17 A. Yes.
18 Q. What are they?
19 A. A tandem instructor. I'm a coach.
20 Q. Anything else?
21 A. I'm a FAA rigger.
22 Q. Anything else?
23 A. I think that's it.
24 Q. Skydiving is not for everyone,
25 would you agree with that statement?

10

1 MAYNARD
2 is what?
3 MR. ZABELL: Objection to the form.
4 You may answer.
5 A. My current employment?
6 Q. Yes.
7 A. Business owner.
8 Q. And the business you own is?
9 A. Altitude Express.
10 Q. And that does business as Skydive
11 Long Island; is that correct?
12 A. That's correct.
13 Q. What is your highest level of
14 education?
15 A. I graduated high school.
16 Q. When was that?
17 A. 1965.
18 Q. How long have you been flying?
19 MR. ZABELL: Objection to the form.
20 Q. I mean, not flying, sky diving.
21 MR. ZABELL: Objection to the form
22 of the question. Are you withdrawing the
23 previous question?
24 MR. ANTOLLINO: Yes.
25 Q. You can answer the second one. How

12

1 MAYNARD
2 MR. ZABELL: Objection to the form
3 of the question.
4 You may answer.
5 A. Yes.
6 Q. And, in fact, you once told a
7 newspaper that; right?
8 A. Yes.
9 Q. That's some Hamptons.com newspaper,
10 you had an interview with them in 2008 or
11 thereabouts; is that correct?
12 MR. ZABELL: Objection to the form
13 of the multiple questions.
14 You may pick a question and provide
15 an answer to it.
16 Q. You can answer.
17 A. Well --
18 Q. Why don't I withdraw the question
19 and just mark an exhibit, all right?
20 MR. ZABELL: Are you asking him if
21 that's okay?
22 MR. ANTOLLINO: I don't want to
23 engage in any colloquy, Counsel.
24 I'd like to mark this -- I've
25 premarked it as R-1. I don't know if we

13

1 MAYNARD
 2 need to remark it -- remark it R-1 or is
 3 my little stamp enough, Counsel?
 4 MR. ZABELL: How ever you prefer.
 5 This is your deposition. As long as you
 6 give me copies.
 7 (Exhibit R-1, article from
 8 Hamptons.com, marked for Identification.)
 9 Q. I'm going to hand this to you. Do
 10 you recognize what I've handed to you?
 11 A. Yes.
 12 Q. And this is an article about you
 13 that was written by a journalist on
 14 Hamptons.com; is that correct?
 15 A. Yes.
 16 Q. And in it you describe at the very
 17 end that "Skydiving is not for everyone";
 18 correct?
 19 A. Yes.
 20 Q. And you describe to the reporter
 21 that you -- even your wife at the time never
 22 went up on a skydive; is that correct?
 23 A. That's correct.
 24 Q. And your wife at the time was
 25 Joanne Maynard?

15

1 MAYNARD
 2 that feeling inside of them and they want to
 3 experience that.
 4 Q. What about people who are
 5 claustrophobic, are they good candidates for
 6 tandem skydiving?
 7 A. I'm not an expert on
 8 claustrophobia. I don't know if that would be
 9 a problem or not. It's going to be an
 10 individual feeling and choice.
 11 Q. Well, what is your understanding of
 12 what a claustrophobic is?
 13 A. When I think being claustrophobic,
 14 I would think of being in a closet, a confined
 15 area.
 16 Q. Claustrophobic, would it be fair to
 17 say, is someone who's afraid of being in a
 18 confined area; correct?
 19 MR. ZABELL: Objection to the form.
 20 You may answer if you can.
 21 A. I'm not sure.
 22 Q. Are passengers in a tandem skydive
 23 situation placed in a confined area?
 24 A. The cab of the aircraft is a fairly
 25 small area.

14

1 MAYNARD
 2 A. That's correct.
 3 Q. And your marriage to her has ended
 4 now; is that correct?
 5 A. No.
 6 Q. It's not? Okay. I had looked
 7 online and it says that the case was disposed.
 8 You're not legally divorced yet?
 9 A. No.
 10 MR. ZABELL: Mr. Maynard, I'm
 11 advising you that just because
 12 Mr. Antollino makes a statement, he is
 13 not under oath and you are no obligation
 14 to believe the words that he is saying
 15 are accurate.
 16 Q. All right. Why did you tell the
 17 Hamptons.com that skydiving is not for
 18 everyone?
 19 MR. ZABELL: Objection to the form.
 20 You may answer.
 21 A. Because skydiving is not for
 22 everyone. People who don't want to go
 23 skydiving should not go skydiving because
 24 people might be trying to talk them into it.
 25 Skydiving is for people who have

16

1 MAYNARD
 2 Q. And it's often filled with many
 3 people; correct?
 4 A. Correct.
 5 Q. And they're also very closely
 6 strapped to another person; correct?
 7 A. That's correct.
 8 Q. What about someone who doesn't want
 9 to be touched, is that a good candidate for
 10 someone -- withdraw.
 11 What about someone who wants to be
 12 touched? Is someone who wants to be touched a
 13 good -- who doesn't want to be touched a good
 14 candidate for skydiving?
 15 MR. ZABELL: I'm going to object to
 16 the three questions you just asked.
 17 MR. ANTOLLINO: I'll be draw the
 18 question and ask it again.
 19 MR. ZABELL: Are you going to
 20 withdraw the last question?
 21 MR. ANTOLLINO: I'll withdraw what
 22 I said and ask it again.
 23 MR. ZABELL: Okay.
 24 Q. Is someone who does not want to be
 25 touched a good candidate for skydiving?

17

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 If you can, you may answer.
4 A. I don't know that. I don't know
5 that.
6 Q. You don't know one way or the
7 other?
8 A. No.
9 Q. So if someone said to you, I'm
10 afraid of being touched, I don't like to be
11 touched, do you think I should go up on a
12 skydive, what would you say to that person?
13 A. If someone said that to me like
14 that, I would say, then maybe you should not
15 skydive.
16 Q. Why not?
17 A. Because they just expressed
18 something that they're going to be
19 uncomfortable with.
20 Q. What did they express they'd be
21 uncomfortable with?
22 A. What you just said.
23 Q. Being touched?
24 A. Yeah.
25 MR. ZABELL: When he makes a

19

1 MAYNARD
2 Q. What if that person went up in a
3 skydive and then afterwards made a complaint to
4 you and said, I was touched, I went up in the
5 skydive and I was touched, is that a legitimate
6 complaint?
7 MR. ZABELL: Objection to the form
8 of the question.
9 You may answer.
10 A. I would ask them to give me more
11 detail.
12 Q. Okay. Well, the person was
13 adjusting straps around my body and I felt
14 uncomfortable, what would -- would that be a
15 legitimate complaint?
16 MR. ZABELL: Objection to the form.
17 You may answer.
18 A. No.
19 Q. Okay. At how many points does the
20 and instructor have to be attached to the
21 passenger?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. At how many points?
25 Q. Yeah.

18

1 MAYNARD
2 statement like that, that's a statement
3 to which no response is required.
4 Q. Why is someone who does not want to
5 be touched not a candidate for skydiving, for
6 tandem skydiving?
7 MR. ZABELL: Objection to the form.
8 If you can, you may.
9 A. You're asking me to answer a
10 question of someone else's feeling. I can't
11 give you that answer.
12 Q. Well, I'm asking you as a tandem
13 instructor if someone came to you and said, I
14 don't like to be touched, do you think I should
15 go up in a tandem skydive, what would be your
16 answer?
17 A. I would tell that in order to do a
18 tandem skydive, you will be touched and hooked
19 up in a harness. And that's all explained to
20 them. There will be close contact with another
21 person.
22 Q. Therefore, what would be your
23 recommendation to that person?
24 A. I would tell him those are the
25 facts and you have to make a choice.

20

1 MAYNARD
2 A. There's four points of attachment.
3 Q. Are there any other points of
4 attachment other than the four points?
5 A. No.
6 Q. Where are the four points of
7 attachment?
8 A. There's two -- there's one on each
9 shoulder and one on each hip.
10 Q. This article in Drop Zone -- I'm
11 sorry, not Drop Zone, Hamptons.com
12 indicates there's about one injury per year at
13 Skydive Long Island. Is that a true statement?
14 A. For a while we average about one a
15 year.
16 Q. And are those injuries of
17 passengers, of skydivers or both?
18 MR. ZABELL: Objection to the form.
19 A. Both.
20 Q. When you say one injury per year,
21 it's one injury and it's either a passenger or
22 a skydiver?
23 A. Yes.
24 Q. Okay. And there was one death in
25 1989; correct?

21

1 MAYNARD
2 A. That's correct.
3 Q. All right. It says here that this
4 death was an apparent suicide; is that correct?
5 A. Yes.
6 Q. Why was it believed to be an
7 apparent suicide?
8 A. Because the student himself
9 released himself from the parachute 200 feet
10 off the ground.
11 Q. And was there any indication that
12 he was suicidal?
13 A. No.
14 Q. So it's possible that he just made
15 a mistake?
16 A. It's possible.
17 Q. But it was his fault?
18 A. Absolutely.
19 MR. ZABELL: Objection to the form.
20 Q. Did the family complain?
21 MR. ZABELL: Objection to the form.
22 Q. About his death?
23 MR. ZABELL: Objection to the form.
24 A. Did they complain?
25 Q. Yeah.

23

1 MAYNARD
2 you the truth.
3 Q. Was there any testimony taken in
4 that case?
5 A. No. It didn't get that far.
6 Q. And it was dismissed that she
7 had -- that the jumper had signed a waiver;
8 correct?
9 A. I don't really remember.
10 Q. And that was in Suffolk County in
11 1989, around there?
12 A. Yes.
13 Q. Was it Suffolk Supreme Court, if
14 you can recall?
15 A. I don't recall.
16 Q. I want to show you -- I premarked
17 as Exhibit 3 and these are all R-3 -- is my
18 memory for Ray. And I'm going to ask you if
19 you recognize this document?
20 MR. ZABELL: I'm going to object to
21 the statements of counsel.
22 MR. ANTOLLINO: Okay. You can take
23 a look --
24 (Exhibit R-3, four-page document
25 starting with 43:121, marked for

22

1 MAYNARD
2 A. Well, they started a lawsuit.
3 Q. They did? And what happened?
4 A. It was dismissed.
5 Q. Okay. Did you give them their
6 money back?
7 A. No.
8 Q. Why not?
9 MR. ZABELL: Objection to the form.
10 A. Because I didn't.
11 Q. Well, did they ask for it back?
12 A. No.
13 Q. And you thought that their
14 complaint was illegitimate?
15 MR. ZABELL: Objection to the form.
16 Did you say "illegitimate"?
17 Q. You felt that their claim was
18 illegitimate; correct?
19 MR. ZABELL: Objection to the form.
20 A. Yes.
21 Q. And this particular lawsuit was
22 dismissed without you being deposed?
23 A. I believe.
24 MR. ZABELL: Objection to the form.
25 A. I don't really remember, to tell

24

1 MAYNARD
2 Identification.)
3 Q. Take a look at R-3 and I'm going to
4 ask you if you recognize any of these
5 documents.
6 A. Yes.
7 Q. What is this?
8 A. It's showing you the attachment
9 points of the tandem passenger harness
10 attaching to a tandem master.
11 Q. Does it fairly and accurately
12 represent how a tandem master is strapped to a
13 passenger?
14 A. Yes.
15 MR. ZABELL: Counselor, before your
16 question, I notice that these pages -- is
17 there an order to these pages because
18 they appear to be numbered but it looks
19 like the second -- the third page is the
20 page that's identified as R-3.
21 MR. ANTOLLINO: I think they're out
22 of order.
23 MR. ZABELL: And what is the order
24 that you'd like them in?
25 MR. ANTOLLINO: The order they're

25

1 MAYNARD
 2 in. There are four pages and they start
 3 with 43:121, 44:121 and then after that
 4 41:121, and then after that 42:121. So
 5 they're slightly out of order, but that's
 6 the order I'd like them in.
 7 A. I have three pages.
 8 Q. You have three pages. So I'll give
 9 you my fourth page. Let's show what you have.
 10 You have that one.
 11 MR. ZABELL: So the record should
 12 reflect that you just gave him a
 13 duplicate copy of 42:121.
 14 MR. ANTOLLINO: You know, it's a
 15 three-page document. I'm sorry, maybe
 16 you were missing --
 17 MR. ZABELL: Really? Because you
 18 gave me four pages. You gave me 43:121,
 19 44:121, 41:121 and then 42:121.
 20 MR. ANTOLLINO: All right. Let me
 21 look at what Ray has.
 22 MR. ZABELL: It appears he might be
 23 missing --
 24 MR. ANTOLLINO: Yes, he is and
 25 that's the one he said was the duplicate

27

1 MAYNARD
 2 container, and parachutes.
 3 Q. And do you own that at your drop
 4 zone?
 5 A. Yes.
 6 Q. Do you own more than one?
 7 A. Yes.
 8 Q. And do you recognize this to be the
 9 manual that comes with this particular rig?
 10 A. It appears to be an old one
 11 because -- it appears to be an old one.
 12 Q. Is there anything in this portion
 13 of the manual that I've handed marked as an
 14 exhibit that needs to -- that is incorrect?
 15 Why don't you take a minute and look through
 16 it.
 17 A. (Reviewing.)
 18 No, they seem to be correct.
 19 Q. So the document on the first page
 20 points out several straps and points of
 21 attachment, do you see that, on page 43:121?
 22 A. Yes.
 23 Q. All right. And all of those straps
 24 need to be adjusted; correct?
 25 A. Correct.

26

1 MAYNARD
 2 that I handed him, but no it's not.
 3 MR. ZABELL: No, it was, because
 4 you now have -- you've taken all the
 5 papers back and you've got multiple
 6 copies in front of you that you're
 7 pulling from.
 8 MR. ANTOLLINO: I have -- I'm
 9 giving the witness now what was the
 10 four-page intended exhibit.
 11 MR. ZABELL: It was a four-page
 12 exhibit not a three-page as you just
 13 articulated.
 14 MR. ANTOLLINO: That's correct.
 15 MR. ZABELL: Okay.
 16 Q. What is the Tandem Vector owner's
 17 manual?
 18 A. Excuse me?
 19 Q. What is the Tandem Vector II?
 20 MR. ZABELL: Objection to form.
 21 Of the multiple questions before
 22 you, you may pick a question and then
 23 answer it.
 24 A. Tandem Vector II is what we call a
 25 rig. It's a harness and container, a harness

28

1 MAYNARD
 2 Q. And they need to be adjusted for
 3 the safety and comfort of the passenger;
 4 correct?
 5 A. That's correct.
 6 Q. And would you agree that safety is
 7 more important than comfort?
 8 A. Safety is number one.
 9 Q. And comfort is number two?
 10 MR. ZABELL: You need to answer
 11 verbally.
 12 A. Yes.
 13 Q. And I see that two of those
 14 attachments are approximately at the hips; is
 15 that correct?
 16 A. Correct.
 17 Q. What about someone who's afraid of
 18 heights? If someone went to you and said, I'm
 19 afraid of heights do you think I should go up
 20 on a skydive?
 21 MR. ZABELL: Objection to the form
 22 of the questions.
 23 Q. What would you say -- what would
 24 you recommend to that person?
 25 MR. ZABELL: Counsel, are you

29

1 MAYNARD
 2 withdrawing the previous question and
 3 just asking that last question?
 4 Q. You can answer.
 5 MR. ZABELL: You can pick one of
 6 the questions and provide an answer to
 7 it.
 8 A. Which question do you want me to
 9 answer?
 10 MR. ANTOLLINO: Would you read it
 11 back, please? Colloquy doesn't count in
 12 my seven hours. If you want to come
 13 back, that's fine with me.
 14 MR. ZABELL: Counselor, just ask
 15 one question at a time.
 16 MR. ANTOLLINO: No, no. We'll read
 17 it back.
 18 MR. ZABELL: Which question are you
 19 having read back?
 20 MR. ANTOLLINO: The last question.
 21 (Record read.)
 22 MR. ANTOLLINO: Read the first part
 23 of that, before that.
 24 (Record read.)
 25 A. If someone comes to us and tells us

31

1 MAYNARD
 2 their choice. We're not telling them that it's
 3 going to be okay and you can do this. It's
 4 their choice to get in the plane or not get in
 5 the airplane knowing they're going to go to at
 6 least 10,000 feet.
 7 Q. And, therefore, a complaint that
 8 the plane went up to 12,000 feet would be an
 9 illegitimate complaint; correct?
 10 MR. ZABELL: Objection to the form
 11 of the question.
 12 A. Yes.
 13 Q. Would you agree or disagree, people
 14 think skydivers are just a bunch of crazies,
 15 you don't have to be crazy, though it helps?
 16 MR. ZABELL: Objection to the form.
 17 You can answer.
 18 A. That's something I've said.
 19 Q. In fact, let's mark what I've
 20 premarked as R-2, you told this to the
 21 Independent which is a newspaper on the east
 22 end of Long Island; correct?
 23 A. Yes.
 24 (Exhibit R-2, article from the
 25 Independent, marked for identification.)

30

1 MAYNARD
 2 that they are afraid of heights, the first
 3 thing we tell them is that this is not like you
 4 standing on the side of a building and being in
 5 a tree or on a ladder. It's a totally
 6 different feeling and, in my opinion, it's not
 7 the same -- it's not the same sensation and
 8 they would probably be okay.
 9 Q. And what if that person went up
 10 into the airplane and experienced a skydive and
 11 later complained that the plane went up to
 12 12,000 feet?
 13 A. They're told that we're going up to
 14 13,500 feet most of the time.
 15 Q. Okay. So if someone told you that
 16 they were afraid of heights and you told them
 17 that it would be -- you thought it would be
 18 okay and he went up to 12,000 feet and later
 19 complained that they went up to 12,000 feet,
 20 that would be an illegitimate complaint;
 21 correct?
 22 MR. ZABELL: Objection to the form.
 23 You may answer.
 24 A. No one is forced to get in the
 25 airplane and jump from any altitude. It was

32

1 MAYNARD
 2 Q. That's exactly what you said to
 3 this reporter, Mariah Quinn, in or around 2006;
 4 correct?
 5 A. According to this, yes.
 6 Q. And you recognize this article?
 7 A. Yes.
 8 Q. And when you spoke to that
 9 reporter, you weren't saying anything that was
 10 untrue; is that correct?
 11 A. That was my opinion.
 12 Q. Okay. Would you agree that --
 13 okay, I'm finished with that exhibit.
 14 Would you agree that the behavior
 15 at the drop zone can get a little bawdy at
 16 times?
 17 MR. ZABELL: Objection to the form.
 18 You may answer.
 19 A. Could you explain what you mean
 20 "bawdy"?
 21 Q. Have you heard the word "bawdy"
 22 before?
 23 A. No.
 24 Q. Okay. A little racy?
 25 MR. ZABELL: Same objection.

33

1 MAYNARD
2 A. I don't know what you mean by being
3 racy.
4 Q. Suggestive?
5 MR. ZABELL: Same objection.
6 A. Suggestive in what way?
7 Q. Sexually suggestive.
8 MR. ZABELL: If you can answer, you
9 may.
10 A. I don't remember.
11 Q. All right. Well, you don't
12 remember? You don't remember any times when
13 behavior has gotten sexually suggestive at the
14 drop zone?
15 A. Not any more than anything else.
16 Q. Well, what does that mean, not any
17 more than anything else?
18 MR. ZABELL: Objection to the form.
19 You may answer.
20 A. It's not a major topic. We're
21 there to skydive.
22 Q. Well, you have read the lawsuit
23 that Don has filed in this case; correct?
24 A. Yes.
25 Q. You were sent a copy in the mail;

35

1 MAYNARD
2 A. There are remarks that are made to
3 keep people calm and let them know -- you know,
4 keep them calm that we're going to make a
5 skydive.
6 + MR. ANTOLLINO: Motion to strike
7 as nonresponsive.
8 MR. ZABELL: Motion is denied to
9 the extent that I'm permitted to deny
10 your motion, Counsel.
11 Q. I'm asking, of those jokes, do they
12 include jokes about men being strapped to
13 women?
14 A. Yes.
15 MR. ZABELL: Objection to the form.
16 You may answer.
17 Q. Are there jokes when men are being
18 strapped to men?
19 MR. ZABELL: Objection to the form.
20 You may answer.
21 A. Yes.
22 Q. And the tenor of those jokes is, "I
23 bet you didn't think you were going to be
24 strapped to a man today, did you?"
25 MR. ZABELL: Objection to the form.

34

1 MAYNARD
2 correct?
3 A. Yes.
4 Q. And you read it before you sought
5 counsel; correct?
6 A. I guess. I don't remember.
7 Q. Well, did you read the lawsuit at
8 any time?
9 A. Yes.
10 MR. ZABELL: Objection, asked and
11 answered.
12 You may answer.
13 A. Yes.
14 Q. There's an allegation in that
15 lawsuit that it's very common at the drop zone
16 for people to make sexually suggestive jokes
17 when men are being strapped to women.
18 Do you remember that allegation
19 being made?
20 A. Yes.
21 Q. And isn't it -- isn't it true that
22 those types of jokes are often made in the rig
23 as men are being strapped to women?
24 MR. ZABELL: Objection to the form.
25 You may answer.

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1 MAYNARD
2 You may answer.
3 A. That's been said.
4 Q. All right. That's been said many
5 times; correct?
6 A. It's been said.
7 Q. It's been said how many times?
8 A. I don't know.
9 Q. Probably more times that you can
10 remember; correct?
11 A. Not physically at that place where
12 people are being dressed all the time. I'm
13 running the place so I'm not right in that
14 dressing area all the time and hear what
15 everybody says to everybody.
16 Q. But you have been up in the plane
17 and you've heard that before?
18 A. Yes.
19 Q. Okay. So many times that you
20 cannot remember; correct?
21 MR. ZABELL: Objection to the form.
22 Objection, asked and answered.
23 You may answer it if you can.
24 A. Yes.
25 Q. Do you know that Rich of

37

1 MAYNARD
2 was deposed in this case?
3 A. Yes.
4 Q. Did you speak to Rich about his
5 testimony?
6 A. He just called me and told me it
7 was a long --
8 Q. It was a what?
9 A. It was a long deposition.
10 Q. It was a long deposition. It was
11 only two hours. Did he say anything else about
12 it?
13 A. No.
14 Q. Did you learn anything else about
15 his testimony?
16 MR. ZABELL: Objection to the form
17 of the question.
18 You may answer.
19 A. He said that it was long and that
20 you covered everything.
21 Q. Okay. Do you know that both Rosana
22 Orelana and David Kengle were deposed in this
23 case?
24 A. Yes.
25 Q. Did you know that they both

39

1 MAYNARD
2 A. One.
3 Q. And the rest are -- how many do you
4 have --
5 MR. ZABELL: Objection to the
6 form --
7 Q. -- total?
8 MR. ZABELL: -- of the multiple
9 questions.
10 MR. ANTOLLINO: Just put an
11 objection. Just make an objection.
12 We're going to be here longer if you have
13 to make speaking objections.
14 MR. ZABELL: You have my objection.
15 You may pick a question and answer it.
16 A. I believe we have 17 instructors.
17 Q. All right. So most of the time,
18 just statistically, you're going to have male
19 instructors with passengers in a skydive;
20 correct?
21 A. That's correct.
22 Q. And many times couples will come to
23 the sky -- to a skydive at your drop zone;
24 correct?
25 A. Correct.

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1 MAYNARD
2 testified that an instructor other than Don
3 attempted to joke with them to the effect that,
4 I bet you didn't know that your girlfriend was
5 going to be strapped to another guy?
6 A. I didn't know that.
7 Q. Do you doubt that that occurred?
8 A. No.
9 Q. And you heard that type of joke
10 before; correct?
11 A. That statement. I don't know if it
12 was a joke.
13 Q. Well, does joking occur in the rig
14 to loosen the tension?
15 MR. ZABELL: Objection to the form
16 of the multiple questions.
17 You may answer.
18 A. Yes.
19 Q. All right. Have you ever had a
20 situation -- first of all, do you have any
21 female instructors?
22 A. Female tandem instructors?
23 Q. Yes.
24 A. Yes.
25 Q. How many?

40

1 MAYNARD
2 Q. Okay. Boyfriend and girlfriend or
3 married couples; correct?
4 A. Correct.
5 Q. And have you ever had a
6 situation -- and, in that case, one -- it is
7 more than likely that there will be one male
8 instructor strapped to the male and one male
9 instructor strapped to the female; correct?
10 A. Correct.
11 Q. And it will be known to the
12 instructor, both instructors, that these two
13 people are in a relationship; correct?
14 A. Correct.
15 Q. All right. And a joke will be made
16 suggesting that the boyfriend didn't know that
17 the girlfriend was going to be strapped up to
18 another guy; correct?
19 MR. ZABELL: Objection to the form.
20 A. That statement is not made all the
21 time, no.
22 Q. It's made sometimes though;
23 correct?
24 A. Correct.
25 Q. Have you ever fired someone for

41

1 MAYNARD
 2 making a statement like that?
 3 A. No.
 4 Q. If someone complained about that
 5 statement, would you fire the instructor that
 6 made -- made the joke?
 7 A. There's never been a complaint.
 8 Q. But if someone did make a
 9 complaint, would you?
 10 MR. ZABELL: Are you asking him a
 11 hypothetical question?
 12 Q. You can answer.
 13 A. I'd have to deal with that at the
 14 time.
 15 Q. I'm asking, do you think that
 16 that's grounds for termination?
 17 MR. ZABELL: Objection to the form.
 18 You may answer.
 19 A. That you can be strapped to a man,
 20 no.
 21 Q. Have you ever fired an instructor
 22 where a passenger had an injury?
 23 A. No.
 24 Q. You make each passenger sign a
 25 waiver; is that correct?

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1 MAYNARD
 2 provide information that was given to you
 3 by your attorney, you need not answer the
 4 question.
 5 A. My attorney prepared this, so --
 6 Q. Well, let me ask you, why do you
 7 have the person -- why do you think it's
 8 necessary to have the person initial each
 9 paragraph?
 10 MR. ZABELL: Same objection. If
 11 your attorney advised you why you need to
 12 have each paragraph initialed, then you
 13 need not answer the question. You need
 14 simply state that that is covered by the
 15 attorney/client confidentiality
 16 privilege.
 17 A. It's covered by the attorney/client
 18 confidentiality.
 19 Q. And you don't want to waive that
 20 attorney/client confidentiality privilege;
 21 correct?
 22 MR. ZABELL: No, he does not.
 23 A. No.
 24 Q. All right. I would like you to
 25 read paragraph 13. Turn to the third page of

42

1 MAYNARD
 2 A. That's correct.
 3 Q. And I'm going to show you what I
 4 premarked as Exhibit 4.
 5 (Exhibit R-4, waiver, marked for
 6 Identification.)
 7 Q. What I believe to be the waiver you
 8 have every skydiver sign.
 9 A. That's correct.
 10 Q. This is, is it not, the release
 11 that you have everyone at the skydive sign?
 12 A. Yes, it is.
 13 Q. All right. And you make them not
 14 only sign it, but initial each paragraph;
 15 correct?
 16 A. That's correct.
 17 Q. And the reason you want everyone to
 18 initial each paragraph is that you don't want
 19 someone to come back and say, oh, that wasn't
 20 included in the waiver that I signed even
 21 though my signature is on the last page, the
 22 first three are a forgery; correct?
 23 MR. ZABELL: I'm going to object to
 24 the form of the question and advise you
 25 that if your answer requires you to

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1 MAYNARD
 2 the waiver and read that aloud for the record.
 3 A. "If I am making a student jump, I
 4 understand that I will wearing a harness that
 5 will need to be adjusted by the jump master.
 6 If my jump is a tandem jump, I understand the
 7 tandem master will attach my harness to his and
 8 this will be put on my body in close proximity
 9 of the tandem master. I specifically agree to
 10 the physical contact between the tandem master
 11 and myself."
 12 Q. Okay. You have seen many waivers
 13 at many drop zones, have you not, including
 14 this one?
 15 A. Yes.
 16 Q. And they all have a paragraph like
 17 that in there, isn't that true?
 18 A. Yes, they do.
 19 Q. Okay. And why is -- in general,
 20 why is that an industry standard paragraph to
 21 have in a waiver for someone who's going to go
 22 up on a tandem skydive?
 23 MR. ZABELL: I object to the form
 24 of the question and advise you that if
 25 your answer requires you to divulge

45

1 MAYNARD
2 information that was provided to you by
3 your attorney, you simply need state that
4 the information is covered by the
5 attorney/client confidentiality
6 provision.
7 Q. And I'm asking you as your -- in
8 your experience, in your 40 years experience,
9 why is it your personal understanding that that
10 is there? I don't want to know what your
11 attorney told you.
12 MR. ZABELL: If your personal
13 understanding was derived because your
14 attorney explained to you why that needs
15 to be there, then you simply need state
16 that that information is covered by the
17 attorney/client confidentiality
18 privilege.
19 Q. You can answer.
20 A. It's covered by the attorney
21 confidentiality.
22 Q. All right. When was the first time
23 you spoke to an attorney about this particular
24 clause?
25 A. I don't remember what year it was.

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1 MAYNARD
2 MR. ZABELL: Objection.
3 Q. I mean, is this an industry-wide --
4 well, you have -- let's see, in between 1986 --
5 MR. ZABELL: Counselor, are you
6 withdrawing the previous question?
7 Q. Well, let me ask you this. You
8 said you don't know if it was put in before
9 1986, but this is a Skydive Long Island waiver;
10 correct?
11 A. Yes, this is. It's the current
12 Skydive Long Island waiver.
13 Q. Right, okay. Now, you had seen
14 waivers like this before 1986; correct?
15 A. Yes.
16 Q. All right. And you signed many of
17 them as a fun jumper; correct?
18 A. Yes.
19 Q. Okay. What is a fun jumper?
20 A. It's an experienced jumper that's
21 no longer on student status who normally owns
22 their own gear.
23 Q. But you signed -- you signed these
24 waivers and you initialed paragraphs saying
25 that you're making a student jump; correct?

46

1 MAYNARD
2 Q. Well, was it before you started
3 Skydive Long Island?
4 A. No.
5 Q. Okay. And was it in -- was it
6 before 2000?
7 A. I'm not sure.
8 Q. Was it before 1995?
9 A. I'm not sure.
10 Q. Okay. When did you start Skydive
11 Long Island?
12 A. 1986.
13 Q. Okay. So, in 1986 you had been
14 jumping for 17 years approximately?
15 A. Yes.
16 Q. Okay. And between 1969 and 1986
17 you had seen many releases similar to this one;
18 correct?
19 A. Yes.
20 Q. And you had seen many clauses
21 similar to clause 13; correct?
22 A. I'm not sure between 1969 and 1986
23 when that clause was put in.
24 Q. Well, is this a industry-wide
25 clause --

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1 MAYNARD
2 MR. ZABELL: Objection to the form
3 of the question.
4 Q. That you know that you're going to
5 be in close contact to --
6 MR. ANTOLLINO: Let me finish my
7 question before you make an objection.
8 Q. You signed waivers saying that if
9 you're making a student jump you know you're
10 going to be in close proximity to the
11 instructor; correct?
12 MR. ZABELL: Objection to the form
13 of the multiple questions posed before
14 you. You may pick any one of those
15 questions and provide an answer to it.
16 A. Okay. When I was a student jumper,
17 there were no tandem jumps. It evolved after
18 my student status. So there was no gigantic
19 waiver like this back then. The waivers have
20 evolved over the years.
21 Q. When was the first time you saw a
22 waiver that included clause 13?
23 A. I don't remember.
24 Q. But it was before 1986; correct?
25 A. No.

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1 MAYNARD
2 Q. It was not? This was the first --
3 your waiver that you developed for Skydive Long
4 Island was the first time that you ever saw a
5 clause like that?
6 A. I didn't say that.
7 Q. Okay. When was the first time you
8 saw the clause?
9 A. I don't remember the first time I
10 saw that clause in a waiver.
11 Q. And you don't know if it was before
12 1986?
13 A. It was not before 1986. It was
14 sometime after 1986. I do not remember the
15 year.
16 Q. Okay. So your first waiver at
17 Skydive Long Island did not have this clause in
18 it?
19 A. No, it did not.
20 Q. And when did you put this clause
21 into your waiver at Skydive Long Island?
22 A. I don't remember the year.
23 Q. Do you have copies of these old
24 waivers?
25 A. Probably not.

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1 MAYNARD
2 question is, are you certain that an attorney
3 advised you to put that clause in there?
4 MR. ZABELL: Objection, asked and
5 answered. You may answer it again.
6 A. My attorney advised me that that
7 should be in there.
8 MR. ZABELL: Objection. Do not
9 disclose what your attorney advised you.
10 THE WITNESS: Okay.
11 Q. Do you think that this clause
12 should continue to be in the waiver?
13 A. Yes.
14 MR. ZABELL: Objection to the form.
15 Q. Do you think that someone who is
16 going up in a jump should know that they're
17 going to be in close proximity to an
18 instructor?
19 A. Yes.
20 Q. And would you agree that the tandem
21 instructor, when strapping himself in to a
22 passenger, is essentially violating the
23 passenger's personal space?
24 MR. ZABELL: Objection to the form.
25 A. No.

50

1 MAYNARD
2 Q. Why did you think that it would be
3 appropriate for you to put this in a waiver?
4 MR. ZABELL: I'm going to object to
5 the form. To the extent that the answer
6 requires you to reveal communications had
7 between your counsel and yourself, you
8 may assert the attorney/client
9 confidentiality privilege.
10 A. And I assert the attorney/client
11 confidentiality.
12 Q. Well, do you remember the attorney?
13 MR. ZABELL: Objection to the form.
14 You can answer.
15 A. I'm not -- I don't remember what
16 attorney I had at the time.
17 Q. Are you certain that an attorney
18 told you to put that clause in there?
19 A. Am I certain that an attorney told
20 me to do that?
21 Q. Yes.
22 A. Any waiver that I've given to
23 anybody at the place was reviewed by an
24 attorney.
25 Q. Okay. That's not my question. My

52

1 MAYNARD
2 Q. Were you aware that that's what
3 Rich Winstock testified to?
4 A. No.
5 Q. So you would disagree with Rich if
6 he did say that?
7 A. I disagree with the statement that
8 you're violating the personal space, just out
9 of that statement.
10 Q. Well, let me ask you this, would
11 you agree that if I came over and asked you to
12 stand up and strapped myself to you in the way
13 that is represented in Exhibit 2, that I would
14 be invading your personal space?
15 MR. ZABELL: Objection to the form
16 of the question.
17 You may answer.
18 A. What you're saying, yes.
19 Q. Okay. Were you aware that when
20 Ms. Orelana testified she said she didn't even
21 read this waiver?
22 MR. ZABELL: Objection to the form
23 of the question. To the extent it is a
24 question and you understand it, you may
25 answer.

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1 MAYNARD
2 A. No.
3 Q. Are you aware that she testified
4 that she was asked to read the waiver at the
5 same time that she watched the video?
6 MR. ZABELL: Same objection.
7 A. No.
8 Q. All right. Do you believe that if
9 she said that that she was inaccurate?
10 A. I'm not going to give an opinion
11 about what she's saying is inaccurate.
12 Q. I'm saying, is it your practice at
13 the drop zone to give people the waiver and to
14 read the waiver at the same time they watched
15 the videotape?
16 A. No.
17 Q. That would be a bad practice, would
18 you agree?
19 A. Yes.
20 Q. Because if that happens, the person
21 is not going to be paying full attention to the
22 videotape and is not going to be paying full
23 attention to reading the waiver; correct?
24 A. Correct.
25 Q. You believe that every customer

55

1 MAYNARD
2 + MR. ANTOLLINO: Just mark that.
3 I'll call for the production and I'll
4 follow up with something in paper. Just
5 for my memory.
6 Q. You never talked to Rosana Orelana,
7 did you?
8 A. No.
9 Q. Have there been any complaints
10 about SDLI?
11 A. Have there been complaints about
12 SDLI?
13 Q. Yes, over the years.
14 MR. ZABELL: Objection to the form.
15 You can answer. If you know what
16 it is. If you know what he's asking you.
17 THE WITNESS: I have an idea.
18 MR. ZABELL: You may follow up on
19 that idea and provide the best answer you
20 can.
21 A. There's been no direct complaint to
22 me personally. I know there's something out
23 there on the internet that there's responses to
24 it that I don't even believe that it's a true
25 customer. It's probably a competitor that

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1 MAYNARD
2 should read this waiver very carefully;
3 correct?
4 A. That's my opinion, yes, they
5 should.
6 Q. And what is in the video?
7 MR. ZABELL: Objection to the form.
8 You may answer.
9 A. The video is a short videotape that
10 an attorney is explaining the waiver to a point
11 and the other part of it is basically how to
12 help your tandem master get out of the airplane
13 together; what to do to make it easier for both
14 of you and the correct body position you should
15 have in free fall.
16 Q. It's an attorney explaining this or
17 is it you?
18 A. It was an attorney and now this
19 past two years it's been me.
20 Q. So you've got two tapes -- you
21 still have two tapes at the drop zone, one that
22 you used to use with an attorney and one of
23 you; correct?
24 A. Correct.
25 Q. Okay.

56

1 MAYNARD
2 wants to make us look bad.
3 Q. Well, what website is that on?
4 A. There's -- I don't know the name of
5 the website. It's not a very nice one.
6 Q. Yelp, is that the website?
7 A. I'm not sure.
8 Q. What does the complaint say?
9 A. The complaint probably mentions
10 everything that could possibly be bad that can
11 be said about a drop zone.
12 Q. Like what?
13 A. Anything that would be derogatory,
14 from A to Z.
15 Q. Well, I'm going to show you what
16 I've premarked as Exhibits 5 and 6.
17 (Exhibit R-5, review, marked for
18 Identification.)
19 (Exhibit R-6, review, marked for
20 Identification.)
21 Q. And ask you if either of these are
22 the complaints you're talking about?
23 MR. ZABELL: Counsel? Thank you.
24 Counselor, when you get to a logical
25 conclusion in your questioning, I just

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1 MAYNARD
2 need to take a two-minute bathroom break.
3 A. (Reviewing.)
4 And what's your question?
5 Q. Okay, the question is, is one of
6 these complaints the complaints you were
7 talking about?
8 A. No.
9 Q. So there's a third complaint out
10 there on another website we're not aware of?
11 MR. ZABELL: Objection.
12 You may answer.
13 A. Yes.
14 Q. You don't remember the name of the
15 website?
16 A. No.
17 Q. Is it wegoplaces.com?
18 A. I don't know.
19 MR. ZABELL: Objection.
20 MR. ANTOLLINO: Why don't we take
21 your break now, Counsel. We're still
22 going to talk about complaints but --
23 MR. ZABELL: That's fine. I just
24 didn't want to interrupt your flow.
25 THE VIDEOGRAPHER: We are now off

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1 MAYNARD
2 Q. Yeah.
3 A. A social media summit?
4 Q. Yeah.
5 A. I did?
6 Q. Did you?
7 MR. ZABELL: If you remember, you
8 can answer.
9 A. I don't remember.
10 Q. You have Facebook pages, various
11 Facebook pages, that you make comments on for
12 Skydive Long Island; is that correct?
13 A. Correct.
14 Q. You have your own personal Facebook
15 page Ray Maynard; correct?
16 A. Correct.
17 Q. That's not open to the public?
18 A. I'm not sure. I very rarely go
19 there.
20 Q. There's also two other Skydive Long
21 Island Facebook pages; correct?
22 A. Correct.
23 Q. And recently you asked people to
24 put good reviews on wegoplaces.com; is that
25 correct?

58

1 MAYNARD
2 the record at 11:03 a.m.
3 (Recess taken.)
4 THE VIDEOGRAPHER: This is tape two
5 of the deposition of Raymond Maynard. We
6 are now on the record at 11:16 a.m.
7 Q. In addition to the Tandem Vector
8 II, there was also a rig called the Vector
9 Sigma; is that correct?
10 A. Correct.
11 Q. And that has additional attachment
12 points on it; isn't that correct?
13 A. Between the passenger and the
14 tandem master?
15 Q. Yes.
16 A. No.
17 Q. No. All right. I guess the
18 instruction manual would say for sure where all
19 the attachments were on the Vector Sigma;
20 correct?
21 A. Correct.
22 Q. All right. In September you
23 attended a social media summit; is that
24 correct?
25 A. In September?

60

1 MAYNARD
2 A. Correct.
3 Q. Does anyone put any reviews?
4 A. I don't know.
5 Q. So this is the type of review that
6 can affect your reputation; correct?
7 MR. ZABELL: Objection to the form.
8 A. I would imagine.
9 Q. I'd like you to look at Exhibits 5
10 and 6 and the first, Exhibit 5, refers to
11 Anthony F. and his review of Skydive Long
12 Island?
13 A. Okay.
14 Q. And he has -- he basically says he
15 enjoyed it but he had some problems with it;
16 correct?
17 A. According to this, yes.
18 Q. Okay. Do you believe what he said
19 there, his criticisms?
20 A. Some of this might have validity.
21 I think a lot of it is his opinion.
22 Q. Okay, but nevertheless he did
23 complain; right?
24 A. In this publication, yes.
25 Q. The first complaint is -- although

61

1 MAYNARD
2 he said he enjoyed the jump, the first
3 complaint he said is that the website is
4 misleading on prices; correct?
5 A. That's what he says.
6 Q. All right. Do you know if he's
7 right about that?
8 A. There were times that they had to
9 be fixed.
10 Q. Did you fire the webmaster?
11 A. No.
12 Q. He also said the photography is
13 average because they're just constant shots
14 rather than particularized shots; correct?
15 A. That's what he's saying.
16 Q. Yes, he said that.
17 A. Okay.
18 Q. Do you believe that?
19 A. No.
20 Q. Are you going to fire the
21 photographer?
22 A. No.
23 Q. Do you think -- who is your
24 photographer?
25 A. We have several.

63

1 MAYNARD
2 You may answer.
3 Q. So the answer is yes?
4 A. Yes.
5 Q. The last complaint he has is that
6 the ladies in the office are rude?
7 A. Are what?
8 Q. It says basically -- the last check
9 that I have on there that I put in, he says
10 that the ladies in the office are rude.
11 MR. ZABELL: That's not a question.
12 That's a statement to which no response
13 is required.
14 Q. Is that correct?
15 A. No.
16 Q. What does he say, the last check
17 point, if you could just read it for the
18 record?
19 A. "The ladies in the office, I know
20 you're busy, but please don't get frustrated
21 with me when after two hours I'm checking in to
22 see how much longer my wait is and when you
23 tell me 30 minutes and another hour goes by,
24 don't be surprised when I'm back asking you
25 again."

62

1 MAYNARD
2 Q. All right. And how do you
3 photograph the dive?
4 A. There's a camera attached to the
5 helmet and they have a switch that they bite on
6 to shoot individual shots.
7 Q. All right. And he also said that
8 "the wait was interminable." Do you think that
9 that was an inaccurate complaint?
10 A. Everybody is told to plan on being
11 there a half a day.
12 Q. Where -- go ahead.
13 A. Because there can be delays of
14 weather. There's a lot of variables out there.
15 There's no way there can be a guarantee that
16 you're going to come there at 9 o'clock and
17 jump at 9:30 and everyone is told that.
18 Q. At what point?
19 A. When they're making the
20 reservation.
21 Q. Okay. So that was basically an
22 unfair complaint that the wait was
23 interminable?
24 A. Yes.
25 MR. ZABELL: Objection.

64

1 MAYNARD
2 Q. Do you not think that that's a
3 characterization of rudeness?
4 A. A characterization --
5 Q. Of the ladies in the office
6 treating him rudely?
7 A. No. This is one side of what he's
8 telling you. You don't know the story.
9 Q. Okay. Are you going -- are you
10 going to fire any of the ladies in the office?
11 A. No.
12 Q. Who are the ladies in the office?
13 A. Lauren, Megan and Jesse.
14 Q. Take a look at Exhibit 6. Have you
15 read Exhibit 6 the Kevin W. complaint?
16 A. (Reviewing.)
17 MR. ANTOLLINO: What was the
18 question?
19 (Record read.)
20 A. Yes.
21 Q. Do you remember that incident?
22 A. No.
23 Q. All right. Do you think that Kevin
24 W. had a legitimate complaint?
25 A. If what he said is true. I don't

65

1 MAYNARD
 2 know that to be a fact.
 3 Q. So it might not be true?
 4 A. Correct.
 5 Q. If it was true, would you take any
 6 corrective action?
 7 A. If I was convinced of everything he
 8 was saying is here, I would probably give him
 9 back his money for the video and probably give
 10 him a deal on another jump if he wanted to do
 11 it.
 12 Q. Okay. But you would investigate if
 13 what he is saying is true?
 14 A. Like I said, if he convinced me
 15 that what he's saying is true, I would look
 16 into it.
 17 Q. Okay. What other -- what verbal
 18 complaints -- well, let me ask you this.
 19 Withdrawn.
 20 You've been in business since 1986;
 21 correct?
 22 A. Yes.
 23 Q. All right. And you've hired over
 24 that course of time approximately how many
 25 tandem skydive instructors?

67

1 MAYNARD
 2 A. We do several thousand.
 3 Q. Okay. And I'm talking about just
 4 tandem jumps.
 5 A. Yes.
 6 Q. Several thousand?
 7 A. Yes.
 8 Q. When you say "several," is several
 9 more than 3,000 less than 10,000?
 10 A. What year?
 11 Q. Let's start with 1986.
 12 A. It was probably a couple of
 13 hundred, if we did that.
 14 Q. All right, a couple of hundred.
 15 And then when did it start getting into the
 16 thousands?
 17 MR. ZABELL: Objection to the form.
 18 You may answer.
 19 A. Probably 2001 maybe, 2002.
 20 Q. Okay, 2001, 2002 you started
 21 getting into the thousands. About how many
 22 thousands in 2001, 2002?
 23 A. Probably 1,000 or 2.
 24 Q. And in 2005, were you doing more?
 25 MR. ZABELL: Objection to the form.

66

1 MAYNARD
 2 A. I don't know the number offhand, a
 3 lot.
 4 Q. More than 100?
 5 A. Probably.
 6 Q. All right. More than 200?
 7 A. I don't know.
 8 Q. In all of that time, have there
 9 been any times other than Don's -- other than
 10 Don's -- withdrawn.
 11 During all of that time with all of
 12 those tandem jumps that have taken place since
 13 1986, has anyone ever complained about an
 14 instructor other than Don?
 15 A. No one has complained to me. I
 16 never heard of any other thing.
 17 Q. So Don was the only instructor that
 18 anyone ever complained about in your 20 --
 19 approximately 26-year history at Skydive Long
 20 Island?
 21 A. Yes.
 22 Q. How many jumps do you do in a
 23 season approximately?
 24 MR. ZABELL: Objection to the form.
 25 You may answer.

68

1 MAYNARD
 2 You may answer.
 3 A. Yes, it increased most years a
 4 little bit.
 5 Q. Okay. So what was it last year,
 6 how many jumps or I guess you're still in the
 7 season, maybe someone is even jumping now?
 8 MR. ZABELL: Objection to the form.
 9 Objection to the multiple questions,
 10 Counsel --
 11 MR. ANTOLLINO: Withdrawn. Don't
 12 argue with me.
 13 Q. How many jumps in 2011?
 14 A. Tandem jumps?
 15 Q. Yeah.
 16 A. We did just under 8,000.
 17 Q. And in 2010?
 18 A. It was right around 8,000.
 19 Q. And do you remember 2009?
 20 A. It was I'm going to take a guess --
 21 Guesstimate.
 22 A. Guesstimate maybe 6,500.
 23 Q. Okay. So it appears that
 24 approximately you could say that since 2001
 25 there have been between 30 and 50,000 jumps at

69

1 MAYNARD
2 Skydive Long Island, would that be roughly
3 fair?
4 MR. ZABELL: Objection to the form.
5 A. I don't know. I'd have to look
6 back.
7 Q. Many thousands?
8 A. Yes.
9 Q. And your testimony is that the only
10 two complaints about any tandem instructor were
11 about Don in those many thousand jumps?
12 MR. ZABELL: Objection to the form.
13 You may answer.
14 A. Yes.
15 Q. There are parties that occur at the
16 drop zone one or two times a summer; is that
17 correct?
18 A. We have an annual event.
19 Q. And who is invited to the annual
20 event?
21 A. It's open to the public. When I
22 say "annual event" we bring in specialty
23 aircraft. It's an annual skydiving event.
24 Q. Was it a party?
25 A. They call it a boogie.

71

1 MAYNARD
2 have to input a user name and a password;
3 correct?
4 MR. ZABELL: Again, I'm going to
5 advise you that counsel for Mr. Zarda is
6 not under oath. You are under no
7 obligation to believe that the words that
8 come out of his mouth are accurate. You
9 may answer, keeping that in mind.
10 A. What was the question?
11 MR. ANTOLLINO: Could you read it
12 back?
13 MR. ZABELL: Please.
14 (Record read.)
15 A. Yes.
16 Q. All right. What is your user name?
17 A. I personally don't do that so I
18 don't know what it is.
19 Q. So you have your employees --
20 A. Yes.
21 Q. -- who are authorized to go on to
22 dropzone.com?
23 A. Yes.
24 Q. And make announcements?
25 A. Not all of them, but yes.

70

1 MAYNARD
2 Q. In 2006 you had a luau; is that
3 correct?
4 A. Yes.
5 Q. And what was the name of that luau?
6 A. I don't think it had a name.
7 Q. And are you familiar with
8 dropzone.com?
9 A. Yes, I am.
10 Q. Do you have a handle on
11 dropzone.com?
12 A. Do I have a handle on it?
13 Q. Are you a member of dropzone.com?
14 MR. ZABELL: Objection to the form
15 of the multiple questions that are posed
16 before this witness.
17 MR. ANTOLLINO: Withdrawn.
18 Q. Are you a member of dropzone.com?
19 A. Skydive Long Island is, yes.
20 Q. And what Skydive Long Island's
21 handle?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. I don't know.
25 Q. When you log on to dropzone.com you

72

1 MAYNARD
2 Q. Who is authorized to make an
3 announcement?
4 A. It's normally Lauren.
5 Q. Anyone else?
6 A. Not that I can recall.
7 Q. Has there ever been a time that you
8 have authorized a skydive instructor to make a
9 post on dropzone.com about the Skydive Long
10 Island?
11 A. I don't believe I gave any
12 authorization, but they might have gone on
13 there.
14 Q. All right. I'm going to show you
15 what I've premarked as Exhibit 7 and I'd ask
16 you to read that.
17 (Exhibit R-7, website post, marked
18 for identification.)
19 A. I don't know who posted this.
20 Q. Does this refresh your recollection
21 about what the name of the luau was at Skydive
22 Long Island?
23 A. No.
24 Q. All right. Well, the title of the
25 post is "Skydive Long Island, Get Laid Luau,"

73

1 MAYNARD
2 do you see that?
3 A. Uh-huh.
4 Q. Was that the name of the party?
5 A. I did not give the party a name and
6 they are referring to a lei that you wear
7 around your neck.
8 Q. Well, it appears that he hasn't
9 spelled --
10 A. I see that.
11 Q. He hasn't spelled it right. It's
12 referring to -- he's referring to a lei but he
13 didn't spell it right; correct?
14 MR. ZABELL: I'm going to advise
15 you that you need not make the assumption
16 that counselor made that there was a man
17 that wrote this e-mail and you may answer
18 the question.
19 A. Okay.
20 Q. The person who wrote this -- well,
21 withdrawn.
22 Do you know Jordan Miles?
23 A. Jordan is one of my employees.
24 Q. Is he a good employee?
25 A. Yes.

75

1 MAYNARD
2 to fire him?
3 A. I don't know.
4 MR. ZABELL: Objection, asked and
5 answered.
6 Q. Why might you fire him?
7 MR. ZABELL: Objection.
8 You may answer.
9 A. I would have to think about it.
10 Q. He's a good -- he's a good
11 employee, isn't it?
12 MR. ZABELL: Objection, asked and
13 answered. You can answer it again.
14 A. Yes.
15 Q. Does it seem like something that
16 you would fire someone for?
17 MR. ZABELL: Objection to the form
18 of the question.
19 You may answer.
20 A. I'm not sure.
21 Q. Have you fired people in the past
22 other than Don?
23 A. I have let some ground crew people
24 go.
25 Q. Who?

74

1 MAYNARD
2 Q. All right. If he wrote, "You
3 pulled your pork with us now come and get laid
4 at Skydive Long Island luau on dropszone.com,"
5 are you going to fire him?
6 A. Am I going to fire him now?
7 Q. Yeah.
8 A. I'm not sure. I'm going to go talk
9 to him.
10 Q. Why would you fire him for posting
11 that?
12 MR. ZABELL: Objection.
13 Q. Why might you fire him? You said
14 you're not sure.
15 MR. ZABELL: Objection to the
16 multiple questions. If you'd like to
17 withdraw any of them, you may.
18 If you like, you may pick one of
19 them and provide an answer to it.
20 A. I will talk to him.
21 Q. And what are you going to say when
22 you talk to him?
23 A. I will find out if he actually said
24 this or posted this.
25 Q. And if he says yes, are you going

76

1 MAYNARD
2 A. I don't remember the names. It was
3 a while ago.
4 Q. Any other instructors?
5 MR. ZABELL: Objection to the form
6 of the question.
7 You may answer.
8 A. I don't remember.
9 Q. You don't remember anyone that you
10 fired over how many years? You can't remember
11 a single instructor that you fired?
12 MR. ANTOLLINO: Objection to the
13 multiple questions posed.
14 You may pick a question and answer
15 it.
16 A. No.
17 Q. What about Willie?
18 A. What about Willie?
19 Q. Did you fire Willie?
20 A. No.
21 Q. What about Ben Lowe?
22 A. No.
23 Q. You didn't fire Ben Lowe?
24 A. No.
25 Q. What about Alex Allen?

77

1 MAYNARD

2 A. Yes.

3 Q. Okay. He was an instructor?

4 A. Yes.

5 Q. Why did you fire Alex Allen?

6 A. Because Alex Allen put his nose in

7 the business where it was not -- it did not

8 belong, questioning me about what I was doing

9 with another video guy and then he went on

10 videotape and gave me the finger and he was

11 fired.

12 Q. What do you mean he was questioning

13 you with what you were doing with another video

14 guy. Did he need that video guy on a jump or

15 something?

16 A. No.

17 Q. Explain it -- explain what his

18 problem was.

19 A. His problem was that he was trying

20 to tell me how to run my business. He was -- I

21 was on my way home and he called me up and

22 wanted to know why this guy was doing a video

23 and somebody else wasn't.

24 Q. When was that?

25 A. I think it was two years ago.

79

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 You may answer.

4 A. He was fired for putting himself in

5 the place of the business where he had no place

6 being.

7 Q. Did you ever fire Jerry Hannon?

8 A. Yes, I did.

9 Q. And Jerry Hannon was an instructor?

10 A. Yes.

11 Q. Was he a good instructor?

12 MR. ZABELL: Objection to the form.

13 You may answer.

14 A. He was -- I believe he was a

15 videographer when he was fired.

16 Q. And why was he fired?

17 A. He got into an altercation with

18 another employee.

19 Q. What altercation?

20 A. They had words and they went in the

21 back and he punched him.

22 Q. Who was the employee he punched?

23 A. Duncan Shaw.

24 Q. Did Duncan Shaw require any medical

25 treatment?

78

1 MAYNARD

2 Q. Why did he want the other guy in

3 the video?

4 A. It was none of his business, so it

5 didn't matter why he wanted the other guy in

6 the video.

7 MR. ZABELL: Just answer the

8 question that's asked of you if you know

9 the answer.

10 Q. Can you answer?

11 A. He wanted the other guy in the

12 video because the person that I was putting in

13 the video was somebody new that needed some

14 more experience. Everybody had equal number of

15 jumps across the day and the only way someone

16 is going to get experience is to give them the

17 chance to get to jump.

18 Q. And that's why you decided to

19 assign the video guy where you assigned him?

20 A. Yes.

21 Q. And would you say Alex's giving you

22 the finger is what you made fire him?

23 A. No, that was the icing on the cake.

24 Q. Okay. So what -- so the real

25 reason was his questioning you?

80

1 MAYNARD

2 A. No.

3 Q. Was Duncan Shaw hurt?

4 A. Jerry hit him once.

5 Q. It was inappropriate at the

6 workplace?

7 A. Yes.

8 Q. But you eventually rehired Jerry

9 Hannon, didn't you?

10 A. Yes, I did.

11 Q. Why did you rehire him?

12 A. I rehired Jerry because he is a

13 good man. It was over a year that went by. He

14 was egged on, as I would put it, by Duncan.

15 Duncan called him out to come in the back and

16 Jerry loss his temperature -- I mean, his

17 temper.

18 Q. Okay. How did Duncan egg him on?

19 A. Duncan didn't like Jerry so there

20 was always a little pushing going on, saying

21 things and they didn't see eye-to-eye.

22 Q. Did you ever fire Duncan Shaw?

23 A. Duncan was suspended.

24 Q. Why was Duncan suspended?

25 A. Because he was the victim of

81

1 MAYNARD
 2 getting hit.
 3 Q. So there are lots of level of
 4 discipline that you can use at the workplace;
 5 correct?
 6 MR. ZABELL: Objection to the form.
 7 You may answer.
 8 A. Yes.
 9 Q. All right. Short of termination,
 10 you can suspend someone; correct?
 11 A. Right.
 12 MR. ZABELL: Objection to the form.
 13 You may answer.
 14 A. Yes.
 15 Q. And you can reprimand them?
 16 A. Yeah.
 17 MR. ZABELL: That's a statement to
 18 which no response is required.
 19 Q. Correct? Correct?
 20 A. Yes.
 21 Q. You can counsel them; correct?
 22 A. I don't know if "counsel" is the
 23 correct word.
 24 Q. Well, you can retrain them;
 25 correct?

83

1 MAYNARD
 2 MR. ZABELL: Objection to the form.
 3 Q. -- as the night goes on?
 4 MR. ZABELL: Objection to the
 5 multiple questions.
 6 A. I don't know what you mean by
 7 "lewd."
 8 Q. Well, do women take their shirts
 9 off?
 10 A. I never saw that.
 11 Q. All right. So you post -- you make
 12 postings on your Facebook pages, your two
 13 Skydive Long Island Facebook pages, yourself;
 14 correct?
 15 A. No, very rarely.
 16 Q. Very rarely, mostly it's Lauren?
 17 A. Yes.
 18 Q. But you do make some postings
 19 sometimes?
 20 A. I can't remember the last time I
 21 made a post.
 22 Q. Well, I have a few here. Did you
 23 make a posting about -- did you ever make a
 24 joke, what's grass -- what's green and has
 25 wheels?

82

1 MAYNARD
 2 A. Yes.
 3 Q. When these parties that occur at
 4 the drop zone there is alcohol involved;
 5 correct?
 6 A. Correct.
 7 Q. And some people use recreational
 8 drugs?
 9 A. No.
 10 Q. Are you aware of any of your sky
 11 divers who, over the course of 26 years, have
 12 used recreational drugs at the drop zone?
 13 A. I've seen it.
 14 Q. Okay. Who have you seen use
 15 recreational drugs at the drop zone?
 16 A. I'm talking years ago. I don't
 17 even remember. I don't condone any of that.
 18 Q. So you don't allow it to take place
 19 in the drop zone?
 20 A. No.
 21 Q. Do you know anything about Don
 22 Zarda using any illegal drugs?
 23 A. No.
 24 Q. Do these parties at the drop zone
 25 get a little lewd --

84

1 MAYNARD
 2 A. Not that I remember.
 3 Q. And the answer being, grass, I lied
 4 about the wheels? Does that ring a bell?
 5 A. No.
 6 Q. Are there videos of these parties
 7 that you have at the drop zone?
 8 A. A video of the party itself?
 9 Q. Yeah.
 10 A. You're talking about nighttime?
 11 Q. Yeah.
 12 A. Not that I know of.
 13 Q. What the practice of keeping videos
 14 of the tandem jumps? Who keeps them?
 15 A. I believe they're kept on a file
 16 server now or I know they used to be videotapes
 17 we keep.
 18 Q. When did you change from tape to
 19 file server?
 20 A. With the technology.
 21 Q. When was that?
 22 A. Just started last year at some
 23 point in time.
 24 Q. All right. And you keep the tapes
 25 as well, the ones from before the new

85

1 MAYNARD
2 technology?
3 A. That's how we did it before, yes.
4 Q. All right. And are there out takes
5 of video jumps that remain at the drop site?
6 A. What's kept at the drop zone is the
7 raw footage.
8 Q. So the raw footage is edited and
9 put into, like, a five-minute presentation for
10 the customer; correct?
11 A. Correct.
12 Q. And how long is the raw footage
13 itself?
14 A. I'm not a videographer. I would
15 guess maybe ten minutes. I'm not sure.
16 Q. Would it be fair to say there was
17 raw footage in the jumps that were recorded by
18 David Kengle and Rosana Orelana?
19 MR. ZABELL: Objection to the form.
20 A. Yes. Every video is done the same
21 so there's always -- there's raw footage and
22 then they convert it to a CD.
23 + MR. ANTOLLINO: Just make a note
24 I'll call for production and I'll follow
25 it up with a demand.

87

1 MAYNARD
2 MR. ZABELL: How many pages?
3 MR. ANTOLLINO: What did I say?
4 (Record read.)
5 MR. ANTOLLINO: Could you read the
6 question back?
7 MR. ZABELL: Please.
8 (Record read.)
9 A. Yes.
10 Q. All right. And those are currently
11 on the Facebook page for Skydive Long Island;
12 correct?
13 A. I don't know that.
14 Q. I see we have wifi, but we'll do it
15 later, but you have no reason to believe that
16 they're not there, do you?
17 MR. ZABELL: Objection to the form.
18 A. No, I don't. I know there's two
19 different Facebook pages and I think one is not
20 being maintained and I'm not sure.
21 Q. Well, if they are there, are you
22 going to take them down?
23 A. Yes.
24 Q. Why?
25 A. It's a practice that we try to keep

86

1 MAYNARD
2 MR. ZABELL: Please.
3 Q. Have you ever flown to video a jump
4 yourself?
5 MR. ZABELL: Objection to the form.
6 A. You mean as a videographer?
7 Q. Uh-huh.
8 A. No.
9 Q. There are lots of pictures of Don
10 on your -- one of your business Facebook pages;
11 is that right?
12 A. I don't know.
13 Q. Well, I'll show you what I've
14 marked as Exhibit 8?
15 (Exhibit R-8, photographs from
16 Facebook page, marked for
17 Identification.)
18 Q. I'm handing a one, two, three,
19 four, five, six, seven page document and I'd
20 like you to look at those and see if you
21 recognize Don on every single one of those
22 pages.
23 MR. ZABELL: Just wait until he
24 provides me with a copy.
25 A. (Reviewing.)

88

1 MAYNARD
2 anything that's out there from Skydive Long
3 Island to its current employees and I know
4 there's probably others.
5 Q. I'm going to show you what I've
6 marked as Exhibit 9. What is that?
7 A. That's a picture of Richie
8 Winstock.
9 Q. And what is he wearing?
10 A. A towel.
11 Q. Is he on his way to the shower?
12 A. Yes, or on the way back.
13 Q. Why did you think that it would be
14 appropriate to put a picture of Rich Winstock
15 with a towel around him on your business
16 Facebook page?
17 A. I did not do that.
18 Q. Do you think it's appropriate?
19 A. I'm not sure.
20 Q. It's a little personal, isn't it?
21 MR. ZABELL: Objection to the form.
22 A. That's an opinion.
23 Q. Well, what is your opinion? Is it
24 your opinion that it's a little personal or
25 not?

89

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You may answer.
4 A. It's not showing anything.
5 Q. Well, he has his shirt off;
6 correct?
7 A. Yes.
8 Q. All right. Do you like your
9 instructors to walk around the drop zone in
10 front of the customers with towels around them?
11 A. No, and this was at the end of the
12 day or very early in the morning when there was
13 nobody around.
14 Q. Okay. But it's on your Facebook
15 page; correct?
16 A. I guess so.
17 Q. All right. So would it be
18 appropriate -- I'm just asking you, would it be
19 appropriate for Rich to be walking around with
20 a towel around him in front of the customers?
21 A. No.
22 Q. Okay.
23 (Exhibit R-11, photograph, marked
24 for Identification.)
25 Q. I'm going to show you what I have

91

1 MAYNARD
2 "personal information"?
3 A. Certainly not that I'm dating
4 somebody. I mean, it's common -- it's common
5 knowledge.
6 Q. Okay. It also conveys the
7 impression that you're heterosexual; correct?
8 MR. ZABELL: Objection to the form.
9 A. Yes.
10 Q. Okay. And that's personal
11 information; correct?
12 A. Yes.
13 Q. Are there any escapades going on in
14 this picture?
15 MR. ZABELL: Objection to the form.
16 A. Escapades?
17 Q. Yeah, any escapades?
18 A. I had my picture taken. I don't
19 understand.
20 Q. I'm wondering if you believe that
21 there are any escapades going on in that
22 picture?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A. No.

90

1 MAYNARD
2 marked as Exhibit 12 and ask if you recognize
3 this. I'm sorry, is that Exhibit 12 or 11?
4 A. 11.
5 Q. Do you recognize this?
6 A. Yes.
7 Q. And that is a picture of you and
8 your current girlfriend; correct?
9 A. Yes.
10 Q. What is her name?
11 A. Barbara.
12 Q. What's her last name?
13 A. Schiano.
14 Q. So would you agree that you're
15 sharing to your Facebook followers your
16 relationship with Barbara Schiano?
17 A. I guess so.
18 Q. That's personal information, isn't
19 it?
20 A. It's my girlfriend.
21 Q. Okay. And that's personal
22 information; correct?
23 A. It depends on how one interprets
24 it.
25 Q. Well, what would you define as

92

1 MAYNARD
2 (Exhibit R-12, photograph, marked
3 for Identification.)
4 Q. Let me show you what I've marked as
5 Exhibit 12. And I'd ask you if you could
6 identify that.
7 A. That's a picture of myself and
8 Barbara after she made a jump and obviously I
9 did too.
10 Q. And you put that there; right?
11 A. Yes.
12 Q. Okay. And there are some comments
13 under the photo; isn't that correct?
14 A. Yes.
15 Q. And when did this occur?
16 A. Well, I would say in June.
17 Q. And this is on your business
18 Facebook page; correct?
19 A. Yes.
20 Q. All right. The very last comment
21 is a comment made by you; correct?
22 A. Yes.
23 Q. Can you read it for the record?
24 A. "Skydive Long Island: Thanks
25 everyone. Unfortunately my pathetic ex will

93

1 MAYNARD
2 not leave us alone and continues to try to
3 disrupt our lives by dancing as close as she
4 can to get to me at Dockers last Tuesday night.
5 It did not work. Barbara and I could not be
6 happier. As a matter of fact, this Wednesday,
7 June 29, 2011, will be the first of many
8 anniversaries we will share. That's the first
9 night we met and I have never been happier."
10 Q. All right. And in that post you
11 were talking about Joanne Maynard; correct?
12 A. Yes.
13 Q. And you referred to her as
14 pathetic; correct?
15 A. Yes.
16 Q. Because you believe she's pathetic?
17 A. Yes.
18 Q. And you said that she was trying to
19 make your life miserable; correct?
20 A. Correct.
21 Q. And one of the ways she was trying
22 to make your life miserable was by dancing too
23 close to you at Boxers?
24 A. Yes.
25 Q. What is Boxers?

95

1 MAYNARD
2 A. Absolutely.
3 Q. Why do you believe that?
4 A. Because Barbara and I were the only
5 two people out on the dance floor and she came
6 out by herself and got about two inches away
7 from me.
8 Q. She was dancing right next to you?
9 A. Right next to me, trying to evoke
10 whatever.
11 Q. Why did you feel a need to mention
12 this on your business Facebook page?
13 A. I just did.
14 Q. It's personal information, isn't
15 it?
16 A. Yes.
17 Q. All right. You put some of those
18 words in capitals, didn't you?
19 A. Yes.
20 Q. Why did you put some of those words
21 in capitals? Were you trying to emphasize
22 them?
23 A. Yes.
24 Q. All right. I believe you made a
25 mistake about the date there?

94

1 MAYNARD
2 A. Dockers is a bar.
3 Q. Dockers is a bar?
4 A. It's a restaurant.
5 Q. And did you just happen to show up
6 there coincidentally, both of you, or do you
7 think she was following you?
8 A. I think -- I know that that is
9 where Barbara and I would hang out and all of a
10 sudden Joanne started coming down there.
11 Q. Is it close to where Joanne lives?
12 A. It's probably ten miles away.
13 Q. And how far is it from where you
14 live?
15 A. Maybe seven.
16 Q. So it's relatively close to both of
17 you?
18 A. Yeah.
19 Q. And they have dancing?
20 A. Yes.
21 Q. And was Joanne with someone else?
22 A. She was with some friends.
23 Q. All right. And you believe that
24 she purposefully tried dancing too close to
25 you?

96

1 MAYNARD
2 A. Oh, right.
3 Q. You put 2001. It was really 2011
4 you should have put there; right?
5 A. It was actually 2010.
6 Q. So you met Barbara when? You met
7 her in 2010?
8 A. Correct.
9 Q. Did you meet her the same day you
10 fired Ray?
11 A. What?
12 Q. Did you meet her the same day you
13 fired Ray?
14 A. That I fired who?
15 Q. I'm sorry, withdrawn.
16 Did you meet her the same day you
17 fired Don?
18 A. No.
19 Q. There was a document I received --
20 you don't have to take this as truth, but do
21 you know of any reason why Barbara Schiano, is
22 that how you pronounce the name?
23 A. Yes.
24 Q. Was list -- would be listed as a
25 witness with information about this case?

97

1 MAYNARD
2 A. No.
3 Q. Did you ever learn that Barbara
4 Schiano was listed by your attorney on a
5 document as a person with discoverable
6 information in this case?
7 A. I might have heard something like
8 that.
9 Q. And did you discuss this with
10 Barbara?
11 A. Discussed what?
12 Q. Discussed her being listed as a
13 witness, with Barbara?
14 A. Yes, I might have.
15 Q. And what did you discuss with
16 Barbara about her being listed as a witness?
17 A. That I don't understand why she
18 would be because she doesn't know anything
19 about this.
20 Q. And so did she ask to be taken off
21 the list?
22 A. I don't remember.
23 Q. Do you have any -- do you know any
24 reason why she would have been listed as a
25 witness in this case?

99

1 MAYNARD
2 about Mrs. Maynard, that that did not work or
3 her dancing close to you at the -- at the
4 Docker -- is it Dockers?
5 A. Dockers.
6 Q. At Dockers. When you said that --
7 MR. ZABELL: How many questions are
8 you asking at once?
9 MR. ANTOLLINO: Please, please.
10 MR. ZABELL: Please what? I will
11 be more than happy to help you when you
12 say "please," but you have to identify
13 what question you need help with.
14 MR. ANTOLLINO: Be quiet. Remain
15 silent like you told me last week.
16 MR. ZABELL: Counselor, you will
17 keep a civil tongue in your mouth at this
18 deposition do you understand?
19 MR. ANTOLLINO: I am keeping a
20 civil tongue and I told you to remain
21 silent just like you told me last week.
22 MR. ZABELL: Okay. Form
23 appropriate questions and I will not
24 object to them and if you ask please,
25 tell me what you're asking please about.

98

1 MAYNARD
2 A. No, I do not.
3 Q. What have you discussed --
4 withdrawn.
5 What is an escapade?
6 A. What is a what?
7 Q. What is an escapade?
8 A. You go out somewhere and you have a
9 drink, if you have go out and have dinner, if
10 you have go to an event, if you go to a
11 football game.
12 Q. All of those are escapades?
13 A. Sure.
14 Q. It seems like --
15 A. It's a general term.
16 Q. -- it seems like there were some
17 escapades going on at Dockers then; correct?
18 A. Yeah.
19 Q. And it seems like in that earlier
20 exhibit where you're posing with Barbara,
21 you've got a drink in your hand, that there's
22 some escapades going on there; correct?
23 A. Well, I looked at that as a picture
24 being taken of us, so, yes.
25 Q. Okay. When you said in that post

100

1 MAYNARD
2 MR. ANTOLLINO: To remain silent.
3 Remember, the colloquy doesn't count to
4 the seven hours that I have for your
5 client. If you want to keep talking,
6 it's just stopping the clock.
7 MR. ZABELL: Counsel, ask
8 appropriate questions and I will not make
9 objections to your questions, if you're
10 capable.
11 Q. In the post -- there's no question
12 pending. I will withdraw whatever question or
13 questions were asked.
14 MR. ZABELL: Thank you.
15 Q. In your post you mentioned that
16 something did not work by Joanne getting close
17 to you on the dance floor at Dockers; correct?
18 A. Correct.
19 Q. What was it that did not work?
20 A. I didn't get upset and Barbara
21 didn't get upset and there was no scene.
22 Q. Has she tried -- has she --
23 withdrawn.
24 What other things has Joanne done
25 to make your life miserable?

101

1 MAYNARD
 2 + MR. ZABELL: Objection to the
 3 form. Counsel, I'm not going to allow
 4 this question because I believe you are
 5 attempting to harass my client.
 6 You need not answer that question.
 7 MR. ANTOLLINO: Well, I will say
 8 that I think that Mrs. Maynard's
 9 relationship to this case is relevant and
 10 I'm trying to explore what the judge
 11 suggested I do at the conference before
 12 we litigate your motion to strike the
 13 subpoena of Mrs. Maynard.
 14 I'm trying to explore that and if
 15 you're not going to allow me, that will
 16 give me additional grounds to depose
 17 Mrs. Maynard. So if you'd like to direct
 18 him not to answer, that's fine. I'll
 19 just point it out to the judge when I my
 20 application or we actually litigate your
 21 motion.
 22 Q. Were you on a reality show? Did
 23 you ever sign you up for a reality show?
 24 A. It never got there, no.
 25 Q. The name of the reality show that

103

1 MAYNARD
 2 married?
 3 A. Yes.
 4 Q. Why did you agree to allow them
 5 into your home?
 6 A. Joanne wanted to be on TV.
 7 Q. And you went along with it?
 8 A. Yes.
 9 Q. And there were things discussed
 10 between you and Joanne while they were filming
 11 you?
 12 A. Yes.
 13 Q. And they were only there for two
 14 hours?
 15 A. Yes.
 16 MR. ZABELL: Objection. That was a
 17 statement to which no response is
 18 required. And I'm reminding you,
 19 Mr. Antollino is not under oath. You,
 20 therefore, may treat everything that
 21 comes out of his mouth as suspect and you
 22 are under no obligation to believe it is
 23 accurate.
 24 Q. Why did you not get put on the
 25 show, do you know?

102

1 MAYNARD
 2 you agreed to participate in was The Marriage
 3 Ref; is that correct?
 4 A. Correct.
 5 Q. And in that agreement that you made
 6 with the company that produces The Marriage Ref
 7 you invited videographers and other people into
 8 your home; correct?
 9 A. They were the producers, yes.
 10 Q. Okay. You invited them into your
 11 home to -- you just met with the producers?
 12 A. No.
 13 MR. ZABELL: Objection to the form.
 14 You may answer.
 15 A. It was the whole -- the workings of
 16 what those people do, the video guys, the sound
 17 guys, the crew.
 18 Q. Okay. How long were they there
 19 for, how many days?
 20 A. They came to the house twice for an
 21 hour or two.
 22 Q. Okay. And they recorded you having
 23 discussions with Mrs. Maynard?
 24 A. Yes.
 25 Q. And this is while you were still

104

1 MAYNARD
 2 MR. ZABELL: Objection to the form.
 3 You may answer.
 4 A. They said we didn't make the final
 5 cut.
 6 Q. Did they say why?
 7 A. No.
 8 Q. So The Marriage Ref is a reality
 9 show. If you had made the final -- let me
 10 withdraw that question, let me withdraw that
 11 question and --
 12 MR. ZABELL: The one question or
 13 the three questions?
 14 MR. ANTOLLINO: Counsel, your
 15 comments and your derisive, insulting
 16 behavior is taking away from the time of
 17 the deposition. If you're going to
 18 complain about me having two questions,
 19 I'm going to withdraw the question. I
 20 don't want you laughing if I change
 21 questions and I am videotaping this
 22 because of you, because I want to get all
 23 of your comments and improper objections
 24 on the record.
 25 MR. ZABELL: Counsel, you asked

105

1 MAYNARD
 2 three questions and withdrew one of them.
 3 MR. ANTOLLINO: All right, but I
 4 withdraw -- I withdrew everything. All
 5 right.
 6 MR. ZABELL: Okay. As long as you
 7 clarify that you're withdrawing
 8 everything then I won't have to ask you
 9 to clarify that.
 10 Q. Did you see the show?
 11 MR. ZABELL: Objection to the form.
 12 You may answer.
 13 A. I have seen the show.
 14 Q. All right. And the show is
 15 essentially a husband and wife that have some
 16 issues; correct?
 17 MR. ZABELL: Objection to the form.
 18 A. Correct.
 19 MR. ZABELL: You may answer.
 20 Q. And they present their issues to a
 21 panel of celebrities; correct?
 22 MR. ZABELL: Objection to the form.
 23 You may answer.
 24 A. Correct.
 25 Q. And were you told who the

107

1 MAYNARD
 2 really -- that really stinks?
 3 MR. ZABELL: Objection to the form.
 4 You may answer.
 5 A. I've heard people say that.
 6 Q. Okay. Have you yourself ever said
 7 it?
 8 A. No.
 9 Q. Have you ever used the word
 10 "faggot"?
 11 A. No.
 12 Q. In your entire life you've never
 13 used the word "faggot"?
 14 A. Maybe I have when I was younger.
 15 Q. What age?
 16 A. I don't remember.
 17 Q. When did you stop using the word
 18 "faggot"?
 19 A. I don't remember.
 20 Q. Have you ever used the word
 21 "queen"?
 22 A. What?
 23 MR. ZABELL: Objection to the form.
 24 Q. "Queen"?
 25 A. No.

106

1 MAYNARD
 2 celebrities might be?
 3 A. No.
 4 Q. And the celebrities come up with a
 5 decision as to who's right; correct?
 6 A. Correct.
 7 Q. And you were willing to submit
 8 yourself to that circumstance?
 9 MR. ZABELL: Objection to the form.
 10 You may answer.
 11 A. Yes.
 12 Q. Have you ever used the word
 13 "gay" -- withdrawn.
 14 Do you know what the word
 15 "pejorative" means?
 16 A. The word what?
 17 Q. "Pejorative."
 18 A. No.
 19 Q. Have you ever used the word "gay"
 20 in a nasty sense?
 21 MR. ZABELL: Objection to the form.
 22 You may answer.
 23 A. No.
 24 Q. So have you ever heard anyone say,
 25 oh, that's really gay, to signify that that's

108

1 MAYNARD
 2 Q. You've never used the word "queen"
 3 at all, even when referring to the Queen of
 4 England?
 5 A. Yes.
 6 Q. But you've never used the word
 7 Queen in referring to a gay person?
 8 A. No.
 9 Q. Have you ever said anything
 10 derogatory about gay people?
 11 A. No.
 12 Q. Do you have any gay friends?
 13 A. Yes.
 14 Q. Who?
 15 A. Well, my sister was gay. She
 16 passed away.
 17 Q. She passed away. Who else?
 18 A. I don't remember names, you know.
 19 Not personally, I've known other people that
 20 were gay.
 21 Q. So really you don't have any
 22 friends that are gay right now?
 23 A. Not that I know of.
 24 Q. Tell me about your sister. When
 25 did she -- do you know what the phrase "coming

109

1 MAYNARD
2 out" means?
3 A. Yes.
4 Q. What does it mean?
5 A. I interpret that as when they
6 decided to go the other way, in the open, I
7 guess.
8 Q. So, did there come a point where --
9 what was your sister's name?
10 A. Mary Lou.
11 Q. When did she pass?
12 A. Last Mother's Day.
13 Q. I'm sorry. When did she come out
14 of the closet?
15 A. She was about 19 years old.
16 Q. So that was several years -- that
17 was many years ago. Was it the '60s?
18 A. Yes.
19 Q. And did that surprise you in any
20 way when she came out?
21 A. Yes.
22 Q. Did you ever tell her that you
23 wished she wasn't gay?
24 A. No.
25 Q. What was your parents' reaction to

111

1 MAYNARD
2 Q. Santine?
3 A. Yes.
4 Q. Is she deceased also?
5 A. Excuse me?
6 Q. Is she also deceased?
7 A. No.
8 Q. What's her last name?
9 A. Megneco.
10 Q. And where did they live?
11 A. They lived last in Holbrook, New
12 York.
13 Q. Holbrook?
14 A. Yes.
15 Q. Have you kept in contact with
16 Santine?
17 A. Yes.
18 Q. And have you talked to her about
19 this lawsuit?
20 A. No.
21 Q. Does she know about it, if you
22 know?
23 A. I don't think so.
24 Q. So, does Santine still live in
25 Holbrook?

110

1 MAYNARD
2 it?
3 A. They were surprised.
4 Q. Did they like it?
5 MR. ZABELL: Objection to the form.
6 You may answer.
7 A. I didn't ask them.
8 Q. Did they ever express an opinion?
9 A. Not to me.
10 Q. Did your sister ever tell you that
11 they had expressed an opinion about her being
12 gay?
13 A. No.
14 Q. Did she live openly as a gay woman
15 from the '60s to the date of her passing?
16 A. Yes.
17 Q. She had a partner?
18 A. One partner her whole life.
19 Q. She had one partner her whole life?
20 A. Yeah.
21 Q. And how did she introduce herself
22 to this partner? I'm sorry, how did she
23 introduce this partner? What was the partner's
24 name?
25 A. Santine.

112

1 MAYNARD
2 A. I believe she does, yes.
3 Q. Do you know -- do you remember her
4 address?
5 A. I should know this.
6 MR. ZABELL: You're under no
7 obligation to provide it and, in fact,
8 I'm going to advise you not to provide
9 it. If counsel wants it, he'll have to
10 make an application to the court to get
11 it.
12 MR. ANTOLLINO: I think she has
13 discoverable information.
14 Q. Are you unwilling to provide it?
15 MR. ZABELL: I've advised you not
16 to provide it.
17 Q. And, therefore, you're not going to
18 provide it; correct?
19 MR. ZABELL: I've advised him not
20 to provide it.
21 MR. ANTOLLINO: I just want --
22 MR. ZABELL: You need not ask him
23 anything further.
24 Q. Did your sister marry Santine?
25 A. No.

113

1 MAYNARD
2 Q. When Don was fired gay marriage
3 wasn't legal; is that correct?
4 A. I believe.
5 Q. Okay. You agree that gay
6 marriage --
7 MR. ZABELL: I'm going to object to
8 the form of that question. Are you
9 specifying a locale?
10 Q. In New York, in New York.
11 MR. ZABELL: Why don't you ask your
12 question again.
13 MR. ANTOLLINO: Fair enough.
14 Q. When Don was fired gay marriage was
15 not legal in New York; correct?
16 A. I guess.
17 Q. Okay. Do you know where it was
18 legal?
19 A. I know there were several states
20 that legalized it. I didn't follow it.
21 Q. Did you ever discuss it with your
22 sister?
23 A. No.
24 Q. Did you ever socialize with your
25 sister and her partner?

115

1 MAYNARD
2 what they do outside of my workplace. So if
3 someone else is gay and they haven't expressed
4 it, I don't know that. I don't ask that
5 question.
6 Q. Okay. I'm just asking you whether
7 you think being gay is an orientation or a
8 preference?
9 MR. ZABELL: Objection to the form.
10 You may answer, if you can.
11 A. I don't know.
12 Q. Do you think that gay people are
13 born that way?
14 MR. ZABELL: Objection to the form.
15 A. I don't have an opinion on that.
16 Q. Did your sister ever say that she
17 was born that way?
18 A. No.
19 Q. Did Santine ever say that she was
20 born that way?
21 A. No.
22 Q. So you believe that homosexuality
23 is a choice?
24 MR. ZABELL: Objection to the form.
25 If you can, you can answer.

114

1 MAYNARD
2 A. Yes.
3 Q. Have you ever been to a gay
4 establishment?
5 MR. ZABELL: Objection.
6 A. No.
7 MR. ZABELL: Objection to the form.
8 Q. Do you know what I mean by a gay
9 establishment, a gay bar, a gay restaurant?
10 A. Yes.
11 Q. It's probably pretty certain that
12 you've had gay customers; correct?
13 A. I would assume.
14 Q. Have you had any gay skydivers
15 other than Don?
16 MR. ZABELL: Objection to the form.
17 A. I don't ask anybody what their
18 preferences are in that. I'm not -- I don't
19 know.
20 Q. Do you think that it's a preference
21 or an orientation --
22 MR. ZABELL: Objection to the form.
23 Q. -- being gay?
24 MR. ZABELL: Objection to the form.
25 A. I don't know -- I don't ask people

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1 MAYNARD
2 A. I don't know if somebody is born
3 one way or they choose something else. I know
4 how I am and what someone else does, that's
5 in -- I don't know how they think or how
6 anybody does anything else.
7 Q. Did you choose -- you're
8 heterosexual, correct?
9 A. Yes, I am.
10 Q. Did you choose to be heterosexual
11 or were you just born that way?
12 A. I've always been heterosexual.
13 Q. So, therefore, it would be fair to
14 assume that you were born that way?
15 A. That's your assumption, I guess. I
16 don't know.
17 Q. Did you ever make a choice in your
18 life and say, you know what, I'm going to --
19 I'm going to date women rather than men?
20 A. I only dated women. I never
21 thought about dating a man.
22 Q. But it doesn't sound like it was a
23 choice, it was just natural; correct?
24 MR. ZABELL: Objection to the form
25 of that question.

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1 MAYNARD
2 If you can answer it, you may.
3 A. It's my choice, yes.
4 MR. ANTOLLINO: Could you read back
5 the question and the answer?
6 (Record read.)
7 Q. So you believe it's a choice?
8 MR. ZABELL: Objection.
9 Q. Or that it's natural, it just
10 happened naturally?
11 MR. ZABELL: Objection, asked and
12 answered.
13 You may answer it again if you can.
14 A. I don't know if I can answer that
15 question. There's probably some people that
16 it's a -- that's what -- I don't know. I don't
17 know.
18 Q. Okay. I want to show you what I
19 have marked as Exhibit 18.
20 (Exhibit R-17, e-mail, marked for
21 Identification.)
22 MR. ZABELL: 18 or 17?
23 MR. ANTOLLINO: I'm sorry, 17.
24 Q. I'd like you to read that to
25 yourself and let me know when you're done.

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1 MAYNARD
2 You may answer.
3 A. I don't know if he's a student or
4 if he's up -- a fun jumper.
5 Q. What are the different prices?
6 A. If you're a fun jumper and you have
7 your own gear, it's \$25 a jump at 13,5.
8 Student jumps are, I believe -- I think -- I'm
9 not sure of the price structure, 70, 75, 80.
10 Q. And video?
11 A. Most video is for tandems. If the
12 video is for tandem, it's 125. If you're
13 getting video as a student, I believe it's
14 about \$80.
15 Q. And if you're going on a tandem
16 jump, how much is that?
17 MR. ZABELL: Objection.
18 A. That's 125.
19 Q. But without the video, how much is
20 it?
21 MR. ZABELL: Objection.
22 A. A tandem jump?
23 Q. Yeah.
24 MR. ZABELL: Objection.
25 A. If you come out there by yourself

118

1 MAYNARD
2 MR. ZABELL: Please.
3 A. (Reviewing-)
4 You want me to read this and what?
5 Q. Just let me know when you're done
6 reading it.
7 A. Yeah.
8 Q. All right. This appears to be --
9 have you seen this before?
10 A. No.
11 MR. ZABELL: Objection to the form
12 of the multiple questions.
13 Q. Do you know Kevin Beisler?
14 MR. ZABELL: Objection to the form
15 of the multiple questions.
16 A. I do not know Kevin.
17 Q. Do you recognize him as someone
18 who's been to Skydive Long Island?
19 A. No.
20 Q. It says in the e-mail that he's
21 been there five times; correct?
22 A. Yes.
23 Q. And how much does he pay for each
24 jump if he goes on a student jump?
25 MR. ZABELL: Objection to the form.

120

1 MAYNARD
2 on a weekend it's 125, but there's also group
3 rates, weekday rates. There's many different
4 price structures.
5 Q. All right. So it looks like you've
6 lost a customer in Kevin Beisler, according to
7 this e-mail if it's true; is that correct?
8 MR. ZABELL: Objection to the
9 multiple questions.
10 You can pick one and answer.
11 Q. You can answer.
12 A. According to this, I guess we have.
13 Q. I'd like you to take a look at
14 Exhibit 18.
15 (Exhibit R-18, letter, marked for
16 Identification.)
17 Q. And read that and tell me when
18 you're done.
19 A. (Reviewing-)
20 I'm done.
21 Q. Have you read it?
22 A. I'm done.
23 Q. Have you seen this before?
24 A. No.
25 Q. Do you remember a time in 2010 when

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1 MAYNARD
2 a group of gay sky divers went to Skydive Long
3 Island?
4 A. No, I don't.
5 Q. All right. If there were a group
6 of 24 people, how much would you charge them if
7 they were going up in tandem instruction and
8 video, what would be the group rate for that?
9 And if you need a second to calculate that,
10 take as much time as you want.
11 A. We don't discount the video. The
12 group rate for 24 people -- it's over 20 people
13 they get, I believe, \$20 off each and either
14 two or three other people go for free. And if
15 they choose to take that amount and split it
16 between the whole group, they can also do that.
17 Q. All right, so let me just get my
18 numbers straight. The tandem price itself, I
19 just want to get this clear in my mind --
20 MR. ZABELL: So you've moved on to
21 a different question?
22 MR. ANTOLLINO: There's no question
23 pending before the witness. Is there a
24 question pending before the witness? You
25 want to continue colloquy, it's just

123

1 MAYNARD
2 weekend price is 225.
3 Q. Okay.
4 A. Do you want the whole breakdown?
5 Q. No. I want to take it
6 step-by-step. And the video would be an
7 additional 125?
8 A. Correct.
9 Q. Okay. And that's on a weekend or
10 is that the price for any time?
11 A. That's the price for video.
12 Q. Okay. So if 24 gay guys came out
13 or a group of 24 guys, whether they're gay or
14 not, came out, how much would you reduce the
15 225 to?
16 A. It would be reduced to -- if it's
17 over 20, I think it's either 20 or 25 dollars
18 off per person, so it's either 205 or 200.
19 Q. All right. So let's say it's 200.
20 A. And, in addition to that, they
21 would give two people for free.
22 Q. So if there were 24, two people
23 would go for free?
24 A. Right. A lot of times, the group
25 would take that amount of money and then the

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1 MAYNARD
2 adding to the seven hours.
3 MR. ZABELL: Are you asking madam
4 reporter if there was a question pending
5 before the witness before you asked the
6 other question? If you were, then you
7 should give her an opportunity to answer
8 you before you start yelling at me,
9 Counselor.
10 (Record read.)
11 MR. ANTOLLINO: So there was no
12 question pending, Counselor.
13 MR. ZABELL: If you read the
14 answer, you did ask him to follow-up on
15 his answer.
16 MR. ANTOLLINO: And that's what I'm
17 doing now. You want to continue to do
18 this, Counsel? It's just increasing the
19 time your client has to sit here.
20 Q. All right. Now, let me take it
21 step-by-step for my own clarification. Is it
22 true that a tandem price in itself without
23 video is between 199 and 225?
24 A. We never charged 199. 225 is a
25 person goes out by themselves on a weekend, the

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1 MAYNARD
2 whole group would whack it up and decide how
3 much it would be.
4 Q. But that's between them?
5 A. Correct.
6 Q. Okay. So if there are 24 gay guys
7 that are out there and just getting tandems, no
8 video, that's \$4,000 coming in to the drop
9 zone; correct?
10 A. If that's what you computed.
11 Q. All right. If you'd like to do the
12 computation yourself, but it sounds about
13 right; correct?
14 A. Uh-huh.
15 Q. All right. And if they also all --
16 all 24 gay guys got video, that would be -- I
17 can't do hand calculations anymore.
18 MR. ZABELL: I don't doubt that.
19 Q. That would be another \$3,000; is
20 that fair to say?
21 A. Yes.
22 Q. So if 24 gay guys go there and go
23 on tandems with video, that's bringing \$7,000
24 into your business; correct?
25 A. Correct.

125

1 MAYNARD
2 Q. And, according to this e-mail,
3 Scott Ryan is not going to bring his gay group
4 there anymore; correct?
5 A. According to the e-mail, you're
6 right.
7 Q. All right.
8 MR. ANTOLLINO: Do you want to take
9 the break now?
10 THE VIDEOGRAPHER: Whenever you
11 want. We have four minutes left.
12 Q. It says in this e-mail that the
13 instructors who went up in the tandems were
14 telling the gay guys about the gay skydiver.
15 Do you see that?
16 A. Yes.
17 Q. Was that inappropriate for them to
18 do?
19 A. I can't answer that. I don't know
20 who started what or who said what. I don't
21 even know -- I don't even know that --
22 Q. Well what --
23 A. -- if this is even true.
24 Q. We're just assuming that it's true.
25 A. Hypothetically.

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1 MAYNARD
2 A F T E R N O O N S E S S I O N
3 (Time noted: 1:03 p.m.)
4 R A Y M O N D M A Y N A R D, resumed and
5 testified as follows:
6 CONTINUED EXAMINATION
7 BY MR. ANTOLLINO:
8 THE VIDEOGRAPHER: This is tape
9 three of the deposition of Raymond
10 Maynard, we are now on the record at 1:03
11 p.m.
12 Q. So, that we were looking earlier at
13 Exhibits 17 and 18 and it appears on its face
14 that there are some gay people who will not go
15 back to Skydive Long Island because of what
16 happened to Don?
17 MR. ZABELL: Objection.
18 Q. It appears on its face; correct?
19 MR. ZABELL: Objection.
20 Q. Is that correct? That's what these
21 e-mails say basically.
22 MR. ZABELL: No, they don't.
23 A. They say they won't be going back
24 there any time soon.
25 Q. And the other one says --

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1 MAYNARD
2 MR. ZABELL: You're under no
3 obligation to assume it's true,
4 Mr. Maynard.
5 Q. We're assuming it's true and if
6 your skydivers mentioned Don's sexuality, was
7 that inappropriate?
8 MR. ZABELL: Objection to the form.
9 A. It would depend on what's being
10 said.
11 Q. It's personal information, isn't
12 it?
13 A. I guess so.
14 MR. ZABELL: Objection to the form.
15 You may answer.
16 MR. ANTOLLINO: You got the answer?
17 Q. If someone told these jumpers that
18 Don was gay, are you going to fire any of them?
19 A. No.
20 MR. ANTOLLINO: All right. Good
21 break.
22 THE VIDEOGRAPHER: We are now off
23 the record at 12:27 p.m.
24 (Luncheon recess taken at 12:27 p.m.)
25

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1 MAYNARD
2 A. "Sorry to hear about this."
3 Q. Well, what does it say about
4 returning?
5 A. It doesn't say anything.
6 Q. You're right. How do you feel
7 about the guy who won't return?
8 MR. ZABELL: Objection to the form.
9 Q. How do you feel about that? How to
10 you feel that he won't come back soon? Do you
11 want him to come back soon?
12 MR. ZABELL: Objection to the form
13 of the multiple questions asked.
14 You may pick any one of those
15 questions asked and provide an answer to
16 one of them.
17 A. I'm in business and I have
18 thousands of people come through my place every
19 year. You can't have everybody happy and you
20 can't have everybody return. For whatever
21 reason it is, I don't know -- I don't know if
22 any of this is true. So how do I feel about
23 somebody not coming back? We'd like everybody
24 to come back if possible.
25 Q. He's a paying customer, this guy.

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1 MAYNARD
2 A. Yup.
3 Q. You didn't give him a free jump?
4 A. No.
5 MR. ZABELL: Objection to the form
6 of the multiple questions.
7 MR. ANTOLLINO: He answered the
8 first question and I'm asking the second
9 one.
10 Q. You didn't give him a free jump,
11 did you?
12 MR. ZABELL: You may pick a
13 question and respond to it.
14 A. The question is?
15 Q. You never gave him a free jump, did
16 you?
17 A. No.
18 Q. Is Jordan Miles a good tandem
19 instructor?
20 A. Yes, he is.
21 Q. And he has a military background, I
22 understand?
23 A. Yes, he does.
24 Q. All right. Has he ever revealed to
25 any customers that he is a veteran?

131

1 MAYNARD
2 A. It's personal information.
3 Q. What if it did ruin someone's day?
4 A. It would depend on what it is.
5 Q. Well, if he said -- if you got a
6 complaint, someone said, I don't want to hear
7 about war when I'm on a jump. I want to enjoy
8 the scenery. That ruined my jump. Does Jordan
9 get fired for saying that?
10 MR. ZABELL: That's an
11 objectionable question, but you can go
12 ahead and answer his objectionable
13 question.
14 A. No, he would not.
15 Q. Have you ever chatted about this
16 lawsuit on your personal Facebook page?
17 MR. ZABELL: Objection.
18 You may answer.
19 A. I don't remember if I have or not.
20 + MR. ANTOLLINO: All right. I'm
21 going to call for production of any
22 comments made about this lawsuit on his
23 Facebook page.
24 And I remind you of the --
25 MR. ZABELL: You may remind me of

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1 MAYNARD
2 A. That what?
3 Q. Has he ever revealed to any
4 customers that he is a veteran?
5 A. I don't know.
6 Q. Would you think it inappropriate
7 for him to do so?
8 A. No.
9 Q. What if he was, say, diving with
10 someone and someone complained that this guy
11 Jordan Miles told me that he was a vet and I
12 didn't want to hear that information.
13 What if somebody called you and
14 complained about that? Would you consider that
15 a legitimate complaint?
16 A. I'm an American and I would not
17 take that very well at all. Without the vets
18 we wouldn't be having freedom.
19 Q. But his military service is
20 personal information, isn't it?
21 MR. ZABELL: Objection to the form.
22 A. It's personal information that's
23 not upsetting people and ruining the day.
24 Q. But it's personal information;
25 correct?

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1 MAYNARD
2 absolutely nothing. Remain silent.
3 MR. ANTOLLINO: Remain silent? I
4 remain silent at the deposition where I'm
5 taking questions?
6 MR. ZABELL: One can only hope.
7 Q. Did you ever complain about Joanne
8 at the drop zone in front of other employees?
9 A. I probably had.
10 Q. Pretty often?
11 A. Yes.
12 Q. Did you ever complain about Joanne
13 within the earshot of other customers?
14 A. I don't think so.
15 Q. So you're not certain one way or
16 the other?
17 A. Probably not.
18 Q. But you're not certain?
19 A. No.
20 Q. But if you had, it would be sharing
21 personal information with customers; correct?
22 MR. ZABELL: Objection to form.
23 A. If they heard me, I wasn't speaking
24 with them, so I would not be sharing something
25 with them.

133

1 MAYNARD
2 Q. Did you ever hear any situation
3 where a big busted woman is caught on videotape
4 in free fall and instructors rushing to the
5 video room to watch what it looks like?
6 MR. ZABELL: Objection to the form.
7 You may answer.
8 A. Yes.
9 Q. And have you participated in that?
10 A. I have been informed that they had
11 a videotape similar to that.
12 Q. And what was your reaction to that?
13 A. I don't remember.
14 Q. Did you fire anyone as a result of
15 looking at someone in a lewd manner on a video?
16 MR. ZABELL: Objection to the form
17 of the question.
18 You may answer.
19 A. I wasn't looking at anybody in a
20 lewd manner.
21 Q. Did you fire anyone else for
22 looking at this particular passenger in a lewd
23 manner to see her big breasts in free fall?
24 MR. ZABELL: Objection to the form
25 of the multiple questions.

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1 MAYNARD
2 A. I believe my friend Kurt. I'm not
3 sure if he was working with us at the time or
4 not. He probably was. I met Don at another
5 drop zone. I believe he was working in Vermont
6 or New Hampshire and Kurt told Don about our
7 busy drop zone and we could use some help and I
8 encouraged him to come down and work for us.
9 Q. And what happened then?
10 MR. ZABELL: Objection to the form.
11 A. Don came to work for us.
12 Q. So you met Don in 2001 and what did
13 you know about Don at that time?
14 A. I knew he was an experienced
15 skydiver, an experienced tandem master.
16 Q. Anything else?
17 A. He told me he was gay.
18 Q. He told you he was gay. When did
19 he tell you he was gay?
20 A. When I first met him.
21 Q. What did he say to you?
22 A. I don't remember the exact words.
23 It came up in conversation just to let me know.
24 Q. What did you say in response?
25 A. "It doesn't matter to me."

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1 MAYNARD
2 You may pick any one of those
3 questions and provide an answer to it.
4 A. No.
5 Q. Did you get any complaints about
6 Don from any other employees at Skydive Long
7 Island?
8 MR. ZABELL: During any particular
9 time period?
10 MR. ANTOLLINO: At any time.
11 A. There were no formal complaints,
12 no.
13 Q. Were there any informal complaints?
14 A. No.
15 Q. Don was well liked at the drop
16 zone, is that a fair statement?
17 A. Yeah.
18 MR. ZABELL: Objection to the form.
19 You may answer.
20 A. Yes, he was.
21 Q. When did you meet Don?
22 A. When did I what?
23 Q. When did you first meet Don?
24 A. In 2001.
25 Q. Under what circumstances?

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1 MAYNARD
2 Q. Did you tell him not to reveal his
3 sexual orientation to anyone else?
4 A. No.
5 Q. Did you tell him not to reveal his
6 sexual orientation to any passengers?
7 A. All of my employees are told to
8 just report to their job. One is to make sure
9 that they are totally save from the time that
10 they get into the airplane and back to the
11 ground; that they be safe and the only
12 responsibility of the tandem master is to make
13 sure they have a good time and not do or say
14 anything that's going to upset them.
15 + MR. ANTOLLINO: Motion to strike
16 as nonresponsive.
17 MR. ZABELL: Your motion is denied,
18 Counsel, to the extent that I'm permitted
19 to do so.
20 Q. Did you specifically ask Don not to
21 reveal his sexual orientation to any customers,
22 yes or no?
23 A. No.
24 Q. How long did Don work for you in
25 2001?

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1 MAYNARD
2 A. It was several months, I believe.
3 Q. And was it discussed during those
4 several months that Don was gay among the
5 students at -- among the instructors at Skydive
6 Long Island?
7 A. Did you say was it discussed?
8 Q. Yeah.
9 A. It might have been.
10 Q. You don't remember one way or the
11 other?
12 A. It probably was.
13 Q. Was Don referred to as gay Don?
14 A. He referred to himself as gay Don.
15 Q. When you say "he referred to
16 himself as gay Don," when was that? When did
17 he refer to himself as gay Don?
18 A. In 2001.
19 Q. He said, I'm gay Don?
20 A. He would make jokes about it. He
21 was not always called gay Don. He was not
22 referred to as gay Don.
23 Q. Rich Winstock testified that, and
24 you don't have to accept this as true, that he
25 was introduced to Don by another person as gay

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1 MAYNARD
2 A. Because he was carrying on about
3 his after-hours activities and they didn't want
4 to hear it.
5 Q. In 2001?
6 A. Yes.
7 Q. And there was some women who were
8 crying because of this?
9 A. Yes.
10 Q. And what did they look like?
11 A. I don't remember.
12 Q. Did it happen more than once?
13 MR. ZABELL: He testified there
14 were two women.
15 A. There were two incidents that I
16 remember.
17 Q. Okay. Did they happen on the same
18 day?
19 A. It wasn't the same day. It was
20 close proximity. I would say within a month,
21 maybe two weeks.
22 Q. And what was it that Don said that
23 made these women cry?
24 A. Him talking about being gay.
25 Q. Anything else?

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1 MAYNARD
2 Don. Do you believe that to be true?
3 A. It could be true. I don't know who
4 the person is.
5 Q. It could be true that other people
6 at the drop zone referred to Don as gay Don?
7 A. Very possible.
8 Q. You don't know where the phrase gay
9 Don originated, do you?
10 A. No.
11 Q. So you don't know if it originated
12 with Don or with someone else; correct?
13 A. Correct.
14 Q. Did there come a time in 2001 that
15 a passenger complained about Don?
16 A. There were several instances when
17 Don would be upset that he was taking the women
18 and the other guys were taking the guys and
19 there was more than one person that came down
20 upset about being told things by Don and there
21 was -- actually, I know of two women that were
22 almost in tears after their jump with Don. I
23 don't know their names. I don't know the date.
24 Q. And can you describe the
25 circumstance, why they were in tears?

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1 MAYNARD
2 A. No.
3 Q. All right. But, yet, even then you
4 didn't tell him not to tell customers that he's
5 gay; correct?
6 A. Say that one more time.
7 MR. ANTOLLINO: Could you read it
8 back?
9 MR. ZABELL: Please.
10 (Record read.)
11 A. I didn't tell him not to tell them.
12 Q. And you don't remember -- you don't
13 have any documentation whatsoever about these
14 complaints?
15 A. No, I don't.
16 Q. Do you have any record of any of
17 the passengers Don took on a flight in 2001?
18 A. No.
19 Q. Have you ever heard other
20 instructors ask to get women instead of men?
21 A. No.
22 Q. Have you ever heard instructors
23 or -- well, have you heard of instructors
24 agreeing to trade passengers?
25 A. I've heard of instructors agreeing

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1 MAYNARD
 2 to trade passengers?
 3 Q. Yes.
 4 A. No.
 5 Q. So, is the assignment of the
 6 instructor to the passenger something that is
 7 made by you and it's not something that can be
 8 changed by the instructors?
 9 A. The assignment is made through
 10 manifest. So as people come in and sign up,
 11 that's how it's supposed to go, 1 through 10,
 12 and then you get a list of instructors. And
 13 unless there's a circumstance of somebody
 14 being -- that has special needs, it should go
 15 down the list and it's just a random of who
 16 goes with who.
 17 Q. And, so, the randomness is never
 18 varied?
 19 A. If there's a special need there
 20 might be.
 21 Q. But for no other reason?
 22 A. There should not be.
 23 Q. There should not be, but does it
 24 ever happen?
 25 A. Not that I know of.

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1 MAYNARD
 2 for a while and then he left and came back.
 3 I'd have to look back.
 4 + MR. ANTOLLINO: Okay. I call for
 5 a production of the list of names of
 6 employees -- I'm putting this on the
 7 record.
 8 MR. ZABELL: It's denied.
 9 MR. ANTOLLINO: -- who were working
 10 in 2001.
 11 MR. ZABELL: Your request is
 12 denied.
 13 MR. ANTOLLINO: Well, we'll deal
 14 with it. I'll send you the letter and
 15 you'll put in your objection and we'll go
 16 to the judge.
 17 MR. ZABELL: But, just so you know,
 18 your request is denied.
 19 Q. Isn't it true that the only
 20 customer complaint in 2001 was a male who
 21 complained because Don did not do something
 22 that he considered unsafe and that the
 23 manufacturer of the rig considered unsafe?
 24 A. No.
 25 Q. If a passenger asks a customer to

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1 MAYNARD
 2 Q. Why would Don complain about having
 3 to take women?
 4 A. You'd have to ask him.
 5 Q. What did he say exactly about
 6 complaining about taking women?
 7 MR. ZABELL: Objection to the form.
 8 You may answer, if you can.
 9 A. He would outwardly say to the other
 10 people that the guys are always getting all the
 11 guys and I'm getting the women.
 12 Q. Did anyone else tell you this?
 13 A. No.
 14 Q. Do you remember anyone else who
 15 might have heard this?
 16 A. Not offhand.
 17 Q. Are there any people working at
 18 Skydive Long Island now that are currently
 19 working -- that -- now that were working in
 20 2001?
 21 A. Yes, I believe there are.
 22 Q. Who?
 23 A. I believe Brian Petretti was with
 24 us in 2001, Duncan Shaw. I'm not sure if
 25 Winstock was there or not. He worked for me

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1 MAYNARD
 2 do something that the manufacturer considers
 3 unsafe, is the instructor obligated to follow
 4 the customer's request or obligated to follow
 5 the manufacturer's request?
 6 MR. ZABELL: Objection to the form
 7 of the multiple questions.
 8 You may pick one and respond.
 9 A. No tandem instructor should do what
 10 a customer asked him to do if it's unsafe.
 11 Q. And so if a customer complains --
 12 what is a head down student tandem?
 13 A. A head down tandem is when you're
 14 in free fall and your head is falling first.
 15 Q. Would you agree with the statement
 16 that a head down student tandem is unnecessary
 17 and not in the best interest of giving the
 18 student an educational experience?
 19 A. Yes.
 20 Q. Okay. So if a passenger asked Don
 21 to do a head down student tandem and Don would
 22 not do it, and then later complained, that
 23 would not be a legitimate customer complaint,
 24 would it?
 25 MR. ZABELL: Objection to the form

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1 MAYNARD
2 of the question. You may answer.
3 A. It would not be a legitimate
4 complaint because he should not do that.
5 Q. What about a flip out of a plane?
6 A. Back flip, front flip?
7 Q. Start with front. Is that allowed?
8 A. Yes.
9 Q. How about a front flip?
10 MR. ZABELL: Objection, asked and
11 answered. You said "front" twice.
12 MR. ANTOLLINO: I'm sorry.
13 MR. ZABELL: I accept your apology.
14 Q. How about a back flip?
15 A. Yes.
16 Q. Do you know of any manuals or
17 safety regulations that suggest that back flips
18 and front flips are unsafe?
19 A. No, I do not.
20 Q. If Don was asking to do something
21 that would result in his license suspension by
22 a passenger, he was permitted to deny that
23 request; correct?
24 A. Correct.
25 Q. So these two girls allegedly

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1 MAYNARD
2 A. It's the United States Parachute
3 Association.
4 Q. Do they have a manual?
5 A. Yes, they do.
6 Q. Is it the standard manual followed
7 by the most reputable drop zones in the
8 country?
9 A. Yes.
10 Q. In between 2001 and 2009, did you
11 have any dealings with Don whatsoever?
12 A. Don had made several phone calls
13 during that time. He asked about coming back
14 and initially I told him no. He did visit the
15 drop zone, I think more than one time.
16 Q. And when was that?
17 A. I believe he was there in 2008 and
18 he might have been there one time before that.
19 I don't remember the date.
20 Q. And when were these several phone
21 calls?
22 A. I don't remember exactly when they
23 were.
24 Q. Were they before 2005?
25 A. I don't remember.

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1 MAYNARD
2 complained in tears and they happened shortly
3 one after another?
4 MR. ZABELL: Objection to the form
5 of the question and to the
6 characterization of the testimony.
7 You may answer.
8 Q. You can answer.
9 A. It was within a few weeks of each
10 other, yes.
11 Q. And so you fired Don after the
12 second one?
13 A. Yes.
14 Q. What did you say to Don when you
15 fired him?
16 A. I don't remember exactly what I
17 said to him.
18 Q. Did you think that Don was doing
19 anything unsafe as an instructor?
20 A. No.
21 Q. Can you think of any reason that
22 Don would prefer the male passengers rather
23 than the female passengers?
24 A. No.
25 Q. What is the USPA?

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1 MAYNARD
2 Q. So you would not be able to tell me
3 anywhere in between 2001 and 2009 when these
4 phone calls took place?
5 A. I don't remember the dates we had
6 the phone calls.
7 Q. You don't remember how many of them
8 there were?
9 A. There weren't many.
10 Q. What?
11 A. There were not many.
12 Q. Was it more than three?
13 A. I do not think so.
14 Q. Okay. And when -- it was 2008 that
15 Don visited the drop zone?
16 A. I believe that's when it was.
17 Q. All right. And when he visited the
18 drop zone, what did you say to him?
19 A. We talked. He made some jumps.
20 Q. So he was a paying customer --
21 A. Yes.
22 Q. -- at the time? And what did you
23 talk about?
24 A. We talked about him coming back to
25 work.

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1 MAYNARD
2 Q. And that was in 2008?
3 A. I believe so.
4 Q. Who brought it up?
5 A. Don did.
6 Q. And what did you say?
7 A. What did I say?
8 Q. Yeah.
9 A. I said that I believed that he was
10 a good instructor, he was a safe instructor.
11 He was a good guy and I would give him a
12 chance.
13 Q. Earlier you testified that you
14 initially said no. When was it that you said
15 no?
16 A. In one of the earlier phone calls.
17 Q. Why did you say no?
18 A. Because I just said no.
19 Q. But there must have been a reason
20 for it.
21 A. No reason.
22 Q. Did you need people at the time?
23 A. Excuse me?
24 Q. Did you need people at the time?
25 MR. ZABELL: Objection. During

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1 MAYNARD
2 MR. ZABELL: Objection to the form
3 "regular old jump."
4 Q. All right, that would not have
5 resulted in an injury?
6 MR. ZABELL: Are you withdrawing
7 the previous question or are you adding
8 on to the previous question? In either
9 event, I object to both.
10 Q. You can answer.
11 MR. ZABELL: If you know what he's
12 asking you.
13 A. Yeah, I'm not sure.
14 MR. ANTOLLINO: Could the court
15 reporter read it back without the
16 objection. If you want to stay here
17 forever and play this game, we will.
18 MR. ZABELL: No, we won't.
19 MR. ANTOLLINO: I've got seven
20 hours and your colloquy doesn't count
21 towards that.
22 MR. ZABELL: What about your
23 colloquy, Counsel?
24 (Record read.)
25 MR. ZABELL: Objection to the form.

150

1 MAYNARD
2 what time?
3 Q. During the time you said no.
4 A. I don't even remember what time of
5 the year it was that we talked.
6 Q. So you don't remember why you said
7 no?
8 A. No.
9 Q. It might have been because you
10 didn't have any openings?
11 A. Very possible.
12 Q. So you rehired Don in 2009 and
13 there came a time that he had an injury and
14 could not work for the rest of the season; is
15 that correct?
16 A. That's correct.
17 Q. Did you see the video of the jump
18 in which he suffered an injury?
19 A. I probably did, but I don't
20 remember it.
21 Q. Do you remember if he did anything
22 improper in that jump that caused his injury?
23 A. No.
24 Q. Did it, in fact, just look like a
25 regular old jump?

152

1 MAYNARD
2 You may answer.
3 A. It looked like a normal skydive.
4 Q. It did not look like Don did
5 anything negligent; correct?
6 A. No.
7 Q. He was carrying an overweight
8 passenger on that flight; is that correct?
9 MR. ZABELL: Objection to the form.
10 A. I don't know that.
11 Q. Do you pay your instructors extra
12 when they agree to exceed stated weight limits?
13 A. The posted weight, yes.
14 Q. What is the posted weight?
15 A. 225.
16 Q. And that includes what, that
17 includes just the passenger; right?
18 A. Right.
19 Q. So if the passenger weighs more
20 than 225, is the skydiver allowed to decline to
21 take the passenger?
22 A. Yes, absolutely.
23 Q. Was there an older instructor that
24 you used to have by the name of Willie?
25 A. Yes.

153

1 MAYNARD
2 Q. What's Willie's last name?
3 A. Tomares.
4 Q. And you fired Willie?
5 A. No.
6 Q. He's still working for you?
7 A. No. At the end of one season he
8 didn't come back.
9 Q. Do you know where Willie lives?
10 A. I believe Montana.
11 Q. Would you want him to come back?
12 A. I wouldn't say absolutely no. We'd
13 have to have a conversation about it.
14 Q. What problems did you have with
15 Willie Tomares?
16 A. Willie was just very unhappy a lot
17 of times.
18 Q. About what?
19 A. I never found that out.
20 Q. Did you pressure him to take the
21 overweight passengers?
22 A. No.
23 Q. If an instructor agrees to take an
24 overweight passenger, you pay the instructor
25 more; correct?

155

1 MAYNARD
2 is that correct?
3 A. I don't remember.
4 Q. He wasn't certain if he would be
5 returning that summer or not, correct, when he
6 went out on injury; correct?
7 A. Correct.
8 Q. In fact, you received an e-mail
9 from Don --
10 (Exhibit R-19, e-mail, marked for
11 Identification.)
12 Q. -- I hand you what I premarked as
13 Exhibit 19 -- shortly after the injury;
14 correct?
15 A. You want me to read it?
16 Q. That appears to be an e-mail that
17 Don sent to you after the injury?
18 A. Yes.
19 Q. And it indicates that he wants to
20 continue could have his job, he wants to get
21 better and get back to work; correct?
22 A. Yes.
23 Q. And there was no reason why he
24 could not return to work if his doctors cleared
25 him to work that summer; correct?

154

1 MAYNARD
2 A. Yes.
3 Q. Why is that?
4 A. To tell you the truth, I don't know
5 how that policy started, but the policy is in
6 place.
7 Q. Well, isn't it true that taking an
8 overweight passenger increases the risk for the
9 instructor?
10 A. No.
11 Q. Isn't it a harder job?
12 A. No.
13 Q. When Don was injured at work, he
14 did not -- the passenger was not injured in the
15 same tandem; correct?
16 A. Correct.
17 Q. Do you remember when that jump when
18 Don got injured was?
19 A. No.
20 Q. It was -- would it be fair to say
21 it was in either late June or early July in
22 2009?
23 A. Probably.
24 Q. Okay. Don didn't know how badly he
25 was injured when he hurt himself on that jump;

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1 MAYNARD
2 A. Correct.
3 Q. And if his doctors had cleared him
4 to work that summer, you would have allowed him
5 to continue to do jumps; correct?
6 A. Correct.
7 Q. All right. Now, you have mandatory
8 staff meetings at the drop zone; is that
9 correct?
10 A. Not really.
11 Q. I'll hand you what I've marked
12 collectively as Exhibit 25 -- I'm sorry,
13 Exhibit 20 and ask you if you recognize these.
14 (Exhibit R-20, three e-mails,
15 marked for Identification.)
16 Q. There's three e-mails here.
17 A. Okay.
18 Q. These are all e-mails about staff
19 meetings; correct?
20 A. Okay. Yes, they are.
21 Q. Okay. And it's sent from Skydive
22 Long Island with the e-mail address
23 funjumps@skydivelongisland.com; correct?
24 A. Correct.
25 Q. And that is your e-mail address;

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1 MAYNARD
2 correct?
3 A. Correct.
4 Q. All right. And it's sent to a
5 group, SDLI. It says "To SDLI"; correct?
6 A. Correct.
7 Q. And that is a shorthand name for a
8 bunch of e-mail addresses; correct?
9 A. Correct.
10 MR. ZABELL: Objection to form.
11 Q. And if Don was working in 2009 he,
12 was included among this SDLI group; correct?
13 A. Correct.
14 Q. And all of these e-mails refer to
15 staff meetings; correct?
16 A. Yes.
17 Q. And did you expect the instructors
18 to attend the staff meetings?
19 A. Yes.
20 Q. What types of things are discussed
21 at staff meetings?
22 A. The business of the upcoming day --
23 THE VIDEOGRAPHER: We are now off
24 the record. At 1:38 p.m.
25 (Recess taken.)

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1 MAYNARD
2 record?
3 A. "Just want to let you know we have
4 a busy weekend lined up with 120 on the books
5 for Saturday and almost 100 so far for Sunday.
6 Let's hope the weather cooperates. Also, we're
7 going to have a mandatory staff meeting this
8 Saturday at 7:30 a.m. See you then."
9 Q. And "mandatory staff meeting" is in
10 bold; correct?
11 A. Yes.
12 Q. So you wanted to make it clear that
13 it was mandatory; correct?
14 A. Yes.
15 Q. Don went to that meeting, did not?
16 A. I imagine so. I don't remember.
17 Q. Okay. Was that the first time you
18 saw Don after his injury?
19 A. I don't remember.
20 Q. Did Don show up -- well, when is --
21 do you remember the first time you saw Don
22 after his injury?
23 A. No, I don't.
24 Q. When you saw Don for the first time
25 after his injury he was wearing a pink cast;

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1 MAYNARD
2 THE VIDEOGRAPHER: We are now on
3 the record at 1:39 p.m.
4 MR. ANTOLLINO: Could you read it
5 back?
6 (Record read.)
7 A. The business of the upcoming day,
8 the amount of tandems we have. The amount of
9 videos we have. Just in general everything and
10 just try to lay the day out. If we hadn't been
11 busy for a while, we wanted to get people in
12 there early to make sure we can get everything
13 taken care of.
14 Q. Do the instructors or other people
15 that go to these staff meetings get paid to
16 attend the staff meeting?
17 A. No.
18 (Exhibit R-21, e-mail, marked for
19 Identification.)
20 Q. I'm going to show you what I've
21 marked as Exhibit 21 and there's a copy for you
22 and this appears to be an e-mail from you to
23 SDLI; correct?
24 A. Yes.
25 Q. And could you read that for the

160

1 MAYNARD
2 correct?
3 A. If you say so.
4 Q. Well, I'm asking you.
5 A. Well, I don't remember.
6 Q. Did -- is it not true that Don
7 showed up to this staff meeting with a pink
8 cast and you looked at the cast and derisively
9 said, "That's gay"?
10 A. I don't remember that.
11 Q. So are you denying that it happened
12 or you just don't remember whether it happened
13 or not?
14 A. I don't remember that.
15 Q. So you don't -- okay. Do you
16 remember Don appearing at the jump zone, the
17 drop zone, I should say, with his cast --
18 A. Yes, sir.
19 Q. -- after that meeting?
20 A. Yes, I do.
21 Q. You say anything to him about that?
22 A. Yes, yes, I did.
23 Q. What did you say?
24 A. That I didn't appreciate anybody
25 being at the drop zone in a cast and on

161

1 MAYNARD
2 crutches. The students are nervous enough and
3 if they see someone on crutches with a cast on,
4 it's not going to be very good for the
5 customers.
6 Q. Did you comment about the color of
7 his cast at that -- in that discussion?
8 A. I don't believe I did. It had
9 nothing to do with the color of the cast.
10 Q. Did you tell him to cover up his
11 foot so his pink toenails would not show?
12 A. No.
13 Q. Isn't it true that seeing skydivers
14 on crutches is very common at a drop zone?
15 A. No.
16 Q. Have you been to any drop zone
17 where -- other than yours where you've seen
18 someone on crutches?
19 A. Yes.
20 Q. Where?
21 A. I don't remember.
22 Q. You have employees who don't do
23 jumps who might break their legs; correct?
24 MR. ZABELL: Objection.
25 A. If I have employees that don't do

163

1 MAYNARD
2 Comp.
3 Q. Well, Workmen's Comp.
4 A. That's not true --
5 Q. They would only be on Workman's
6 Comp. --
7 A. If it happened on the job.
8 Q. If it happened to the job. Do you
9 know something with the Workers' Comp. System?
10 A. Do I know something about it?
11 Q. Yeah.
12 MR. ZABELL: Objection to the form.
13 A. Yes.
14 Q. All right. Don did not return to
15 work that summer; correct?
16 A. Correct.
17 Q. Eventually he applied for Workers'
18 Compensation; correct?
19 A. Yes.
20 Q. He received his Workers'
21 Compensation; correct?
22 A. Correct.
23 Q. Would you agree that Workers'
24 Compensation is the right of a worker who has
25 been injured on the job?

162

1 MAYNARD
2 jumps that might break legs?
3 Q. Yeah.
4 A. Yes.
5 Q. Okay.
6 A. Like, anybody could break their
7 leg.
8 Q. So Lauren Doesn't do any jumps,
9 does she?
10 A. She jumps.
11 Q. Okay. Well, what about the ladies
12 in the office, Lauren, Megan and Jesse?
13 A. Lauren is the only current jumper.
14 Q. All right. So the other two, if
15 they broke their legs, you wouldn't tell them
16 not to come in to work, with you?
17 A. I wouldn't want anybody, if
18 possible, to be there on crutches in a cast.
19 Q. So if those people -- if one of
20 Megan or Jesse broke her leg and was on
21 crutches, you would ask them to leave work?
22 A. Yes.
23 Q. Would you pay them?
24 MR. ZABELL: Objection.
25 A. She'd probably be on Workmen's

164

1 MAYNARD
2 A. Yes.
3 Q. What is Workers' Compensation?
4 A. What is Workmans' compensation?
5 Q. Yeah, what is it is?
6 A. It's a benefit if someone gets
7 injured on a job that they get paid while
8 they're out of work.
9 Q. You also know that workers are
10 protected against discrimination for filing
11 Workers' Compensation claims; correct?
12 A. Correct.
13 Q. And were you aware that if someone
14 who is fired is discriminated against for
15 filing a Workers' Compensation claim, they can
16 get reinstated back pay and attorneys' fees and
17 all sorts of things?
18 A. I guess so.
19 Q. All right. So you didn't
20 discriminate against Don in any way because he
21 filed a Workers' Compensation claim, did you?
22 A. No.
23 Q. People get injured on the drop zone
24 pretty regularly, would that be fair to say?
25 MR. ZABELL: Objection to the form.

165

1 MAYNARD
2 A. No.
3 Q. Well, it happens at your drop zone
4 at least once a year; correct?
5 A. Yes.
6 Q. It's part of the hazard of
7 skydiving; correct?
8 A. Correct.
9 Q. It is an inherently dangerous
10 activity; correct?
11 A. Correct.
12 Q. And it's not grounds for discipline
13 if you get injured; correct?
14 A. Correct.
15 Q. Now, you rehired Don for the 2007
16 season, right? I'm sorry, 2010 season;
17 correct?
18 A. Correct.
19 Q. Did you have any discussions with
20 him in between the end of the 2009 season and
21 the beginning of the 2010 season?
22 MR. ZABELL: Objection, you may
23 answer.
24 A. Yes.
25 Q. What was that?

167

1 MAYNARD
2 you verify this?
3 A. Don verified it to me.
4 Q. What did he say exactly? Well,
5 let's back up.
6 Who initiated this phone call in
7 which you learned that Don was doing work?
8 A. I imagine I did.
9 Q. Okay. And why did you make the
10 call?
11 A. I felt that if you're -- you got
12 injured in my place, you're collecting
13 Workmen's Comp. from the company that I am
14 paying into and you are now fraudulently
15 working somewhere else and making money, that
16 it's not right.
17 Q. All right. My question is,
18 however, who initiated the phone call in which
19 Don told you that he was working and making
20 money?
21 A. I don't remember who called who on
22 that one.
23 Q. So you said that Don told you that
24 he was making money at his own business?
25 A. Correct.

166

1 MAYNARD
2 A. One conversation I remember having
3 with him is that he was working other places,
4 he had his own business. He was making money
5 while he collected Workman's Comp. and
6 disability when he shouldn't have been.
7 Q. Do you know how much he was making?
8 A. Nope.
9 Q. How did you find this out?
10 A. He told me.
11 Q. Is it your belief that a person
12 who's getting Workers' Compensation is not
13 allowed to do any clerical job or something
14 that he's able to do to supplement the Workers'
15 Compensation funds?
16 A. My belief is that if you're out on
17 Workmen's Comp. you're not allowed to work
18 anywhere else and collect benefits. I may be
19 wrong, but that's my belief.
20 MR. ZABELL: You're not.
21 Q. So, when you called Don, Don told
22 you he was working?
23 A. Yes, he did, and he owns a
24 business.
25 Q. What did you say about -- how did

168

1 MAYNARD
2 Q. And you don't know who initiated
3 that conversation?
4 A. I imagine I initiated that part of
5 the conversation.
6 Q. Okay. Well, I'm talking about the
7 phone call. This was over the phone; correct?
8 A. Correct.
9 Q. You don't know --
10 MR. ANTOLLINO: Counsel, could you
11 not send e-mails or turn off the sound of
12 your computer. It's distracting.
13 Q. What was the purpose of the call?
14 Was the purpose of the call the Workers'
15 Compensation issue or something else?
16 A. I believe the purpose of the call
17 was talking about him coming back to work.
18 Q. And in this conversation he told
19 you that he was working?
20 A. It came up in conversation.
21 MR. ANTOLLINO: Counsel, I'm going
22 to ask you again to turn off the sound.
23 Q. And what did you say to Don about
24 that?
25 A. I told him I think it's wrong that

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1 MAYNARD
2 you're collecting Workmen's Comp. from my
3 company or from my insurance company while
4 you're making money and he asked me not to do
5 anything about it because he said it was just a
6 little bit to make sure his rent was paid and
7 this and that, and I still expressed to him
8 that I thought it was wrong.
9 Q. Did you make any notation about
10 this allegedly illegal activity?
11 A. Notation to who? No.
12 Q. Did you make any writings?
13 A. No.
14 Q. Did you mention it to anyone?
15 A. No, I don't think I did.
16 Q. Did you file a complaint with the
17 Workers' Compensation Board?
18 A. I'm not sure if I complained there
19 or not.
20 Q. Did you initiate a complaint?
21 A. I don't remember.
22 Q. Did you accuse Don of fraud?
23 A. I probably said that.
24 Q. Were you aware that the final
25 administrative judge law decision was in Don's

171

1 MAYNARD
2 Q. And, in fact, the final decision of
3 the Workers' Compensation board was in January
4 2011?
5 MR. ZABELL: Objection.
6 Q. Correct? I'm sorry, January 2010;
7 correct?
8 MR. ZABELL: Same objection.
9 A. I don't remember.
10 MR. ANTOLLINO: Counsel, I'm asking
11 you now for the fourth time to turn off
12 the sound. It is distracting. It's bad
13 enough that you're clicking away, but the
14 sound of sending and the dings is
15 distracting.
16 Do we need to call the court on
17 this?
18 MR. ZABELL: Counsel, remain silent
19 on the issue.
20 MR. ANTOLLINO: Are you going to
21 stop that or do we need to call the court
22 on this?
23 MR. ZABELL: You may do whatever it
24 is you feel the need to do. If you are
25 distracted by your own inability to

170

1 MAYNARD
2 favor against the assertion about him working
3 while collecting benefits?
4 MR. ZABELL: Objection to the form
5 of the question.
6 A. No.
7 MR. ZABELL: You may answer.
8 Q. Did you read the final decision of
9 the Workers' Compensation judge?
10 A. I don't think so.
11 Q. All right. You would have to
12 respect the final word from the Workers'
13 Compensation judge as to whether or not Don was
14 committing fraud; correct?
15 MR. ZABELL: Objection to the form
16 of the question to the misrepresentations
17 made by counsel and to the attitude in
18 which he's asking the questions.
19 To the extent that you can answer
20 the questions, you may.
21 A. I'm not sure what the question was.
22 MR. ANTOLLINO: Could you read it
23 back?
24 (Record read.)
25 A. Yes.

172

1 MAYNARD
2 perform this deposition, then you and
3 your client will have to suffer with your
4 distractions.
5 MR. ANTOLLINO: If it happens one
6 more time, I'm going to call the judge.
7 Okay. All right, let's call the judge.
8 Unless you're going to agree right now to
9 turn off the sound.
10 MR. ZABELL: I thought I did,
11 actually.
12 MR. ANTOLLINO: All right. Would
13 you try again? Why don't we take a
14 five-minute break. You decide -- you
15 figure out how to turn off the sound.
16 MR. ZABELL: If you would like to
17 take a five-minute break, then we can
18 take a five-minute break.
19 MR. ANTOLLINO: I would like you to
20 turn off the sound of your computer. It
21 is distracting and I have a right to have
22 you turn it off. There's a way for you
23 to do what you're doing without me having
24 to hear the dings and whistles of your
25 computer.

173

1 MAYNARD
2 Do you want to turn it off or
3 should we call the court to get a ruling
4 on this?
5 MR. ZABELL: Counsel, I thought I
6 shut it off. You can do whatever it is
7 you like and if you want to have a
8 tantrum and misrepresent facts, you are
9 free to do so.
10 In fact, if you want to take that
11 five minutes that you just suggested for
12 the sole purpose of having a tantrum and
13 showboating for your client, you may do
14 so, but do not expect my consent when you
15 do so.
16 MR. ANTOLLINO: I'm asking you to
17 turn off the sound on your computer. Are
18 you willing to do so or not?
19 MR. ZABELL: Counsel, as I've said
20 to you three times now, I believe I have.
21 MR. ANTOLLINO: All right. I have
22 heard several e-mails since -- or several
23 dings and whistles since you said you
24 thought you had. Would you do me the
25 courtesy of trying again because

175

1 MAYNARD
2 Maynard. We are now on the record at
3 2:02 p.m.
4 MR. ANTOLLINO: I'm sorry, I don't
5 have copies.
6 Q. But I'm going to show you what I've
7 marked as R-25.
8 (Exhibit R-25, page from the Sigma
9 tandem system owner's manual, marked for
10 Identification.)
11 MR. ANTOLLINO: Would you like to
12 take a look at it first, Counsel.
13 MR. ZABELL: I would. Do you want
14 to see if we can get copies made here?
15 MR. ANTOLLINO: I'm sure we can,
16 but we're just back on the record and
17 this is pretty simple so let's just
18 continue, if you don't mind.
19 MR. ZABELL: I do.
20 MR. ANTOLLINO: I'll get you copies
21 after we're off the record.
22 MR. ZABELL: When?
23 MR. ANTOLLINO: Because, I'd just
24 like to get --
25 MR. ZABELL: Not why. When?

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1 MAYNARD
2 obviously, you have not.
3 MR. ZABELL: You have heard no
4 whistles. You may have heard a ding and,
5 again, I believe I have turned it off. I
6 will endeavor again to turn off any sound
7 from the computer, but if you want to
8 showboat, grandstand and be petulant, you
9 may do so.
10 I strongly suggest you do it off
11 the record because all I'm doing now is
12 responding to your comments.
13 MR. ANTOLLINO: I don't want to
14 continue until you --
15 MR. ZABELL: So would you like to
16 go off the record for a moment?
17 MR. ANTOLLINO: Okay, let's go off
18 the record.
19 MR. ZABELL: There you go. Was
20 that so hard? Was that really so hard?
21 THE VIDEOGRAPHER: We're off the
22 record at 1:56 p.m.
23 (Recess taken.)
24 THE VIDEOGRAPHER: This is tape
25 four of the deposition of Raymond

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1 MAYNARD
2 MR. ANTOLLINO: After. Remind me
3 before you go.
4 MR. ZABELL: Why can't you -- I can
5 have this one? So your client said I can
6 have this one. Thank you.
7 MR. ANTOLLINO: I want a copy
8 before we go.
9 MR. ZABELL: Okay. Give me an
10 opportunity to read it. I have had an
11 opportunity to read it.
12 MR. ANTOLLINO: Thank you.
13 Q. The exhibit is now being handed to
14 the witness and I'm asking you, do you
15 recognize this?
16 A. Yes.
17 Q. It appears to be the page from the
18 Sigma tandem system owner's manual. Could you
19 read how many points of adjustment is on the
20 Sigma tandem rig?
21 A. Points of adjustment?
22 Q. Yeah.
23 A. You've got the shoulder-top
24 adjustment, the chest strap, the belt strap,
25 the main lift webs, diagonals, leg straps.

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1 MAYNARD
2 Q. Does it say how many there are in
3 total in this document? Maybe I can just show
4 you, point to you. If you look at the
5 paragraph that says, "The student harness was
6 designed," does it say how many points of
7 adjustment?
8 A. Twelve.
9 Q. Okay. So does this change your
10 testimony about how many points of adjustment
11 are on the Sigma tandem?
12 A. When you asked me that, I thought
13 you asked me points of attachment.
14 Q. Okay. I'm glad you made that
15 clarification. So, there are twelve points of
16 attachment --
17 A. No, there's four points of
18 attachment.
19 Q. Four points of attachment.
20 A. Right.
21 Q. Twelve points of adjustment.
22 A. Yes, correct.
23 Q. What is the difference between an
24 attachment and an adjustment?
25 A. An attachment is where the hardware

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1 MAYNARD
2 A. He was coming back to work for the
3 2010 season.
4 Q. Okay. And he worked between when
5 and when?
6 A. I don't remember the exact dates;
7 the beginning of the season until he got
8 hurt -- I mean, until he got fired.
9 Q. So before June 18, 2010, were there
10 any complaints about Don or his work?
11 A. What's June 18th?
12 Q. What?
13 A. What is June 18th?
14 Q. Well, did there come a time that
15 David Kengle -- when David Tengle (phonetic)
16 called you to make a complaint?
17 MR. ZABELL: Tengle or Kengle?
18 Q. Tengle --
19 A. Yes.
20 Q. -- called you to make a complaint
21 about Don? Yes?
22 A. Yes.
23 Q. Okay. And that was when, do you
24 remember?
25 A. I don't remember the exact time.

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1 MAYNARD
2 attaches to the rings on the tandem master and
3 on the -- on the side hooks and that's all
4 hardware, 5,000 pound test each.
5 Adjustments, obviously, are all the
6 different belts and harness points that can be
7 adjusted to the person's size.
8 Q. Okay. Would you agree with the
9 statement that there is no single right way to
10 fit every size or shape of the human body when
11 putting a passenger in that rig?
12 A. That there's no single way to do
13 it?
14 Q. Yeah, there's no single right way
15 to fit every size or shape of the human body
16 with that particular rig?
17 A. That's probably a fair statement.
18 Q. All right. The points of
19 adjustment have to totally surround and contain
20 the student's body comfortably; correct?
21 A. Correct.
22 Q. And safely?
23 A. Correct.
24 Q. So how did this discussion you had
25 with Don on the telephone end?

180

1 MAYNARD
2 Q. All right. Was it on or about June
3 21st or something like that, 2010?
4 A. I know it was on a Monday.
5 Q. Okay. Did it concern a jump that
6 happened on or about June 18, 2010?
7 A. Yes.
8 Q. All right. It was -- when you got
9 the call, it concerned a jump a few days
10 earlier; correct?
11 A. Correct.
12 Q. Okay. Who received the first call
13 from David Kengle?
14 A. The office.
15 Q. When you say "the office," what do
16 you mean?
17 A. He called in to Skydive Long
18 Island. One of the girls in the office
19 answered the phone.
20 Q. Who answered the phone?
21 A. It would be a guess. It could have
22 been Lauren, it could have been Megan. I was
23 not available right then at that point.
24 Q. What did Lauren or Megan tell you
25 that the call was about?

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1 MAYNARD
2 A. That there was a customer complaint
3 and they gave me a name and a phone number.
4 Q. Did they say anything else, either
5 Lauren or Megan, about this customer complaint?
6 A. Not that I remember.
7 Q. Okay. And, so, how soon after you
8 got this customer complaint did you call the
9 number on the message pad?
10 A. When I was given the message pad, I
11 went into the office and called him.
12 Q. All right. And did he answer?
13 A. Yes, he did.
14 Q. Okay. And what was said in that
15 conversation?
16 A. He told me who he was, when him and
17 his girlfriend or fiancée was out on the Friday
18 before and his disappointment in the company
19 with the tandem master, who was representing
20 Skydive Long Island, did.
21 He said that his - it was either
22 his girlfriend or his fiancée, I'm not sure
23 which, it was her birthday. It was a present
24 to her for her birthday and that her birthday
25 was completely ruined and he would never

183

1 MAYNARD
2 said, "This call is not about me getting my
3 money back. I don't care about getting my
4 money back. I don't want my money back. I
5 just want to let you know how disappointed we
6 are in your company and what happened with my
7 girlfriend and how upset she was that she had
8 to be listening to these things from Don."
9 Q. And these things were --
10 A. Talking about -- about him being
11 gay and that subject matter.
12 Q. Well, was there -- the subject
13 matter of being gay?
14 A. Correct.
15 Q. And I believe that as -- in
16 response to this complaint, you met with Don
17 shortly thereafter; correct?
18 A. Yes, I did.
19 Q. Okay. And you asked him about the
20 jump; correct?
21 A. Yes.
22 Q. And it was three days after the
23 jump; correct?
24 A. Yes.
25 Q. All right. And he didn't remember

182

1 MAYNARD
2 recommend our company to anybody in the future.
3 And then he went on to tell me that -- what
4 transpired with Don and her.
5 Q. Well, what did he say?
6 A. He said that he had his hands on
7 her hips and made her feel very uncomfortable.
8 He put his head on her shoulder and was
9 whispering to her. And he kept reinforcing
10 that, "Don't worry that I'm so close because
11 I'm gay," and that made her feel very
12 uncomfortable.
13 And there was more -- according to
14 the gentleman, there was more of that
15 conversation when they were under canopy that
16 don't worry we're so close. You have nothing
17 to worry about, I'm gay.
18 Q. Anything else?
19 A. No.
20 Q. Okay. And what did you do in
21 response to that call?
22 A. At first I offered to give them a
23 free jump. They said they wanted nothing to do
24 with doing another skydive. I then offered to
25 give them their money back. He told me -- he

184

1 MAYNARD
2 the jump; correct?
3 A. I don't remember if he said he
4 didn't remember the jump.
5 Q. He also asked to see the video;
6 correct?
7 A. Yes, he might have.
8 Q. And you didn't allow him to see the
9 video, did you?
10 A. No, I did not.
11 Q. Wouldn't it have been easier for
12 Don to respond to the complaint if you had
13 shown him the video and refreshed his memory
14 about what happened?
15 MR. ZABELL: Objection.
16 You may answer.
17 A. No.
18 Q. Why not?
19 A. Because most of the skydive was
20 under canopy and the talk under canopy was no
21 one else is around to hear. It wouldn't be
22 there.
23 Q. Well, Don didn't remember who the
24 customer was; correct?
25 A. Well, but that's what he said.

185

1 MAYNARD
2 Q. Well, would it be a fair assumption
3 to make that if someone complained to you 30
4 jumps ago that he might not remember who was
5 complaining?
6 A. He might not.
7 Q. Okay. So wouldn't showing Don the
8 video have allowed him to remember who was
9 making this complaint?
10 A. It might have.
11 Q. Okay. Now, you didn't even speak
12 to Rosana Orelana, did you?
13 A. No, I did not.
14 Q. So, for all you know, David Kengle
15 could have been lying about the whole thing?
16 A. There was no reason to lie. This
17 man didn't want anything but to express his
18 disappointment of what happened to his fiancée
19 or girlfriend from things that were said that
20 made her very uncomfortable and it made my
21 customer very unhappy.
22 Q. You gave him his money back though?
23 A. Yes, I did.
24 Q. You sent him a check and he cashed
25 it?

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1 MAYNARD
2 A. He said he didn't want his money.
3 He said, "This is not about the money."
4 Q. But, yet, he cashed the check
5 anyway?
6 A. Well, that's -- that has -- you
7 know, that has nothing to do with me.
8 Q. All right. Now, you met with Don
9 shortly after speaking to Mr. Kengle; correct?
10 A. Correct.
11 Q. And how soon after?
12 A. I don't remember exactly, probably
13 fairly soon.
14 Q. Within an hour?
15 A. Probably, if Don was there.
16 Q. Okay. And what did you say to Don
17 at that time?
18 A. I told him about the customer's
19 complaint. I was very upset. I reminded him
20 that when he was hired back that if there was
21 any incidents whatsoever he would have to leave
22 and I suspended him for a week.
23 Q. What do you mean by this; that you
24 reminded him when you hired him back that if
25 there were any incidents whatsoever he would

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1 MAYNARD
2 A. Yes, he did.
3 Q. He didn't have to do that, did he?
4 A. No, he didn't have to.
5 Q. Did you know that he was an
6 unemployed waiter at the time?
7 MR. ZABELL: Objection.
8 A. No.
9 Q. So you're telling me that in this
10 conversation he didn't want his money back and
11 he insisted he didn't want his money back, but
12 yet he took his money back?
13 A. When I hung up the phone with him,
14 he said he did not want his money and I decided
15 to send it to him anyway.
16 Q. Did you include a cover letter?
17 A. I don't remember.
18 + MR. ANTOLLINO: I'm going to call
19 for production of the cover letter. I'll
20 follow it up.
21 Q. And did you say before the end of
22 this conversation that you would be sending him
23 a refund?
24 A. Yes, I did.
25 Q. And what did he say?

188

1 MAYNARD
2 have to leave, what does that mean?
3 MR. ZABELL: Objection.
4 A. If there was any complaints from
5 the customers of him talking about what he does
6 after work.
7 Q. You told Don this when?
8 A. Before he was hired back.
9 Q. When?
10 A. In 2009.
11 Q. But yet -- and so you suspended
12 him; correct?
13 A. Correct.
14 Q. And you also docked his pay;
15 correct?
16 A. Yes, I did.
17 Q. Did you feel you had the right to
18 do that?
19 A. It was an emotional moment. I
20 returned his pay to him in full.
21 Q. Were the customers complaining
22 about what Don -- what Don did after work? Don
23 was gay during work, wasn't he?
24 A. Excuse me?
25 MR. ZABELL: Objection.

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1 MAYNARD
2 Q. Withdrawn. Don is gay during work;
3 correct?
4 A. It has nothing to do with him being
5 gay.
6 Q. But Don is gay during work;
7 correct?
8 A. I believe so. You can ask him.
9 Q. Do you believe that Don is gay?
10 A. He told me he was gay.
11 Q. Okay. Do you believe that he's
12 gay?
13 A. It doesn't matter what I believe.
14 Q. You're here and you have to answer
15 that question. Do you believe that Don is gay?
16 A. Yes.
17 Q. So Don is gay at work and after
18 work; correct?
19 A. I guess.
20 Q. All right. So you suspended Don
21 for a week and you took away his pay and it was
22 an emotional reaction that you took away his
23 pay?
24 A. Correct.
25 Q. So you didn't felt -- after

191

1 MAYNARD
2 A. There's been one other occasion.
3 Q. The one you testified to?
4 A. Excuse me?
5 Q. What was the occasion when you
6 suspended someone?
7 A. This past summer I suspended
8 somebody.
9 Q. Who did you suspend?
10 A. Duncan Shaw.
11 Q. And that was the fighting incident?
12 A. No.
13 Q. What did you suspend him for?
14 A. He was sent home halfway through
15 the day for flying into a wind blade, which
16 everyone was told not to do, in front of TV
17 cameras that were rolling for something that
18 was going on at the airport.
19 Q. So, you basically did not allow him
20 to work for half a day?
21 A. Correct.
22 Q. And he -- you gave him a specific
23 direction not to do something and he defied
24 your instruction; correct?
25 A. Correct.

190

1 MAYNARD
2 reflection that you didn't have the right to do
3 that?
4 A. Correct.
5 Q. If you steel something from someone
6 and give it back later, does it take away the
7 fact that you've stolen something from them?
8 MR. ZABELL: Objection.
9 A. I didn't steal anything.
10 Q. Well, is that your Blackberry
11 there?
12 A. Yeah.
13 Q. Okay. If I take your Blackberry
14 and take it home and return it to you in a
15 week, is that legal?
16 MR. ZABELL: I could tell you,
17 Counselor, that I wouldn't let that
18 happen.
19 Q. If I do that, is it legal?
20 A. No.
21 Q. Okay. Had you ever docked
22 someone's pay before?
23 A. No, I do not think I did.
24 Q. The issue as to suspension, how
25 many times have you suspended other skydivers?

192

1 MAYNARD
2 Q. And all he got was half a day?
3 A. He just hit a wind blade.
4 Q. He just -- did he do this
5 deliberately or was it a mistake?
6 A. I believe he did it deliberately.
7 Q. Why do you think he did it
8 deliberately?
9 A. Because I saw it.
10 Q. And why did you tell him not to do
11 it?
12 A. Because they're expensive and they
13 break and it's not his property.
14 Q. And so how much did this cost?
15 MR. ZABELL: Objection to the form.
16 A. It cost between 350 and \$500.
17 Q. How much does the -- does Altitude
18 Express make in a year?
19 A. How much does Altitude Express
20 make?
21 Q. Yeah, gross and net.
22 MR. ZABELL: Objection to the
23 compound nature of the question.
24 Q. All right. We'll start with gross.
25 MR. ZABELL: Objection. It's not a

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1 MAYNARD
2 question. Are you withdrawing your
3 previous questions and attempting to ask
4 a new question?
5 MR. ANTOLLINO: Yes, I am. I'll do
6 it again. We all know what we're talking
7 about here, but if you want me to be --
8 MR. ZABELL: Appropriate.
9 MR. ANTOLLINO: Perfectly correct,
10 I will.
11 MR. ZABELL: Perfect, no, just
12 appropriate.
13 Q. What is the gross that you take in
14 at Altitude Express on an annual basis?
15 A. Last year?
16 Q. Yes.
17 A. Last year was 2.4 or 2.5 million.
18 Q. And how much of that was profit?
19 A. I don't recall exactly.
20 Q. Approximately?
21 A. The profit was less than 200,000.
22 Q. Are you the sole owner of Altitude
23 Express?
24 A. Yes.
25 Q. So those were all of your profits,

195

1 MAYNARD
2 than what that was. Like I said, last year was
3 a banner year.
4 Q. So is it usually in the range of
5 100,000, 150,000?
6 A. 140, 150.
7 Q. And what is the net worth of the
8 company?
9 MR. ZABELL: Objection.
10 A. It depends on who you talk to. I
11 really don't know.
12 Q. If you gave it a guesstimate.
13 A. Probably a million and change.
14 Q. And what is your personal net
15 worth?
16 MR. ZABELL: Objection.
17 A. I guess that would be the same.
18 Q. All right. Now, after you met with
19 Don, was there anything else that you discussed
20 with him in the first suspension meeting that
21 we haven't covered already?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. I don't remember.
25 Q. How long did it take?

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1 MAYNARD
2 yes?
3 A. Correct.
4 Q. And is that average for a year?
5 A. No.
6 THE VIDEOGRAPHER: We are now off
7 the record at 2:21 p.m.
8 (Recess taken.)
9 THE VIDEOGRAPHER: We are now on
10 the record at 2:27 p.m.
11 Q. All right, your profit was less
12 than \$200,000 last year and you said that that
13 was not typical?
14 MR. ZABELL: Objection.
15 Q. Is that correct?
16 MR. ZABELL: Objection.
17 You can answer.
18 A. Last year was a banner year
19 weather-wise. Skydiving, what the business
20 does is really based on how much we can jump
21 and last year was the best year we've ever had.
22 Q. And what is it usually, what is
23 your profit usually?
24 MR. ZABELL: Objection to the form.
25 A. I don't know exactly. It was less

196

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 How long did what take?
4 MR. ANTOLLINO: The suspension
5 meeting.
6 A. Twenty minutes, a half an hour.
7 I'm not sure.
8 Q. And what did you discuss in this 20
9 minutes or 30 minutes?
10 A. We discussed the complaint from the
11 gentleman about his girlfriend and that he made
12 his girlfriend feel very uncomfortable with the
13 way he was touching her on her legs, the way he
14 was putting his head on her shoulder and just
15 the girl was very, very uncomfortable for the
16 entire jump and she even thought that maybe he
17 was hitting on her and he was covering up this
18 stuff by telling her that he was gay.
19 Q. Did you think that Don was hitting
20 on her?
21 A. It doesn't matter what I think.
22 Q. I'm asking you if you think that
23 Don was hitting on her?
24 A. I couldn't say if I thought he was
25 or not.

197

1 MAYNARD
2 Q. You knew Don was gay at the time;
3 correct?
4 A. He told me he was gay.
5 Q. Do you think it logical that he was
6 hitting on her?
7 A. I don't know anything about that
8 of -- of when someone is whatever, because I
9 don't know what someone does. I don't know
10 what anybody else does, whether they're
11 heterosexual, if they're gay or they're
12 bisexual other whatever. I don't know what
13 they're going to do a day-to-day basis, whether
14 they're going to change their mind about
15 something. So I can't say what I -- my thought
16 means nothing. I don't know what anybody else
17 is going to do.
18 Q. Well, didn't you have an obligation
19 to inquire as to whether or not he was hitting
20 on her?
21 MR. ZABELL: Objection, obligation
22 to what?
23 Q. You can answer.
24 MR. ZABELL: Obligation to what?
25 A. I was told.

199

1 MAYNARD
2 Q. Other than Mr. Kengle's report, you
3 had no reason to believe that Ms. Orelana was
4 being hit on; correct?
5 A. Correct.
6 MR. ZABELL: Objection.
7 Q. You didn't speak to anyone who was
8 in the plane --
9 MR. ZABELL: Objection.
10 Q. -- correct?
11 MR. ZABELL: Objection. He already
12 told you he spoke to Don.
13 Q. Other than Don.
14 MR. ANTOLLINO: Thank you.
15 Q. Is that correct?
16 A. Correct.
17 Q. You didn't look at the video, did
18 you?
19 A. Yes, I did.
20 Q. You looked at the video
21 immediately?
22 A. I looked at the video that day.
23 Q. That day. Why didn't you show it
24 to Don?
25 A. I don't remember.

198

1 MAYNARD
2 Q. Did you have an obligation to
3 inquire as to whether or not Don was hitting on
4 her?
5 MR. ZABELL: Objection, obligation
6 to what?
7 A. I have an obligation to my customer
8 to make sure that they are treated correctly
9 and they are not put in a position that they
10 were put in.
11 Q. But you didn't speak to
12 Ms. Orelana?
13 A. No, I did not.
14 Q. And you had no reason to believe
15 that she thought she was being hit on; correct?
16 A. Her boyfriend was a little nervous
17 and he thought that himself.
18 MR. ANTOLLINO: Could you read back
19 the prior question?
20 (Record read.)
21 THE WITNESS: What was that?
22 MR. ZABELL: You've answered the
23 question. If he wants to ask you a new
24 question, he can do that.
25 MR. ANTOLLINO: I will.

200

1 MAYNARD
2 Q. And what did you see on the video
3 that you thought was -- well, we'll look at the
4 video later, but as you sit here today, what do
5 you remember about seeing on that video that
6 was improper?
7 MR. ZABELL: Objection to the form
8 of the question.
9 You may answer.
10 A. I remember him sitting behind her
11 and looking at her and looking at the camera
12 and making kind of a weird look and there was
13 something with his hand like this (indicating)
14 and as he's doing this, he's looking back at
15 her, which I don't know what that meant at all.
16 MR. ZABELL: Let the record reflect
17 that the deponent was taking his right
18 hand and doing circles around the right
19 side of his face with his pointer finger.
20 Q. Isn't there usually a goofy
21 atmosphere that goes on in the rig --
22 MR. ZABELL: Objection.
23 Q. -- before a jump?
24 MR. ZABELL: Objection to the form
25 of the question.

201

1 MAYNARD
2 Q. You can answer.
3 MR. ZABELL: You may answer.
4 A. There are times -- yes, there are
5 goofy times.
6 Q. All right. Let's take a look at
7 what we have marked as Exhibit 3 to the
8 Winstock deposition, which is a 29-page
9 document of screen shots.
10 And I want you to look through
11 these and tell me if you think that there's
12 anything going on in any of these pages which
13 are numbered that is inappropriate, unsafe, or
14 improper.
15 A. (Reviewing.)
16 I'm not sure if when someone giving
17 someone else the finger on the plane is so
18 traumatic, but other than that, I don't see it.
19 Q. All right. So someone giving
20 someone the finger on the plane is not
21 something that is worthy of termination;
22 correct? You wouldn't want to terminate an
23 instructor who gave someone the finger on the
24 plane; correct?
25 A. No.

203

1 MAYNARD
2 that's Super John in the background.
3 Q. All right. So among -- other than
4 this, which you thought was mild, you didn't
5 think that there was anything else in here that
6 was inappropriate, improper or unsafe; correct?
7 A. Correct.
8 Q. And that would include, for
9 example, this goofy expression at page four
10 that Rich Winstock is giving the camera;
11 correct?
12 A. Yeah.
13 Q. And that would include this goofy
14 expression that Rich Winstock is giving the
15 camera in Number 6; correct?
16 MR. ZABELL: Object to the form of
17 the question.
18 A. That's correct.
19 Q. And that would include someone
20 putting someone's hand on one's posterior in
21 picture seven; correct?
22 A. Correct.
23 Q. And that would include someone
24 sticking their tongue out, one of your
25 instructors sticking his tongue out in number

202

1 MAYNARD
2 Q. But if you saw it, you'd say don't
3 do that; right?
4 A. Yes.
5 Q. And you wouldn't suspend him for
6 that, would you?
7 A. No.
8 Q. All right. Giving someone the
9 finger is pretty extremely disrespectful, don't
10 you think?
11 MR. ZABELL: Objection.
12 A. I'm just looking at a photo and
13 these two guys are probably friends. No one
14 came in and complained and this guy wasn't
15 feeling bad and said that he was -- that he
16 was, you know, upset.
17 Q. Okay. Do you know this person?
18 MR. ZABELL: Ray, calm down.
19 THE WITNESS: Okay.
20 Q. Do you know that person?
21 A. I don't know who that person is.
22 Q. Do you know anyone in this plane?
23 A. Actually, I do know. Yeah, that's
24 Joe Fresh. That's one of our regular jumpers
25 and these two guys hang out all the time and

204

1 MAYNARD
2 nine; correct?
3 A. Correct.
4 Q. And that would include someone
5 exiting the airplane where his mouth is very
6 close to her ear; correct?
7 A. Correct.
8 Q. And that would include -- that's
9 number eleven and that would include Number 12
10 where someone is wearing a mask?
11 A. Correct.
12 Q. Could that pose any safety hazard
13 at all?
14 A. No.
15 Q. And that would include hang fives
16 signals. You know what a hang five signal is,
17 right? Well, have you ever seen this signal
18 before that that girl on page 13 is showing?
19 A. Isn't that a -- a love symbol or
20 something?
21 Q. It's called a hang five signal, I
22 think, or maybe it's something else. You tell
23 me?
24 A. I don't know.
25 Q. Have you seen it before?

205

1 MAYNARD
2 A. I've seen it, but I don't know what
3 it means.
4 Q. All right. It's pretty common;
5 right?
6 A. I guess.
7 Q. And that would include someone
8 trying to give someone water in number 14;
9 correct?
10 A. Correct.
11 Q. And that would include in page 16
12 someone sticking his tongue out to the camera;
13 correct?
14 A. Correct.
15 Q. And that would include on page 20
16 Rich Winstock crossing his fingers to the
17 camera?
18 A. Correct.
19 Q. He's crossing his fingers because
20 he's saying let's wish us all good luck that we
21 don't get injured or die; correct?
22 MR. ZABELL: Objection.
23 A. You'll have to ask Rich Winstock
24 why he crossed his fingers.
25 Q. Well, have you ever seen anyone

207

1 MAYNARD
2 22, do you recognize the person in this
3 picture?
4 A. Yeah.
5 Q. Who is that?
6 A. That's Kurt.
7 Q. Kurt who?
8 A. Kurt Gellinger (phonetic).
9 Q. He works for you?
10 A. Not anymore.
11 Q. Why not?
12 A. Because he moved.
13 Q. You didn't fire him, did you?
14 A. No.
15 Q. All right. And he was a good
16 instructor?
17 A. Yes, he was.
18 Q. And he's making in this picture a
19 face as if he's scared; correct?
20 A. He's got his mouth open.
21 Q. It looks like he's making a
22 feigned -- a pretend scared expression. Would
23 that be a fair characterization?
24 MR. ZABELL: Objection.
25 Q. How would you read his expression?

206

1 MAYNARD
2 cross their fingers in a plane like that on a
3 video?
4 A. I've seen it.
5 Q. Why do people do that?
6 A. Wishing them luck, wishing luck.
7 Q. You want to good jump.
8 A. Yup.
9 Q. You don't want there to be any
10 injuries; correct?
11 A. I want it to be a good jump.
12 Q. What is this that's happening in
13 number 21 with all of these people attached to
14 each other? What is that? Is that a boogie?
15 A. No, that's freestyle -- not
16 freestyle. I've got a brain fart. It's a
17 hybrid jump.
18 Q. And there's nothing unsafe about
19 that, it's allowed?
20 A. There's nothing unsafe about that.
21 Q. It's pretty extreme though; right?
22 A. It's skydiving.
23 MR. ZABELL: Objection to the form
24 of the question.
25 Q. There's nothing improper -- in page

208

1 MAYNARD
2 MR. ZABELL: Objection to the
3 multiple questions. Are you intending on
4 asking three questions at once, Counsel?
5 Q. You can answer.
6 MR. ZABELL: You can pick any of
7 one of those three questions and provide
8 an answer to any one of them.
9 A. My answer is that I don't think he
10 looks scared at all.
11 Q. What does that expression mean to
12 you?
13 A. He's just having fun. He's got his
14 mouth open. He might be screaming, but he's
15 happy.
16 Q. He's goofy?
17 MR. ZABELL: Objection.
18 Q. Would you characterize it as being
19 goofy?
20 A. No.
21 Q. No?
22 A. He's having fun.
23 Q. Would you characterize it as being
24 goofy or not?
25 MR. ZABELL: He just said -- asked

209

1 MAYNARD
2 and answered.
3 A. No.
4 Q. Here is page 28. We have Rich
5 Winstock sticking his tongue out at the camera.
6 There's nothing inappropriate about that?
7 A. No.
8 Q. Would you characterize it as goofy?
9 A. No.
10 Q. No.
11 A. He's having fun.
12 Q. And here is Rich Winstock pictured
13 in page 29 with a first time tandem jump -- let
14 me put it this way, the album that it purports
15 to be from says, "First time tandem jumps";
16 correct?
17 A. Uh-huh.
18 Q. Do you recognize the passenger?
19 A. No.
20 Q. And Rich appears to have his hand
21 on her shoulder and their heads to be close to
22 each other; correct?
23 A. Correct.
24 Q. And there's nothing inappropriate
25 about that; correct?

211

1 MAYNARD
2 A. I don't know.
3 Q. You don't know if he told you that?
4 A. No.
5 Q. If that joke was made, was it an
6 inappropriate joke?
7 A. I don't believe so.
8 Q. Why not?
9 A. Because I don't.
10 Q. Do you think it is standard
11 practice to make a joke like that?
12 A. That you're going to be strapped to
13 a guy?
14 Q. Yeah, that your girlfriend is going
15 to be strapped to another guy?
16 MR. ZABELL: Objection, asked and
17 answered. No matter how you place the
18 emphasis on the syllables, Counselor, you
19 still have asked the question at least on
20 three separate occasions.
21 Q. You can answer.
22 A. No, I don't think -- I don't think
23 that's a joke. It's a statement. They're all
24 male instructors.
25 Q. Well, what if someone complained

210

1 MAYNARD
2 A. Correct.
3 Q. Did you happen to watch the video
4 made for Mr. Kengle?
5 A. No, I did not.
6 Q. At any time?
7 A. No.
8 Q. Were you aware that Ms. Orelana was
9 flirting with the camera in that video?
10 MR. ZABELL: Excuse me? Could I
11 have his question read back, please?
12 (Record read.)
13 MR. ZABELL: Objection.
14 A. No.
15 Q. Did Mr. Kengle tell you that there
16 had been a joke made before the passengers
17 exited the airplane?
18 A. I don't recall.
19 Q. Did he not, in fact, tell you that
20 one of the instructors other than Don made a
21 joke to the effect that, hey, I bet you didn't
22 think that your girlfriend was going to get
23 strapped to another guy?
24 MR. ZABELL: Objection, asked and
25 answered.

212

1 MAYNARD
2 about that joke being made, is that legitimate
3 complaint?
4 A. The statement of you didn't think
5 your girlfriend was going to be strapped to a
6 man today?
7 Q. Yeah. What if somebody complained
8 about that?
9 A. Well, they wouldn't be there to
10 skydive to begin with.
11 Q. Why?
12 A. Because, except for this year,
13 every instructor was a male. It's an
14 observation.
15 Q. But it's an observation that calls
16 attention to the fact that someone's girlfriend
17 is in close contact with another man; correct?
18 A. Correct.
19 Q. What if someone complained about
20 that joke?
21 A. No one has.
22 Q. Well, what if someone did, would
23 you instruct your instructors not to engage in
24 that type of banter?
25 A. Yes.

213

1 MAYNARD
2 Q. All right, now, you indicated that
3 you talked for 20 minutes to Ray in the
4 suspension meeting and what else did you talk
5 to Ray about -- I'm sorry, to Don about during
6 that suspension meeting other than what you
7 testified about to now?
8 MR. ZABELL: Object to the form of
9 the question.
10 You may answer.
11 A. The meeting was about him being
12 suspended. I said 20 minutes. I'm not sure if
13 it was 20 minutes. I don't remember the exact
14 amount of time. We were in there and we were
15 talking and I told him that I had to let him
16 go.
17 Q. No, this is the suspension meeting.
18 A. The suspension, I'm sorry.
19 Q. So it could have been five minutes
20 from what you can recall?
21 A. It might have been. I don't
22 remember.
23 Q. All right. Did there come a time
24 later that you saw Rich Winstock and Don
25 speaking about this suspension?

215

1 MAYNARD
2 tape, marked for Identification.)
3 Q. And I'll just let you know that
4 this is a transcript that I've had written
5 up -- I've attempted to write up, have written
6 up, someone else wrote it up and I made some
7 changes. You don't have to believe anything
8 I'm telling you, but we're going to read the
9 transcript and listen to the tape and I'm going
10 to ask you whether it fairly and accurately
11 represents what is on the tape or if there are
12 some changes you'd like to make, we'll make
13 those changes. But before I go there --
14 MR. ZABELL: Do you have a copy for
15 me, Counselor?
16 MR. ANTOLLINO: Yes, I do.
17 Q. But before I go there you said you
18 met with Harvey Arnoff. How long has Harvey
19 Arnoff been your lawyer?
20 A. Since the early '90s.
21 Q. And what type of law does he
22 practice?
23 A. I think he practices everything.
24 He's not --
25 Q. He's a general practitioner?

214

1 MAYNARD
2 A. Before Don left that day, you mean?
3 Q. Yes.
4 A. I think I did see them talking.
5 Q. And did you not say, oh, you're
6 talking about this and then run out of the door
7 and slam the door?
8 A. I don't remember that.
9 Q. Did you slam the door that day at
10 any time?
11 A. I don't recall.
12 Q. I understand that during the week
13 between the suspension and the termination, you
14 spoke to a lawyer; is that correct?
15 A. That's correct.
16 Q. Who was that lawyer?
17 THE WITNESS: Is that lawyer
18 confidentiality?
19 MR. ZABELL: You can identify him.
20 A. Harvey Arnoff.
21 Q. What?
22 A. Harvey Arnoff.
23 Q. Okay. Well I'm going to show you
24 what I've marked as Exhibit 23.
25 (Exhibit R-23, transcription of

216

1 MAYNARD
2 A. Yes.
3 Q. Did you call him or did you go in
4 and meet with him?
5 A. I drove in and met with him.
6 Q. How long was the meeting?
7 MR. ZABELL: Objection.
8 A. I don't know the exact amount of
9 time.
10 Q. Where does he work?
11 A. Excuse me?
12 Q. Where does Harvey Arnoff work?
13 A. In Riverhead.
14 Q. Do you know the exact address?
15 A. 206 Roanoke Avenue.
16 Q. Okay. Did you have a conversation
17 with Rich Winstock during this week before you
18 terminated Don? Did you have a conversation
19 with Rich Winstock about Don?
20 MR. ZABELL: Objection.
21 A. Yes.
22 Q. All right. And when did that
23 conversation take place?
24 A. I don't remember the day.
25 Q. All right. And how long did the

217

1 MAYNARD
 2 conversation take?
 3 A. I don't remember that either.
 4 Q. What was said in the conversation?
 5 A. We just talked in general what
 6 happened.
 7 Q. Okay.
 8 A. And what I was told.
 9 Q. Are you aware that Rich Winstock
 10 testified that you didn't tell him anything
 11 about the complaint that was made?
 12 A. No.
 13 Q. He did say that. Do you think he's
 14 mistaken or -- do you recall telling him what
 15 had happened?
 16 MR. ZABELL: Objection to the
 17 form --
 18 A. No, I did not.
 19 MR. ZABELL: -- for the multiple
 20 questions. You have may now, and only
 21 now, answer the question.
 22 A. No, I really don't remember what we
 23 talked about.
 24 Q. All right. And what did Rich
 25 recommend that you do?

219

1 MAYNARD
 2 answering that question to utilize them.
 3 A. I don't know.
 4 Q. Did he tell you to fire Don?
 5 A. No.
 6 Q. Did he and Don have a good
 7 relationship?
 8 A. I guess.
 9 Q. Do you respect Rich Winstock's
 10 opinion in general?
 11 A. In general.
 12 Q. Do you think that he is -- well,
 13 what is his role at Skydive Long Island?
 14 MR. ZABELL: Objection to the form.
 15 You may answer.
 16 A. He's the chief instructor.
 17 Q. And you've hired him for many
 18 years; correct?
 19 A. Correct.
 20 Q. Were you aware that on occasion
 21 he's told certain skydivers -- he's offered the
 22 information that he's married and has kids?
 23 A. I guess.
 24 Q. Are you aware of that?
 25 A. It's common knowledge that he's

218

1 MAYNARD
 2 A. I don't remember.
 3 Q. Is it not true that Rich
 4 recommended that you write up a reprimand and
 5 put it in Don's file and say that this has
 6 nothing to do with your sexual orientation to
 7 give him clear direction as to how he is to
 8 behave in the future; is that not true?
 9 MR. ZABELL: Objection to the form
 10 of the multiple questions. You may pick
 11 a question and answer it.
 12 A. I don't remember that.
 13 Q. Did he tell you that he thought
 14 that Don was a good instructor and he didn't
 15 want you to fire Don?
 16 A. No, I don't remember that at all.
 17 Q. Are you aware that he testified to
 18 that?
 19 MR. ZABELL: Objection.
 20 A. No.
 21 Q. If he testified to that, would that
 22 be a lie or would that be just a
 23 misunderstanding?
 24 MR. ZABELL: Objection. There are
 25 other options as well and feel free in

220

1 MAYNARD
 2 married and has kids.
 3 Q. Well, if someone comes in to the
 4 drop zone for the first time, has never met
 5 Rich Winstock, it's not common knowledge to
 6 that person that he's married and has kids;
 7 correct?
 8 A. Correct.
 9 Q. Are you aware that Rich Winstock
 10 has offered, without being asked, tandem
 11 passengers that he is married and has kids?
 12 MR. ZABELL: Objection to the form
 13 of the question and the manner in which
 14 it has been asked. You may, if you can,
 15 answer the question now.
 16 A. I don't know that for a fact.
 17 Q. All right. If he did, was there
 18 anything improper about that?
 19 A. I wouldn't think so.
 20 Q. It's personal information; correct?
 21 A. Personal information.
 22 Q. The answer is yes?
 23 A. Yes.
 24 Q. All right. So here is the proposed
 25 transcript and I'm going to ask you to take a

221

1 MAYNARD
 2 look at this and before we start reading it, I
 3 want to ask you, were you aware at the time
 4 that you fired Don that you were being
 5 recorded?
 6 A. No, I was not aware.
 7 Q. Okay. Do you think there was
 8 anything improper in Don recording that
 9 meeting?
 10 A. I don't know. I don't know.
 11 Q. So you have no opinion one way or
 12 the other?
 13 A. I think I should have been told if
 14 I was going to be recorded like everyone is
 15 supposed to do, I guess.
 16 Q. Why?
 17 A. Because that's what people do.
 18 You're told ahead of time I'm going to record
 19 this conversation for whatever purposes. So if
 20 there was nothing to hide, he should have said
 21 I'm recording it.
 22 Q. Well, if he had told you he was
 23 recording it, would you have spoken as much, do
 24 you think?
 25 MR. ZABELL: Objection.

223

1 MAYNARD
 2 appropriately, I have a right to object
 3 to it.
 4 And if you are going to make a
 5 false start for a question, I have a
 6 right to ask you to clear the transcript
 7 of your false starts.
 8 Your failures to do so are not my
 9 issue and do not be ashamed that I am
 10 calling them to your attention.
 11 MR. ANTOLLINO: I'm not ashamed.
 12 MR. ZABELL: Well you're clearly
 13 acting that way.
 14 MR. ANTOLLINO: You're a bully.
 15 Q. All right, we're going to listen to
 16 the tape now.
 17 (Whereupon video is played.)
 18 Q. All right, hold on. Let's start
 19 over.
 20 MR. ZABELL: Start what over,
 21 Counselor.
 22 MR. ANTOLLINO: We're going to
 23 start over because the court reporter
 24 needs to pick up the tape?
 25 MR. ZABELL: I think you should

222

1 MAYNARD
 2 A. We'll never know.
 3 Q. You've heard the tape by now,
 4 right?
 5 A. Yes, I have.
 6 Q. We're going to get it out and
 7 listen to it and we can stop at any time.
 8 MR. ZABELL: Uh, what?
 9 MR. ANTOLLINO: Don't make fun of
 10 me when I say "uh" or something like
 11 that. You really are extremely rude when
 12 you make fun of me for misspeaking. Your
 13 attempt is to be a bully and I'm not
 14 going to take it anymore. I'm
 15 documenting every single time that you do
 16 it, and at the end of the litigation the
 17 judge is going to have a whole list
 18 including when you said something that
 19 you're -- that I heard at a deposition
 20 about me.
 21 MR. ZABELL: Counselor, your
 22 threats are unavailing. I am simply
 23 trying to get you to clear up this
 24 record, which you are butchering. If you
 25 are incapable of asking a question

224

1 MAYNARD
 2 because we're not obligated to accept
 3 this homemade transcript of the audio.
 4 So I'm going to request that you take
 5 down everything that's said on the video.
 6 MR. ANTOLLINO: Try your best.
 7 TRANSCRIPTION OF AUDIO:
 8 "Mr. Maynard: All right, after a
 9 week of me thinking about the entire
 10 situation, from day one that you came
 11 here years ago and everything, uh, first
 12 off, I'm going to give you the refund
 13 back of the people because I thought
 14 about it and I shouldn't take that money
 15 from you.
 16 Mr. Zarda: All right.
 17 Mr. Maynard: But also, I'm going
 18 to let you go because this just isn't
 19 working.
 20 Mr. Zarda: What's not working,
 21 Ray?
 22 Mr. Maynard: It's not working.
 23 Mr. Zarda: Well what is 'it'?
 24 Mr. Maynard: That's all I have to
 25 say. I went -- I went -- I went and

225

1 MAYNARD
 2 spoke to my attorney. I explained
 3 everything to him exactly the history of
 4 everything and that and he said that, you
 5 know, I have to let you go.
 6 Mr. Zarda: Well, Ray --
 7 Mr. Maynard: He's -- I'm letting
 8 you go.
 9 Mr. Zarda: All right. Okay, well
 10 let me --
 11 Mr. Maynard: I'm not going to --
 12 that's all, I'm going to say.
 13 Mr. Zarda: Well, Ray, you haven't
 14 told me what I've been accused of.
 15 What did they --
 16 Mr. Maynard: It's not -- let me
 17 just put it this way, it's not working
 18 and that's all I'm going to say. It's
 19 not working for me for you to be here
 20 anymore and that's -- there's no more
 21 explanation. There's nothing else I'm
 22 going to say. That's all on my
 23 attorney's advice.
 24 Mr. Zarda: Well, you just told me
 25 that a gay issue came up with these

227

1 MAYNARD
 2 Mr. Zarda: Okay. You said in
 3 here, I know you were upset, that that
 4 came up and that they were offended and
 5 then you said something about this girl,
 6 I took the girl, being inappropriately
 7 touched. You said that.
 8 Mr. Maynard: Well, she felt
 9 that -- that you were holding her hips in
 10 a way that she was very uncomfortable.
 11 Mr. Zarda: Ray, does that make any
 12 sense to you?
 13 Mr. Maynard: Don --
 14 Mr. Zarda: I mean, really.
 15 Mr. Maynard: Don, listen, I'm not
 16 going to explain anything else to you.
 17 That's -- this is what is happening, this
 18 is what's going to happen and I'm sorry,
 19 but that's -- that's what I'm saying.
 20 Mr. Zarda: Okay. What about -- I
 21 mean, when you say 'personal escapades,'
 22 these guys -- I mean -- I mean, Marco
 23 runs around saying everything is gay.
 24 Petretti still is in the 2001 mode --
 25 Mr. Maynard: But this is not --

226

1 MAYNARD
 2 people.
 3 Mr. Maynard: It wasn't a gay
 4 issue. It was a personal issue. When I
 5 told you the other day -- that's -- I'm
 6 not going to get into it. Because if it
 7 was a heterosexual thing -- if Richie
 8 Winstock was telling some chick of his
 9 escapades, he would be in the same
 10 situation. It's not about gay. It's
 11 about your personal life, talking to
 12 people about it. Not -- I don't care --
 13 I don't care what you do and I don't care
 14 what those guys do, but what I do care
 15 about is that it's not shared with my
 16 customers.
 17 Mr. Zarda: Okay, well --
 18 Mr. Maynard: Okay? So don't take
 19 this as a gay thing. It's not a gay
 20 thing. It's about your personal
 21 escapades and what you're telling people,
 22 what you're saying. So --
 23 Mr. Zarda: Okay, well, can I
 24 before -- can I say something?
 25 Mr. Maynard: Sure.

228

1 MAYNARD
 2 Mr. Zarda: -- he jokes about it.
 3 Mr. Maynard: They're not talking
 4 to the customers. They're not saying
 5 things to the customers that you're
 6 saying to the customers.
 7 Mr. Zarda: What was I -- what did
 8 I say to the customer?
 9 Mr. Maynard: Listen, I'm done.
 10 You know, this is what -- I mean, I
 11 thought about this for a very long time.
 12 I went to my lawyer. I got legal advice
 13 of what I should do here and I'm doing
 14 what I feel I have to do. This is not
 15 working anymore for me or for my company
 16 to have you work here.
 17 Mr. Zarda: But based on -- okay,
 18 what are you letting me go for?
 19 Mr. Maynard: I'm -- because it's
 20 not working.
 21 Mr. Zarda: Okay, you suspended me
 22 for a week, okay. So, I mean, did you
 23 decide a week ago that something wasn't
 24 working? You made a decision a week ago.
 25 So what did I get suspended for? I mean,

229

1 MAYNARD
2 I've been sitting in the dark at home.
3 Mr. Maynard: You were suspended
4 for completely ruining somebody's
5 birthday because of you talking about
6 your personal life to them. That is it
7 in a nutshell.
8 Mr. Zarda: I ruined somebody's
9 birthday because I got -- okay, that's
10 fine. That's not --
11 Mr. Maynard: They were very
12 sincere on the phone. There was nothing
13 about -- they weren't demanding their
14 money back or nothing like that. They
15 were just saying there's no way can I
16 ever give my fiancée her birthday back
17 because it was taken away because of you
18 putting your head on her shoulder,
19 whispering in her ear and talking about,
20 'Don't worry about me, I'm gay,' under
21 canopy and everything else.
22 Mr. Zarda: Ray, did you think at
23 all to -- that maybe these people just
24 were looking for a free jump and that
25 they --

231

1 MAYNARD
2 done then.
3 Mr. Zarda: So you made this
4 decision really fast on Monday. Did you
5 investigate -- did you ask any of the
6 other people on the plane? There was a
7 bunch of people on the plane. Did
8 Don say to them --
9 Mr. Maynard: Things happened under
10 canopy, Don. Things were said under
11 canopy. There was nobody there. There's
12 nobody there to see you do what you're
13 doing.
14 Mr. Zarda: Okay.
15 Mr. Maynard: It doesn't even
16 matter. It's over.
17 Mr. Zarda: What did she say
18 happened under canopy?
19 Mr. Maynard: It's over. I -- just
20 about -- about -- about, you know, don't
21 be worried, I'm gay. Don't worry about
22 me being so close. I have to go. I have
23 to go do work. You can take care of what
24 you have to care of, get your stuff out.
25 Mr. Zarda: Ray, I came up here

230

1 MAYNARD
2 Mr. Maynard: No, because I offered
3 them a free jump. I offered them
4 everything and they didn't want it.
5 Mr. Zarda: No, no, no, I mean --
6 Mr. Maynard: They didn't want it.
7 They didn't want it.
8 Mr. Zarda: I mean, that that's
9 what they thought about that they could
10 just use this --
11 Mr. Maynard: Absolutely not.
12 Absolutely not. It doesn't even matter.
13 It doesn't matter. The decision is that
14 this is not working anymore for me for
15 you to be working here.
16 Mr. Zarda: Ray, did you
17 investigate at all? When did they call?
18 When did they call, on Friday or Monday?
19 Because you let me work all through the
20 weekend.
21 Mr. Maynard: They called on
22 Monday.
23 Mr. Zarda: Okay, on Monday.
24 Mr. Maynard: And if they had
25 called on Friday, that would have been

232

1 MAYNARD
2 from a long way.
3 Mr. Maynard: It's not working
4 anymore. It's over."
5 MR. ZABELL: Counselor, I'm
6 advising you that this transcript of the
7 audio termination is inaccurate. There
8 were many things that I've noticed that
9 are missing or analysis transcribed so we
10 will not be accepting this as an accurate
11 transaction although I believe now madam
12 reporter that is taken down what has been
13 said.
14 Q. All right. Do you believe that
15 this is -- there are any mistakes in that
16 transcript, Mr. --
17 MR. ANTOLLINO: And I appreciate
18 your speaking objection, but I'm going to
19 ask the witness --
20 Q. But do you believe that there are
21 any mistakes in that transcript?
22 A. I don't know if every word is
23 tracked. I wasn't watching it that closely.
24 Q. Do you think that it's
25 substantially accurate?

233

1 MAYNARD
2 A. Yes.
3 MR. ZABELL: Objection. Okay.
4 Q. Do you want to listen to it again
5 and read it a little bit more closely? And I
6 see your counsel is making a speaking -- is
7 coaching you to say yes. Would you like to
8 read it again and look at it more closely?
9 MR. ZABELL: I have said nothing at
10 all on the record.
11 MR. ANTOLLINO: You've nodded your
12 head.
13 MR. ZABELL: It's not different
14 than what you're doing right now,
15 Counselor.
16 Q. Would you like to?
17 A. Sure, why not.
18 (Whereupon video is played.)
19 MR. ZABELL: The videographer
20 should be taking it down.
21 MR. ANTOLLINO: Okay, that's fine.
22 And we'll say tape being played in the
23 record and get.
24 (Whereupon, tape is played.)
25 Q. Okay. You've had an opportunity to

235

1 MAYNARD
2 this and we'll call this Exhibit 22 -- 23-A
3 because these are your corrections, all right.
4 Do you want to do that?
5 MR. ZABELL: As long as you give me
6 copies.
7 MR. ANTOLLINO: We'll make copies.
8 MR. ZABELL: Make a copy.
9 THE VIDEOGRAPHER: We are now off
10 the record at 3:13 p.m.
11 (Recess taken.)
12 THE VIDEOGRAPHER: This is tape
13 five of the deposition of Raymond
14 Maynard. We are now on the record at
15 3:20 p.m.
16 (Exhibit R-23-A, marked-up
17 transcription, marked for
18 Identification.)
19 Q. Mr. Maynard, I've marked as 23-A
20 your marked-up exhibit of my attempt at
21 transcripts and you've noted that on various
22 points that there were two people speaking at
23 once and so you weren't exactly sure there
24 were -- it was a completely accurate
25 transcript. Is that a fair statement?

234

1 MAYNARD
2 listen again. It's not a perfect transcript
3 but would you agree that it's substantially
4 accurate?
5 A. Yes, there are a few things that I
6 couldn't understand. I marked in between where
7 I couldn't understand things.
8 Q. All right. Why don't you tell me
9 where you couldn't understand. You've marked a
10 few things.
11 A. It was in between --
12 Q. Two people speaking at once.
13 A. I guess. I don't know.
14 Q. So you put a question mark on line
15 five, and then --
16 A. Because things were being said and
17 you couldn't understand them on the tape and
18 that's what every one of these were the same
19 thing.
20 Q. Okay. So that's where two people
21 were talking?
22 A. I would guess.
23 Q. All right. And so you put a little
24 mark on 15, on line 15 and line 19 and -- so
25 you put a lot of -- we'll make another copy of

236

1 MAYNARD
2 MR. ZABELL: Objection.
3 A. Yeah.
4 Q. But would you agree that it's
5 substantially accurate?
6 MR. ZABELL: Objection, asked and
7 answered.
8 A. Yes.
9 Q. Did you feel like I left anything
10 out, other than the discussions with Lauren
11 that I didn't transcribe, did you feel like
12 anything was left out that was important?
13 A. I don't think so.
14 Q. All right. All right, so -- at the
15 end. We didn't play the part about Lauren, but
16 you heard the tape before when Don is talking
17 to Lauren; correct?
18 MR. ZABELL: Objection to the form
19 of the question. You may answer.
20 A. Yes, I did hear the tape.
21 Q. All right. And I believe at the
22 end of the tape he asked Lauren if these people
23 got video; correct?
24 A. I don't remember if that was a
25 question to her.

237

1 MAYNARD
2 Q. All right. Let me just play that
3 part of the tape. That's not on the
4 transcript. That's just a yes or no. So just
5 a second:
6 TRANSCRIPTION OF AUDIO:
7 "Mr. Zarda: Okay, could you --
8 Lauren, could you print me just the rest
9 of my jumps.
10 Lauren: Sure, not a problem.
11 Mr. Zarda: And, you know what,
12 the -- the one that always gets -- it's
13 got --
14 Lauren: I'll bring it. You
15 know --
16 Mr. Zarda: -- jumper one.
17 Lauren: That's okay. I'll bring
18 it right out to you. Not a problem. If
19 you want to grab your stuff, I'll bring
20 it right out to you.
21 Mr. Zarda: It's going to take a
22 little bit for that.
23 Lauren: That's okay.
24 Mr. Zarda: And --
25 Lauren: I'll bring it right out to

239

1 MAYNARD
2 to the conclusion that he had never seen the
3 video; correct?
4 A. It could.
5 Q. And he wanted to see the video;
6 correct?
7 A. I think so.
8 Q. Did you know that we didn't get the
9 video until we subpoenaed it or demanded it in
10 this case?
11 MR. ZABELL: Objection to the
12 form --
13 A. I didn't know it.
14 MR. ZABELL: -- and to the
15 representations contained therein you may
16 answer.
17 Q. I was just asking if you knew that.
18 A. Excuse me?
19 Q. I was just asking if you knew that.
20 A. No, I didn't know that.
21 Q. When you say you looked at the
22 video, did you also look at the out takes?
23 A. I'm trying to think which one I
24 saw. I'm not sure if I saw the raw footage or
25 the edited version.

238

1 MAYNARD
2 you, Don.
3 Mr. Zarda: Did these people get
4 video?
5 Lauren: Don, I don't know what
6 information --
7 Mr. Zarda: Would you just please
8 look and see if they got video?
9 Lauren: Don, Ray's made a
10 decision. I have to go with what Ray
11 says.
12 Q. Now after having listened to the
13 portion where Don, in talking to Lauren, it
14 appears he asked her repeatedly whether these
15 people got video; is that right?
16 A. It sounds like.
17 Q. So that would lead you to the
18 conclusion that he didn't know one way or the
19 other; correct?
20 MR. ZABELL: Objection. Didn't
21 know one way or the other with what?
22 Q. Whether or not they got video;
23 correct?
24 A. Possibly.
25 Q. Okay. And it would also lead you

240

1 MAYNARD
2 MR. ANTOLLINO: All right. So I'm
3 going to call for production of the raw
4 footage. I think that's responsive and
5 I'll put it in a letter to you.
6 MR. ZABELL: You've already been
7 given the raw footage.
8 MR. ANTOLLINO: I have?
9 MR. ZABELL: Even your client is
10 shaking his head yeah. Off the record.
11 (Discussion off the record.)
12 Q. Let's take a look at line eight
13 from 23-A where you say, "That's all I have to
14 say. I spoke to my attorney. I explained
15 everything to him exactly the history and
16 that" -- I'm sorry, withdrawn.
17 You said, "That's all I have to
18 say. I spoke to my attorney, I explained
19 everything to him exactly the history of
20 everything and that and he said that, 'You
21 know, I have to let you go.'" Do you see that?
22 A. Yes.
23 Q. And is that what your attorney, in
24 fact, told you?
25 MR. ZABELL: Objection. You do not

241

1 MAYNARD
2 have to disclose communications that were
3 given to you by your attorney.
4 Q. All right. So --
5 MR. ZABELL: To the extent you can
6 answer that without revealing what your
7 attorney told you, you may, but he's
8 asking you specifically what your
9 attorney told you.
10 A. I'm not sure how to answer that.
11 + MR. ANTOLLINO: I think let's
12 mark that for a ruling because I think
13 the attorney/client privilege has been
14 waived. We don't have to call the judge
15 on this, but it will come up eventually.
16 Q. And on page two, line -- or
17 paragraph 16, do you see there where it says at
18 the last sentence, "that's all on my attorney's
19 advice." Do you see that?
20 A. Yes.
21 Q. And is that a true sentence,
22 "That's all on my attorney's advice?"
23 A. That's correct.
24 Q. And what did your attorney advise
25 you?

243

1 MAYNARD
2 going to reproduce your client or you're
3 going to fight reproducing your client
4 for not answering questions, I mean then
5 that -- listen -- off the record -- on
6 the record. All right.
7 Do you believe that you have --
8 you've mentioned at your deposition that
9 you had the right to recall my client if
10 the judge overrules my objections to
11 certain privileges; is that right?
12 MR. ZABELL: That's correct.
13 MR. ANTOLLINO: All right. So are
14 you saying that you believe that you can
15 recall my client if the judge overrules
16 the objections, but you can't -- I can't
17 recall Mr. Maynard if the judge overrules
18 your objections?
19 MR. ZABELL: The difference is my
20 objections were sub juris.
21 MR. ANTOLLINO: All right. Well,
22 let's call the court and I'm going to ask
23 the judge if we can brief this and you
24 can object. Let's call the court.
25 I don't think we have to reach this

242

1 MAYNARD
2 MR. ZABELL: Objection. Same
3 objection based upon privilege.
4 MR. ANTOLLINO: So you're going
5 to -- let's just make the record clear.
6 You're not going to allow me to inquire
7 into the substance of the discussion
8 between Harry Arnoff and Ray Maynard in
9 any respect whatsoever; so no matter how
10 many times he's referred to legal advice
11 and attorneys advice in this transcript,
12 that's going to be the same direction to
13 the witness. Is that a fair statement?
14 MR. ZABELL: Correct. That is a
15 fair statement.
16 MR. ANTOLLINO: All right. We'll
17 take this up -- we'll mark those all for
18 a ruling at a later time.
19 MR. ZABELL: You can certainly
20 attempt to do it at a later time, but
21 you're allowed one shot at a deposition
22 and nothing else.
23 MR. ANTOLLINO: All right. So then
24 I think that we have to call the court
25 then. If you're saying that you're not

244

1 MAYNARD
2 now, but I want to avoid a future fight
3 with Saul Zabell. So I'm going to look
4 up the court's number and call and see if
5 we can deal this because I think this
6 needs a letter brief at least.
7 THE VIDEOGRAPHER: We are now off
8 the record at 3:29 p.m.
9 (Recess taken.)
10 THE VIDEOGRAPHER: We are now on
11 the record at 3:43 p.m.
12 MR. ANTOLLINO: I'd just like to
13 state for the record that we called the
14 court. The judge was not available to
15 rule and the clerk is going to call us
16 back to let us know if the judge wants to
17 rule now or have argument, or have
18 briefing on this.
19 Q. Okay. So what was the last
20 question and answer?
21 (Record read.)
22 Q. Let's look at paragraph 18. In the
23 third -- one, two, third, fourth sentence, you
24 stated, "Because if it was a heterosexual, if
25 Rich Winstock was telling some chick about his

245

1 MAYNARD
 2 escapades, he would be in the same situation."
 3 Do you see that?
 4 A. Yes.
 5 Q. And what is a chick?
 6 A. Excuse me?
 7 Q. What is a chick? What do you mean
 8 by chick?
 9 A. A woman.
 10 Q. Is it a -- do women like to be
 11 called chicks?
 12 A. Some do, some don't.
 13 Q. Okay. What -- if Rich Winstock was
 14 telling some chick about his escapades, what
 15 did you mean by that?
 16 A. If he's out with somebody.
 17 Q. What do you mean by that?
 18 A. If he's out and he's talking about,
 19 I guess, intense matters.
 20 Q. What intense matters?
 21 A. Whatever could be going on, if he
 22 was bragging about things.
 23 Q. If he was what?
 24 A. If he was bragging about things.
 25 Q. Bragging about what?

247

1 MAYNARD
 2 testimony.
 3 A. That he was talking about him being
 4 gay and going out and doing this and doing
 5 that.
 6 Q. Being gay and going out and doing
 7 this and doing that, what was he going out --
 8 what does that mean? Going out and doing what?
 9 MR. ZABELL: Objection to the form
 10 of the question. Objection to the
 11 multiple questions. You may pick a
 12 question and provide an answer, if you
 13 can.
 14 A. He told me that besides in the
 15 airplane the way he was touching her thighs and
 16 having his head on her shoulder it made her
 17 feel very uncomfortable. She was very upset
 18 about that and he made remarks under canopy
 19 that, "Don't worry, I'm gay," and went on about
 20 that.
 21 Q. So he didn't say anything about
 22 going out and doing this and going out and
 23 doing that; correct?
 24 MR. ZABELL: Objection.
 25 Q. It's just what you just testified

246

1 MAYNARD
 2 A. Whatever.
 3 Q. Can you give me an example of what
 4 escapade Rich Winstock would tell to a woman
 5 that would be grounds for termination?
 6 MR. ZABELL: Objection to the form.
 7 You can answer.
 8 A. If any of my instructors, including
 9 Richie Winstock, was telling the customers of
 10 any kind of sexual activities, that would fall
 11 under that.
 12 Q. Well, Don wasn't talking about
 13 sexual activity. He was talking about his
 14 sexual identity, wasn't he?
 15 A. No. I was told that he was talking
 16 specifically about things he did after work.
 17 Q. What things that he did after work?
 18 A. The men he was with.
 19 Q. The men he was with. What men was
 20 he with?
 21 A. I have no idea.
 22 Q. What did David Kengle say that
 23 Rosana told him about the men he was with?
 24 MR. ZABELL: Objection to the form
 25 of the question, mischaracterizes

248

1 MAYNARD
 2 to right now; correct?
 3 A. Right.
 4 MR. ZABELL: Objection.
 5 Q. And it wasn't her thighs that she
 6 felt were uncomfortable, it was hips; correct?
 7 MR. ZABELL: Objection.
 8 A. Hips, thighs, you know, the same
 9 thing.
 10 Q. Okay. The hips, there are two
 11 attachments at the hips; correct?
 12 A. Uh-huh.
 13 Q. If Don had to choose between safety
 14 in adjusting the hips and comfort, which -- in
 15 adjusting the straps of the hips, which would
 16 you prefer that he choose?
 17 MR. ZABELL: Objection to the form.
 18 A. He would choose to do the right
 19 thing for safety, but not make the customer
 20 feel uncomfortable.
 21 Q. Do you feel that Don ever made any
 22 other employees -- I'm sorry, withdrawn.
 23 Do you feel that Don made any other
 24 passengers physically uncomfortable in your
 25 aircrafts?

249

1 MAYNARD
2 A. I think it's possible, but people
3 didn't come and make a complaint.
4 Q. So you're not aware of anything;
5 correct?
6 A. Correct.
7 Q. Your opinion of Don was that he was
8 a good instructor; correct?
9 A. Correct.
10 Q. And he's had more jumps than you;
11 correct?
12 A. Correct.
13 Q. And you knew Don was gay; correct?
14 A. Correct.
15 Q. And you trusted his judgment in
16 adjusting the straps to give as much safety and
17 balance that with comfort?
18 MR. ZABELL: Objection to the form.
19 You may answer.
20 A. Correct.
21 Q. And you didn't call Ms. Orelana and
22 say what was it about the hips that made you
23 feel uncomfortable; correct?
24 A. Correct.
25 Q. And it could have been something

251

1 MAYNARD
2 Q. But you want to check the
3 attachments to make sure they're in place;
4 correct?
5 A. Correct.
6 Q. And that would require him to touch
7 the attachments and see that they were in
8 place; correct?
9 A. Correct.
10 Q. What if Don -- well, do you have a
11 uniform at work?
12 MR. ZABELL: Objection to the form
13 of the --
14 MR. ANTOLLINO: Okay, withdrawn.
15 Q. Is there a uniform that skydivers
16 wear at work?
17 A. No.
18 Q. Okay. So you can show up wearing a
19 T-shirt and shorts; correct?
20 A. Correct.
21 Q. And that's a typical attire for
22 someone doing a skydive; correct?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A. In the summer.

250

1 MAYNARD
2 like he was adjusting the straps down there;
3 correct?
4 MR. ZABELL: Objection to the form.
5 You may answer.
6 A. It could.
7 Q. And if it was he was adjusting the
8 straps down there, that would not be a
9 legitimate complaint; correct?
10 MR. ZABELL: Objection to the form.
11 You may answer.
12 A. Correct.
13 Q. And a tandem instructor, in fact,
14 has to not only adjust the straps, but check
15 them and make sure that they're in place
16 throughout the tandem experience; correct?
17 A. Most of it should be done before
18 they get on the airplane. The final
19 adjustments are normally taking the side straps
20 and making them tighter. The harness -- the
21 tandem passenger harness, there is -- there is
22 very little time or there's very little things
23 that I even know about anybody doing
24 adjustments in the plan about the passenger
25 harness after you get on the airplane.

252

1 MAYNARD
2 Q. What about -- what if Don came to
3 work with a T-shirt that says "I'm gay," would
4 you allow him to wear that?
5 A. It never happened.
6 Q. Well, I'm just asking if that would
7 be allowable.
8 A. I think that would make some people
9 uncomfortable.
10 Q. And so you would ask him to change
11 the shirt?
12 A. If I had somebody come to work that
13 said "I'm heterosexual" it would be the same
14 thing.
15 Q. So the answer to the question is
16 that if he came to work way a shirt that says
17 "I'm gay," you would tell him to change the
18 shirt; correct?
19 A. Most likely.
20 Q. All right. There's a shirt that
21 I've seen, it's kind of a joke on the street
22 that says, "I'm not gay, but my boyfriend is,"
23 and it's worn by many gay men. If Don showed
24 up at work with that T-shirt that said, "I'm
25 not gay but my boyfriend is," would you ask him

253

1 MAYNARD
 2 change the shirt?
 3 MR. ZABELL: Objection to the form
 4 of the question, speculation and
 5 everything else.
 6 You can answer.
 7 A. Probably.
 8 Q. Okay. There's a T-shirt out there
 9 that I've seen that says "Legalize Gay." It
 10 just says "Legalize Gay." If he showed up with
 11 that T-shirt, would you allow him to wear it?
 12 A. My company is not a forum for any
 13 kind of statements. My workplace is not a
 14 forum for these things that you're asking me.
 15 Q. My question is, to you, --
 16 MR. ZABELL: Counselor, if you want
 17 a different answer, ask a different
 18 question. Asked and answered, move on,
 19 because now you're harassing the
 20 deponent.
 21 MR. ANTOLLINO: No I'm not
 22 harassing him.
 23 Q. Would you ask him to change a shirt
 24 that says "Legalize Gay"?
 25 MR. ZABELL: Objection, asked and

255

1 MAYNARD
 2 A. No.
 3 Q. What if Don wore a T-shirt that
 4 said "I love my husband," would you ask him to
 5 change that T-shirt?
 6 A. No.
 7 Q. But that's personal information.
 8 MR. ZABELL: That's not a question.
 9 Q. Isn't it personal information? If
 10 Don has a T-shirt that says "I love my
 11 husband," that's personal information; correct?
 12 A. Correct.
 13 Q. Would that make some people
 14 uncomfortable?
 15 A. It would depend on the other
 16 person.
 17 Q. Right. And do you think that would
 18 make some people uncomfortable?
 19 A. Just a T-shirt?
 20 Q. Yeah, a man wearing a T-shirt that
 21 says "I love my husband."
 22 A. Some maybe.
 23 Q. Okay. But you wouldn't ask Don to
 24 change that T-shirt?
 25 A. No.

254

1 MAYNARD
 2 answered. Move on, Counselor.
 3 Q. Can you answer the question?
 4 MR. ZABELL: You've already
 5 answered it. You don't need to answer it
 6 again.
 7 Q. All right. What about a T-shirt
 8 that says "I'm proud to be an Iraq vet"?
 9 A. To be a what?
 10 Q. An Iraq vet.
 11 MR. ZABELL: Iraq? What's the word
 12 you're saying because I think you're
 13 mispronouncing it. I don't understand
 14 it.
 15 MR. ANTOLLINO: All right. Well,
 16 maybe out in Long Island they pronounce
 17 it Iraq. In the city we pronounce it
 18 Iraq.
 19 Q. What if somebody wore a T-shirt
 20 that says "I'm an Iraq vet," would you ask
 21 somebody to change that T-shirt?
 22 A. No.
 23 Q. What about someone wearing a
 24 T-shirt that says "I love my grandchildren,"
 25 would you ask them to change that T-shirt?

256

1 MAYNARD
 2 Q. What about a T-shirt that says,
 3 "I'm proud to be Cuban," would you ask someone
 4 to change that T-shirt?
 5 A. No.
 6 Q. All right, but it's personal
 7 information, correct, that he's Cuban?
 8 A. Yes.
 9 Q. All right. What if someone was
 10 talking to a passenger and said something like,
 11 "I'm Irish and the Irish are fighters," is that
 12 something that's inappropriate to tell a
 13 customer?
 14 MR. ZABELL: Objection to the form
 15 of the question.
 16 You can answer it. As absurd as it
 17 is, you can answer it.
 18 A. No.
 19 Q. That's personal information though;
 20 correct?
 21 A. Yes.
 22 Q. All right. Were you aware that --
 23 sir, do you have a jumper from New Zealand?
 24 MR. ZABELL: Objection to the form
 25 of the multiple questions.

257

1 MAYNARD
 2 MR. ANTOLLINO: Not a jumper,
 3 withdrawn.
 4 Q. Do you have an instructor -- I need
 5 some more coffee. We'll take a break after
 6 this question.
 7 Do you have an instructor from New
 8 Zealand?
 9 A. Well, yes.
 10 Q. Is he still working for you?
 11 A. Yes.
 12 Q. Were you aware that he told
 13 Mr. Kengle that he was from New Zealand?
 14 A. No.
 15 Q. Is there anything inappropriate
 16 about that?
 17 A. No.
 18 Q. That's personal information, isn't
 19 it, that he's from New Zealand?
 20 A. Yeah.
 21 MR. ANTOLLINO: Let me just get a
 22 coffee. We are now off the record at
 23 3:58 p.m.
 24 (Recess taken.)
 25 THE VIDEOGRAPHER: We are now back

259

1 MAYNARD
 2 shouted in speaking to a customer?
 3 MR. ZABELL: Objection.
 4 You can answer, if you can.
 5 A. Maybe.
 6 Q. Isn't it true that when an
 7 instructor is strapped to a passenger, the
 8 instructor has to position his chin on either
 9 the right or the left side of the passenger to
 10 avoid hitting the passenger's head with his
 11 mouth?
 12 A. Sitting in the airplane?
 13 Q. Either sitting in the airplane or
 14 up in the air.
 15 A. Yes.
 16 Q. And so, therefore, would it be a
 17 fair statement that the mouth is very close to
 18 the ear on a tandem jump with a passenger and
 19 an instructor?
 20 A. Not for the entire jump.
 21 Q. Okay. But --
 22 A. At times.
 23 Q. At times, okay. Do you think that
 24 it might have been reasonable that the
 25 girlfriend and the boyfriend, Mr. Kengle and

258

1 MAYNARD
 2 on the record at 4:11 p.m.
 3 Q. All right. Under canopy you have
 4 to loosen the straps as you land; is that
 5 correct?
 6 A. Correct.
 7 Q. Okay. And you have to loosen the
 8 straps at the hips as you land; correct?
 9 A. Before you land.
 10 Q. Before you land?
 11 A. Correct.
 12 Q. Otherwise an injury could occur?
 13 A. It makes it better to have them
 14 loosened up, yeah.
 15 Q. Now, earlier we -- you mention also
 16 in the audio tape that Don was alleged to have
 17 whispered in the passenger's ear; correct?
 18 A. Correct.
 19 Q. Would you have preferred that he
 20 shouted?
 21 MR. ZABELL: Objection.
 22 A. I don't know what was said.
 23 Q. Well, I'm just talking about the
 24 tone of voice in terms of the decibel level of
 25 the voice, would you have preferred that he

260

1 MAYNARD
 2 Mr. and Ms. -- withdrawn.
 3 Do you think it might have been
 4 reasonable for Mr. Kengle or Ms. Orelana to
 5 have felt uncomfortable by a comment that
 6 Mr. Kengle's girlfriend was getting strapped to
 7 another guy?
 8 MR. ZABELL: Objection, asked and
 9 answered no less than three times.
 10 Q. You can answer.
 11 A. No.
 12 Q. Do you think that it was reasonable
 13 that Don might have felt uncomfortable about
 14 that?
 15 A. No.
 16 Q. Do you believe that Don, as a gay
 17 man, has to accept such a statement and play
 18 along with the suggestion that he's a
 19 heterosexual?
 20 MR. ZABELL: Objection to the form
 21 of the question, the innuendo contained
 22 in that question and the
 23 mischaracterization of the intent --
 24 Q. You can answer.
 25 MR. ZABELL: -- of that question.

261

1 MAYNARD
2 If you can.
3 A. I don't know.
4 Q. Do you believe it was unreasonable
5 for Don to take him out -- take himself out of
6 the suggestion that someone else made that he's
7 being strapped to someone else's girlfriend?
8 A. Take himself out?
9 Q. Take himself out of the equation.
10 Do you think that's reasonable?
11 MR. ZABELL: Objection to the form.
12 I don't think it's a question that can be
13 answered in the manner in which it's
14 phrased, but to the extent that you
15 understand it, you may answer.
16 A. I don't know.
17 Q. But you think it was unreasonable
18 for him to mention that he was gay in order to
19 take himself out of the equation; correct?
20 MR. ZABELL: No -- objection to the
21 form.
22 Q. You can answer.
23 A. No, no.
24 Q. So it was reasonable for him to
25 tell the customer that he was gay to take

263

1 MAYNARD
2 You can answer it this last time.
3 I will not allow him to harass you any
4 more after this.
5 A. I don't believe that this was being
6 in a sexual position or whatever you just said.
7 Q. You don't believe that there was
8 any sexual innuendo being made when an
9 instructor other than Don said to Mr. Kengle
10 and Ms. Orelana, I bet you didn't know that
11 your girlfriend was going to get strapped to
12 another guy?
13 A. No.
14 MR. ZABELL: Don't answer it any
15 more. You've been asked the question
16 multiple times. I told him before I
17 would not allow him to continue to harass
18 you on this issue in the manner in which
19 he has. Therefore, I will not permit any
20 additional questions repeating that same
21 question.
22 Q. If a customer came on to Don -- if
23 a woman came on to Don at the drop zone, would
24 it be appropriate for him to say, yeah, thanks
25 but I'm not interested because I'm gay?

262

1 MAYNARD
2 himself out of the equation that he was being
3 put in as someone who was being strapped to
4 someone else's girlfriend; correct?
5 MR. ZABELL: Objection to the form.
6 A. Maybe.
7 Q. Why do you say maybe?
8 MR. ZABELL: Objection to the form.
9 You may answer.
10 Q. Why would you say "maybe"; why not
11 yes or no?
12 A. Because taking yourself out of the
13 equation, you know, that's a choice.
14 Q. Someone in the airplane, the
15 witnesses testified, made the suggestion that
16 Don was being strapped to a someone else's
17 girlfriend --
18 MR. ZABELL: Correct.
19 Q. -- in a way that was sexual --
20 MR. ZABELL: That's incorrect.
21 Q. -- correct?
22 MR. ZABELL: Objection to the form
23 of the question. Objection to the
24 mischaracterization of the prior
25 testimony.

264

1 MAYNARD
2 MR. ZABELL: Objection to the form
3 and the hypothetical.
4 You can answer.
5 A. I don't know.
6 Q. Why don't you know?
7 MR. ZABELL: Objection to the form.
8 A. I don't know.
9 Q. If someone tried to come on to
10 Don -- well, let me ask you this; did you ever
11 see any women express any interest in Don?
12 A. No.
13 Q. Do you believe any women ever have?
14 A. I don't know.
15 Q. All right. We've looked at
16 pictures and now we're going to watch some
17 videos. We will start with what I have
18 previously marked as the Rich folder which you
19 already have. We're starting with a folder
20 called "Rich" that I have on my computer which
21 I also have given to counsel and was also
22 viewed at the deposition of Rich Winstock and
23 there are five little movies here and I'm going
24 to play movie 1334 now and I'm going to ask you
25 to watch it and I'm going to ask if you see

265

1 MAYNARD
 2 anything in this video that is improper,
 3 inappropriate or unsafe.
 4 Would you agree to answer those
 5 questions after you watch the video?
 6 A. Yes.
 7 Q. All right.
 8 MR. ZABELL: Before the play the
 9 videotape -- are you all right?
 10 MR. ANTOLLINO: I'm fine.
 11 MR. ZABELL: Why don't you discuss
 12 with me on the record how you'd like the
 13 court reporter to handle --
 14 MR. ANTOLLINO: There's no way
 15 she's going to be able to -- there's no
 16 way. It's just shouting and music.
 17 MR. ZABELL: That's fine. So we
 18 should discuss it so we both have a clear
 19 understanding and she has clear direction
 20 as to what is going to proceed and how
 21 we're going to proceed.
 22 MR. ANTOLLINO: Fair enough.
 23 There's no way to transcribe it, but
 24 we're now playing 1334.
 25 (Whereupon video is played.)

267

1 MAYNARD
 2 A. Okay.
 3 MR. ZABELL: Are you agreeing or
 4 are you just accepting what he said as
 5 accurate, Mr. Maynard?
 6 THE WITNESS: To what?
 7 MR. ZABELL: Are you agreeing to
 8 his statement --
 9 THE WITNESS: That she was a
 10 first-time jumper?
 11 MR. ZABELL: No, that the lady in
 12 green was a tandem.
 13 A. Yes, the woman in green was a
 14 tandem.
 15 Q. And she's not the one that did the
 16 role?
 17 A. Correct.
 18 Q. What did you call it?
 19 A. It's called a tube.
 20 Q. A tube, okay. And it was just a
 21 single jumper that did that?
 22 A. No, there's two people.
 23 Q. There's two people. So you don't
 24 know the level of experience of those two
 25 people, do you?

266

1 MAYNARD
 2 Q. Okay, so the question is, did you
 3 see anything in that video that was
 4 inappropriate, improper or unsafe?
 5 A. Well, the exit -- the jump itself
 6 they're experienced jumpers. It's called
 7 rolling a tube out the door. People are
 8 saying -- I believe they were saying, "Make
 9 shit happen." They're adults in the plane. I
 10 don't know what's so bad about that.
 11 Q. Well, let me ask you this, do you
 12 know that they were experienced jumpers?
 13 A. Yes.
 14 Q. Do you know all of those people?
 15 A. I don't know -- do I know all of
 16 those people? I didn't see all of them.
 17 You're talking about everybody that's in the
 18 airplane.
 19 Q. The woman in the green, were you
 20 aware that that was her first tandem or not?
 21 MR. ZABELL: Objection to the form.
 22 A. That's not a tandem that went out
 23 the door.
 24 Q. The woman in the green was in a
 25 tandem; correct?

268

1 MAYNARD
 2 A. I knew who the people were, but I
 3 also know that they are very experienced
 4 jumpers because only experienced jumpers would
 5 do that maneuver.
 6 Q. But they were tandem passengers?
 7 A. They were not.
 8 Q. Oh, okay. That's all I wanted to
 9 know. There's a little bit of comradery with
 10 the expression in the plane "Make shit happen";
 11 correct?
 12 MR. ZABELL: Objection to the form.
 13 You may answer.
 14 A. Yes.
 15 Q. And the entire staff responds in
 16 kind, including Rich Winstock, "Make shit
 17 happen"; correct?
 18 A. Correct.
 19 Q. And that's basically the atmosphere
 20 when you're up in the air; correct?
 21 MR. ZABELL: Objection to the form.
 22 A. Sometimes.
 23 Q. Okay. You want to have it be
 24 relaxed and loose so that people aren't
 25 uncomfortable when they're about to be falling

269

1 MAYNARD
2 out of an airplane; correct?
3 A. Correct.
4 Q. All right. I'm finished with this
5 movie and we're going to go on to the next
6 movie, 1335, and the same question applies
7 inappropriate, improper or unsafe?
8 MR. ZABELL: Objection to the form.
9 (Whereupon video is played.)
10 Q. Okay, you've watched the entire
11 video?
12 A. Yeah.
13 Q. And that's the video of the time
14 when someone gave someone else the finger;
15 correct?
16 A. Correct.
17 Q. And there was a -- and one part of
18 that video someone feigned vomiting, would you
19 agree with that characterization?
20 A. They what?
21 Q. They faked a vomit.
22 MR. ZABELL: Objection to the form
23 of the question.
24 Q. Do you remember at one point --
25 MR. ZABELL: Are you withdrawing

271

1 MAYNARD
2 A. What you're asking me about this is
3 with experienced jumpers having fun with each
4 other and not a customer making a complaint
5 about something that was not right.
6 Q. I'm just asking you if you think
7 that that was improper in any way?
8 A. No.
9 Q. Did you see anything that was
10 inappropriate or unsafe in that video?
11 A. I don't think so.
12 Q. Wasn't there, in fact, a tandem in
13 that plane?
14 A. I'd have to see it again.
15 Q. All right. Let's watch it again.
16 (Whereupon video is played.)
17 A. It was a tandem?
18 Q. Were you able to see a tandem in
19 there?
20 A. No.
21 Q. What about that young lady in the
22 back?
23 A. Like I said, I didn't see it.
24 Q. You didn't see a tandem in there?
25 Well, let me ask you this, if there had been a

270

1 MAYNARD
2 the question before allowing the --
3 MR. ANTOLLINO: The witness does
4 not seem to understand what I'm getting
5 at.
6 Q. But I'm going to describe that
7 there was someone who went "Blah" and stuck his
8 tongue out in the camera; correct?
9 MR. ZABELL: Let the record
10 reflect --
11 MR. ANTOLLINO: Let the record
12 reflect --
13 MR. ZABELL: Does the videotape
14 picture Mr. Zarda -- Mr. Antollino?
15 MR. ANTOLLINO: No.
16 MR. ZABELL: Well, let the record
17 reflect that Mr. Antollino stuck his
18 tongue out of his mouth and made a
19 gagging sound.
20 MR. ANTOLLINO: Yes.
21 Q. All right. Did you see that on the
22 video?
23 A. Yes.
24 Q. And did you think that was
25 inappropriate in any way?

272

1 MAYNARD
2 tandem in there, would any of that comradery of
3 experienced divers in front of the tandem
4 passengers have been inappropriate?
5 MR. ZABELL: Objection to the form
6 of the question.
7 You may answer.
8 A. I didn't see that tandem person
9 near these other guys. They were pretty far a
10 about in the airplane and these were
11 experienced jumpers again just goofing with
12 each other.
13 Q. It was pretty goofy, wasn't it?
14 A. Yeah.
15 Q. And if there were a tandem
16 passenger in there, is anything improper about
17 that goofiness?
18 A. No.
19 Q. Okay. So let's move on to 1337.
20 (Whereupon video is played.)
21 Q. All right, did you see anything
22 that was inappropriate, unsafe or improper?
23 A. No.
24 Q. There were portions in there where
25 people were touching each other on the

273

1 MAYNARD
 2 posterior; is that correct?
 3 A. Yes.
 4 Q. What is the reason for that?
 5 A. They were getting their balance
 6 because they're standing outside the aircraft
 7 that has no step.
 8 Q. It was necessary for them to do
 9 that?
 10 A. Yes.
 11 Q. It was necessary for them to touch
 12 each other's posterior; correct?
 13 A. Yes.
 14 Q. Okay. Now we're looking at 1339.
 15 (Whereupon video is played.)
 16 Q. Did you see anything in there that
 17 was inappropriate or unsafe?
 18 A. No.
 19 Q. Now we're going to look at 1340.
 20 (Whereupon video is played.)
 21 Q. Did you see anything in there that
 22 was inappropriate or unsafe?
 23 A. No.
 24 Q. There was some point -- did you
 25 recognize the instructor in that video?

275

1 MAYNARD
 2 Q. He was tapping her on the head?
 3 Didn't it really look like he was sticking his
 4 fingers in her ears and going like this
 5 (indicating)?
 6 A. No.
 7 Q. Okay. Was there anything
 8 inappropriate about his tapping her head?
 9 A. I don't think so.
 10 Q. Was it just a joke, a harmless
 11 trope for a skydiver?
 12 MR. ZABELL: Objection to the form
 13 of the question.
 14 Q. You can answer.
 15 MR. ZABELL: And the words you
 16 used.
 17 If you can. If you know what he's
 18 saying.
 19 THE WITNESS: I don't know what
 20 he's saying. They were doing something
 21 for the video.
 22 Q. They were being goofy for the
 23 video; correct?
 24 A. They were having fun.
 25 Q. And by -- and in having fun, they

274

1 MAYNARD
 2 A. I think it was Super John.
 3 Q. Super John. What's Super John's
 4 last name? Well, I'll tell you what, since you
 5 have asked to review a copy of the record, I'll
 6 leave a blank space in there. Would you look
 7 it up and write it into the space?
 8 + TO BE FURNISHED: _____
 9 A. Yeah.
 10 Q. There was a point in there where
 11 the instructor was sticking his finger into the
 12 tandem passenger's ears and making what I
 13 believe was moose ears?
 14 MR. ZABELL: Objection to the form
 15 of the question --
 16 A. I didn't see it.
 17 MR. ZABELL: -- and the
 18 representations made therein.
 19 MR. ANTOLLINO: Counsel, you were
 20 the one last week who said that that was
 21 moose ears. All right, let's look at it
 22 again.
 23 (Whereupon video is played.)
 24 Q. Did you just see that?
 25 A. He was tapping her on the head.

276

1 MAYNARD
 2 were being goofy; correct?
 3 A. Yes.
 4 Q. Okay. And if someone -- if an
 5 instructor did put his fingers in a passenger's
 6 ear and make a little moose ear for the video,
 7 would that have been improper?
 8 A. I don't know, but that's not what I
 9 saw.
 10 Q. Okay. But, you know, you're an
 11 experienced skydiver and I just want to know
 12 what your opinion is if that happened and
 13 someone did make moose ears, would that have
 14 been inappropriate or is that just typical?
 15 A. If I saw a video of somebody
 16 sticking their fingers in someone's ear that
 17 would be inappropriate. That is not what I
 18 saw.
 19 Q. Okay. We're looking at 1341 now.
 20 (Whereupon video is played.)
 21 Q. Did you see anything in there that
 22 was inappropriate, unsafe or improper?
 23 A. No. Could I watch it one more
 24 time?
 25 Q. Sure.

277

1 MAYNARD
 2 (Whereupon video is played.)
 3 A. No, I believe that they did either
 4 a front flip or a back flip and then they came
 5 out of it.
 6 Q. The instructor has his arms around
 7 the passenger until the drove went up; is that
 8 true?
 9 A. No.
 10 Q. You see the instructor having his
 11 arms around the passenger at any time?
 12 A. Yeah.
 13 Q. Why?
 14 A. Because they would have to do the
 15 flip one way or the other, that's the position
 16 you have to get into.
 17 Q. That something if they wanted to do
 18 the flip he had to put his arms around her;
 19 correct?
 20 A. Yes.
 21 Q. And he was basically hugging her;
 22 correct?
 23 A. He had his arms around her. I
 24 wouldn't characterize it as hugging her.
 25 Q. All right. So if she complained

279

1 MAYNARD
 2 passenger and you're jumping out of the plane
 3 if -- are there any dangers to pulling the
 4 drogue too quickly?
 5 A. No.
 6 Q. We're going to look now at the main
 7 event, the video of Mr. Zarda and Ms. Kengle
 8 and this is the video that you've provided to
 9 me which has the screen name skydiveavi.avi;
 10 correct?
 11 (Whereupon video is played.)
 12 Q. For some reason the video is
 13 stopping so we're going to have to go back to a
 14 point where before it stopped and play more.
 15 (Whereupon video is played.)
 16 MR. ANTOLLINO: Something is wrong
 17 with this video.
 18 MR. ZABELL: Counselor, I have a
 19 copy a my computer.
 20 MR. ANTOLLINO: Would you mind?
 21 Thanks a lot.
 22 (Whereupon video is played.)
 23 Q. Okay. You've now watched the
 24 entire video. You can take that counselor.
 25 Okay. So you've watched that video

278

1 MAYNARD
 2 afterwards that he put his arms around me,
 3 would you fire that instructor?
 4 A. No.
 5 Q. How many seconds was it before he
 6 drops the drogue in that, were you able to
 7 catch it?
 8 A. No.
 9 Q. Was it an inappropriate amount of
 10 time?
 11 A. No. When they go out of the
 12 airplane, they do a flip with the people, a
 13 front flip or back flip. They go out a little
 14 bit longer than the normal with the drogue.
 15 Q. What are some other reasons why he
 16 might -- what is the recommended amount of time
 17 to pull the drogue when you leave the airplane?
 18 A. It's probably between five and
 19 seven seconds.
 20 Q. Okay. And is it better to have a
 21 light passenger to wait a little closer to
 22 seven so you don't collide with the
 23 photographer if there is photography?
 24 A. No.
 25 Q. Is it possible if you have a light

280

1 MAYNARD
 2 and you've seen it before; correct?
 3 A. Correct.
 4 Q. About how many times have you
 5 watched it?
 6 A. Not much.
 7 Q. More than five?
 8 A. No.
 9 Q. If you were to grade Don's
 10 performance in that zero, what would you give
 11 it?
 12 A. The skydive part of it?
 13 Q. Yeah.
 14 A. An eight or nine except I didn't
 15 see any handle checks where you touch the
 16 handle which is supposed to be done at every
 17 jump. I didn't see that. It wasn't apparent
 18 on that jump.
 19 Q. In other words it just might not
 20 have been filmed when he did it; correct?
 21 A. No. He was filmed -- the handle
 22 checks are done under drogue.
 23 Q. Right.
 24 A. So he was filmed the entire time
 25 under the drogue. The handle checks are before

281

1 MAYNARD
 2 you come in and put the parachute up.
 3 Q. But you'd give it an eight or nine
 4 out of ten?
 5 A. Yes, I would.
 6 Q. Okay. And how would you rate the
 7 landing?
 8 A. The landing was good.
 9 Q. Would you characterize it as good
 10 or great?
 11 A. Yes.
 12 Q. Okay. Did you see at the end that
 13 the passenger seemed happy?
 14 A. No.
 15 Q. You didn't see that she seemed
 16 happy?
 17 A. No.
 18 Q. What did you see?
 19 A. And in the beginning the looks that
 20 Don had on his face looking at her and the
 21 expressions were kind of creepy too.
 22 Q. So you think that Don made some
 23 creepy expressions on there?
 24 A. Yeah.
 25 Q. Do you think that those expressions

283

1 MAYNARD
 2 Q. Some people throw up; correct.
 3 A. Correct.
 4 Q. But they still might have had a
 5 good time; correct?
 6 A. Correct.
 7 Q. She said "That was awesome"; is
 8 that correct?
 9 A. I don't know.
 10 Q. All right. Let's watch the video
 11 again then.
 12 (Whereupon video is played.)
 13 Q. Now that you've seen it again she
 14 said "Yeah, that was awesome"; isn't that
 15 right?
 16 A. Yeah, she said it.
 17 Q. And she smiled; correct?
 18 A. She smiled when she kissed her
 19 boyfriend.
 20 Q. She smiled next to Don. She posed
 21 with Don after she kissed her boyfriend;
 22 correct?
 23 MR. ZABELL: Objection to the
 24 multiple questions.
 25 Q. You may answer.

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1 MAYNARD
 2 are why you fired Don?
 3 A. No, not at all. I got a complaint.
 4 Q. Okay. So you had to fire an
 5 employee because of any complaint?
 6 A. Do I have to fire them?
 7 Q. Yeah.
 8 A. No, I do not have to fire every
 9 employee because of a complaint. If it's a
 10 serious complaint, yes, I do.
 11 Q. You're saying that she didn't look
 12 happy in that video?
 13 A. I what?
 14 Q. You don't believe she looked happy
 15 in that video?
 16 A. I don't think she did.
 17 Q. At the end she said it was awesome?
 18 A. I'm just looking at her facial
 19 expression when she first landed.
 20 Q. Well, when people land they can
 21 have any number of expressions, they're just
 22 coming from their teen thousand feet; correct?
 23 A. You asked me -- go ahead.
 24 Q. Is that right?
 25 A. Yes.

284

1 MAYNARD
 2 MR. ZABELL: You may pick one and
 3 answer.
 4 A. What's your question?
 5 Q. She posed with Don after she kissed
 6 her boyfriend; correct?
 7 A. Correct.
 8 Q. She voluntarily put her face next
 9 to Don's face and smiled for the camera;
 10 correct?
 11 A. It might have been that way.
 12 Q. Okay. Do you have any reason to
 13 believe that she did not think the jump was
 14 awesome if it was not awesome?
 15 MR. ZABELL: Objection to the form
 16 of the question.
 17 You may answer.
 18 A. Yes, I do.
 19 Q. And what's that, what Mr. 3Kengle
 20 told you?
 21 A. Correct.
 22 Q. Anything else?
 23 A. No.
 24 Q. As is evident from that video there
 25 is nothing in there that indicates that she did

285

1 MAYNARD
2 not have an awesome time on that jump; correct?
3 MR. ZABELL: Objection to the form
4 of the question and he's already told you
5 what he believes is on the video that
6 does not indicate that she had an awesome
7 jump.
8 Q. You can answer the question.
9 A. I don't believe that videotape
10 backs up that she had a great jump, no, I do
11 not.
12 Q. Why? Let's list all the reasons.
13 A. When she landed?
14 Q. Uh-huh.
15 A. She didn't look happy. She might
16 have said "Awesome," but that wasn't like "Oh,
17 that was awesome." It was like, "It was
18 awesome."
19 Q. Anything else? So she wasn't
20 evocative enough?
21 MR. ZABELL: Objection to the form
22 of the question. If you understand the
23 words that he's using, you may answer.
24 If you don't understand them, you can
25 tell him you don't understand them.

287

1 MAYNARD
2 on the tape. When he was being filmed when the
3 camera is directly on him?
4 A. Correct.
5 Q. You thought that those expressions
6 were creepy?
7 A. The way that he was looking at her,
8 looking at her and then looking back and doing
9 whatever else he was, at some point like that,
10 I thought that was a little creepy and that's
11 my opinion.
12 Q. You didn't fire him for that, did
13 you?
14 A. No.
15 Q. Do you instruct your instructors
16 how to act when they're on camera?
17 A. Excuse me?
18 Q. Do you instruct your instructors
19 how to act when they're on camera when someone
20 is buying video?
21 A. Professionally.
22 Q. Isn't it true that you don't want
23 hem to sit there with a poker face?
24 A. No.
25 Q. Okay. You want them to contribute

286

1 MAYNARD
2 A. I don't understand them.
3 Q. She wasn't expressive enough?
4 MR. ZABELL: The same objection.
5 A. No.
6 Q. And any other evidences that she
7 didn't have an awesome time?
8 A. No.
9 Q. So it's simply when she landed that
10 she wasn't smiling immediately and her -- and
11 when her statement of awesomeness was not
12 expressive enough; correct?
13 MR. ZABELL: Objection.
14 Q. Just those two things are the
15 evidences that she didn't have an awesome time;
16 correct?
17 MR. ZABELL: Objection to the
18 multiple questions posed before you. You
19 may choose any one of them and provide an
20 answer to it.
21 A. No.
22 Q. Now, what were the creepy looks
23 that Don gave?
24 A. You can see it on the tape.
25 Q. So it's -- when he's being filmed

288

1 MAYNARD
2 to the fun of the jump; correct?
3 A. Correct.
4 Q. And, so, when this particular
5 vision of Mr. Zarda was shown, only his face
6 and his hands were available; correct?
7 A. Correct.
8 Q. So he was making expressive
9 gestures with his face and his hands; correct?
10 A. Correct.
11 Q. And those gestures were very
12 similar to many of the gestures we've seen in
13 the other videos and in the screen shots I
14 showed you; correct?
15 MR. ZABELL: Objection to the form
16 of the question.
17 You may answer.
18 A. No.
19 Q. Okay. Were his extra creepy?
20 MR. ZABELL: Objection to the form
21 of the question.
22 You may answer.
23 A. They were different.
24 Q. They were different. And what made
25 them different?

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1 MAYNARD
2 A. The way he was looking at her and
3 the motions that he made were different than
4 any other thing you showed me today.
5 Q. When Mr. Kengle called, he didn't
6 mention anything about looking at her or making
7 any -- looking at her in an improper way, did
8 he?
9 MR. ZABELL: Objection to the form
10 of the question. You may answer.
11 A. He called to make a complaint about
12 how his girlfriend was unhappy the way she felt
13 on the jump; that she felt totally
14 uncomfortable. That is what the phone call was
15 about. It was a complaint.
16 Q. And she felt uncomfortable in part
17 because Don told her that he is gay?
18 A. Correct.
19 Q. All right. We're going to -- now
20 Mr. Kengle was on the same plane. You saw him
21 in the video we just saw; correct?
22 A. I don't know if I saw him.
23 Q. Well, he had his own video; is that
24 correct?
25 A. That's correct.

291

1 MAYNARD
2 was fucking awesome; is that right?
3 A. I didn't hear it. Maybe he did.
4 Q. You didn't hear him say it once or
5 at all?
6 A. No.
7 Q. He looked happy at the end of the
8 jump; correct? Did you see -- withdrawn.
9 Have you ever seen that video
10 before?
11 A. No, I don't think so.
12 Q. There was one point in there where,
13 you know, Ms. Orelana gave a little kiss to the
14 camera. Did you see that?
15 A. Yes.
16 Q. Did you think that was
17 inappropriate?
18 A. No.
19 Q. She was flirting with the camera;
20 correct?
21 MR. ZABELL: Objection to the form.
22 A. I don't know.
23 Q. How did they exit the -- how did
24 they exit the airplane? Was that the
25 appropriate way to exit the airplane in that

290

1 MAYNARD
2 The guy's last name is Sherman.
3 John Sherman. It just came to me.
4 Q. All right. I'm going to show you
5 my computer and ask you if you recognize
6 this -- well, you never met with Mr. Kengle
7 with -- in respect to this complaint did you?
8 MR. ZABELL: Wait, wait. Objection
9 to the form of the multiple questions.
10 MR. ANTOLLINO: Okay, withdrawn,
11 and I'll ask it again.
12 Q. You never met with Mr. Kengle after
13 his complaint, did you?
14 A. No, I did not.
15 Q. So you wouldn't necessarily be able
16 to pick him out of a lineup, would you?
17 A. No.
18 Q. All right. Well, let's just play
19 the video.
20 (Whereupon video is played.)
21 Q. Did you see anything in there that
22 was inappropriate or unsafe?
23 A. No.
24 Q. All right. And I believe that
25 Mr. Kengle said twice after he landed that it

292

1 MAYNARD
2 video?
3 A. Yes.
4 Q. Hold on a second.
5 Do you believe that homosexuality
6 is wrong?
7 A. I don't have an opinion on it. If
8 people want to do it, people can do as long as
9 it doesn't affect me or affect my customers
10 it's a free world.
11 Q. So, therefore, you would say it's
12 not wrong?
13 A. No.
14 Q. It's not wrong?
15 A. No.
16 MR. ZABELL: No, it's not wrong or,
17 no, it is wrong.
18 A. No, it's not wrong.
19 Q. It took you a while to get there,
20 though, you didn't --
21 MR. ZABELL: Objection.
22 Q. You paused. I mean, we've got it
23 on tape. You paused a while before you gave an
24 answer on that. Why did you have to think
25 about that?

293

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You can answer.
4 A. Because I did, that's all.
5 Q. Do you think it's a disorder being
6 gay?
7 MR. ZABELL: Objection.
8 A. No.
9 Q. Do you think that gay people can
10 become heterosexual if they want to?
11 A. I'm not a doctor or a psychologist
12 or anybody to make any kind of opinion on that.
13 Q. Do you think gay marriage is wrong?
14 A. No.
15 MR. ANTOLLINO: All right. Do you
16 want to change the tape?
17 THE VIDEOGRAPHER: We are now off
18 the record at 5 p.m.
19 (Recess taken.)
20 THE VIDEOGRAPHER: This is tape six
21 of the deposition of Raymond Maynard.
22 We're now on the record at 5:06 p.m.
23 Q. Do you know anyone by the name of
24 Doug Smith?
25 A. Doug Smith?

295

1 MAYNARD
2 filed this case? Are you aware of that?
3 A. No.
4 Q. So it could be true?
5 A. It could be.
6 Q. You don't have any press release
7 that was sent out to the press; correct?
8 A. No.
9 Q. Was there anything wrong -- do you
10 think there was anything wrong with Don
11 cooperating and speaking to the reporter who
12 was interested in the case?
13 A. No.
14 Q. Now after Don was fired he applied
15 for unemployment insurance; correct?
16 A. I believe he did.
17 Q. How did you find out about it?
18 A. Because I get a notice from
19 Unemployment.
20 Q. All right. And one of the
21 grounds -- well, you contested his claim for
22 unemployment; correct?
23 A. Yes, we did.
24 Q. And one of the grounds you can
25 contest unemployment is that the employee was

294

1 MAYNARD
2 Q. Yes.
3 A. It doesn't ring a bell.
4 Q. Did anyone ever contact you about
5 Don after you fired him in relation to Don's
6 applying for another job?
7 A. No.
8 Q. Now, after the lawsuit was filed,
9 there was a little bit of press attention in
10 October of 2010. Do you recall that?
11 A. Yes, I do.
12 Q. Are you under the impression that
13 either Don or I sent out a press release
14 announcing the lawsuit?
15 A. I don't know who contacted the
16 press, but somebody had to.
17 Q. Well, are you aware that the court
18 docket is a public docket?
19 A. No.
20 Q. Are you aware that reporters often
21 look in the docket for juicy and interesting
22 cases?
23 A. No.
24 Q. Were you aware that a reporter from
25 the New York Post called me the day after I

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1 MAYNARD
2 fired for misconduct; correct?
3 A. I believe -- I don't remember
4 exactly, I thought that it was about that he
5 was working, had another job somewhere.
6 Q. Well, I'll show you what I've
7 premarked as 26.
8 (Exhibit R-26, letter, marked for
9 Identification.)
10 Q. And I'll ask you if you recognize
11 this.
12 A. (Reviewing.)
13 Yes.
14 Q. You recognize it?
15 A. Yeah.
16 Q. That's a letter that Lauren
17 Callanan wrote on your behalf to the
18 unemployment insurance division; correct?
19 A. Correct.
20 Q. And, so, one of the points that she
21 makes is that "Mr. Zarda resumed working for
22 Altitude Express on May 15, 2010 through June
23 21, 2010 and was terminated for believed
24 misconduct as we received complaints from
25 customers stating Mr. Zarda shared

297

1 MAYNARD
2 inappropriate information with them regarding
3 his personal life"; correct?
4 A. Correct.
5 Q. It doesn't mention anything there
6 about improper touching; correct?
7 A. With what?
8 Q. It doesn't mention anything there
9 about improper touching; correct?
10 A. No.
11 Q. And the complaints from customers,
12 that was just from one customer; correct?
13 A. Correct.
14 Q. And Mr. Kengle; correct?
15 A. Correct.
16 Q. And Lauren said, "This is not the
17 first time we had received complaints from
18 paying customers regarding Mr. Zarda," and when
19 you say that, you're referring to the
20 complaints from 2001; correct?
21 A. Correct.
22 Q. All right. And those complaints
23 were also about Don sharing personal
24 information at the workplace; correct?
25 A. Yes.

299

1 MAYNARD
2 Q. Yeah.
3 A. He told us he owned a company. He
4 gave us that information, Don gave us that
5 information.
6 Q. But why did she used the word
7 "speculated"?
8 A. I don't know.
9 Q. You don't know how much money that
10 company makes?
11 A. No.
12 Q. Do you know why -- withdrawn. Do
13 you know why you would want to see any e-mails
14 between Don and Bill Moore?
15 A. Why would I want to see e-mails?
16 Q. Yeah, why would you -- could you
17 think of any reason you would want to see
18 e-mails between Don and Bill Moore?
19 A. I don't know who Bill Moore is.
20 Q. Did Don have a cat that died?
21 A. Did he have a cat that died?
22 Q. Yes.
23 A. I believe he did.
24 Q. Did you see him crying at the drop
25 zone at any time?

298

1 MAYNARD
2 Q. You also speculated that Don was
3 working at Advance in Fitness; correct?
4 MR. ZABELL: Objection. This
5 document does not indicate that Mr.
6 Maynard speculated about anything.
7 MR. ANTOLLINO: All right.
8 Q. The document does say, and you can
9 refer to it since I have taken it from you, "It
10 is speculated that during this time through
11 present day, Mr. Zarda has also owned, co-owned
12 and maintained his own business."
13 MR. ZABELL: Correct, but
14 Mr. Maynard didn't write this letter,
15 Counsel.
16 Q. It says that "It is speculated,"
17 correct? Do you want to look at the letter?
18 A. (Reviewing.)
19 Okay.
20 Q. Do you know who -- you know, Lauren
21 uses what we call in the law the passive voice.
22 It is speculated, but it doesn't say who did
23 the speculation. Do you know who did the
24 speculation?
25 A. That he owned a company?

300

1 MAYNARD
2 A. Did I personally see him crying?
3 Q. Yeah.
4 A. I don't believe so.
5 Q. Did anyone tell you that he cried?
6 A. I don't remember anybody telling me
7 that he cried. I know he was upset that his
8 cat died.
9 Q. Was he unable to do jumps for any
10 period of time because of the death of the cat?
11 A. I don't remember that.
12 Q. All right. This request for a
13 finding of misconduct was denied by
14 Unemployment; correct?
15 MR. ZABELL: Objection to the
16 mischaracterization of the document.
17 Q. I'm just asking if you know.
18 A. I don't know.
19 Q. Okay. Well, did Don get
20 unemployment?
21 A. I don't remember. I think he did.
22 Q. You're looking for people; is that
23 right?
24 MR. ZABELL: Objection to the form.
25 Q. You're looking for workers, aren't

301

1 MAYNARD
2 you?
3 A. We're always looking for workers.
4 Q. You're always looking for workers.
5 In fact, you put out two ads for workers, one
6 on Facebook and one on dropzone.com; is that
7 correct?
8 A. Correct.
9 Q. I'll show you what I've marked as
10 24?
11 MR. ZABELL: Thank you, Counselor.
12 (Exhibit R-24, posted ads, marked
13 for Identification.)
14 Q. How many -- are those ads that your
15 company has posted?
16 A. Yes.
17 Q. Seeking experienced skydivers?
18 A. Yes.
19 Q. Okay. How many do you need?
20 A. I like to get probably four to six
21 more tandem masters and a few more video guys,
22 a few ground guys.
23 Q. Okay. So Don -- how many video
24 guys?
25 A. I haven't crunched all the numbers,

303

1 MAYNARD
2 MR. ZABELL: Step outside.
3 MR. ANTOLLINO: You have
4 interrupted the questioning. You're
5 coaching the witness and that's unfair.
6 THE VIDEOGRAPHER: Do you want me
7 to go off the record now?
8 MR. ANTOLLINO: Well, I have no
9 choice.
10 THE VIDEOGRAPHER: We are now off
11 the record at 5:16 p.m.
12 (Recess taken.)
13 THE VIDEOGRAPHER: We are now on
14 the record at 5:17 p.m.
15 MR. ANTOLLINO: Counsel, that was
16 completely inappropriate and I'm going to
17 ask for evidentiary sanctions because of
18 that.
19 MR. ZABELL: Counselor, look at me
20 when you speak to me, please. I am
21 telling you you are absolutely incorrect.
22 I started to get up to take a quick break
23 before you started asking your question.
24 MR. ANTOLLINO: Nonsense.
25 MR. ZABELL: You saw that I stood

302

1 MAYNARD
2 probably two or three more.
3 Q. All right. So you're looking for
4 between five and nine people who are
5 experienced jumpers; correct?
6 A. About that.
7 Q. Because the video guys also have to
8 go out in the parachute; correct?
9 A. Correct.
10 Q. Don is qualified for all of those
11 jobs; correct?
12 A. Correct.
13 Q. All right. Is Don eligible for
14 rehire this summer?
15 MR. ZABELL: Objection to the form
16 of the question.
17 Q. You can answer.
18 MR. ZABELL: Just yes or no.
19 THE WITNESS: Excuse me?
20 MR. ZABELL: Just answer yes or no.
21 A. No.
22 Q. Why not?
23 MR. ZABELL: Let's take a break.
24 MR. ANTOLLINO: No, no, no, hold
25 on. We are going to --

304

1 MAYNARD
2 up and then you jammed out a question
3 while I had already was attempting to
4 take a break.
5 MR. ANTOLLINO: Nonsense. You went
6 out and coached your witness.
7 Q. Why is Don not eligible for rehire?
8 MR. ZABELL: Objection to the form.
9 You may answer.
10 A. He was let go for a customer
11 complaint and this was the second time it
12 happened. I believe in giving people a second
13 chance and he's had a second chance.
14 Q. Are there any other reasons?
15 A. No.
16 Q. All right. And would it be fair to
17 say you will never hire Don again?
18 MR. ZABELL: Objection to the form.
19 You can answer.
20 A. I never say never. Right now, two
21 strikes and -- I never say never though.
22 Q. Did you have a conversation with
23 your attorney outside?
24 MR. ZABELL: Objection.
25 Don't answer that question.

305

1 MAYNARD
2 Q. Just whether there was a
3 conversation?
4 MR. ZABELL: Don't answer that
5 question.
6 + MR. ANTOLLINO: Okay. We'll just
7 mark it for the ruling.
8 Q. How do you pay your workers?
9 A. Some people are W-2 and some people
10 are 1099 contract workers.
11 Q. Who is W-2 and who's a 1099?
12 A. Most -- well, half the -- half of
13 the video guys and half of the tandem guys have
14 chosen between the two. All the other
15 employees, the ground crew workers, the office
16 help and all of that, they're all W-2. There
17 are advantages, I guess, to being a 1099 that
18 the jumper guys like to take advantage of as
19 seasonal workers.
20 Q. Was Don a 1099 or a W-2?
21 A. I'm not sure.
22 Q. Are there any days where an
23 employee might be around the drop zone all day
24 long and not do any jumps?
25 A. What do you mean?

307

1 MAYNARD
2 to be available if there is -- if work is in.
3 Q. So they're on-call?
4 A. Correct.
5 MR. ZABELL: Objection to the form.
6 Q. All right. Is the cell reception
7 very good out there? Is the cell reception
8 good out there in Calverton?
9 MR. ZABELL: Objection.
10 A. Oh, cell, yes.
11 Q. Okay. There's not really much
12 around Drop Zone Long Island -- I'm sorry,
13 Skydive Long Island, is there in terms of, you
14 know, amenities, stores things like that?
15 MR. ZABELL: Objection to the form.
16 You may answer.
17 A. Yes, there are.
18 Q. All right. Well, what's within a
19 mile?
20 A. What's within a mile?
21 Q. Yeah.
22 A. There's a bagel place right north
23 of the airport on 25. There's a few stores
24 there.
25 Q. Well, isn't the runway itself two

306

1 MAYNARD
2 Q. Well, how long is the work day at
3 the drop zone?
4 MR. ZABELL: Objection to the form.
5 You may answer.
6 A. On the weekends we expect everybody
7 to be there at 7:30 because we try to get
8 wheels up by 8 o'clock. On the weekdays we
9 expect the employees to be there at 9:30 to
10 have the wheels up by 10 o'clock.
11 Q. And would the end of the day be a
12 half hour before sundown or something like
13 that?
14 A. It would depend on the day and how
15 much business we have.
16 Q. All right. So are there any days
17 where jumpers arrive at the drop zone and stay
18 for the entire day until sundown and don't do
19 any jumps?
20 A. Do you mean employees?
21 Q. Yeah.
22 A. If we have a bad weather day, or we
23 might be on hold, but they -- they don't have
24 to be at the drop zone. They can go home.
25 They can do what they have to do, but they need

308

1 MAYNARD
2 miles?
3 A. Yup.
4 Q. So, the drop zone is at least two
5 miles away from the bagel store; right?
6 A. When I said that place was a mile,
7 I meant from there to the airport. From the
8 entrance to the airport.
9 Q. Okay. So do you ever keep track of
10 the days when jumpers are not allowed to --
11 withdrawn.
12 Do you ever keep track of the days
13 when instructors spend the entire day at the
14 drop zone and don't get any jumps?
15 MR. ZABELL: Objection to the form.
16 You may answer.
17 A. We have records of days that we
18 don't jump, but no one is required. We don't
19 say you have to be here. You need to be
20 on-call, as you would say, and they have a
21 choice to go home or the Tanger Mall is not
22 that far away.
23 Q. So, how far can someone leave the
24 drop zone during the day and still be within
25 the company guidelines?

309

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You may answer.
4 A. We like you to be within 20 to 30
5 minutes max.
6 MR. ZABELL: Counsel, you should
7 know that you are five minutes away from
8 your seven hours.
9 MR. ANTOLLINO: No, I'm not.
10 MR. ZABELL: No, you are. We're
11 leaving at 5:30.
12 MR. ANTOLLINO: Counsel, I'm not
13 done and I'm entitled to seven hours
14 without colloquy, okay, and without
15 breaks. So if you're going to leave then
16 we're going to have to make a motion to
17 continue the deposition and he's going to
18 have to come back.
19 MR. ZABELL: It seems like you're
20 wasting your time anyway, Counselor. Go
21 ahead, you have five minutes.
22 Q. Do you have a staff manual?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A. You mean an employee handbook?

311

1 MAYNARD
2 Long Island went to Neptune's Bar and you were
3 there?
4 A. We have jumped in there, yes.
5 Q. Do you recall a time when Don
6 jumped in there with you?
7 A. Yes.
8 Q. Okay. And that was in 2010?
9 A. I'm not sure of the date, when it
10 was.
11 Q. Okay. Do you recall there being a
12 transgender person present?
13 A. A what?
14 Q. At Neptune's. Do you know what
15 transgender means?
16 A. I'm not too sure.
17 Q. Okay. A transgender person is a
18 person that has -- that either is biologically
19 a man and who either dresses, acts or performs
20 as another gender?
21 MR. ZABELL: I'm going to A, advise
22 you that that's incorrect, and, B, tell
23 you that you're under no obligation to
24 believe any representations he makes
25 because he is not under oath.

310

1 MAYNARD
2 Q. Yes.
3 A. Yes, we do.
4 Q. And how old is it?
5 A. A year and a half, a year. Fairly
6 new.
7 Q. Why did you write it?
8 A. My girlfriend, who is very business
9 minded, said I should have one.
10 + MR. ANTOLLINO: All right. I
11 call for the production of that. I'll
12 send you a follow-up letter.
13 MR. ZABELL: No.
14 Q. But you didn't have one when Don
15 was working at the drop zone; correct?
16 A. No, we did not.
17 Q. Does the employee manual instruct
18 employees not to provide any personal
19 information to the passengers?
20 A. I'm not sure.
21 Q. Does the employee manual say don't
22 mention to any employees if you're gay?
23 A. I'm not sure.
24 Q. Do you remember an occasion where
25 Don and some other staff members from Skydive

312

1 MAYNARD
2 Q. Okay. That's one way to describe
3 it a transgender person. Have you ever seen
4 anyone like at Neptune's?
5 A. I don't recall if I have.
6 Q. Okay.
7 MR. ZABELL: Counsel, it is now
8 5:30. If you represent that you can
9 finish within the next ten minutes, I
10 will gladly allow my client to sit for
11 another ten minutes. If you cannot, then
12 we are done for the day.
13 MR. ANTOLLINO: All right. If
14 you're leaving, and I'm not going to
15 represent that I'm done. I get seven
16 hours. If you insist on leaving then
17 we'll just have to continue the
18 deposition another time.
19 MR. ZABELL: Okay. I believe
20 you've used your seven hours. I say good
21 day, sir.
22 MR. ANTOLLINO: I haven't, but
23 that's okay. What time do you have for
24 the video?
25 THE VIDEOGRAPHER: We've gone on

313

1 MAYNARD
 2 the record testimony five hours, 30
 3 minutes and 16 seconds.
 4 MR. ANTOLLINO: Does that sound
 5 like seven hours to you, Counsel?
 6 MR. ZABELL: You've used your seven
 7 hours. We were invited to be here at 10
 8 o'clock. You did not start on time. We
 9 were here at 10 o'clock. This
 10 deposition, from our position, started at
 11 10 o'clock.
 12 MR. ANTOLLINO: Well, even if you
 13 count that 15 minutes of lateness, I'm
 14 still well within my seven hours and I
 15 get another hour, but we'll just have to
 16 take it up to the judge like everything
 17 else.
 18 He has said that he's taking his
 19 client, so I have no legal authority to
 20 compel him and I have to go to the judge.
 21 THE VIDEOGRAPHER: We are now off
 22 the record at 5:28 p.m.
 23 (Time noted: 5:28 p.m.)
 24
 25

315

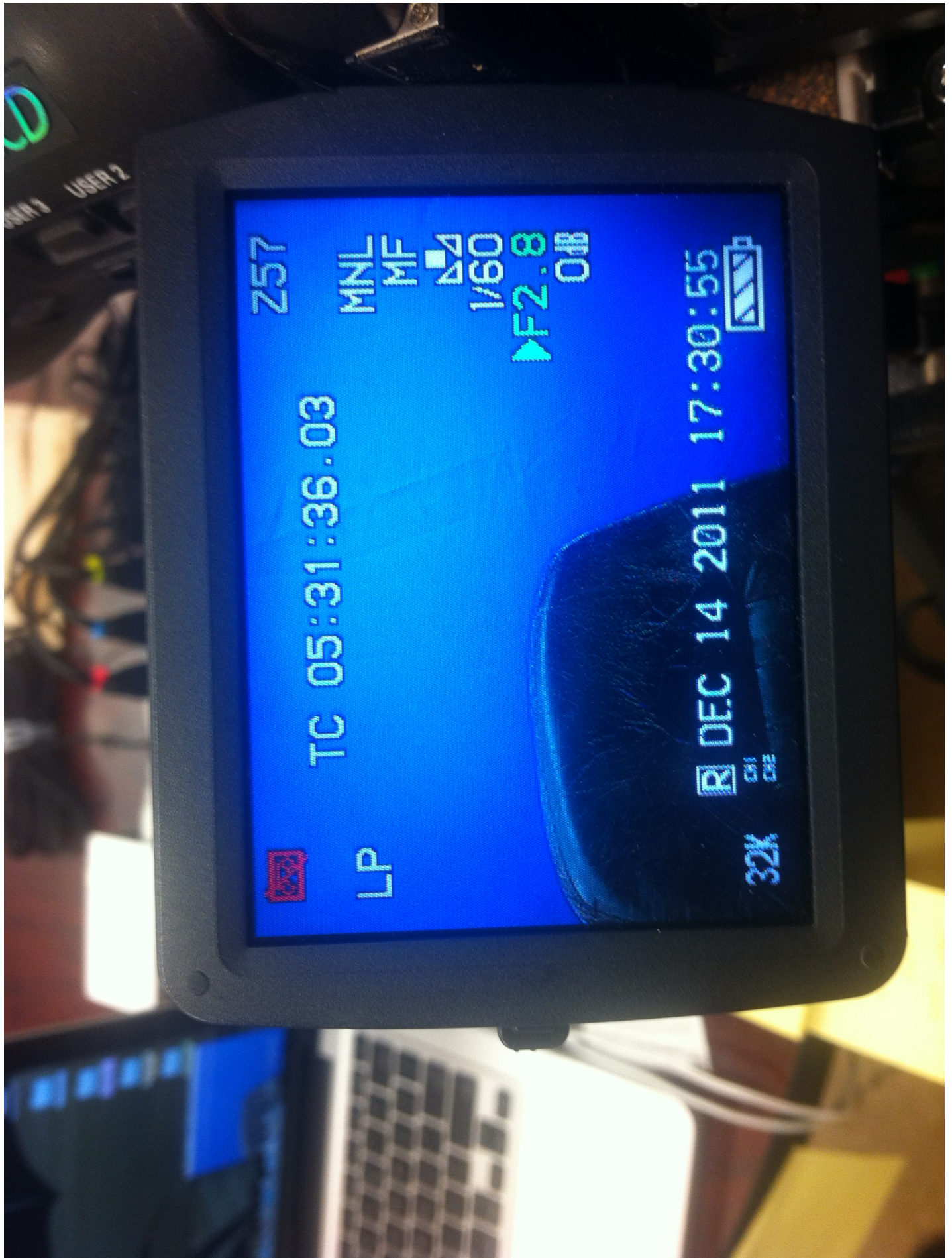
1 C E R T I F I C A T E
 2
 3 STATE OF NEW YORK)
 4)
 5 COUNTY OF NEW YORK)
 6
 7 I, SOPHIE NOLAN, a Notary Public within
 8 and for the State of New York, do hereby
 9 certify:
 10 That RAYMOND MAYNARD, the witness whose
 11 examination is hereinbefore set forth, was duly
 12 sworn by me and that this transcript of such
 13 examination is a true record of the testimony
 14 given by such witness.
 15 I further certify that I am not related to
 16 any of the parties to this action by blood or
 17 marriage and that I am in no way interested in
 18 the outcome of this matter.
 19 IN WITNESS WHEREOF, I have hereunto set my
 20 hand this 27th day of December, 2011.
 21
 22
 23
 24
 25 SOPHIE NOLAN

314

1 A C K N O W L E D G M E N T
 2
 3 STATE OF NEW YORK)
 4 :
 5 COUNTY OF)
 6
 7 I, RAYMOND MAYNARD, hereby certify
 8 that I have read the transcript of my testimony
 9 taken under oath in my deposition of December
 10 14, 2011; that the transcript is a true,
 11 complete and correct record of my testimony,
 12 and that the answers on the record as given by
 13 me are true and correct.
 14
 15
 16 RAYMOND MAYNARD
 17
 18
 19 Signed and Subscribed to
 20 before me, this day
 21 of , 2011.
 22
 23 Notary Public, State of New York
 24
 25

316

1 ***ERRATA***
 2 ELLEN GRAUER COURT REPORTING CO. LLC
 3 126 East 56th Street, Fifth Floor
 4 New York, New York 10022
 5 212-750-6434
 6
 7 NAME OF CASE: Zarda vs. Altitude Express
 8 DATE OF DEPOSITION: December 14, 2011
 9 NAME OF WITNESS: RAYMOND MAYNARD
 10
 11 PAGE LINE FROM TO REASON
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22 Subscribed and sworn before me
 23 this day of , 20__.
 24
 25 (Notary Public) My Commission Expires:



0001

1
1
UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT
-----X

4 DONALD ZARDA,
5 Plaintiff,

6 - against - INDEX NO.:
7 CV-10-4334

ALTITUDE EXPRESS, INC., d/b/a
8 SKYDIVE LONG ISLAND AND RAY MAYNARD,
9 Defendants,
10 -----X

11 Bee Reporting Agency, Inc.
12 32 Court Street
13 Brooklyn, New York

December 8, 2011
2:11 P.M.

16
17 EXAMINATION BEFORE TRIAL OF RICHARD M.

18 WINSTOCK, a non-party witness, taken by the

19 attorney for the Plaintiff, pursuant to Subpoena,

20 and held before Deborah Thier, a Notary Public of

21 the State of New York at the above-stated time and

22 place.

23

* * *

24

25

0003

1 3

2 RICHARD M. WINSTOCK,

3 The witness herein, having first been duly

4 sworn by Deborah Thier, a Notary Public in and

5 for the State of New York, was examined and

6 testified as follows:

7 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:

8 Q Please state your name for the record.

9 A Richard M. Winstock.

10 Q What is your address?

11 A 65 Ridge Road, Hackettstown, New

12 Jersey, 07840.

13 Q Good morning, Mr. Winstock. We've met

14 before, I mean five minutes before, and I'll just

15 give you some ground rules about the deposition.

16 I'm just going to ask questions and

17 you're just going to answer them, and you've been

18 sworn to tell the truth, and I'd ask you to ask me

19 to rephrase a question if you don't understand a

20 question.

21 Would you agree to do that?

22 A Yes.

23 Q And if you don't know the answer to my

24 question, the answer is, I don't know. I don't

25 want you to guess or speculate or anything like

0005

1 Richard Winstock 5
2 By the way, when I'm asking questions,
3 if Mr. Zabel, who is Mr. Maynard's lawyer,
4 objects, that means he doesn't like the way I
5 asked the question and he might have the
6 opportunity to go to the judge and say, he didn't
7 ask that question right, so the answer should be
8 stricken, but that doesn't mean you don't answer.
9 It simply means that he is keeping a record.
10 A I understand.
11 Q So every time he objects, you answer.
12 You're not being represented by him,
13 are you?
14 A No.
15 MR. ZABELL: Unless you want to be.
16 I've been authorized by Mr. Maynard that if
17 you feel the need for representation at this
18 deposition, I am available to represent you,
19 but only if you feel the need.
20 THE WITNESS: Understood. Thank you.
21 Q What is your current place of
22 employment?
23 A Encore Nationwide, Inc., and the
24 address is 2780 Columbia Street, Torrance,
25 California, 09 -- I'm sorry, 90503.

0007

1 Richard Winstock 7
2 Is it a nonprofit organization?
3 A Yes.
4 Q You're the director at this nonprofit
5 organization that oversees all or many drop sites?
6 A Correct.
7 Q One of which is Long Island Sky Dive?
8 MR. ZARDA: It's Skydive Long Island.
9 You said Long Island Skydive.
10 MR. ANTOLLINO: If I've said Long
11 Island Skydive, Skydive Long Island is what I
12 meant to say.
13 MR. ZARDA: Because there is a Long
14 Island Skydive.
15 MR. ZABELL: Counsel, I'm going to ask
16 that if you need to confer with your client,
17 that should probably be done off the record.
18 It's not appropriate to do while this
19 deposition is going on.
20 MR. ANTOLLINO: All right. Thank you.
21 Q What is your highest level of
22 education?
23 A I have a master's degree in education
24 and one year PhD work in psychiatry.
25 Q From what institutions?

0006

1 Richard Winstock 6
2 Q What do you do there?
3 A Director of sales.
4 Q What do you sell?
5 A Staff.
6 Q So it's a staffing agency?
7 A Yes.
8 Q Do you have anymore connection to Long
9 Island Skydiving?
10 A Yes.
11 Q What is your connection to L.I.S.D.?
12 A Currently I'm the safety and training
13 advisor. I'm also the chief instructor. I'm an
14 advanced free fall instructor examiner, a tandem
15 instructor examiner, a coach instructor examiner
16 and national director with U.S.P.A.
17 Q National director of U.S.P.A., that
18 does not have anything to do with L.I.S.D., does
19 it?
20 A Indirectly.
21 Q How so?
22 A Skydive Long Island is a group member
23 of the United States and we are a member of the
24 U.S.P.A. where I'm a director.
25 Q So you're a director.

0008

1 Richard Winstock 8
2 A Seton Hall University was my master's
3 of education and Walden University was the PhD
4 stint.
5 Q Just tell me a little bit about your
6 professional life since leaving college as an
7 undergraduate.
8 MR. ZABELL: I'm going to object to the
9 form.
10 A Can you be a little more specific?
11 Q Why don't you start with, what did you
12 do after you graduated from college, and lead me
13 to how you've gotten to be doing what you're doing
14 today.
15 A Okay. I graduated college. I got my
16 master's degree in 1992. I started with the
17 Roxbury Township Police Department in December of
18 1992. I was a police officer for seventeen years,
19 sergeant of the emergency services unit, which is
20 a S.W.A.T. team dive team.
21 I made my first skydiving jump in 1992
22 and continued to jump primarily for sport and fun
23 until it became a part-time job, and I
24 collaterally jumped, and was a police officer for
25 the next fifteen years.

0009

1 Richard Winstock 9
 2 I moved on from the police department
 3 and continued skydiving at Skydive Long Island.
 4 I've been employed at Skydive Long Island for,
 5 approximately, fifteen years, and I am still
 6 currently employed there right now.
 7 Q Is that a seasonal position?
 8 A Yes.
 9 Q So you work there from when till when
 10 every year?
 11 A March, usually early, March 8th to
 12 March 12th, straight to November, around
 13 Thanksgiving.
 14 Q How long have you known Don Zarda?
 15 A I'm gonna estimate, approximately, six
 16 years.
 17 Q Where did you meet him for the first
 18 time?
 19 A I met Don for the first time at Skydive
 20 Long Island. There is -- There's a very good
 21 possibility we may have met up in Vermont one time
 22 over the summer. So I believe I met him one time
 23 in Vermont and then he came to work for us at
 24 Skydive Long Island.
 25 Q Was it you who invited him to come work

0011

1 Richard Winstock 11
 2 maybe, eight to ten years prior.
 3 Q But you weren't there at the time?
 4 A I was, but I didn't -- I didn't have
 5 the opportunity to meet Mr. Zarda.
 6 Q How many tandem jumps have you done, do
 7 you know?
 8 A Seventy-five hundred.
 9 Q What kind of tandem equipment did you
 10 use at Skydive Long Island?
 11 A Over the years they've used Strong
 12 Rigs, that's the name of the manufacturer, and
 13 also United Parachute Technologists, which is
 14 commonly referred to as U.P.T., or Vector/Sigma.
 15 We've had both manufacturers.
 16 Q Is that what is used currently?
 17 A Currently U.P.T. Vector/Sigma.
 18 Q For how long has that been?
 19 A Almost three years, approximately.
 20 Q So then --
 21 A Strong Rig was phased out slowly over
 22 time.
 23 Q In 2010 what was being used?
 24 A Vector/Sigma, and specifically only
 25 Sigma.

0010

1 Richard Winstock 10
 2 at S.D.L.I.?
 3 A No.
 4 Q Do you know who that was?
 5 A Curt Kellinger. C-U-R-T.
 6 Q He was also in Vermont?
 7 A Yes.
 8 Q Did Don subsequent to that invitation
 9 come to S.D.L.I. and work for a summer?
 10 A He did.
 11 Q When was that, approximately?
 12 A Three years ago, possibly four years
 13 ago. I'm approximating here. I'm not sure.
 14 Q How long did he work there?
 15 Well, if I were to ask you if this was
 16 as long ago as ten years ago, would you say that
 17 could be possible or --
 18 A No, it wasn't ten years ago. It was
 19 within the last six years.
 20 Q So let's stick with the first time that
 21 he's hired at S.D.L.I.
 22 How long did he work there?
 23 A While I was there, two summers,
 24 possibly a third, and I am aware of previous
 25 employment at Skydive Long Island, probably,

0012

1 Richard Winstock 12
 2 Q As a tandem instructor, are you
 3 familiar with all of the procedures required by
 4 tandem instructors for gearing up tandem
 5 passengers?
 6 A Yes.
 7 Q Are you familiar with the aspects from
 8 gear up to gear down for tandem passengers on a
 9 tandem jump?
 10 A Yes, I am.
 11 Q Do any of these procedures involve
 12 touching a passenger?
 13 A Yes.
 14 Q In what manner?
 15 A A professional manner.
 16 Q Well, what do you mean by that?
 17 A It's specifically covered in the U.P.T.
 18 waiver, but when you're putting a harness on
 19 someone, it has to be adjusted properly, securely,
 20 to ensure safety, and that sometimes makes it
 21 necessary to actually physically touch a person.
 22 Q Can you explain?
 23 A In layman's terms, if you're putting a
 24 harness around your leg or thigh and I need to
 25 tighten the strap, I might need to touch your

0013

1 Richard Winstock 13
 2 thigh to tighten the strap.
 3 Q Does the manner in which you touch a
 4 passenger vary from situation to situation?
 5 A Yes.
 6 Q Can you briefly describe the procedure
 7 for gearing up a tandem passenger?
 8 A I can.
 9 The tandem passenger goes through a
 10 series of waivers and videos that describe what is
 11 going to happen to them prior to getting them out
 12 to the gear up area.
 13 They're gonna take all their jewelry
 14 off, empty their pockets. Depending on the time
 15 of year, they may be in shorts. We may offer them
 16 a jumpsuit, although it's not mandatory or
 17 necessary.
 18 I'm going to have them step into a
 19 harness which has two leg straps, two shoulder
 20 straps, like a backpack, and it has six adjustment
 21 points.
 22 Q Where are those adjustment points?
 23 A Two leg straps, one belly, one back
 24 band strap, two lateral straps and two shoulder
 25 straps. Two --

0015

1 Richard Winstock 15
 2 There are another two that allow
 3 adjustment once they attach to the parachute rig,
 4 or container system.
 5 Q The two that are on the leg, where on
 6 the leg are they located?
 7 A Inner groin, thigh.
 8 Q Is it the duty of the instructor to
 9 make the attachment to the passenger?
 10 A I'm sorry, repeat that?
 11 Q How does the instructor, and if I'm
 12 asking this incorrectly, then maybe you can
 13 clarify what I'm trying to get at, but how does
 14 the instructor attach the adjustment points on the
 15 legs of the passenger?
 16 A Usually, and when I say usually, it's
 17 upwards of ninety plus percent, the leg straps are
 18 already fastened, they're just loosened up to form
 19 almost like an open leg strap that you could slip
 20 your leg through.
 21 So if I were to ask a tandem student to
 22 put a harness on while I held it, they would
 23 basically just step into two round circles. I
 24 would pull it up to their inner groin or thigh and
 25 tighten up the straps.

0014

1 Richard Winstock 14
 2 Q Go ahead?
 3 A If you give me a second, I can answer
 4 that.
 5 Two leg straps -- two, three, four,
 6 five seven, eight -- There's eight adjustment
 7 points on the harness, and then when the harness
 8 attaches to the rig, there's two more adjustment
 9 points.
 10 Q When you say the rig, you mean the
 11 plane?
 12 A When I say the rig, I'm referring to
 13 the actual parachute itself.
 14 Q So in total there appear to be ten
 15 adjustment points?
 16 A Correct.
 17 Q So since the original answer was six,
 18 let's start again with the eight adjustment points
 19 on the person. So if I could just write those
 20 down.
 21 A Two leg straps, one belly band, one
 22 lower lumbar, or back band, two lateral straps, in
 23 the rear of your back, two shoulder straps.
 24 That's eight right there on the actual harness
 25 itself.

0016

1 Richard Winstock 16
 2 So if you're referring to actually
 3 hooking up the strap itself, it's hooked up
 4 already.
 5 Q What about the shoulders?
 6 A They're all -- every other strap is
 7 already intact, it just would take some tightening
 8 or loosening up to adjust it.
 9 Q Is the instructor required to monitor
 10 the tightness of the strap during the jump or is
 11 that something that just doesn't vary?
 12 A No, they are required to monitor it.
 13 Q If a strap became loosened, what could
 14 result?
 15 A If a strap became loosened?
 16 Q Yes.
 17 A Unsafe scenario.
 18 Q Have you known Ray Maynard to fire any
 19 employees during your tenure?
 20 A Yes.
 21 Q Approximately, how many over the
 22 fifteen years you've been there?
 23 A Six.
 24 Q So aside from Don, who were they?
 25 A Alex Allen.

0017

1 Richard Winstock 17
2 Q When was that?
3 A Three years ago. Approximately, three
4 years ago.
5 Q Anyone else?
6 A There were others. I don't recall
7 names.
8 Q What was Alex Allen fired for?
9 A I don't know.
10 Q Did you ask Ray or --
11 A No.
12 Q How did you find out that Alex was
13 fired?
14 A Word of mouth.
15 Q Not from Ray, but from someone else?
16 A I don't recall.
17 Q Did you have any opportunity during the
18 summers that Don worked under your tutelage, let's
19 say, to observe his performance as an instructor?
20 A Yes.
21 Q Did you have an opinion about it?
22 A Yes.
23 Q What was it?
24 A I had no objections with his ability to
25 perform tandem instructor duties.

0019

1 Richard Winstock 19
2 this lawsuit, correct?
3 A I am --
4 MR. ZABELL: Object to the form. You
5 can answer.
6 A I am now.
7 Q Have there been any other complaints
8 about Don that you're aware of?
9 A Not that I'm aware of.
10 Q Have there been any other complaints by
11 any other customers about anything over the years
12 that you've worked there?
13 A Not that I'm aware.
14 Q The five people other than Alex Allen
15 whose names you didn't remember, do you know what
16 any of them were fired for?
17 A I don't.
18 Q Are you also a cameraman at Skydive
19 Long Island?
20 A Yes.
21 Q What are your duties as a camera man?
22 A Primary responsibility is to video the
23 entire tandem experience for the passenger and
24 then produce a product for them to take home.
25 Q When you say, produce a product, do you

0018

1 Richard Winstock 18
2 Q Did you believe that Don was a good
3 instructor?
4 A Yes.
5 Q Was it known at S.D.L.I. that Don was
6 gay?
7 A Yes.
8 Q Issued say Don is gay.
9 Q How was that something that was known?
10 A I would say from Don.
11 Q Was it something that was ever
12 discussed among other people?
13 A Not specifically. It was known.
14 Q Did you ever hear anyone say to Don
15 anything like referring to his homosexuality in
16 any way?
17 A I didn't.
18 Q Over the years that you have worked at
19 Skydive Long Island, has there ever been a
20 customer complaint?
21 A While I was there about Don?
22 Q Well, has --
23 A Can you just clarify for me?
24 Q So you are aware that there was a
25 customer complaint about Don that is the basis of

0020

1 Richard Winstock 20
2 mean edit the raw material that you've filmed?
3 A Correct.
4 Q So are there frequently out takes from
5 the video?
6 A Correct.
7 Q What is done with those, that you know
8 of?
9 A The raw footage?
10 Q Yes.
11 A I can only speak with my footage, but
12 we record over it, or destroy it. We're using
13 digital media now. It used to be, actually,
14 cassette like media where we would just record
15 over it. Some people do save it. I'm talking
16 about myself. I record over them.
17 Q When you say you use digital now, how
18 long have you been using digital?
19 A This summer, one year.
20 Q So in 2010 you were still, or the
21 company was still using the cassette?
22 A The compact cassette, yes.
23 Q Did you ever hear any staff members
24 make jokes about Don's sexuality in front of Don?
25 A No.

0021

1 Richard Winstock 21
 2 Q Did there come a time that you learned
 3 that Ray had suspended Don?
 4 A Yes.
 5 Q How did you learn about this?
 6 A From Don.
 7 Q What did Don tell you?
 8 A He explained that he -- he explained
 9 that he was suspended for an incident. He was
 10 upset and I told him I would look into it and then
 11 contact him.
 12 Q Did he know what the incident was about
 13 or did he just say he was suspended for an unknown
 14 incident?
 15 MR. ZABELL: I'm going to object to the
 16 form of the multiple questions. You may
 17 answer.
 18 A I don't recall if Don knew exactly the
 19 incident.
 20 Q Where did you discuss this suspension?
 21 A It was outside.
 22 Q Outside where?
 23 A Outside of -- it was in a gear up
 24 tandem area outside of Skydive Long Island's
 25 office in private.

0023

1 Richard Winstock 23
 2 husband/wife, girlfriend/boyfriend scenario, and
 3 there was a complaint about the female passenger
 4 was with Don and she and the husband had a
 5 complaint.
 6 Q Do you remember anything else?
 7 A I don't. I will say Ray Maynard was
 8 the one that spoke to both of them, and I don't
 9 have any intimate knowledge of the actual
 10 complaint or the investigation that ensued, took
 11 place, or if there was one. I don't know.
 12 Q Are you certain that Ray spoke to both
 13 the husband and the wife or the boyfriend and the
 14 girlfriend?
 15 A Ray took the complaint, and if -- I
 16 need to amend that, it was from one or the other.
 17 Q So you don't know anything about what
 18 Ray did to investigate this complaint?
 19 A I don't.
 20 Q Did there come a time that you spoke to
 21 Ray later about this complaint and Don's
 22 suspension?
 23 A Yes.
 24 Q When was this?
 25 A It was post Don being terminated. Post

0022

1 Richard Winstock 22
 2 Q Is there a classroom --
 3 A Yes.
 4 Q -- on the premises?
 5 A Yes.
 6 Q Was it in the classroom?
 7 A It may very well have been.
 8 Q Do you remember Ray Maynard walking
 9 into the meeting when Don was telling you about
 10 the suspension?
 11 A I don't.
 12 Q So did you later approach Ray to
 13 discuss the matter with him?
 14 A I did.
 15 Q When was that?
 16 A It may have been that evening, that
 17 weekend. Shortly thereafter speaking to Don.
 18 Q What did you say to Ray?
 19 A I asked him what happened.
 20 Q What did he say?
 21 A He said that he sent Don home because
 22 of a complaint.
 23 Q Did he say anything else?
 24 A He explained the complaint briefly, and
 25 when I say briefly, I knew that it was either a

0024

1 Richard Winstock 24
 2 termination.
 3 Q Let's talk about before Don was
 4 terminated.
 5 Did there come a time that you went to
 6 Ray and argued in favor of Don not being fired?
 7 A Yes.
 8 Q What did you say?
 9 A Ray asked my opinion, or when I -- Ray
 10 asked me what I would do.
 11 Q What did you say?
 12 A My suggestion was a letter of
 13 reprimand, spelling out the exact situation,
 14 exactly what the complaint was, go over it with
 15 Don and sit Don down, make it exorbitantly clear
 16 that it had nothing to do with sexual orientation,
 17 it was a reprimand, and have Don sign it saying
 18 that if it ever happened again, that he would be
 19 terminated.
 20 Q What did Ray say in response to that?
 21 A He just took -- he just asked for my
 22 advice.
 23 Q When you say that you wanted to put it
 24 in the letter, this letter of reprimand, that you
 25 suggested to make it exorbitantly clear that it

0025

1 Richard Winstock 25
 2 had nothing to do with sexual orientation, why did
 3 you suggest that?
 4 A Because it's a sensitive -- it's a
 5 sensitive situation.
 6 Q But why mention sexual orientation in
 7 the letter, or in this proposed letter I should
 8 say?
 9 A It was outwardly known that Don is gay,
 10 and when I say outwardly, in a positive way. It
 11 was Don -- in fact, I was introduced to him as gay
 12 Don. So this wasn't something that was hidden.
 13 When it comes to sexual orientation and
 14 being politically correct, I feel that it was --
 15 the advice I gave Ray was to be very sensitive to
 16 that situation and be very politically correct and
 17 do -- document it accordingly.
 18 Q Did the complaint have anything to do
 19 with sexual orientation that you can recall?
 20 A Yes.
 21 Q How so?
 22 A It was brought up, the fact that Don
 23 was gay was brought up. I believe Don brought it
 24 up to the passenger, so it was definitely
 25 mentioned in the complaint to Ray.

0027

1 Richard Winstock 27
 2 person at ease, I personally would not have a
 3 problem with it, and, of course, you can go
 4 overboard with it as well.
 5 So I would tread lightly on how much
 6 information you gave or didn't give a passenger.
 7 Sometimes no information is better than too much.
 8 Q So there came to be a point when you
 9 had a discussion with Don -- or rather Ray, about
 10 the complaint after Don was terminated?
 11 MR. ZABELL: I'll object to the form.
 12 You can answer.
 13 A Yes.
 14 Q When was that, about how long after Don
 15 was terminated?
 16 A Within the week.
 17 Q What did you say to Ray or what did he
 18 say to you?
 19 A Ray had advised me that he had
 20 terminated Don under the advice of his attorney.
 21 Q Do you know who his attorney was?
 22 A I don't.
 23 Q Do you know if it was not Saul Zabell?
 24 A I don't know.
 25 Q So you definitely don't know who the

0026

1 Richard Winstock 26
 2 Q How did Ray react to that?
 3 A I don't know.
 4 Q Well, did Ray express any opinion about
 5 whether or not that was appropriate?
 6 A To bring that up?
 7 Q Yes.
 8 A Ray's the drop zone owner, and anything
 9 tandem instructor wise would usually -- he would
 10 defer to me to make the decision.
 11 I wasn't -- if you can clarify one
 12 thing, when you say that wasn't appropriate, what
 13 wasn't appropriate?
 14 Q Don mentioning to the passenger that he
 15 was gay.
 16 A The answer to that is I don't know that
 17 Ray said that was okay or not.
 18 Q What is your opinion?
 19 A I would instruct, or I would probably
 20 give a tandem instructor advice that doing a
 21 tandem is inherently an awkward situation, and if
 22 you feel that can lighten the mood or possibly
 23 make that person more comfortable and that would
 24 make it a safer skydive, if the instructor felt
 25 that it would make the skydive safer or put a

0028

1 Richard Winstock 28
 2 attorney was, and just to clarify this, you would
 3 not be able to have say, oh, no, I know it wasn't
 4 Saul Zabell because I know Don got Saul Zabell at
 5 a different time?
 6 A I'm sorry, Saul Zabell?
 7 Q This is Saul Zabell.
 8 A I don't know if it was or it wasn't.
 9 It was his attorney.
 10 Q That's all he said, was on the advice
 11 of his attorney?
 12 A I heard the name Harvey as the
 13 attorney. I have no idea who gave him the advice.
 14 Q Was there any further discussion?
 15 A There wasn't.
 16 Q Did there come a time that you learned
 17 about this lawsuit?
 18 A Was there a time what?
 19 Q Oh, and by the way, I offer to
 20 represent you as well if you feel like taking me
 21 up on that, but I don't think you're going to need
 22 any representation.
 23 MR. ANTOLLINO: We'll have the question
 24 read back.
 25 (Whereupon, the requested section was

0029

1 Richard Winstock 29
 2 read back.)
 3 A Yes.
 4 Q When was that?
 5 A Shortly thereafter the termination.
 6 Within three months.
 7 Q What did Ray say?
 8 A That he was being sued.
 9 Q What did you say in response?
 10 A I didn't say anything.
 11 Q Did Ray say anything about this
 12 lawsuit?
 13 A No.
 14 Q Have you spoken to him about the
 15 lawsuit since then?
 16 A No.
 17 If I can add, I told him I was coming
 18 here today.
 19 Q What did he say in response to that?
 20 A He didn't.
 21 Q Do you know anything about the husband
 22 and wife, boyfriend/girlfriend team that made the
 23 complaint about Don?
 24 A I don't know -- I do not.
 25 Q Would it be fair to say that you were

0031

1 Richard Winstock 31
 2 you, the safer the jump will be.
 3 Q Have you ever heard any jokes made in a
 4 situation where a boyfriend and a girlfriend are
 5 going up on a skydive and the girlfriend gets
 6 strapped to another guy?
 7 A Have I ever heard -- Repeat that,
 8 please.
 9 MR. ANTOLLINO: If the reporter would
 10 please read it back.
 11 (Whereupon, the requested section was
 12 read back.)
 13 A Yes, I have.
 14 Q Is that common?
 15 A Yes.
 16 Q Why are jokes like that made?
 17 A Again, it boils down to a safety issue.
 18 Q You've heard these jokes made at
 19 Skydive Long Island?
 20 A Yes.
 21 Q So a joke is something like, wow, I bet
 22 you didn't think your girlfriend was gonna be
 23 crotch to crotch with another guy? Would that be
 24 a type of joke that would be made?
 25 A No.

0030

1 Richard Winstock 30
 2 not on that particular jump?
 3 A I wasn't -- Strike that, or let me
 4 rephrase that.
 5 I may have been. There's a very good
 6 chance I was on the plane or at the jump zone, but
 7 I do not recall the jump or the passengers
 8 involved.
 9 Q In your experience doing tandem jumps,
 10 is it common to make jokes as one approaches the
 11 point where one is going to drop out of the plane?
 12 A Yes.
 13 Q Why do you do this?
 14 A Well, as I said earlier, I'm an
 15 instructor examiner, so I teach the instructor
 16 course for U.P.T., and the reason for, you called
 17 it joking, or making the situation less tense,
 18 really boils down to instructor and student
 19 safety.
 20 Q How so?
 21 A The calmer a passenger is to exiting,
 22 generally the safer the skydive will be. As an
 23 instructor, you're given a short amount of time to
 24 build a confidence between him and her and
 25 yourself, and the more confidence they have in

0032

1 Richard Winstock 32
 2 Q How about something like, I bet you
 3 didn't know your girlfriend was gonna be strapped
 4 to another guy?
 5 A Possibly.
 6 Q Can you give me an example of another
 7 one you can think of?
 8 A I've heard the instructor of a female
 9 say, who's more important to you now.
 10 Q Anything else?
 11 A Not off the top of my head.
 12 Q Did you ever hear Ray Maynard make any
 13 disparaging comments about Don's homosexuality?
 14 A No.
 15 Q Did you ever hear him reference it at
 16 all?
 17 A Again, I'll be very clear, people
 18 referred to Don as gay Don. So if that's a
 19 reference to it, then, yes. A good portion of the
 20 instructors, if not all of them, and all video
 21 guys and coaches and everyone that works there
 22 referred to Don as gay Don.
 23 I thought that this was acceptable
 24 because that's how I was introduced to him. I
 25 didn't know if that upset him or -- then it would

0033

1 Richard Winstock 33
 2 be disparaging, but that's the only thing that I
 3 can think of.
 4 Q Do you know where gay Don originated?
 5 A I have no idea.
 6 Q Did Don ever seem to be bothered by
 7 being referred to as gay Don?
 8 A No.
 9 Q Did there come a time where Don had
 10 an accident in the workplace?
 11 A Yes.
 12 Q Do you remember what happened?
 13 A Don hurt one of his ankles.
 14 Q Do you remember how that happened?
 15 A Or foot or feet.
 16 Without getting very specific, and I
 17 believe it was a landing injury, and it was one of
 18 his ankles or his left or right foot.
 19 Q Is there a weight limit for passengers
 20 to go on a tandem jump?
 21 A Yes.
 22 Q What has been the weight limit at
 23 Skydive Long Island?
 24 A There's a weight -- There's several
 25 weight limits. Skydive Long Island has a weight

0035

1 Richard Winstock 35
 2 Q Yes. Was the passenger over weight at
 3 the time that he broke his ankle?
 4 MR. ZABELL: Object to the form of the
 5 question.
 6 A I have no idea.
 7 Q When I say the passenger is over
 8 weight, what I mean to say is did the total
 9 weight, the instructor and passenger weight,
 10 exceed five hundred pounds, and your answer is you
 11 don't know?
 12 A I don't know.
 13 Q Do you ever recall Don coming back to
 14 work after his injury with a cast?
 15 A Yes.
 16 Q Do you remember what the cast looked
 17 like?
 18 A Yes.
 19 Q What did it look like?
 20 A Bright fluorescent pink.
 21 Q Was there anything else pink that you
 22 saw?
 23 MR. ZABELL: Objection to the form.
 24 You may answer.
 25 A On Don, yes.

0034

1 Richard Winstock 34
 2 limit of two hundred twenty-five pounds. We can
 3 -- the reason for that weight limit is the wear
 4 and tear on the equipment and instructor ability.
 5 Based on the actual manufacturer of the
 6 rig, we can take up to five hundred total pounds
 7 under the system. So depending on instructor
 8 weight, that two twenty-five can be exceeded.
 9 Q So, in other words, if someone came who
 10 weighed two hundred and fifty pounds, that would
 11 be an acceptable weight, so long as the instructor
 12 weighed two hundred and fifty pounds or less?
 13 A The instructor would be two hundred,
 14 the rig itself is fifty pounds. So, for example,
 15 I am two hundred pounds. With the rig I'm
 16 two-fifty. I can take up to a two hundred fifty
 17 pound passenger.
 18 Q So anything over five hundred is
 19 inappropriate, including the rig, the passenger
 20 and the instructor?
 21 A It's outside of manufacturer
 22 guidelines.
 23 Q Was Don asked to take an overweight rig
 24 on the time that he broke his ankle?
 25 A An overweight rig?

0036

1 Richard Winstock 36
 2 Q Yes. What was it?
 3 A I've seen a pink hats, I've seen pink,
 4 I believe, nail polish, pink shirts. That's the
 5 best of my recollection.
 6 Q When you say pink polish, you mean
 7 toenail polish, fingernail polish or both?
 8 A I believe toe.
 9 Q Do you remember Ray ever making any
 10 disparaging comments about that?
 11 A No.
 12 Q Did anyone contact you after Don was
 13 fired to inquire about Don's ability as a worker
 14 as a reference for future employment?
 15 A I don't know. Quite possibly.
 16 Q Do you know someone by the name of Doug
 17 Smith?
 18 A No.
 19 Q You talked about a waiver that is
 20 signed before the passenger goes up in the plane.
 21 Do you recall?
 22 A Yes.
 23 MR. ANTOLLINO: So I'm just going to
 24 have this marked as Plaintiff's Exhibit 2.
 25 (Whereupon, the waiver was marked as

0037

1 Richard Winstock 37

2 Plaintiff's Exhibit 2 for identification, as

3 of this date.)

4 Q Is this the waiver at S.D.L.I.?

5 A This is a portion of it.

6 Q I'm sorry, did I leave something out?

7 A That is the waiver. There's usually a

8 U.P.T. waiver attached too.

9 Q So this is an S.D.L.I. waiver?

10 A Yes.

11 Q And the U.P.T. waiver is something

12 else?

13 A Correct.

14 Q What does the U.P.T. waiver have on it?

15 A It's a manufacturer waiver.

16 Q When do you give in the tandem process

17 this waiver to the passenger?

18 A Usually when they first show up. They

19 fill out the waiver in its entirety and then they

20 watch a training video.

21 Q Is there ever a circumstance where

22 they're watching the video at the same time

23 they're reading the waiver?

24 A Not to my knowledge. I don't get

25 involved in that end of it, so I'm not -- I can't

0039

1 Richard Winstock 39

2 Q It wasn't Mr. Zabell?

3 A That I know as a fact. No, it wasn't

4 him.

5 Q Did you ever hear Ray complain about

6 his wife while they were married?

7 A Yes.

8 Q Was it something that was pretty often?

9 A I wouldn't say often. I would say once

10 in a while I heard him complain about his wife.

11 Q What types of things would he say?

12 A I don't recall specifics.

13 Q How long were Ray and his previous wife

14 married?

15 MR. ZABELL: I'm going to object to the

16 form.

17 Q If you know.

18 A Eight years, seven years. Seven or

19 eight years, approximately.

20 Q Over the course of the entire marriage,

21 did you hear complaints on a continual or a time

22 to time basis, or did it happen more often at the

23 end?

24 A More often at the end.

25 Q Are you on the S.D.L.I. Facebook page?

0038

1 Richard Winstock 38

2 answer either way.

3 Q Do you know anything about this waiver

4 or why this waiver was written up?

5 A Not specifically. I know it is a

6 waiver.

7 Q How many videos does the tandem

8 passenger watch?

9 A One.

10 Q Who's in that video?

11 A Currently Ray Maynard and myself.

12 Q Who was in it in 2010?

13 A 2010, very well may have been the same

14 video. The prior video was Duncan Shaw and an

15 attorney.

16 Q Mr. Shaw --

17 A Wasn't him.

18 Q Mr. Shaw is an attorney?

19 A No, Duncan Shaw is a tandem instructor.

20 So he was in a video doing -- a tandem instructor

21 needs to do the training of the student. So the

22 video suffices for the training.

23 The current one I'm in. The prior one

24 was Duncan Shaw, and there was also an attorney

25 reading some sort of disclaimer or waiver prior.

0040

1 Richard Winstock 40

2 A Yes, as a -- Yes.

3 Q Have you ever seen Ray complain about

4 his wife on the S.D.L.I. Facebook page?

5 A Not off the top of my head.

6 Q I'm going to show you some pictures.

7 We talked about the jokey atmosphere that might

8 occur when somebody is going up in a plane before

9 you jump, and I do believe that you have a web

10 site, is that correct?

11 A I do. When you say we --

12 Q You, you have a web site?

13 A My own web site?

14 Q Yes.

15 A Yes, I do.

16 Q And I believe S.D.L.I. has its own web

17 site?

18 A Yes, they do.

19 Q Would it be fair to say that people

20 have tagged you on Facebook in videos and

21 photographs?

22 A Yes.

23 Q Some of these are publicly available?

24 A Yes.

25 Q And some of them are available to your

0041

1 Richard Winstock 41
 2 Facebook friends?
 3 A Yes.
 4 Q And you have about three thousand
 5 Facebook friends?
 6 A Yes.
 7 MR. ANTOLLINO: We'll go one by one.
 8 We'll make copies later.
 9 This will be Plaintiff's Exhibit 3.
 10 (Whereupon, the photographs were marked
 11 as Plaintiff's Exhibit 3 for identification,
 12 as of this date.)
 13 (Whereupon, a short break was taken.)
 14 Q We've marked as Plaintiff's Exhibit 3 a
 15 twenty-nine page document, and I've numbered each
 16 of the documents in my own handwriting of stills
 17 that I've taken from various point on the
 18 Internet.
 19 MR. ZABELL: You said twenty-nine
 20 pages?
 21 MR. ANTOLLINO: Twenty-nine pages.
 22 Q I'm just going to give you this, and
 23 you can take some time if you'd like, I don't
 24 think you'll need that much time, but I'd like you
 25 to look at each of these pages and tell me, A, is

0043

1 Richard Winstock 43
 2 Do you recognize the people in that in
 3 that shot?
 4 A The instructor.
 5 Q You recognize the instructor?
 6 A Yes.
 7 Q Who is it?
 8 A John Sherman.
 9 Q Does John Sherman now work for
 10 S.D.L.L?
 11 A He does.
 12 Q What's unsafe about that?
 13 A He had a mask on.
 14 Q What's unsafe about wearing a mask?
 15 A It could hinder his visibility.
 16 Q Is that a serious safety violation, a
 17 major one?
 18 A No, it's not a major one. It's one I
 19 would note, though.
 20 Q Is there anything else that's improper
 21 or unsafe or inappropriate about page twelve?
 22 A No.
 23 Q And you said page fourteen.
 24 Do you recognize any of the people on
 25 page fourteen?

0042

1 Richard Winstock 42
 2 there anything improper, B, unsafe, or C,
 3 inappropriate.
 4 Do you understand the question?
 5 A I do.
 6 Q Okay.
 7 A I've gone through all the photos.
 8 Q And your answer?
 9 A I did see one thing that I consider to
 10 be unsafe.
 11 Q What was that?
 12 MR. ZABELL: I'm going to ask you just
 13 to count the pages.
 14 THE WITNESS: I think they're numbered.
 15 MR. ANTOLLINO: Yes, they're numbered.
 16 A Number twelve, and there's one other I
 17 found. Number fourteen.
 18 Q So twelve and fourteen.
 19 Were there any other documents or any
 20 other pages in this document where you saw
 21 anything improper, unsafe or inappropriate?
 22 A Other than those two, I didn't notice
 23 anything.
 24 Q Now, let's talk those. We'll start
 25 with twelve.

0044

1 Richard Winstock 44
 2 A Yes.
 3 Q Who are they?
 4 A Tandem instructor, Brett Nock.
 5 N-O-C-K.
 6 Q What is inappropriate, unsafe or
 7 improper about what's happening here?
 8 A Unsafe category. I would say jumping
 9 with an external -- a bottle of water or plastic,
 10 whatever.
 11 Q So it appears that in this picture
 12 Brett is putting water into the mouth of the
 13 tandem passenger while they are in flight, is that
 14 correct?
 15 A Brett's simulating giving his passenger
 16 a drink of water, correct.
 17 Q Is it a simulation or was he actually
 18 doing that or do you know?
 19 A The bottle is empty.
 20 Q How do you know the bottle is empty?
 21 A I saw the video.
 22 Q Do you know where this video is? Do
 23 you know which of the locations this is? Is this
 24 someone that tagged you or is this is on the
 25 S.D.L.L. page?

0045

1 Richard Winstock 45
 2 It appears this is on Facebook, right?
 3 MR. ZABELL: Objection to the form of
 4 the multiple questions.
 5 MR. ANTOLLINO: Okay. Withdrawn.
 6 Q Does this --
 7 A I don't know, I don't know.
 8 Q Do you know when this took place?
 9 A I don't know.
 10 Q Did Mr. Nock get disciplined for any
 11 reason as a result of that?
 12 A No. I put this into the category of
 13 very minor.
 14 Q Did you in any way, you know, tell him
 15 that he shouldn't do that?
 16 A No. Brett Nock has in excess of ten
 17 thousand tandem jumps. He's one of our very, very
 18 senior instructors, and if I were teaching a brand
 19 new tandem instructor, I wouldn't want a new
 20 instructor doing that.
 21 Q You saw a lot of pictures of yourself
 22 in there, right?
 23 A I did.
 24 Q And you saw pictures of a lot of people
 25 who you recognized?

0047

1 Richard Winstock 47
 2 Q Do you know why your hands are at the
 3 passenger's hips?
 4 A Yes.
 5 Q Why?
 6 A When you land a tandem, there's two
 7 methods to landing in tandem. You can both sit
 8 down and slide, which is a preferred method, it's
 9 taught, it's for newer instructors, or you can
 10 both stand up, which is more difficult.
 11 If you'll notice in this picture, the
 12 lower connectors are already detached, that's why
 13 the passenger is allowed to move away from him.
 14 When you do that, you do that up in the air so you
 15 land safely.
 16 This picture, and I remember the actual
 17 jump, I stood up and my passenger went to stand
 18 up, but he was sitting, in other words, he was
 19 going to the ground, and my hands were there to
 20 pick him up to stop him.
 21 It's important to note you're still
 22 attached at the shoulders, so if your tandem goes
 23 down or goes down quick, I go down. So all I was
 24 doing there was grabbing his side connectors,
 25 which are natural handles or straps to hold him

0046

1 Richard Winstock 46
 2 A I did.
 3 Q And there were a lot of tandem
 4 instructors in there too?
 5 A Yes.
 6 Q And Don is on the first page?
 7 A Correct.
 8 Q Would you say that a lot of those
 9 pictures represented the general goofiness that
 10 builds ease in a customer while he is going up in
 11 the plane?
 12 MR. ZABELL: I'm going to object to the
 13 form of the question. You may answer it.
 14 A Yes.
 15 Q Again, aside from those two safety
 16 issues, you didn't see any goofiness that you
 17 thought was inappropriate, is that correct?
 18 MR. ZABELL: Object to the form of the
 19 question.
 20 A I didn't.
 21 Q There's a couple of things I want to
 22 ask about, some particular ones.
 23 Number two, it looks like you are
 24 landing with someone. Do you see that?
 25 A Yes.

0048

1 Richard Winstock 48
 2 up.
 3 Q You did this because you thought it was
 4 in the best interest of the passenger to do that,
 5 correct?
 6 A No.
 7 Q Why did you do that?
 8 A It was in the best interest for me.
 9 Q It was for your safety?
 10 A Correct, and my passenger's safety.
 11 Q Under the circumstances using your
 12 judgment, you thought it was necessary to grab his
 13 hips?
 14 A Yes.
 15 Q In number three, I don't know if you
 16 are the tandem instructor there. Are you?
 17 A No.
 18 Q Do you recognize who it is?
 19 A Yes.
 20 Q Who is it?
 21 A It's a Greek name. I call him Sully.
 22 His real name is Telly, and his last name was --
 23 it's a Greek last name. It's Telly. He's known
 24 as Telly.
 25 Q Do you know why he's touching the

0049

1 Richard Winstock 49

2 woman's head there?

3 A Yes, I do.

4 Q Why is that?

5 A There's also a few methods to exiting a

6 aircraft with a passenger. In all instances,

7 whether it be standing, sitting, kneeling, you

8 want your passenger's head to be back. If their

9 head is forward as you leave the aircraft, the

10 tendency is for the head -- it's tandem, so it is

11 going to be to go forward or do a front flip.

12 So we teach them, and this is also

13 trained in the video on the ground, that when they

14 sit in the doorway to keep their head back so if a

15 passenger sits in the doorway and they're looking

16 at the ground or scared or looking at the

17 videographer, it's very, very common, and it's

18 also taught that the tandem instructor can

19 reposition their head backwards, and that's what

20 he's doing.

21 Q It appears that their heads are very

22 close to each other, correct?

23 A Correct.

24 Q That's for the passenger's safety,

25 correct?

0051

1 Richard Winstock 51

2 A You can't even speak.

3 Q Is there a way to communicate when

4 you're in the air?

5 A Yes.

6 Q How is that?

7 A Hand signals.

8 Q Is there any other way?

9 A Not that I know of.

10 Q What does under canopy mean?

11 A It means the parachute has inflated and

12 you're basically using it as a wing to get

13 yourself to the ground. So you're flying the

14 parachute, and they call that under canopy.

15 Q When you're under canopy, can you

16 communicate verbally with a passenger?

17 A Yes.

18 Q How easy or hard is that?

19 A Easy.

20 Q Number seven, do you recognize this

21 still from this video?

22 A I do.

23 Q Do you know whose hand that is?

24 A I do.

25 Q Whose hand is it?

0050

1 Richard Winstock 50

2 A What is, that their heads are close?

3 Q Yes, or does it just depend on the

4 circumstances?

5 A You're strapped pretty closely. I can

6 say that some instructors prefer the head -- the

7 passenger's head on the left side, some prefer it

8 on the right side.

9 Virtually no instructors that I know of

10 like it right in front of them, and the reason for

11 that is when the parachute opens, the head can

12 literally knock you out or crack your teeth.

13 Usually the passenger's head is to the right or

14 left. When that happens, it causes you to put it

15 a little closer to their head.

16 Q And their chin would come close to the

17 passenger's neck, correct?

18 A Correct.

19 Q When you're up in the air, is it loud?

20 A Generally. Can you please -- In a

21 plane, free fall? When I'm in the plane?

22 Q Yes. Not free fall, but in the plane.

23 A We can hear each other speak, it's not

24 deafening, but it's loud.

25 Q When you get out in the air?

0052

1 Richard Winstock 52

2 A Dan Feitlan's.

3 Q Do you know the person with the

4 backpack there?

5 A I'm not sure.

6 Q When I say the backpack, is that the

7 parachute?

8 A Yes.

9 Q Do you know why Dan's hand is touching

10 the other person's posterior?

11 A Yes.

12 Q Why?

13 A This was a coach course evaluation, and

14 basically the person that you just referred to in

15 the front of this picture number seven is a

16 simulated student. As a coach, and that's the

17 person whose hand it is, it appears to me they're

18 putting their hand there to anticipate the student

19 leaving the plane. If the student leaves the

20 plane without you, you have to catch up with them.

21 So it's taught that you have a physical

22 presence on the student so that when they go, you

23 go, and that's exactly what they're taught to do,

24 is have a physical presence.

25 Q So in this particular circumstance,

0053

1 Richard Winstock 53
 2 it's perfectly appropriate and necessary for
 3 safety for the instructor to put his or her hand
 4 on the posterior of the student, correct?
 5 A In this particular photo, yes.
 6 Q Do you recognize number fifteen?
 7 A Yes, I do.
 8 Q It appears that someone's giving
 9 someone the finger there. Do you see that?
 10 A Yes.
 11 Q Do you know why?
 12 A No idea.
 13 Q What?
 14 A I have no idea.
 15 Q Do you know what this group was?
 16 A What do you mean?
 17 Q Do you know who these people were?
 18 A I do.
 19 Q Who were they?
 20 A Joseph Fortune, --
 21 MR. ANTOLLINO: Let me withdraw the
 22 question and ask it generally.
 23 Q Do you know generally who they are;
 24 were they passengers, were they fun jumpers?
 25 A These are two instructors and a fun

0055

1 Richard Winstock 55
 2 On page twenty-six, it appears that
 3 you're touching the passenger's head. Is that
 4 what you had described earlier with regard to the
 5 other page we were looking at or is that a
 6 different situation?
 7 A You said me? I don't know if that's
 8 me.
 9 Q It appears that you are tagged here,
 10 so, I mean, I don't know if this is you or not.
 11 Does it look like you right there?
 12 A Yes, I'll give it to you, it looks like
 13 me.
 14 Q Do you know why you're touching that
 15 passenger's head?
 16 A Yes.
 17 Q Why?
 18 A Exactly the reason I explained earlier.
 19 Q Okay.
 20 A To get that passenger's head on my
 21 shoulder.
 22 Q So I'm done with Exhibit 3.
 23 MR. ANTOLLINO: We'll mark this
 24 collectively as Exhibit 4.
 25 (Whereupon, the web site pages were

0054

1 Richard Winstock 54
 2 jumper, and this is at a special event that we
 3 call a Boogie, where we have planes that hold
 4 upwards of thirty people. So this was just fun
 5 jumpers. They're instructors acting as fun
 6 jumpers.
 7 Q Are the fun jumpers paying customers
 8 also?
 9 A Yes.
 10 Q Are the fun jumpers treated differently
 11 than first time customers or are they also
 12 considered paying customers?
 13 A They're considered experienced
 14 skydivers. So there's usually a separation
 15 between a first time student and someone who is a
 16 student. Yes, they are treated differently.
 17 Q Do you recognize who's sticking his
 18 tongue out in number sixteen?
 19 A I don't know.
 20 Q Is that from the same video in fifteen,
 21 if you know?
 22 A It might be, yes.
 23 Q But you're not sure?
 24 A I'm not sure if that's the same time.
 25 Q There are a couple of repeats here.

0056

1 Richard Winstock 56
 2 marked as Plaintiff's Exhibit 4 for
 3 identification, as of this date.)
 4 Q I'm handing you Exhibit 4, and I'm just
 5 going to ask you, do these appear to be from your
 6 personal web site?
 7 A Yes, they do.
 8 Q Why don't you look at all three.
 9 A Okay.
 10 Q So they're all snapshots of your web
 11 site, is that fair to say?
 12 A I believe they are, yes.
 13 Q One of them is a link to some videos,
 14 is that right?
 15 A Yes.
 16 Q Two of them are a link to S.D.L.L.
 17 videos, is that right?
 18 A Yes.
 19 Q One of them is a link to a video with
 20 Rich, Tony and Curt.
 21 Are those friends of yours?
 22 A Yes.
 23 Q On the second page of the exhibit you
 24 have a page about canopy safety, is that correct?
 25 A Yes.

0057

1 Richard Winstock 57

2 Q In this canopy safety, I believe you
3 refer to there having been five fatalities and one
4 critical injury that were canopy related.

5 I don't know when this was written, but
6 you refer to one fatality and one critical injury,
7 correct?

8 A Yes.

9 Q And you refer the reader --

10 A I'm sorry, if I can, I'm pretty sure
11 this is taken from the U.S. Parachute Association,
12 so it was a copy and paste. So those five
13 incidents were nationwide.

14 Q But you thought that this was something
15 that was important that you wanted to put on your
16 own web site, is that fair to say?

17 A Yes.

18 MR. ANTOLLINO: Off the record.
19 (Whereupon, there was a discussion
20 held off the record.)

21 Q Is there a safety manual that is highly
22 regarded in the industry that you recommend on
23 your web site?

24 A Yes.

25 Q What is it?

0058

1 Richard Winstock 58

2 A There's two. Skydiver Information
3 Manual, commonly referred to as the S.I.M., and
4 the Instructor's Rating Manual, commonly referred
5 to as the I.R.M.

6 Q Are these manuals that are supposed to
7 be followed at S.D.L.I.?

8 A Yes.

9 Q Are they generally followed at most
10 reputable drop zones?

11 A Yes.

12 MR. ANTOLLINO: I'm going to mark this
13 as Exhibit 5.

14 (Whereupon, the Facebook page printout
15 was marked as Plaintiff's Exhibit 5 for
16 identification, as of this date.)

17 Q Here we have a snapshot of some
18 Facebook comments, and it appears that S.D.L.I.,
19 Skydive L.I., has made a comment there, is that
20 correct?

21 A Yes.

22 Q Who's the one who's writing when it's
23 S.D.L.I. Skydive L.I.?

24 A I don't know the answer to that. I
25 didn't read these yet.

0059

1 Richard Winstock 59

2 Q Why don't you take a look at the first
3 paragraph.

4 A Okay.

5 Q Does it appear to you that anyone in
6 particular wrote that?

7 A Yes.

8 Q Who wrote that?

9 A The owner, Ray Maynard.

10 Q How do you know that it's Ray?

11 A 'Cause he's making reference to his
12 ex-wife and Barbara, who I know is his current
13 girlfriend.

14 Q Does Barbara know anything about this
15 current case?

16 A I don't know.

17 Q What's Barbara's last name?

18 A I don't know.

19 Q Is this a comment that Ray made typical
20 of the comments that Ray made about his wife
21 toward the end of their marriage that you heard?

22 A I don't take this as disparaging as --

23 Q No, I'm just asking is it the typical
24 kind of comments. I'm not saying it's disparaging
25 or not.

0060

1 Richard Winstock 60

2 A Typical, yes.

3 Q How are skydivers paid at S.D.L.I.?

4 A There's two methods. There's W-2 and
5 there's 1099.

6 Q What's the difference between a W-2
7 employee and a 1099 employee?

8 A The 1099 employee, I am one, I have my
9 own skydiving LLC, so I invoice Skydive Long
10 Island each week for my services, and then W-2
11 employees are directly working for Skydive Long
12 Island.

13 Q So are you the only 1099 that you're
14 aware of?

15 A No.

16 Q Who else might be a 1099?

17 A I know there are others. I don't know
18 specifically the financial arrangements for each
19 instructor.

20 Q For the W-2 employees, how are they
21 paid?

22 A With a paycheck biweekly -- I'm sorry,
23 weekly by paycheck.

24 Q Do they get an hourly wage, a weekly
25 wage?

0061

1 Richard Winstock 61

2 A Per jump.

3 Q How much do you get per jump?

4 A Tandems get forty dollars, training

5 tandems get fifty dollars, advanced free fall

6 jumps get fifty-five, video jumps get fifty-nine

7 dollars, coach jumps get thirty dollars.

8 I could go into a slew of other

9 recertification jumps. I don't know how far you

10 want me to go.

11 Q All right. That's good enough.

12 Are there any days where the weather is

13 bad and no one shows up to the drop zone?

14 A Yes.

15 Q On those days do the employees get

16 compensated in any way?

17 A No.

18 MR. ANTOLLINO: Let's mark these as

19 Exhibits 6 through 9.

20 (Whereupon, the e-mail was marked as

21 Plaintiff's Exhibit 6 for identification, as

22 of this date.

23 The letter dated August 17, 2010 was

24 marked as Plaintiff's Exhibit 7 for

25 identification, as of this date.

0063

1 Richard Winstock 63

2 with Mike Gamble?

3 A I don't believe I did. To the best of

4 my recollection, I don't believe I did.

5 Q Exhibit 9, why don't you take a look at

6 this.

7 A Yes.

8 Q Does that appear to be an e-mail

9 exchange you had with Don Zarda after he

10 was terminated?

11 A Yes. This is me forwarding those two

12 documents to Don.

13 Q Now we're going to watch some video.

14 They're not very long.

15 MR. ANTOLLINO: I brought a little

16 Phone Drive for you. If you could return it

17 tomorrow, I would appreciate it.

18 MR. ZABELL: I should be able to. If

19 not, I'll replace it with a new one.

20 MR. ANTOLLINO: I'm going to deem this

21 folder marked Rich collectively as Exhibit

22 10, and I'll make a copy for Mr. Zabell.

23 (Whereupon, the video was deemed marked

24 as Plaintiff's Exhibit 10 for identification,

25 as of this date.)

0062

1 Richard Winstock 62

2 The undated letter was marked as

3 Plaintiff's Exhibit 8 for identification, as

4 of this date.

5 The Facebook pages were marked as

6 Plaintiff's Exhibit 9 for identification, as

7 of this date.)

8 Q I just want to show you Exhibit 6 and

9 ask you if this is an e-mail exchange between you

10 and Don?

11 A Yes.

12 Q Is everything in that e-mail exchange

13 true?

14 A Yes.

15 Q I'm going to show you Exhibits 7 and 8

16 and ask you if you recognize these?

17 A Can I read this?

18 Q Sure, of course. Take your time.

19 A Yes, I recognize both pages.

20 Q Let me just ask you very quickly, is

21 Exhibit 7 a letter you received from Michael

22 Gamble and Exhibit 8 a letter you responded to

23 Michael Gamble's letter with?

24 A Yes.

25 Q Did you have any phone conversation

0064

1 Richard Winstock 64

2 MR. ANTOLLINO: I'm opening this

3 folder, and we'll all have to move around to

4 the other side of the table, and it appears

5 inside this folder Rich there are six items

6 marked image, 1334, 1335, 1337, 1339, 1340

7 and 1341.

8 Q Do you see that?

9 A I do.

10 Q So we're going to look at 1334, and

11 again, I'm going to ask you the question, do you

12 see anything inappropriate, unsafe or improper in

13 this video?

14 Do you want to see it again?

15 A No.

16 Q And your answer is?

17 A Inappropriate, unsafe or improper?

18 Q Yes.

19 A No.

20 Q There was some point in there where the

21 passenger exclaims, make shit happen, is that

22 correct?

23 A Yes.

24 Q And everyone in unison, including

25 instructors, respond, make shit happen, correct?

0065

1 Richard Winstock 65

2 A Correct.

3 Q And that's part of the goofiness of the

4 tandem experience, would that be a fair statement?

5 MR. ZABELL: Objection to form. You

6 may answer.

7 Q Would that be fair to say?

8 A Yes.

9 Q Let's look at 1335, and once again the

10 question is, do you see anything in here that's

11 improper, unsafe or appropriate?

12 A I saw nothing unsafe. It depends, the

13 reference -- if giving the middle finger to

14 someone else is inappropriate, you could probably

15 deem that inappropriate. It was two people having

16 fun. Unsafe though, I would probably say if you

17 played it a little further, you might see

18 something unsafe.

19 Q You've seen this video before?

20 A No, I haven't.

21 Q I only got a snippet of it, but I'm

22 just asking you about the snippet.

23 Do you remember anything about this

24 particular video?

25 A I don't.

0067

1 Richard Winstock 67

2 Q Inside a plane, though, aside from the

3 middle finger, which was a borderline

4 inappropriate, there was nothing else

5 inappropriate?

6 MR. ZABELL: Objection. You may

7 answer.

8 A Depending who you ask, that could be

9 considered borderline inappropriate.

10 Q Would it depend on the circumstances?

11 A Yes.

12 Q I'm sorry, I should really ask the

13 question for the record.

14 I'm now opening 1337, and the question

15 is again, here do you see anything improper, unsafe

16 or inappropriate, and I'm going to start it again?

17 A I didn't notice anything improper,

18 unsafe or inappropriate.

19 Q That appears to be the video of the

20 hand on the posterior in the picture that I showed

21 you earlier, is that correct?

22 A I didn't notice that on that video.

23 MR. ANTOLLINO: Withdrawn. It doesn't

24 matter.

25 Q All the videos you've seen so far,

0066

1 Richard Winstock 66

2 Q Because I have a longer shot of it on

3 my iPhone if you want to see it.

4 A I'm just making mention there's about

5 to be a collision in the air right there, and I

6 think that's unsafe.

7 Q Why is there about to be a collision in

8 the air?

9 A Rewind it a little bit and you'll see

10 that guy about to collide with -- right there.

11 Q Really?

12 A I would say that's unsafe.

13 Q How did that happen?

14 A I have no idea. I've never seen this

15 video before.

16 MR. ZABELL: I think it might have

17 something to do with physics.

18 Q What could have been done to prevent

19 that collision?

20 A That's a very gray general question.

21 They could have not jumped.

22 Q Do you know if there were any injuries?

23 A No. No one reported to me. But again,

24 all kidding aside, I've never seen that video.

25 That was unsafe.

0068

1 Richard Winstock 68

2 they're all Skydive Long Island videos, correct?

3 A Yes.

4 Q I'm going to open now 1339, and the

5 same question, do you see anything improper,

6 unsafe or inappropriate?

7 A There was a glare.

8 Q We're going to watch that one again,

9 because you said there was a glare.

10 A I didn't notice anything unsafe,

11 inappropriate or unusual.

12 Q At one point the instructor in that

13 video touched the face of the passenger, is that

14 correct?

15 A I thought he reached out for the video

16 guy, but if --

17 Q Let's watch it again.

18 A I briefly see him use his left hand, or

19 it looked like he hit him in the goggle, or he

20 might have been straightening the student's

21 goggle. But I don't deem that unsafe or improper.

22 Q What if he was just, for example,

23 joking around and was putting his hands over the

24 passenger's eyes and then taking them off?

25 MR. ZABELL: Let the record reflect

0069

1 Richard Winstock 69
 2 that counsel for the plaintiff motioned for
 3 the witness by putting both his hands over
 4 both his eyes and removed them demonstrating
 5 with the physical context of his question.
 6 MR. ANTOLLINO: I'll agree with that
 7 characterization.
 8 Q Would there be anything inappropriate
 9 about that?
 10 A No.
 11 Q I'm opening 1340. Same question, is
 12 there anything improper, inappropriate or unsafe?
 13 A No.
 14 Q There came to be one point where the
 15 passenger, or rather the instructor put two of his
 16 fingers into the passenger's ears and made a
 17 little like monkey joke. Would that be a fair
 18 characterization?
 19 A Yes.
 20 MR. ZABELL: Let the record reflect
 21 that counsel for the plaintiff is gesturing
 22 with his two hands around his ears. I don't
 23 know if I would characterize it as making a
 24 monkey joke. I would characterize it more
 25 like antlers.

0071

1 Richard Winstock 71
 2 hands in close to herself specifically. They're
 3 holding the harness. A drogue needs to be
 4 deployed. It has to be deployed usually within
 5 ten seconds. If a student's hands get away from
 6 their body, it's impossible to untangle. It's a
 7 fatal error.
 8 Again, I hate to guess what somebody
 9 else is doing, but it's very important that a
 10 student's hands stay in prior to that drogue
 11 coming out. So I would not say that was improper.
 12 Q Could you tell me the point or just tap
 13 this when you get to the point where he's in
 14 contact with --
 15 A Yeah, he's -- I don't know if he's as
 16 much holding her as he's holding the camera guy
 17 right now. He might be reaching around her to
 18 hold the camera guy.
 19 Q That would be improper?
 20 A Holding the camera guy, not reaching
 21 around, I consider it inappropriate. You can do
 22 whatever you have to do or whatever you feel is
 23 necessary to make that skydive successful, and by
 24 successful, I mean you live.
 25 Q Now we're going to go to the main

0070

1 Richard Winstock 70
 2 Q Was there anything inappropriate about
 3 that?
 4 A No.
 5 Q We're going to open 1341, and same
 6 question as before, do you see anything
 7 inappropriate, unsafe or improper? You can forget
 8 about the band, just the jump. Was there anything
 9 improper, unsafe or inappropriate?
 10 A I would characterize that as improper.
 11 Q Why?
 12 A The tandem instructor prior to drogue
 13 release was in contact with the camera, the
 14 videographer.
 15 Q Other than that, anything else?
 16 A No.
 17 Q What about the part where he puts his
 18 arms around the, I guess, torso of the passenger,
 19 was there anything inappropriate about that?
 20 A No.
 21 Q Was it necessary?
 22 A Yes.
 23 Q Why?
 24 A I'm surmising, because I know the
 25 instructor, that he was keeping the student's

0072

1 Richard Winstock 72
 2 event, and we're going to watch the video of --
 3 Well, I'm not going to preface it. I'm just going
 4 to ask you the same question.
 5 MR. ANTOLLINO: I'm going to show Mr.
 6 Winstock, which I'll deem Plaintiff's Exhibit
 7 11, that which is the file we had used in the
 8 previous deposition and entitled
 9 SKYDIVE.ABLAVI.
 10 (Whereupon, the video was deemed marked
 11 as Plaintiff's Exhibit 11 for identification,
 12 as of this date.)
 13 Q I'm going to ask you the same question,
 14 is there anything in there improper, unsafe or
 15 inappropriate?
 16 A Do you want me to critique that video?
 17 Q Was there anything you saw unsafe,
 18 inappropriate or improper?
 19 A I saw absolutely nothing inappropriate,
 20 unsafe or improper -- Strike that.
 21 If I want to get technical, if I was
 22 evaluating that, I would suggest, probably
 23 recommend he do a check of cut away and reserve
 24 handles and probably would have advised that the
 25 drogue get out there a little bit quicker, and I

0073

1 Richard Winstock 73
 2 would say that the landing was outstanding.
 3 So, yes, I would probably -- if I were
 4 to critique it, I would say that to Don.
 5 Q Would that be something --
 6 A Safety, that falls under safety.
 7 Q Explain again exactly what you mean by
 8 that. Let's watch the video.
 9 Is this a major safety violation, a
 10 minor one or just something that you would
 11 critique for him to do better next time?
 12 A I personally, if I were given this
 13 video, I would critique it and talk to him. I'm
 14 sure he knows this, but, yes, it's major. You
 15 could have your ratings suspended for thirty days
 16 on your first violation. But he did check his
 17 lower.
 18 Q Was this in the jump? I'll just skip
 19 ahead.
 20 A Way after. Go to the exit.
 21 The exit was outstanding. It was a
 22 great exit. In the instructor class you're taught
 23 to deploy the drogue in five seconds. You do not
 24 want to get up to the terminal velocity, which is
 25 usually about twelve seconds.

0075

1 Richard Winstock 75
 2 Those should -- five handles should be
 3 touched in free fall every time. You're asking me
 4 a safety question, so I'm being honest.
 5 Q If you were to grade it, what grade
 6 would you give?
 7 A I would give it a ninety-seven.
 8 Q Let's just watch the rest.
 9 A Right there the drogue should have come
 10 out. Right there is the bottom handle. So he
 11 missed the top handles. Nice landing.
 12 Q So basically you had a couple of
 13 critiques, but overall you'd grade it a
 14 ninety-seven?
 15 A I would. It was an outstanding tandem
 16 jump.
 17 MR. ANTOLLINO: Why don't we take a
 18 break now, and I'm going to talk to Don, and
 19 we'll finish up, unless Mr. Zabell has
 20 questions.
 21 MR. ZABELL: I have some questions, but
 22 that's fine. We can take a break.
 23 (Whereupon, a short break was taken.)
 24 MR. ANTOLLINO: Just a few more
 25 questions for me.

0074

1 Richard Winstock 74
 2 Although the exit was perfect, it was
 3 an outstanding exit, I would probably critique and
 4 say you want to get the drogue out earlier.
 5 That's a safety issue.
 6 The second -- if I were critiquing it
 7 for safety, which is checking your primary
 8 release, secondary release, cut away handle, your
 9 reserve handle, and also your R.S.L., and if you
 10 press play --
 11 Q Let me ask this. When you said primary
 12 and secondary release, --
 13 A It's right handed and left handed.
 14 Q When checking your primary and
 15 secondary releases, you put your hands on your
 16 hips, correct?
 17 A Yes.
 18 Q Why does it appear that he didn't do
 19 that at an earlier point?
 20 A He did do that. I saw him do that. He
 21 checked his right and left release, which is
 22 outstanding, and also check a cut away handle,
 23 which is up on your shoulder, and reserve handle,
 24 which is that handle, and R.S.L. device. That
 25 should be checked in free fall.

0076

1 Richard Winstock 76
 2 Q Is it a good practice for a tandem
 3 instructor to check the handle checks more than
 4 once?
 5 A Yes.
 6 Q Is it possible that Don did all of his
 7 handle checks prior to the camera man getting
 8 close enough to videotape?
 9 A I'd have to watch the video again. Is
 10 it possible, yes.
 11 Q Is it possible that the check that you
 12 saw in the video was an additional check and not
 13 the initial check that is required of all six
 14 handles?
 15 A Actually, no, it's not.
 16 Q Why?
 17 A Because the check I saw was after the
 18 drogue came out. Any other checks would have been
 19 pre-drogue, which is very, very, very rare, and
 20 it's actually discouraged. I don't think there
 21 were pre-drogue checks.
 22 Q When we talked about the attachment
 23 points, is there also a chest strap?
 24 A Yes.
 25 Q Where is that located?

0077

1 Richard Winstock 77
 2 A It's an adjustable chest strap, so it
 3 adjusts up the torso.
 4 Q What is its function?
 5 A Primarily to hold the passenger in the
 6 harness.
 7 Q Does it ever loosen and need
 8 readjustment during the jump?
 9 A I can say that in seventy-five hundred
 10 tandems, I've never had one loosened that I had to
 11 tighten up during the jump. I've had them so
 12 tight that I've had to loosen them, but I've never
 13 had it the other way.
 14 Q How about any other attachment points?
 15 A That you have to loosen?
 16 Q Yes.
 17 A Yes.
 18 Q What about the lateral straps or the
 19 lateral bands or straps?
 20 A The lateral?
 21 Q Are there lateral straps at the hips
 22 that strap the passenger to the instructor?
 23 A Side connectors. Talking about side
 24 connectors, can they loosen up?
 25 Q Yes.

0079

1 Richard Winstock 79
 2 Q When you say the lower side connectors,
 3 are those the ones at the hips?
 4 A Those are the ones at the hips, yes.
 5 Q Do instructors ever have passengers sit
 6 in their laps to attach them?
 7 A Yes.
 8 Q Why?
 9 A The reason it's done -- the side
 10 connectors have to be extremely tight. They
 11 almost can't be too tight. When a passenger sits
 12 up in your lap, it brings the attachment point
 13 closer to your hips and it allows you to tighten
 14 the side strap thoroughly. It also makes it
 15 easier to do.
 16 I could say not every instructor does
 17 it, I don't teach it, but it has been done and I
 18 have seen instructors do it.
 19 Q And you've seen them do it at Skydive
 20 Long Island?
 21 A Yes.
 22 Q Do instructors ever guide passengers
 23 into this position?
 24 A Guide them?
 25 Q Yes.

0078

1 Richard Winstock 78
 2 A It's not very common. I couldn't sit
 3 here and say it could never happen, but it's not
 4 very common.
 5 Q Would there be any situation like you
 6 suggested before where they would be too tight and
 7 you had to loosen them?
 8 MR. ZABELL: Ask your client not to
 9 speak.
 10 MR. ANTOLLINO: Don, if you want to
 11 talk to me outside, we can talk outside.
 12 Q When going to hook up or attach a
 13 passenger in a plane, when does that occur?
 14 A It really depends on the plane you're
 15 in, it depends on the drops you're at. There's a
 16 lot that goes into that question.
 17 Are you referring to Skydive Long
 18 Island?
 19 Q Yes.
 20 A If you're referring to Skydive Long
 21 Island, we have benches in our planes. When we
 22 board the plane, the passenger sits in front of us
 23 and we hook up the lower side connectors right
 24 then and there on the ground before we take off,
 25 and then we seat belt ourself into the plane.

0080

1 Richard Winstock 80
 2 A For lack of sounding ignorant, when you
 3 say guide --
 4 Q Pull them toward their lap, yes.
 5 A Yes.
 6 Q Could that involve touching of the
 7 hips?
 8 A It could.
 9 Q During the plane ride up -- Well, what
 10 is the Caravan?
 11 MR. ZABELL: Object to the form. You
 12 may answer.
 13 A The Caravan -- We have two planes. The
 14 Caravan is one of the two planes. A Cessna
 15 Caravan, they call it the Grand Caravan.
 16 Q On the ride up in the Caravan, where is
 17 the passenger sitting in relation to the
 18 instructor?
 19 A In front of.
 20 Q What is the instructor supposed to do
 21 with his arms at that juncture, or is there
 22 anything that --
 23 A What juncture?
 24 Q When the passenger is sitting in front
 25 of the instructor.

0081

1 Richard Winstock 81

2 A Our arms?

3 Q Yes.

4 A It's important to note that we can't

5 dictate every single movement an instructor makes,

6 but I can tell you what is commonplace or taught.

7 Instructors are supposed to do handle

8 checks in the plane the whole way up. It's not

9 uncommon that I do five, six, seven, eight handle

10 checks. So with my hands I'm touching my right

11 hand release and left hand release, cut away and

12 reserve handle, my R.S.L., and I'm also checking

13 the side connectors as well, which are attached at

14 the hips.

15 Some other functions an instructor

16 might do, they might check the harness itself on

17 the passenger, and that might involve looking over

18 his shoulder or tightening up a chest strap.

19 Q On a busy day at the drop zone, would

20 it be easy to forget the passengers that you

21 did --

22 A I can only see where this is going.

23 Q -- would it be easy to forget the

24 passengers that you had taken out on a jump?

25 A Yes. Elaborate, forget visually, face

0083

1 Richard Winstock 83

2 let them know we're violating your personal space

3 to make this safe. That's the only --

4 Q I think that answers the question.

5 MR. ANTOLLINO: Don, I think we've

6 asked everything we need to ask, and I just

7 have one more question, but do you have

8 anything else you want to discuss with me

9 outside or is that enough?

10 MR. ZARDA: If you think this one more

11 question covers all that.

12 MR. ANTOLLINO: Is there anything else

13 based on these questions you want me to ask?

14 MR. ZARDA: I can't think of any other

15 questions.

16 Q When you suggested this letter of

17 reprimand you talked about before, what would the

18 reprimand have been for exactly?

19 A I was not -- It's important that you

20 understand, I wasn't involved in the complaint, I

21 wasn't involved in the decision to terminate Don

22 at all, nor did I ever get involved, and I'll go a

23 step further, that's the first time I've seen the

24 video ever. I've never seen that video, and it

25 appears to be raw footage, so I've never seen the

0082

1 Richard Winstock 82

2 wise, name wise?

3 Q Yes.

4 A Yes, it would be very common.

5 Q Do you ever refer to flipping

6 hamburgers at the drop zone?

7 A To what?

8 Q Flipping hamburgers, is that an

9 expression you've heard?

10 A I never heard it used.

11 Q In the waiver there's a point about the

12 passenger acknowledges close proximity to the

13 instructor.

14 Have you familiarized yourself with

15 that portion of the waiver?

16 A Yes.

17 Q I believe it's item thirteen. Whatever

18 it is, why is that there?

19 A Again, it's important to let the

20 passenger know that they're making, first off, a

21 very dangerous -- they're making a jump out of an

22 airplane, and they're going to be in such close

23 proximity, and like I explained, those side

24 connectors are very tight, so you're violating

25 their personal space basically, and you need to

0084

1 Richard Winstock 84

2 footage.

3 I didn't talk to the husband, I didn't

4 talk to the wife. I advocated on Don's behalf.

5 So when I was asking for the letter of

6 recommendation, it was more a -- more so, don't

7 terminate, how about a letter of recommendation.

8 Q Letter of reprimand.

9 A I'm sorry, a letter of reprimand, and

10 my reason for that, and I've been very vocal about

11 that, Don, in my opinion, is an outstanding tandem

12 instructor. There's never been a safety issue,

13 and I advocated for him.

14 It wasn't based on a video or

15 complaint, because I didn't have that knowledge, I

16 didn't have the facts to make a decision, as I

17 don't right now, because I didn't talk to anyone,

18 and I still don't know exactly what the complaint

19 is. So the letter was really advocating for Don.

20 MR. ANTOLLINO: No further questions.

21 Thank you very much.

22 MR. ZABELL: I have a couple of

23 questions.

24 EXAMINATION BY SAUL ZABELL, ESQ.:

25 Q You said that everybody was aware that

0085

1 Richard Winstock 85
 2 Don was gay, is that correct?
 3 A Yes.
 4 Q How did you know that everybody was
 5 aware that Don was gay?
 6 A Don was flamboyant. He was very
 7 outwardly -- he's a friendly guy, and in his
 8 friendliness he doesn't hide the fact that he's
 9 gay. In fact, it's very out in the open. The
 10 pink hats, the pink toenail polish, he's called
 11 gay Don. I never knew that that bothered him. If
 12 it did, I'm sorry.
 13 MR. ZABELL: I hate to interrupt, but I
 14 think the record should reflect when the
 15 deponent was testifying he was called gay
 16 Don, I didn't know if it bothered him, that
 17 Mr. Zarda shook his head no, it didn't.
 18 MR. ANTOLLINO: There's been no
 19 testimony here. I didn't see --
 20 MR. ZABELL: You have to let me finish
 21 speaking, because I give you the courtesy of
 22 that.
 23 I'm saying that the record should
 24 reflect that Mr. Zarda was physically shaking
 25 his head from left to right while the

0087

1 Richard Winstock 87
 2 Q How frequently?
 3 A If not every weekend, almost every
 4 weekend for two summers, minus possible injuries,
 5 or he might have missed a few days here and there.
 6 Q Did you ever observe any of your
 7 co-workers treating Mr. Zarda differently than any
 8 other co-worker?
 9 A I didn't.
 10 Q Did you ever observe Mr. Zarda being
 11 treated differently because of his sexual
 12 orientation?
 13 A I didn't.
 14 Q Did you ever hear any jokes in the
 15 workplace about Mr. Zarda's sexuality?
 16 A No.
 17 Q Did Mr. Maynard ever make disparaging
 18 comments about Don Zarda?
 19 A Not in front of me.
 20 Q Are you aware if he had made any
 21 disparaging comments?
 22 A No.
 23 Q So when you say, not in front of me,
 24 does that mean you're not aware of comments that
 25 were made?

0086

1 Richard Winstock 86
 2 deponent was saying, I didn't know that it
 3 bothered him, indicating that, no, it did
 4 not.
 5 MR. ANTOLLINO: I didn't see that.
 6 MR. ZABELL: You can feel free to ask
 7 Mr. Zarda.
 8 MR. ANTOLLINO: He's not under oath.
 9 You can ask him tomorrow, and he's gonna tell
 10 you the truth.
 11 Q You can go ahead. I just needed to
 12 verbally clarify that.
 13 A I think I finished answering.
 14 Just that Don himself was very open
 15 about it. This was not something hidden or
 16 something that was quiet. It wasn't clandestine.
 17 Q Did you ever hear Don refer to
 18 himself or introduce himself as gay Don?
 19 A I may have.
 20 Q Did you ever treat Mr. Zarda
 21 differently because of his sexuality?
 22 A No.
 23 Q Did you have occasion to work with Mr.
 24 Zarda?
 25 A Yes.

0088

1 Richard Winstock 88
 2 A No, I am not.
 3 Q Are you aware of any of the co-workers
 4 at Skydive Long Island making disparaging comments
 5 about Mr. Zarda?
 6 A No.
 7 Q Now, you hold a special title at
 8 Skydive Long Island, do you not?
 9 A Yes.
 10 Q What is your title?
 11 A Safety and training advisor. Chief
 12 instructor and instructor examiner in a few
 13 different disciplines.
 14 Q What does an instructor examiner do?
 15 A Certifies instructors. It's the person
 16 if you want to become a tandem instructor or a
 17 free fall instructor, or a coach, you have to go
 18 to an instructor examiner. That's the person who
 19 actually gives -- signs off on the rating for a
 20 tandem instructor. So it's called -- commonly
 21 referred to as an I.E., and I'm the only one at
 22 Skydive Long Island.
 23 Q Who was the most senior skydiver at
 24 Skydive Long Island?
 25 A Seniority -- That's a good question.

0089

1 Richard Winstock 89

2 Seniority is determined in several ways. We have

3 license numbers. Once you become a professional

4 skydiver, you get what's called a D license

5 number, and the lower your license number, that

6 means the longer in the sport you've been.

7 So that's -- For example, if we all had

8 D licenses, whoever had the lowest number would

9 have the most time in the sport. If it's based on

10 time in the sport, I am the most senior guy,

11 instructor there. If it's based on number of

12 jumps, sometimes the guy with the most jumps

13 they'll consider the most senior guy, that's

14 another way to determine it, there are a couple of

15 guys with more jumps than myself.

16 Q What about professional qualifications,

17 is there anybody at Skydive Long Island with more

18 professional qualifications than you?

19 A No.

20 Q Now, if an instructor had a complaint

21 at Skydive Long Island, who were they to bring

22 that complaint to?

23 A Me.

24 Q Why were they to bring their complaint

25 to you?

0091

1 Richard Winstock 91

2 been fired from Skydive Long Island before?

3 A Yes.

4 Q How do you know that?

5 A Word of mouth from Ray Maynard.

6 Q What did Ray Maynard say was the reason

7 for his termination the previous time?

8 A It had to do with instructor and

9 passenger interaction.

10 Q You testified about the various roles

11 of an instructor. Is it safe to say that the

12 primary role of the instructor is to get the

13 instructor and the passenger from the airplane to

14 the ground safely?

15 A That is their primary goal, period.

16 Q Are there secondary goals?

17 A Yes.

18 Q What are the secondary goals and so on,

19 if there are?

20 A Primary goal is safety and always is.

21 Secondary would be to make sure they enjoy their

22 experience. The video would be the secondary.

23 Safety out trumps a nice pretty video if you're

24 having some sort of issue up there. Safety,

25 obviously, is number one. Video, passenger

0090

1 Richard Winstock 90

2 A Because of the title chief instructor,

3 because of my safety and training and title. It

4 depends on what the complaint involves.

5 Of course, I guess if it was a

6 complaint about me, they might go to Ray, the drop

7 zone owner, but if I'm not at the drop zone, the

8 possibility exists that they could also go to Ray.

9 Q Did Mr. Zarda ever complain to you

10 about anything that occurred at Skydive Long

11 Island?

12 A The only -- Only one time.

13 Q What did he complain about?

14 A I remember Mr. Zarda came up to me to

15 discuss that he had been sent home in reference to

16 this particular incident, and that was the only

17 time that I remember him coming to me with a

18 complaint of any sort.

19 Q Do you recall what he told you?

20 A Other than Ray sent me home, no, I

21 can't give specifics.

22 Q Did Mr. Zarda know why he was being

23 sent home?

24 A I don't know.

25 Q Now, do you know if Mr. Zarda had ever

0092

1 Richard Winstock 92

2 experience, that comes second.

3 Q Do you consider what you engage in as

4 an instructor at Skydive Long Island to be a

5 customer service business?

6 A Yes.

7 Q Why do you consider it to be that?

8 A We're offering a product. In my

9 opinion, we're offering a product and we're basing

10 it on the safety record, and I think that we have

11 the obligation to deliver the product as safely as

12 possible.

13 Q As a training instructor and chief

14 instructor of Skydive Long Island, do you teach

15 the other instructors, advise the other

16 instructors that they're responsible for their own

17 actions?

18 A Yes.

19 Q Are they taught that what works for one

20 customer may not work for another customer?

21 A Absolutely, yes.

22 Q If they do something that makes a

23 customer uncomfortable, are they responsible for

24 that?

25 A Yes.

0093

1 Richard Winstock 93

2 Q And they would, in fact, be responsible

3 for damaging the jump experience, is that correct?

4 A Correct.

5 Q Would it be inappropriate to discipline

6 an employee who for one reason or another gives

7 the customer a bad experience?

8 A No.

9 Q Even though another customer might have

10 responded positively to the same actions, is that

11 correct?

12 A Correct.

13 Q Is that because it's a customer service

14 business?

15 A Yes.

16 Q And you need to read your customers?

17 A Yes.

18 Q Now, instilling trust between yourself

19 and the customer is a big part of the jump

20 experience, is it not?

21 A Yes.

22 Q I think you testified that it's one of

23 the most crucial parts of the experience?

24 A Correct.

25 Q So if you needed to place your hand in

0095

1 Richard Winstock 95

2 instructors discussing their sexual orientation at

3 Skydive Long Island?

4 A No.

5 Q Would you recommend as a training

6 instructor and a chief instructor that the

7 instructors discuss their sexual orientation

8 during a jump?

9 A I wouldn't recommend it.

10 Q Why would you not recommend it?

11 A To me that pre-jump phase is one of

12 building trust, and I think, even in the course I

13 teach I talk about this, in building trust, and I

14 think there's better ways to build trust, in my

15 opinion.

16 Every passenger is different. It's

17 important to know that every passenger is

18 different.

19 Would I recommend it was the question?

20 I would say, no.

21 Q Now, you were asked some questions

22 about Mr. Zarda appearing at the drop zone with a

23 cast?

24 A Correct.

25 Q Do you recall that?

0094

1 Richard Winstock 94

2 a certain area or rest your head in a certain

3 area, would it be your responsibility to explain

4 to the customer exactly why you're doing it?

5 A Yes.

6 If I can elaborate, a lot of times you

7 don't have the opportunity to explain why you're

8 doing something, but at some point you would have

9 the obligation, or if you were asked, you would be

10 able to explain why you did what you did.

11 Q Did you ever take the opportunity to

12 explain to a customer that you were taking a

13 particular action because of your sexual

14 orientation?

15 A No.

16 Q Can you think of any situation that

17 might arise where discussing your sexual

18 orientation would be appropriate in the context of

19 a skydive?

20 A No.

21 Q Do you discuss your sexual orientation

22 with customers?

23 A I have told customers I'm married.

24 Other than that, no.

25 Q Are you aware of other skydive

0096

1 Richard Winstock 96

2 A Yes.

3 Q Do you remember Mr. Zarda appearing at

4 the drop zone with a cast?

5 A Yes, I do.

6 Q Was he working at that time that he was

7 there with the cast?

8 A I do not believe so, no.

9 Q And you can't be a skydive instructor

10 with a casted foot or ankle, is that correct?

11 A No.

12 Q No, that's not correct or, no --

13 A I'm sorry, no, you cannot be a skydive

14 instructor with a cast on your foot.

15 Q Can you think of why Ray Maynard

16 wouldn't want someone hanging around the drop zone

17 with a cast on not during a workday?

18 A Yes.

19 MR. ANTOLLINO: Objection to form. Go

20 ahead.

21 A Yes.

22 Q What would that reason be, or those

23 reasons be?

24 A It would kind of fall into the -- I

25 don't have to explain the bad karma category. If

0097

1 Richard Winstock 97
 2 you see someone with a cast at a skydiving
 3 operation, I think it's probably not the best for
 4 business.
 5 If I was Ray, or if I was the owner and
 6 I had to make that decision, I probably wouldn't
 7 want someone, especially an instructor, walking
 8 around with a cast on or possibly in a wheelchair
 9 or something that would bring up -- we're trying
 10 to be positive and build trust and get a good
 11 feeling going.
 12 So, no, I wouldn't think there would be
 13 any reason for an instructor with a cast on -- It
 14 wouldn't help the business, let's put it that way.
 15 Q Did you ever hear Ray Maynard comment
 16 about any of the colors that Don Zarda was
 17 wearing?
 18 A I didn't hear, no.
 19 Q Did you ever hear any of the co-workers
 20 comment on the colors that Don Zarda wore?
 21 A I didn't.
 22 Q Do you think Don Zarda was treated any
 23 differently at Skydive Long Island because he's
 24 gay?
 25 A No.

0099

1 Richard Winstock 99
 2 definitely upset about the situation and that I
 3 would put that in the category of that is how Don
 4 would speak to me. I didn't take it as
 5 disrespectful.
 6 Q Do you see how somebody could see that
 7 as being disrespectful?
 8 A Yes.
 9 Q Do you see how Mr. Maynard could see
 10 that as disrespectful?
 11 A Yes.
 12 Q Do you know on how many different
 13 occasions Mr. Zarda was terminated from Skydive
 14 Long Island?
 15 A To the best of my recollection, one
 16 time prior to this incident.
 17 Q So a total of two times?
 18 A To the best of my knowledge.
 19 Q Do you know how many times Mr. Zarda
 20 was hired by Skydive Long Island?
 21 A Two. I'm surmising here.
 22 Q Let's work this through.
 23 If he was hired once and terminated
 24 once --
 25 A Correct.

0098

1 Richard Winstock 98
 2 Q Did you ever hear Ray Maynard complain
 3 about Don Zarda?
 4 A I didn't.
 5 Q Did you ever hear Don Zarda complain
 6 about Ray Maynard?
 7 A I did not -- Strike that.
 8 Minus the one time, the very last
 9 incident when he was upset that he was sent home,
 10 that he came to me with a complaint about Ray
 11 because I was his direct supervisor at the time,
 12 other than that, I never heard Don complain about
 13 Ray at any time.
 14 Q I believe you were shown an e-mail by
 15 counsel for Mr. Zarda, and in that e-mail Mr.
 16 Zarda had commented about whether or not Mr.
 17 Maynard came to his senses.
 18 Do you recall that?
 19 A Yes.
 20 Q Do you believe that's an appropriate
 21 question to ask, A, of your supervisor, and, B,
 22 about the owner of the company?
 23 A I believe -- I think I could classify
 24 Don and my personal relationship as friendly. I
 25 think it was a friendly e-mail. I know Don was

0100

1 Richard Winstock 100
 2 Q -- and hired again and then terminated
 3 again, then two would be correct, right?
 4 A Right.
 5 Q Was Mr. Zarda hired while you were
 6 employed at Skydive Long Island?
 7 A Yes.
 8 Q Were you responsible for the hiring?
 9 A No.
 10 Q Did you have any input in the hiring?
 11 A No.
 12 Q When he was hired, were you advised of
 13 anything regarding Mr. Zarda?
 14 A Yes.
 15 Q What were you advised of?
 16 A Curt Kellinger, who is the instructor
 17 who introduced me to Don up in Vermont, told me
 18 that he asked Don to come to Skydive Long Island.
 19 He told me that Don was gay and he told me that
 20 Don was an excellent tandem instructor, and that's
 21 all that was told to me prior to his being hired.
 22 Q In any of your experiences with Don,
 23 did you ever find any of that to be untrue?
 24 A No.
 25 Q I'm sorry, who was that that told you?

0101

1 Richard Winstock 101
 2 A Curt Kellinger.
 3 Q Does Curt Kellinger work at Skydive
 4 Long Island?
 5 A He does.
 6 Q The fact that Curt Kellinger told you
 7 that Don Zarda was gay, did that effect whether or
 8 not Don Zarda was hired by Skydive Long Island?
 9 A No.
 10 Q So, in fact, he was hired even though
 11 his sexuality was known?
 12 A Correct.
 13 Q Did it effect what he was paid?
 14 A No.
 15 Q To your knowledge, did it effect how he
 16 was treated?
 17 A No.
 18 Q Is there anything else you'd like to
 19 tell me?
 20 A No.
 21 MR. ZABELL: Thank you for your time.
 22 I appreciate it.
 23 Would you like to reserve the right to
 24 the see a copy of this deposition at the
 25 conclusion of the deposition?

0103

1 Richard Winstock 103
 2 to do with a passenger and instructor interaction?
 3 A That's right.
 4 Q And Ray told you that?
 5 A Yes.
 6 Q When did Ray tell you that?
 7 A Sometime over the course of the last
 8 three to last four years.
 9 Q So it could have been after this
 10 lawsuit had been filed?
 11 A No, this is back when, approximately,
 12 around the time that he was hired. Ray explained
 13 to me that he hired Don and that he also explained
 14 to me that he was terminated once before.
 15 Q But you don't recall any of the
 16 specifics about what Ray said about this
 17 interaction?
 18 A It was passenger/instructor interaction
 19 was the reason he was terminated.
 20 Q If a passenger complains about an
 21 unwillingness to violate safety standards, is that
 22 a legitimate complaint?
 23 A If a passenger --
 24 Q If a passenger --
 25 A I'm trying to get -- If a passenger

0102

1 Richard Winstock 102
 2 THE WITNESS: At the conclusion?
 3 MR. ZABELL: Not immediately.
 4 THE WITNESS: Yes, I would.
 5 MR. ANTOLLINO: All right. There's a
 6 few things to follow-up on here.
 7 CONTINUED EXAMINATION BY MR. ANTOLLINO:
 8 Q You said that Don wasn't hired by you,
 9 but did you inform Ray that Don was gay before Ray
 10 made the decision to hire Don?
 11 A Ray knew Don prior -- I think -- I
 12 don't know who's confused here. Ray had already
 13 worked with Don, so Ray knew Don. All I was
 14 saying to the question was I didn't have much to
 15 do with the hiring. So when Ray hired Don, Ray
 16 knew Don was gay.
 17 Q The first termination of Don, do you
 18 know when that was?
 19 A I don't.
 20 Q Was that before you were working at
 21 S.D.L.L?
 22 A I was working at Skydive Long Island,
 23 but I wasn't there for this incident, or I wasn't
 24 there while he was working.
 25 Q You testified that you believe it had

0104

1 Richard Winstock 104
 2 complains about an unwillingness to violate a
 3 safety, can I -- My passenger is asking me and I
 4 don't want to violate safety standards?
 5 Q No. If the passenger says something
 6 like, can we do X, Y or Z, whatever it is, and you
 7 know that violates safety standards and you say no
 8 because that violates safety standards, is that a
 9 legitimate passenger complaint?
 10 A No.
 11 Q You said you've told some passengers
 12 that you're married?
 13 A Yes.
 14 Q So this happened over the course of say
 15 the last ten years?
 16 A Over the course of the last thirteen
 17 years, give or take.
 18 Q So certainly between 1998 and 2011?
 19 A Yes.
 20 Q Before last year, if you told someone
 21 that you were married, that person would
 22 understand that you were heterosexual, correct?
 23 A Correct.
 24 Q Did you show Ray Maynard that e-mail
 25 where Don said, has Ray come to his senses?

0105

1 Richard Winstock 105
 2 A I don't believe I did.
 3 Q Did you go to Ray and say, Don wants to
 4 know if you've come to your senses?
 5 A No.
 6 Q Early in the deposition I believe you
 7 testified whether or not to reveal one's sexual
 8 orientation would be something that depended on
 9 the circumstances, correct?
 10 A Correct.
 11 MR. ZABELL: Object to the form.
 12 Q Do you know if anyone ever called Don
 13 gay Don in front of another customer?
 14 A Quite possibly, but I can't give you a
 15 specific instance. It wouldn't surprise me if it
 16 did happen.
 17 MR. ANTOLLINO: I'm hoping he has no
 18 further questions, but I have to speak to my
 19 client outside.
 20 (Whereupon, a short break was taken.)
 21 MR. ANTOLLINO: As usual, my client has
 22 excellent questions he wants me to ask, and
 23 he's happy to have written these down.
 24 MR. ZABELL: Object to the questions
 25 being excellent, but...

0107

1 Richard Winstock 107
 2 call it, did Ray ever call a mandatory staff
 3 meeting in which he asked everyone, whether out on
 4 injury leave or not, to come to the workplace?
 5 A I have absolutely no idea. I don't
 6 recall it if he did.
 7 Q Does Skydive Long Island ever have a
 8 summer party where it invites the community and
 9 customers?
 10 A A summer party?
 11 Q A summer party.
 12 A They have different gatherings and
 13 parties during the summer, yes.
 14 Q Did they ever have a luau called, get
 15 laid?
 16 A They may have. I do not remember a
 17 party called get laid. There was a luau five, six
 18 years ago. I don't remember it being categorized
 19 like that.
 20 Q Has Ray ever fired and rehired other
 21 instructors?
 22 A Yes.
 23 Q Do you know who?
 24 A Jerry Hannick was fired and rehired.
 25 There's been so many. He's the one

0106

1 Richard Winstock 106
 2 Q Have you ever heard any gay tandem
 3 jokes made over the years in the air, such as
 4 jokes as when two guys are strapped together?
 5 A Yes.
 6 Q Can you give me an example?
 7 A I can say that over the last twenty
 8 years I've heard quite a few tandem instructors
 9 with quite a few different ways to loosen up the
 10 situation in order to make their passengers feel
 11 more comfortable.
 12 A specific joke or comment, one's not
 13 coming to my mind right now. If you know of one,
 14 I'll tell you if I've heard it used, if that'll
 15 work. I can't think of a particular joke.
 16 Q Did you ever hear a joke, I bet you
 17 didn't guess you were gonna be strapped to another
 18 guy for this experience?
 19 A I've probably heard that.
 20 Q And that is when the speaker is
 21 presuming that the speaker is heterosexual and is
 22 being put into an intimate situation with a man,
 23 correct?
 24 A Hundred percent correct.
 25 Q When Don was out on injury leave let's

0108

1 Richard Winstock 108
 2 that comes to mind right now. That's the most
 3 recent.
 4 Q I notice you're not wearing a wedding
 5 band. Would it be fair to say looking at you one
 6 would not be able to tell you're married?
 7 A Correct.
 8 Q Would it be fair to say that your
 9 marriage is personal information?
 10 A No.
 11 Q Why not?
 12 A I would say it's public information.
 13 My -- whether or not -- whether I'm married or not
 14 -- if you were to ask me whether I'm married, I
 15 don't take that as a violation of my personal
 16 stock or knowledge.
 17 Q When I walked into this room, I didn't
 18 know you were married, and I didn't see any ring
 19 on your finger. So would you agree that in this
 20 setting, without any other indicia, that your
 21 marriage is personal information to you that you
 22 might be willing to share, but it's not obvious?
 23 A Okay.
 24 Q There's nothing I can tell by looking
 25 at you that says, this is a married guy?

0109

1 Richard Winstock 109

2 A Okay.

3 Q Is that fair to say?

4 A Yes, it is.

5 Q Would you agree that your marriage is
6 personal information in this circumstance?

7 A Yes.

8 MR. ANTOLLINO: No further questions.

9 MR. ZABELL: Just a few.

10 In what kinds of context would you

11 reveal to customers that you were married?

12 THE WITNESS: It's a very, very

13 specific context, actually.

14 Over the years, I personally find that

15 women, female passengers, usually older, when

16 they're extremely nervous, and their mothers,

17 I have to calm down my passenger, especially

18 when they're extremely nervous I have to,

19 otherwise it's a safety issue, and like I

20 said earlier, our job is to land safely, and

21 I want to go home to my three kids.

22 Every passenger is different. So when

23 you're dealing with an older woman who is a

24 mother, I say, I'm married, I have three

25 children, I want to go home to my family,

0110

1 Richard Winstock 110

2 it's okay.

3 That's when, and that's the only

4 scenario I reveal it, and I'll add that I

5 have three children, and it tends to calm

6 older women down. That's in my mind when I

7 said that. That's the one time I do that.

8 So I do in certain situations. That's

9 why the question was asked, do I recommend

10 not bringing it up. Yes, of course I

11 recommend you don't bring it up, but there

12 are situations where it could benefit you.

13

14

15

16

17 (Continued on following page to

18 allow for signature and jurat.)

19

20

21

22

23

24

25

0111

1 Richard Winstock 111

2 MR. ZABELL: Thank you.

3 (Whereupon, the examination of

4 this witness was concluded at 5:00 P.M.)

5

6 * * * *

7

8 STATE OF NEW YORK)

9)ss.:

10 COUNTY OF)

11 I have read the foregoing record of my

12 testimony taken at the time and place noted in the

13 heading hereof and I do hereby acknowledge it to

14 be a true and correct transcript of same.

15

16

17 RICHARD M. WINSTOCK

18

19 Subscribed and sworn to

20 before me on this ____ day

21 of _____, 2011.

22

23

24 NOTARY PUBLIC

25

0112

1 112

2 I N D E X

3

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5 Richard Winstock Mr. Antollino 3-84

6 Mr. Zabell 84-102

7 Mr. Antollino 102-111

8

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25

0113

1

113

2

C E R T I F I C A T I O N

3

4

I, Deborah Thier, a Notary Public

5

of the State of New York do hereby certify:

6

That the testimony in the within

7

proceeding was held before me at the aforesaid

8

time and place. That said witness was duly sworn

9

before the commencement of the testimony, and that

10

the testimony was taken stenographically by me,

11

then transcribed under my supervision, and that

12

the within transcript is a true record of the

13

testimony of said witness.

14

I further certify that I am not related

15

to any of the parties to this action by blood or

16

marriage, that I am not interested directly or

17

indirectly in the matter in controversy, nor am I

18

in the employ of any of the counsel.

19

IN WITNESS WHEREOF, I have hereunto set

20

my hand this 16th day of December, 2011.

21

22

23

DEBORAH THIER

24

25

0001

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT
4 -----X
5 DONALD ZARDA,
6 Plaintiff,
7 - against - INDEX NO.:
8 CV-10-4334

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

11 Defendants,
12 -----X

13 Bee Reporting Agency, Inc.
14 800 Veterans Memorial Highway
15 Hauppauge, New York
16 November 9, 2011
17 1:30 P.M.

EXAMINATION BEFORE TRIAL OF ROSANA

18 ORELLANA, a non-party witness, taken by the
19 attorney for the Plaintiff, pursuant to Subpoena,
20 and held before Deborah Thier, a Notary Public of
21 the State of New York at the above-stated time and
22 place.

23 * * * *

24
25

0002

1
2 APPEARANCES:
3
4 GREGORY ANTOLLINO, ESQ.
5 Attorney for the Plaintiff
6 18-20 West 21st Street - Suite 802
7 New York, New York 10010

8 ZABELL & ASSOCIATES, P.C.
9 Attorneys for the Defendants
10 4875 Sunrise Highway - Suite 300
11 Bohemia, New York 11716
12 BY: SAUL D. ZABELL, ESQ.

13 ALSO PRESENT:
14 JOHN SANCHEZ, ESQ.
15 DONALD ZARDA

16
17
18
19
20
21
22
23
24
25

0003

1
2 FEDERAL STIPULATIONS
3
4 IT IS HEREBY STIPULATED AND AGREED,
5 by and between the parties hereto, through
6 their respective Counsel, that the certifi-
7 cation, sealing and filing of the within
8 examination will be and the same are hereby
9 waived;

10 IT IS FURTHER STIPULATED AND AGREED
11 that all objections, except as to the form
12 of the question, will be reserved to the
13 time of the trial;

14 IT IS FURTHER STIPULATED AND AGREED
15 that the within examination may be signed
16 before any Notary Public with the same
17 force and effect as if signed and sworn to
18 before this Court.

19
20
21
22
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24
25

0004

1
2 (At this time, a ruling was sought from
3 Judge Joseph Bianco via conference call.)
4 COURT CLERK: Please state your
5 appearances.
6 MR. ANTOLLINO: Gregory Antollino,
7 counsel for the plaintiff, Donald Zarda.
8 Good afternoon, Your Honor.
9 JUDGE BIANCO: Good afternoon.
10 MR. ZABELL: For the defendants, Saul
11 Zabell, from the law firm of Zabell and
12 Associates, attorneys for the defendants.
13 Good afternoon, Your Honor.
14 JUDGE BIANCO: Good afternoon.
15 My understanding is the issue is
16 regarding a deposition?
17 MR. ANTOLLINO: Yes, Judge.
18 JUDGE BIANCO: What's the issue?
19 MR. ANTOLLINO: The issue is this. I
20 have two non-party witnesses who I have
21 subpoenaed. Both have information about the
22 same transaction and occurrence, and I don't
23 want the first witness listening to the
24 second witness' testimony or vice versa.
25 Rule 615 specifically applies to this, the

0005

1 Rosana Orellana 5
 2 exclusion of witnesses.
 3 I don't want one witness' testimony
 4 jogging the memory or tainting the testimony
 5 of another witness, so I've asked that the
 6 witness we noticed for three o'clock wait
 7 outside. This deposition shouldn't take that
 8 long and the witnesses are appearing here
 9 unrepresented.
 10 The non-party witnesses are boyfriend
 11 and girlfriend and they both want to be
 12 together in this deposition, but I think that
 13 the evidentiary issues are more important and
 14 that there's no risk to the deponent being
 15 here by herself and answering questions
 16 without her boyfriend being here.
 17 JUDGE BIANCO: Mr. Zabell?
 18 MR. ZABELL: Your Honor, this really
 19 isn't my issue. I'm here representing the
 20 defendants, although I can say that the
 21 third-party deponent, Rosana Orellana, has
 22 expressed some concern to me with being in a
 23 rather small room with certain people.
 24 She already feels harassed by being
 25 forced to appear at this deposition by

0006

1 Rosana Orellana 6
 2 subpoena, and her boyfriend, Mr. Kengle, has
 3 expressed an interest in being here in this
 4 deposition.
 5 I am aware of the federal deposition
 6 rules that depositions may be attended by any
 7 person, and I guess the reality appears that
 8 plaintiff's counsel is seeking an exclusion
 9 order from Your Honor to exclude one or the
 10 other while they're giving testimony.
 11 JUDGE BIANCO: Okay. The two witnesses
 12 are David Kengle and Ms. Orellana?
 13 MR. ANTOLLINO: Yes.
 14 MR. ZABELL: Your Honor, if I may, it
 15 seems there's an easy way around this.
 16 If Mr. Kengle was to be deposed in the
 17 room first while Ms. Orellana is outside and
 18 at the conclusion of his deposition Ms.
 19 Orellana can come inside, and this way
 20 nobody's testimony is tainted and nobody will
 21 feel harassed or intimidated in any way.
 22 MR. ANTOLLINO: Your Honor, I thought
 23 about that, but there's information that Ms.
 24 Orellana might have me that will give me
 25 questions to have for Mr. Kengle. So really

0007

1 Rosana Orellana 7
 2 the deposition of Ms. Orellana and her
 3 answers is going to inform how I proceed with
 4 Mr. Kengle's deposition, and I might not even
 5 want to take it. I might want to take it for
 6 five minutes.
 7 So I thought about that solution and
 8 that's not gonna work. What I don't want to
 9 happen is have Ms. Orellana's testimony
 10 tainting the second witness, and that's just
 11 that simple.
 12 If it's a small room, then having one
 13 more person here is not going to help
 14 anything.
 15 You know, I tried very hard to get this
 16 deposition before today. It could have been
 17 under circumstances that would be more
 18 comfortable to Ms. Orellana, but she didn't
 19 want to give out her address to plaintiff
 20 until the court ordered it. So I don't
 21 really have much sympathy for her, and it's
 22 not going to be any hardship for her to be in
 23 a room for an hour without her boyfriend by
 24 her side to give truthful testimony.
 25 MR. ZABELL: This is Saul Zabell.

0008

1 Rosana Orellana 8
 2 JUDGE BIANCO: Are they able to hear
 3 me?
 4 MR. ZABELL: Yes.
 5 JUDGE BIANCO: Mr. Kengle, Ms.
 6 Orellana, this is Judge Bianco. Good
 7 afternoon.
 8 The court's ruling is as follows, and
 9 just so you understand, it is a standard rule
 10 that witnesses, whether it be in a trial or
 11 in this case with respect to a deposition,
 12 that witnesses not sit in and listen to
 13 another witness' testimony, because it could
 14 potentially taint their own testimony in a
 15 way that the court likes to avoid. There's a
 16 different rule if a party is involved, but
 17 that's not the situation we have here.
 18 Both of you are simply non-party
 19 witnesses. So under the rules of Civil
 20 Procedure, I have the authority pursuant to
 21 section 261CE to designate who may be present
 22 in a particular case.
 23 It's my ruling that the depositions
 24 should be separate and that Mr. Antollino
 25 should be able to take them in the order that

0009

1 Rosana Orellana 9
 2 he wishes to and that the other person will
 3 need to wait outside the room.
 4 I understand it may be more comfortable
 5 to have, you know, both people in the room,
 6 you know, I understand that depositions are
 7 not things people are accustomed to, but the
 8 overriding interest is that the testimony not
 9 be tainted in any way by having multiple
 10 people present. So I'm going to direct that
 11 you be separated during the depositions.
 12 Do you understand?
 13 MR. KENGLE: I do.
 14 If I may, this is David Kengle, it's
 15 just a little uncomfortable in the fact that
 16 the plaintiff is here and the original issue
 17 with the -- you know, the entire case is that
 18 it was a case of harassment and --
 19 JUDGE BIANCO: Who is speaking?
 20 MR. KENGLE: This is David Kengle.
 21 MR. ZABELL: I'm sorry, this is Saul
 22 Zabell. It appears that you had spoken over
 23 each other for a moment. I'm going to ask,
 24 Your Honor, if you may indulge me and repeat
 25 the last thing that you said.

0011

1 Rosana Orellana 11
 2 participate and assist in the case that they
 3 have brought or that they have been sued in.
 4 So the situation is different with
 5 respect to non-party witnesses. I understand
 6 why it may be uncomfortable, but that's just
 7 a fact of the situation.
 8 In terms of the conduct of the
 9 deposition, as was just said, this is being
 10 transcribed, there's going to be a record of
 11 this, and if there are any issues of any
 12 improper, you know, questioning or anything
 13 like that or behavior of any type during the
 14 deposition, it's something certainly that it
 15 will be brought to my attention. If there
 16 are any problems of that nature, you know, I
 17 can be contacted again, but I don't expect
 18 that, because the lawyers, obviously, know
 19 that that is not a permissible way to conduct
 20 a deposition, and so I expect to it to be
 21 civilized and that the questioning will be in
 22 a civilized professional manner. Okay.
 23 MR. KENGLE: Okay, Your Honor. Thank
 24 you.
 25 MR. ANTOLLINO: Thank you.

0010

1 Rosana Orellana 10
 2 JUDGE BIANCO: I didn't understand what
 3 he said.
 4 He said it's a little uncomfortable
 5 because the plaintiff is present?
 6 MR. ZABELL: Yes.
 7 Basically, if Your Honor recalls from
 8 the facts, Mr. Antollino wants to depose Ms.
 9 Orellana and Mr. Kengle because they had made
 10 complaints to the owner of Skydive, the
 11 defendant, my client, regarding the behavior
 12 of the plaintiff. So I think that's what Mr.
 13 Kengle is expressing to Your Honor.
 14 MR. ANTOLLINO: Judge, he has nothing
 15 to worry about. My client is going to be
 16 sitting next to me and Ms. Orellana is going
 17 to be on the other side of the table. She
 18 has nothing to worry about it.
 19 MR. KENGLE: It's a little
 20 intimidating.
 21 JUDGE BIANCO: First of all, as I said,
 22 the rule is different, Mr. Kengle, when it
 23 relates to a party. A party does have a
 24 right to be present during the questioning of
 25 witnesses so that they can meaningfully

0012

1 Rosana Orellana 12
 2 MR. ZABELL: Thank you, Your Honor.
 3 R O S A N A O R E L L A N A,
 4 The witness herein, having first been duly
 5 sworn by Deborah Thier, a Notary Public in and
 6 for the State of New York, was examined and
 7 testified as follows:
 8 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:
 9 Q Please state your name.
 10 A Rosana Orellana.
 11 Q What is your address?
 12 A 9 Garfield Place, East Northport, New
 13 York, 11731.
 14 MR. ZABELL: I have been advised by Ms.
 15 Orellana that she is sitting for this
 16 deposition subject to being supplied with a
 17 copy of this transcript for her review and
 18 signature.
 19 Mr. Antollino, by your silence, I
 20 assume you are consenting to that?
 21 MR. ANTOLLINO: I'll send her a copy,
 22 sure.
 23 Q Good afternoon, Ms. Orellana. I'm Greg
 24 Antollino. You've gotten some communications from
 25 me in the mail and I represent Mr. Zarda.

0013

1 Rosana Orellana 13
2 A Okay.
3 Q Have you ever been deposed before?
4 A No.
5 Q Have you ever testified under oath?
6 A No.
7 Q Well, this is a judicial proceeding,
8 even though we're here in the basement someplace
9 in Hauppauge, that's being transcribed, and we're
10 going to seek information about some things that
11 happened on June 18th of 2010, I believe, and you
12 have to listen to my question before you give an
13 answer.
14 A Okay.
15 Q So when you said okay, you kind of
16 spoke over me just a little. It's kind of not
17 like a conversation that way.
18 You've gotta wait for the question to
19 be asked entirely before you give an answer,
20 because she's writing down my information and then
21 she's gonna write down your information.
22 When you start speaking, you have to
23 say a yes or a no. A nod of the head or uh-uh
24 will not answer the question appropriately,
25 because we don't know what that means in the

0014

1 Rosana Orellana 14
2 transcript. You have to say yes or no or I don't
3 know.
4 If you don't understand one of my
5 questions, will you agree to tell me to rephrase
6 it?
7 A Yes.
8 MR. ZABELL: I object to the form of
9 the lecture. There's no reason why we
10 shouldn't continue.
11 Q Are you presently employed?
12 A Yes.
13 Q Who are you employed by?
14 A Besito, B-E-S-I-T-O. It's a
15 restaurant.
16 Q And you are a server there?
17 A That's correct.
18 Q What is your highest level of
19 education?
20 A High school.
21 Q Did you receive a subpoena to testify
22 here today?
23 A Yes.
24 Q Did you bring any documents in response
25 to that subpoena?

0015

1 Rosana Orellana 15
2 A No.
3 Q Were there any documents that were
4 responsive to that subpoena?
5 A No.
6 Q I believe that in that subpoena I asked
7 you for any communications, any written
8 communications that you had had with Mr. Saul
9 Zabell or anyone at Altitude Express; is that
10 correct?
11 A I don't know -- Can you rephrase your
12 question? I don't understand what you're asking.
13 Q The subpoena asked you to bring in any
14 written communications --
15 A Okay.
16 Q -- among a bunch of people.
17 One of them was Saul Zabell and another
18 one was Altitude Express, and another one was any
19 employees of Altitude Express, in other words, any
20 employees of Zabell and Associates.
21 Do you remember that request?
22 A No.
23 Q Do you have any documents that are
24 responsive to that request?
25 A No.

0016

1 Rosana Orellana 16
2 Q Let's go down the list.
3 You have no written documents that
4 you've received from Mr. Saul Zabell?
5 A No.
6 Q You have no written documents you've
7 received from Altitude Express?
8 A No.
9 Q You have no written documents from Ray
10 Maynard?
11 A No.
12 Q Do you know who Ray Maynard is?
13 A Yes.
14 Q And you have no written documents from
15 any employees at Zabell and Associates?
16 A No.
17 Q Do you have any e-mails from any of
18 those entities?
19 A No.
20 Q Have you ever had any conversations
21 with Mr. Zabell?
22 A Yes.
23 Q When was the first conversation you had
24 with Mr. Zabell?
25 A I don't exactly remember the date, but

0017

1 Rosana Orellana 17
2 we did discuss the issue, he let us know what was
3 going on, and that was it.
4 Q Approximately, when was that?
5 A Five, six months ago. I really don't
6 -- It's not accurate. I don't remember the time
7 honestly. I don't remember the month. I remember
8 it was summertime, though.
9 Q It was summertime?
10 A Yes, it was warm outside.
11 Q It was warm outside?
12 A Yes.
13 Q It was in 2011?
14 A Yes.
15 Q You received a call?
16 A From who?
17 Q From Mr. Zabell?
18 A I didn't receive a call, my boyfriend
19 received a call.
20 Q Did you ever speak to Mr. Zabell
21 yourself?
22 A When he went to my apartment.
23 Q When was that?
24 A The same day.
25 Q Who was he with when he showed up at

0018

1 Rosana Orellana 18
2 your apartment?
3 A By himself.
4 Q How long did he stay at the apartment?
5 A Twenty-five minutes, approximately.
6 Q What did you talk about with Mr.
7 Zabell?
8 A Just the whole issue. You know, he
9 asked me to explain the story to him and we
10 explained the story to him.
11 Q Are you sure that was this last summer
12 of 2011 or maybe that was 2010?
13 MR. ZABELL: Object to the form of the
14 question.
15 Q When he objects to the form, he's just
16 preserving the record so he can go to the judge
17 later and say the way I asked the question was
18 lousy, but if you want to answer the question, you
19 can go ahead and answer it.
20 A Well, the incident was about a year and
21 a half --
22 Q The incident I believe happened about a
23 year and a half ago.
24 A A year and a half ago. So, I mean, I
25 don't really -- don't remember the exact time, I'm

0019

1 Rosana Orellana 19
2 sorry.
3 Q So you're not sure if it was the summer
4 of 2010 or 2011?
5 A No.
6 Q So he met with you, and what did he say
7 in that conversation?
8 A He just wanted to know what happened.
9 I mean, we did most of the talking. We explained
10 what happened and he just listened.
11 Q Did he offer to represent you in any
12 way?
13 A No.
14 Q Did he say that you might be a witness
15 in this case?
16 A He said there was a possibility.
17 Q What was your response to that?
18 A I really didn't want to deal with it.
19 I really had put it behind me. It happened, you
20 know, a long time ago.
21 To me, it wasn't something that I
22 wanted to think about it. So I didn't respond in
23 a positive way. I guess I just didn't want to go
24 through it.
25 Q Who else was there?

0020

1 Rosana Orellana 20
2 A Where?
3 Q At this meeting with Mr. Zabell.
4 A It was my boyfriend.
5 Q So just the three of you?
6 A Yes.
7 Q This was at your home in North Babylon?
8 A No, East Northport.
9 Q That is where you lived with Mr.
10 Kengle?
11 A Yes.
12 Q How long have you lived there?
13 A A year and a couple of months.
14 Q When did you learn about a subpoena in
15 this lawsuit?
16 A When did I learn about it?
17 Q Yes.
18 A I guess whenever my boyfriend received
19 the phone call, he let me know -- I mean,
20 everything went through my boyfriend, I didn't
21 really do too much of the -- I didn't really get a
22 phone call. So that was a couple of months ago,
23 like three months ago, two months ago.
24 Q It was a couple of months ago that you
25 heard about the subpoena?

0021

1 Rosana Orellana 21
 2 A I mean, he said there was a possibility
 3 that there would be a subpoena, so I was kind of
 4 expecting it, but I didn't know about the exact
 5 date until a couple of -- maybe a week or two ago
 6 when he gave us the letter. Somebody sent us a
 7 letter.
 8 Q I think that was me who sent you a
 9 letter.
 10 A Yes. So that was the first time.
 11 Q So that was the first time you learned
 12 about a subpoena?
 13 A Yes.
 14 Q Did you ever tell Mr. Zabell that you
 15 would allow him to accept a subpoena for you?
 16 A Did I ever tell him?
 17 Q Yes.
 18 A I didn't think I had a choice. I think
 19 when you're subpoenaed, it's a mandatory thing.
 20 Q Well, that's true, but what I'm asking
 21 is this.
 22 Did you sell Mr. Zabell, I want you to
 23 accept subpoenas for me in this case?
 24 A No, I didn't want to -- I didn't want
 25 the subpoena.

0022

1 Rosana Orellana 22
 2 Q I know you didn't want the subpoena.
 3 Most people don't.
 4 Did you ever say to Mr. Zabell, if
 5 there is going to be a subpoena, they can send it
 6 to you?
 7 A No, I never said that.
 8 Q How did you learn about this lawsuit?
 9 A Through Mr. Zabell.
 10 Q That was the day --
 11 A That was the day.
 12 Q -- when he came --
 13 A Yeah.
 14 Q Again, you have to let me finish.
 15 That was either 2010 or 2011?
 16 A Yes.
 17 MR. ZABELL: Objection to the form.
 18 A Yes, I believe it's 2011.
 19 Q Last summer?
 20 A Yeah, last summer. That's when it
 21 happened.
 22 Q When Mr. Zabell came to your home?
 23 A Yes.
 24 Q Do you remember what day of the week it
 25 was?

0023

1 Rosana Orellana 23
 2 A No.
 3 Q Was it a weekday?
 4 A I don't remember.
 5 Q Was it a day that you had off of work?
 6 A Yes.
 7 Q What are your usual work days?
 8 A I work in a restaurant business, so it
 9 changes all the time. There is no set schedule.
 10 Q Was Mr. Kengle working at the time?
 11 A I don't know if he was unemployed or if
 12 he was employed at the time.
 13 Q Did you read anything about this
 14 lawsuit in the media?
 15 A No.
 16 Q So you met Mr. Zabell for the first
 17 time you believe in the summer of 2011, --
 18 A Yes.
 19 Q -- correct?
 20 A Yes.
 21 Q When was the next time you met with Mr.
 22 Zabell?
 23 A We had lunch before we got here.
 24 Q Where did you go for lunch?
 25 A Paces Steakhouse.

0024

1 Rosana Orellana 24
 2 Q Who paid?
 3 A Mr. Zabell.
 4 Q How long were you there for?
 5 A An hour.
 6 Q What did you order?
 7 A I had scallops in a seafood bisque.
 8 Q What did Mr. Kengle order?
 9 A He ordered steak.
 10 Q Where is Paces Steakhouse?
 11 A I don't know the exact -- I mean, it's
 12 around the corner somewhere close.
 13 Q Somewhere nearby?
 14 A Yeah, somewhere nearby.
 15 Q Did he call me at some point during
 16 that lunch?
 17 A He excused himself. I don't know if he
 18 was calling you or --
 19 Q Was there any alcohol served at this
 20 lunch?
 21 A No.
 22 Q So you didn't see how much the check
 23 was?
 24 A No.
 25 Q What did Mr. Zabell talk about at this

0025
 1 Rosana Orellana 25
 2 lunch?
 3 A Well, we were just talking about -- you
 4 know, he was just asking us about the incident and
 5 we just spoke about it again.
 6 Q Did he say anything about the lawsuit?
 7 A Well, I mean, we know the lawsuit is
 8 going on, so, I mean, that's what we were
 9 discussing.
 10 Q So what did he say about the lawsuit?
 11 A To be honest.
 12 Q Did he say anything about the lawsuit?
 13 A Itself, no.
 14 Q Yes.
 15 A I mean, even if he did, I don't really
 16 know about lawsuits, so he said to be honest.
 17 Q Did he say anything about Mr. Zarda?
 18 A Mr. Zarda?
 19 Q Yes.
 20 A He just asked us if I knew who he was,
 21 and I know who he is.
 22 Q And you see him sitting across from me
 23 today?
 24 A Yes.
 25 Q Did he say anything at all? Did he

0026
 1 Rosana Orellana 26
 2 give you information about Mr. Zarda?
 3 A No.
 4 Q What about Mr. Zarda's attorney?
 5 A No.
 6 Q Did he say anything about the judge in
 7 the case?
 8 A No.
 9 Q Did he say anything about Mr. Maynard?
 10 A Who's Mr. Maynard?
 11 Q Ray Maynard.
 12 A Oh, yes.
 13 Q Do you know Mr. Ray Maynard?
 14 A I know who he is. I don't know him
 15 personally.
 16 Q And you met Ray Maynard before?
 17 A I don't know. I don't know if we met
 18 him at the skydive. I wouldn't remember,
 19 honestly.
 20 Q Let me ask you this.
 21 Did you talk about before you came here
 22 whether Mr. Kengle would be able to accompany you
 23 in the deposition room?
 24 MR. ZABELL: Objection to the form.
 25 Q You can answer.

0027
 1 Rosana Orellana 27
 2 A Yes.
 3 Q What did he say?
 4 A What?
 5 Q What did Mr. Zabell say?
 6 A He didn't really have an opinion on it.
 7 He just asked me if I would be more comfortable.
 8 You know, I don't deal well with stressful
 9 situations, so it would make me more comfortable
 10 for my boyfriend to be here. So it's not a big
 11 deal. He didn't really have an opinion on it.
 12 Q Did you feel it was a big deal to have
 13 your boyfriend here?
 14 A I would feel more comfortable if I had
 15 my boyfriend.
 16 Q Why?
 17 A Just more comfortable.
 18 Q Did you feel threatened in any way?
 19 A No.
 20 Q Other than that lunch that you had
 21 today and that meeting with Mr. Zabell in the
 22 summer of 2011, did you have any other meetings
 23 with Mr. Zabell?
 24 A No.
 25 Q Did you have any phone calls with Mr.

0028
 1 Rosana Orellana 28
 2 Zabell?
 3 A I personally didn't. I did not, did
 4 not.
 5 Q Did Mr. Kengle?
 6 A I don't know.
 7 Q Did Mr. Kengle talk to you about any
 8 phone calls he had with Mr. Zabell?
 9 A I don't know. I mean, he didn't speak
 10 to me, and if he did, I didn't really think about
 11 it, so....
 12 Q I want you to think back to June 18th
 13 of 2010.
 14 A Okay.
 15 Q Did you go skydiving on that day?
 16 A Yes.
 17 Q Why did you go skydiving?
 18 A Something I always wanted to do. I'm
 19 really into extreme stuff, so just, you know, one
 20 of those things you do in a lifetime, I guess.
 21 Q What do you mean you're really into
 22 extreme stuff?
 23 A You know, like I like -- I'd always
 24 wanted to go bungee-jumping. It's one of those
 25 things that I'd always wanted to do.

0029

1 Rosana Orellana 29
2 Q Had you been bungee-jumping before?
3 A No.
4 Q What other extreme things have you
5 done?
6 A Not too much, because I'm still young.
7 It's one of the things on my list.
8 Q How old are you?
9 A I am twenty.
10 Q In 2010 you were how old?
11 A In 2010 I was probably nineteen, just
12 turned nineteen.
13 Q So you haven't done any extreme things
14 other than skydiving?
15 A No.
16 Q So you want to go bungee-jumping?
17 A Yes.
18 Q Any other extreme things that you can
19 think of that you'd like to do?
20 A I don't know.
21 Q Have you been back to skydiving --
22 A No.
23 Q -- since?
24 A No.
25 Q Do you want to do it again?

0030

1 Rosana Orellana 30
2 A Not -- not really. It's just one of
3 those things that I wanted to do once. I mean, if
4 it happens again, it happens. If it doesn't, it's
5 not important.
6 Q Have you seen any of the documents in
7 this case?
8 A No.
9 Q Have you listened to any videos or
10 audio tapes?
11 A Of what?
12 Q Involving this lawsuit.
13 A No.
14 Q Have you seen the video of you jumping
15 out of the plane?
16 A Yes.
17 Q When did you see that?
18 A When did I see the video?
19 Q Yes.
20 A The last time I saw it was like over
21 the summer when I was showing my boyfriend's
22 grandma.
23 Q Why were you showing your boyfriend's
24 grandma?
25 A Because she didn't know we'd skydived,

0031

1 Rosana Orellana 31
2 so....
3 Q Were you showing off to her that you
4 had done it?
5 MR. ZABELL: Objection to the form.
6 You may answer.
7 Q You can answer.
8 A No, we were just showing her the
9 skydiving video.
10 Q Were you proud that you had done it?
11 A It's a big deal to jump out of a plane.
12 So, I mean, I wasn't proud that I had done it. It
13 was just something that I did.
14 Q So you were bragging to her in a way?
15 MR. ZABELL: Objection to form.
16 Q You may answer.
17 MR. ZABELL: You may answer.
18 A I wasn't bragging, no.
19 Q What did she think of it?
20 A She almost had a heart attack. She
21 thought it was crazy that we did it.
22 Q So the last time you saw it was this
23 summer.
24 Did you buy the videotape?
25 A Yes.

0032

1 Rosana Orellana 32
2 Q So you've always had it in your
3 possession since 6-18 of 2010?
4 A Yes.
5 Q So how long at that point had you
6 wanted to go skydiving?
7 A I don't know. I mean, --
8 Q Who made the decision to go skydiving
9 on that day?
10 A I did.
11 Q How long had you planned it in advance?
12 A I don't know. I mean, it's not
13 something -- I don't know, like a few months or --
14 I really don't know.
15 Q Did you make an appointment or did you
16 go on that day?
17 A My boyfriend wanted to surprise me, so
18 he made the appointment.
19 Q When did you learn that you would be
20 going?
21 A I don't remember.
22 Q Why did you go to Skydive Long Island?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A It was the closest location on Long

0033

1 Rosana Orellana 33
 2 Island, I believe.
 3 Q Where did you learn about Skydive Long
 4 Island?
 5 A What did I learn?
 6 Q No, where did you learn about it.
 7 A My boyfriend learned about it, so he
 8 told me about it.
 9 Q So you were excited to go on that day?
 10 A Yes.
 11 Q What's the first thing you remember
 12 when you got to Skydive Long Island?
 13 A The first thing I remember, being very
 14 excited, it was a very hot day outside, and a lot
 15 of people walking around.
 16 Q Do you remember how much it cost?
 17 A Altogether with the videos, I'd say
 18 almost a thousand, about. I don't know the exact
 19 price. My boyfriend paid for it.
 20 Q Explain to me when you arrived on the
 21 grounds of Skydive Long Island, you drove up, you
 22 parked your car. Tell me what happened next.
 23 MR. ZABELL: Objection to the form.
 24 You may answer.
 25 A We walked over to the bench --

0034

1 Rosana Orellana 34
 2 actually, no, we had to watch a video, I think.
 3 Just like a video just to let us know what we were
 4 doing, and then -- we watched the video and then
 5 after that we just sat outside until, you know, it
 6 was our turn to go up, and I don't remember if we
 7 were harnessed at that point or not, like we had
 8 the harness on. I really don't remember.
 9 Q Let's talk about the video. Was this a
 10 video with an instruction on it, was it a video
 11 with a lawyer warning you? What was on that
 12 video?
 13 MR. ZABELL: Objection to the form.
 14 You may answer the question.
 15 A The video was just, you know, an --
 16 yeah, you know, an instruction video on how you
 17 should jump out of the plane. I guess just
 18 getting you excited. I don't remember what was on
 19 the video really, but I feel like it was an
 20 instruction video.
 21 Q Was there a lawyer on that video? Do
 22 you remember there being a lawyer?
 23 A I don't remember.
 24 Q Do you remember someone telling you
 25 that there's risk of death?

0035

1 Rosana Orellana 35
 2 A Yes.
 3 Q Did you sign any documents?
 4 A I believe so, yes.
 5 Q So I'm going to hand you what I'll have
 6 the court reporter mark as Plaintiff's 1.
 7 (Whereupon, the release was marked as
 8 Plaintiff's Exhibit 1 for identification, as
 9 of this date.)
 10 MR. ZABELL: Just make sure you look
 11 through all the pages so you know exactly
 12 what the document is.
 13 Q Do you recognize this, and take your
 14 time?
 15 A Yes.
 16 Q What is it?
 17 A An agreement for when you go skydiving.
 18 Q I want you to look at the first page
 19 only and tell me if that's your handwriting?
 20 A Yes.
 21 Q Is it all your handwriting or is some
 22 of it someone else's handwriting?
 23 A It looks like all of my handwriting,
 24 except for this number over here. I didn't write
 25 that, but everything on the line is my writing.

0036

1 Rosana Orellana 36
 2 Q What about on the second through last
 3 pages, there are a bunch of initials and there's a
 4 signature on the last page. Are those all of your
 5 handwritings?
 6 MR. ZABELL: Objection to the form.
 7 You may answer.
 8 A Yes.
 9 Q It looks like each paragraph starting
 10 on page two or the unnumbered page two has
 11 initials next to it.
 12 Do you see that?
 13 A Yes.
 14 Q Did someone tell you that you needed to
 15 do that?
 16 A Yes, it's a requirement.
 17 Q Did you read this document?
 18 A Probably not.
 19 Q Why not?
 20 A I don't know. I mean, you think
 21 skydiving -- you know, I'm not -- I didn't sit
 22 there and read the whole packet.
 23 Q Did you read any of it?
 24 A I probably read the first page, but I
 25 probably didn't read the whole thing.

0037

1 Rosana Orellana 37
 2 Q Why not?
 3 A I'm not gonna read a packet when I go
 4 skydiving.
 5 Q As best you can recall, you read the
 6 first page, but not the rest?
 7 A Yes.
 8 Q After you signed this document and saw
 9 the video, what's the next thing that happened?
 10 What's is the in the accident thing you remember?
 11 A After the video we sat outside for a
 12 while. I don't remember how long we sat out
 13 there. Then we met our instructors and they kind
 14 of explained everything to us, and then we went on
 15 the plane.
 16 Q Was one of those instructors Don?
 17 A I don't remember my boyfriend's
 18 instructor.
 19 Is this Don?
 20 Q Yes.
 21 A Okay. I'm sorry.
 22 Then, yes.
 23 Q So one of the instructors was Don?
 24 MR. ZABELL: Let the record reflect
 25 that the plaintiff raised his hand and waved.

0038

1 Rosana Orellana 38
 2 Counselor, do you agree with that
 3 characterization of the physical events of
 4 this deposition?
 5 Q So one of those instructors was Don?
 6 MR. ZABELL: By your silence I'll take
 7 it as a yes.
 8 MR. ANTOLLINO: I'm not engaging in --
 9 MR. ZABELL: I'm not asking you to. I
 10 would just like the record to reflect certain
 11 physical things at this deposition that are
 12 not necessarily verbal, and if you are
 13 refusing to acknowledge them, then I'll go
 14 ahead and place my observations on the
 15 record, where I believe it's appropriate.
 16 MR. ANTOLLINO: Are you finished?
 17 MR. ZABELL: Now I am, yes.
 18 Q One of the instructors was Don and you
 19 don't remember the other instructor's name?
 20 A No.
 21 Q Do you remember what he looked like?
 22 A Medium-sized. I remember dark hair, I
 23 think, and skinnier gentleman.
 24 Q When you say skinnier, you mean
 25 skinnier than John?

0039

1 Rosana Orellana 39
 2 A Yes.
 3 Q Was that person's name Duncan, do you
 4 recall?
 5 A I don't remember.
 6 Q Did they both give you instructions?
 7 MR. ZABELL: I object to the form of
 8 the question. You may answer.
 9 A Yes. I remember meeting the other
 10 gentleman first, but -- yes, I believe they both
 11 gave us instructions.
 12 Q When you say the other gentleman, you
 13 mean the person who was not Don Zarda, correct?
 14 A Yes.
 15 Q So you met the other instructor first
 16 and then you met John, correct?
 17 A Yes.
 18 Q At some point they both gave you
 19 instructions?
 20 A Yes.
 21 Q Were they both friendly?
 22 A Yes.
 23 Q Do you feel that you were instructed
 24 adequately?
 25 A Yes. At that point, yes.

0040

1 Rosana Orellana 40
 2 Q What did they instruct you? How did
 3 they instruct you?
 4 MR. ZABELL: Objection to the form.
 5 You may answer.
 6 A They just told us about the harness and
 7 just let us know where we were supposed to place
 8 our, you know, arms and our legs whenever we
 9 jumped out of the plane, you know, so we wouldn't
 10 get hurt.
 11 Q Do you remember specifically how they
 12 said you should place your arms and legs when you
 13 jumped out of the plane?
 14 A No.
 15 Q Do you remember anything in particular
 16 that Don said to you at that point?
 17 A Before we entered the plane, no.
 18 Q When you entered the plane, were you
 19 fastened to Don?
 20 A No.
 21 MR. ZABELL: Objection to the form.
 22 You may answer.
 23 Q At some point did you get fastened?
 24 A At some point I did, yes.
 25 Q Do you remember whether that was in the

0041

1 Rosana Orellana 41
 2 plane, outside of the plane?
 3 A In the plane.
 4 Q How was it that you got fastened to --
 5 Well, Don was your instructor, correct?
 6 MR. ZABELL: Objection to form.
 7 A Yes.
 8 MR. ZABELL: Just slow down and give me
 9 an opportunity to object.
 10 THE WITNESS: Sorry.
 11 MR. ZABELL: That's all right.
 12 Q How was it that you were attached to
 13 Don?
 14 A I really couldn't see behind me, but I
 15 think there were hooks or clasps or -- I don't
 16 know, but we had a harness, so....
 17 Q So you had a harness and Don did
 18 something to attach your harness to his, is that
 19 what you recall?
 20 A Yes.
 21 Q But you don't remember exactly what it
 22 was?
 23 A No.
 24 Q Did you expect that he knew how to
 25 attach the harness to you?

0043

1 Rosana Orellana 43
 2 A I had a harness, I believe he had the
 3 harness and parachute, and then we were attached
 4 by a hook or a clip or something. I don't know.
 5 Q Were you sitting on him?
 6 A No.
 7 Q How were you attached to him? Were you
 8 standing?
 9 MR. ZABELL: Objection to the form of
 10 the multiple questions pending before you.
 11 Q You can answer.
 12 MR. ZABELL: Either one.
 13 A We were sitting, but I wasn't on top of
 14 him. We were sitting very close together, but I
 15 was not on top of him.
 16 Q Were you sitting side by side?
 17 A Yes. I was sitting in front and he was
 18 sitting behind me.
 19 Q But you were not on top of him?
 20 MR. ZABELL: Objection. Asked and
 21 answered. You may answer.
 22 A When we were sitting, I was not on top
 23 of him, no.
 24 Q So you were both on, what was it, a
 25 chair?

0042

1 Rosana Orellana 42
 2 A Yes.
 3 Q So what happened next?
 4 How were you feeling at that point?
 5 MR. ZABELL: Objection to the form of
 6 the multiple questions asked.
 7 MR. ANTOLLINO: Withdrawn.
 8 Q What happened next and -- Withdrawn.
 9 How were you feeling at that point?
 10 MR. ZABELL: Objection to the form.
 11 You may answer.
 12 A At that point I was feeling excited
 13 that I was about to jump out of a plane.
 14 Q Could you feel that you were on top of
 15 someone?
 16 A No, I didn't feel like I was on top of
 17 someone.
 18 Q How were you attached to Don?
 19 A With the harness.
 20 Q Well, just describe it. When you say
 21 the harness, I mean, what do you mean by that?
 22 MR. ZABELL: Objection to the form.
 23 Q You can answer.
 24 MR. ZABELL: You may answer either of
 25 the two questions that are before you.

0044

1 Rosana Orellana 44
 2 A It was like a chair, almost like a
 3 bench, and we had to sit with our legs, you know,
 4 open, I guess. I don't really remember, but we
 5 were sitting.
 6 Q Was your back touching his chest in any
 7 way?
 8 A I don't remember.
 9 Q What happened next?
 10 A We were on the plane and the guys were
 11 joking around, the other instructors were joking
 12 around. I guess, you know, they made a joke like,
 13 you know, to my boyfriend. They were like, you
 14 know, how does it feel to have your girlfriend
 15 strapped onto another man, and he laughed about it
 16 because, you know, it was funny, and just jokes
 17 like that were occurring at the moment.
 18 Q Can you remember any other jokes?
 19 A I can't remember any other jokes, no,
 20 but there were some jokes.
 21 Q Did you laugh at that?
 22 A Yes.
 23 Q Did that loosen the tension?
 24 MR. ZABELL: Objection to the form.
 25 You may answer.

0045

1 Rosana Orellana 45
 2 A It didn't loosen the tension, but we're
 3 not -- but me and my boyfriend aren't -- we can
 4 take a joke.
 5 Q Did you both laugh at that?
 6 A Yes.
 7 Q Did you have a response or did you just
 8 laugh?
 9 A I probably just laughed, yes.
 10 Q Did your boyfriend laugh?
 11 A Yes, he laughed.
 12 Q So who went out of the plane first, was
 13 it your boyfriend and his instructor or was it you
 14 and --
 15 A My boyfriend and his instructor.
 16 Q So you saw him descend from the plane,
 17 and how soon after did you descend from the plane?
 18 A I don't remember.
 19 Q Was it more than a minute?
 20 A Roughly a minute. You know, we have to
 21 give them some time, you know, I guess to fall,
 22 so....
 23 Q Certainly no more than five minutes?
 24 A I'd say no.
 25 Q So at some point you descended from the

0046

1 Rosana Orellana 46
 2 open plane, correct?
 3 A Yes.
 4 Q How did that feel?
 5 MR. ZABELL: Objection to the form.
 6 You may answer.
 7 A How did it feel?
 8 Q Yes.
 9 A As far as my feelings or on my body
 10 or --
 11 Q Let's start with physical feelings.
 12 How did it feel physically?
 13 A Physically, couldn't breathe. I mean,
 14 there is a lot of air up there.
 15 Q Was that something that you thought
 16 that Don was doing wrong or you just thought
 17 that it was the way that worked?
 18 A It's probably the way that it worked.
 19 Q Emotionally how did you feel?
 20 A Emotionally -- well, at that point we
 21 had -- I'd felt -- we had an incident on the
 22 plane, so, I mean, I didn't really think about it,
 23 you know, emotionally.
 24 Q Wait a minute. You had an incident on
 25 the plane?

0047

1 Rosana Orellana 47
 2 A Yes.
 3 Q What was the incident on the
 4 plane?
 5 A He had his hand on my hip, I remember
 6 that, and I remember him resting his chin on my
 7 shoulder, and he was being a little flirtatious.
 8 Q Don was being flirtatious?
 9 A Yes.
 10 Q In what way?
 11 A Like I said, he had his hand on my hip,
 12 and I felt a little uncomfortable, and he was
 13 resting his chin on my shoulder.
 14 Q Anything else?
 15 A That's all I remember.
 16 Q Did you tell him that you felt
 17 uncomfortable?
 18 A No.
 19 Q Why not?
 20 A Because I'm about to throw myself out
 21 of a plane, so I don't think it's the appropriate
 22 time.
 23 Q So he had his hand on your hip and his
 24 chin on your shoulder?
 25 A Yes.

0048

1 Rosana Orellana 48
 2 Q And you didn't say anything, but you
 3 felt uncomfortable?
 4 A Yes.
 5 Q Was there anything else that made you
 6 feel uncomfortable?
 7 A That was it that made me feel
 8 uncomfortable.
 9 Q When you said he was being flirtatious,
 10 what do you mean by that?
 11 A He was kind of putting his finger on
 12 his lip, you know, just the way -- I'm sure you
 13 know what flirtatious is. He was kind of like
 14 being flirtatious.
 15 What really bothered me was just really
 16 the hand on my hip, which I felt he shouldn't put
 17 -- rest put his hand on my hip, and resting his
 18 chin on my shoulder.
 19 Q So really it was the hand on the hip
 20 and the chin on the shoulder?
 21 A Yes.
 22 Q And you said he was touching his lips?
 23 A Yes.
 24 Q And you felt that --
 25 A He was -- you know, I feel like you

0049

1 Rosana Orellana 49
 2 should maintain some sort of professionalism when
 3 you're -- I didn't mind the jokes, I just felt
 4 like he should have been a little more
 5 professional.
 6 Q In what way was touching his lips
 7 unprofessional?
 8 A His face is very close to mine, so, I
 9 mean, if he's doing that, it just makes me feel a
 10 little awkward when I'm strapped to him.
 11 Q I thought you had some distance between
 12 you.
 13 A I was sitting in front of him, he was
 14 sitting right behind me. I wasn't sitting on him,
 15 but there was very little distance. But if he
 16 could reach and rest his chin on my shoulder, he
 17 must have been close enough.
 18 Q Out of the corner of your eye you
 19 remember seeing him touch his lips?
 20 A Yes. And he was resting his chin on my
 21 shoulder. If he was resting his chin on my
 22 shoulder, he was close.
 23 Q Did you mention anything to him about
 24 touching his lips and that you thought that was
 25 unprofessional?

0051

1 Rosana Orellana 51
 2 make you feel uncomfortable on the plane, and I
 3 just broke up with my boyfriend, something like
 4 that?
 5 A Yes.
 6 Q Why is it you remember that?
 7 A Because I felt uncomfortable when he
 8 said it, so it just stuck to my -- you know, just
 9 stuck with me.
 10 Q There's basically three things he said.
 11 He said first, I hope I didn't make you feel
 12 uncomfortable, second, I'm gay, and third, I
 13 recently broke up with my boyfriend.
 14 Would you agree with that?
 15 A Yes.
 16 Q The first thing he said, I hope I
 17 didn't --
 18 A That was one line, I hope I didn't make
 19 you feel uncomfortable, because I'm gay. It was
 20 all in one sentence.
 21 Q So it was kind of pushed together?
 22 A Yes.
 23 Q Did that make you feel uncomfortable, I
 24 hope I didn't make you feel uncomfortable, I'm
 25 gay?

0050

1 Rosana Orellana 50
 2 A No.
 3 Q Why not?
 4 A Because I am about to throw myself out
 5 of a plane. I don't think it's the appropriate
 6 time.
 7 Q Was there anything else that Don did
 8 that made you feel uncomfortable?
 9 A Yes, when we were free falling.
 10 Q Yes?
 11 A There's a point where when you let the
 12 chute go out, you have time to talk and, you know,
 13 he -- I remember him telling me two things.
 14 I remember him telling me, I hope I
 15 didn't make you uncomfortable on the plane, I'm
 16 gay, and I remember him telling me that he had
 17 recently broken up with his boyfriend, and that's
 18 all I remember from that conversation.
 19 Q Let me just get a picture of this in my
 20 mind.
 21 This is before he pulled the parachute
 22 to go up or after?
 23 A After.
 24 Q So he pulled the parachute, it went up,
 25 and you remember him saying, one, I hope I didn't

0052

1 Rosana Orellana 52
 2 A It made me uncomfortable because -- the
 3 statement itself didn't -- it made me feel
 4 uncomfortable because I wanted to learn about the
 5 scenery, I wanted him to speak about what was
 6 going on around us. I didn't want to hear about
 7 his personal life.
 8 Q How long were you up for when the
 9 parachute went up?
 10 A How long?
 11 Q Yes.
 12 A I mean, it's a couple of minutes -- I
 13 mean, we're falling for a long time. I don't
 14 remember how long it was.
 15 Q And you expected him to point out
 16 certain sceneries to you?
 17 A Absolutely.
 18 Q Did he point anything out at all?
 19 A No.
 20 Q So you felt uncomfortable because --
 21 not because -- So are --
 22 MR. ZABELL: Are you going to finish
 23 that question or are you abandoning it?
 24 MR. ANTOLLINO: Don't interrupt.
 25 MR. ZABELL: I'm going to object to the

0053

1 Rosana Orellana 53
 2 half-ass question. I'm assuming he doesn't
 3 want you to respond to it if he's not
 4 finished.
 5 MR. ANTOLLINO: I withdraw the question
 6 I hadn't finished and will ask it again.
 7 Q So the only thing that made you feel
 8 uncomfortable is, I hope I didn't make you feel
 9 uncomfortable, I'm gay, is because he wasn't
 10 talking about the scenery?
 11 A Yeah, and because I didn't want to hear
 12 about his personal life. I did not care.
 13 Q His recently breaking up with his
 14 boyfriend, is that something that made you feel
 15 uncomfortable?
 16 A I just didn't care.
 17 Q Is there a difference between not
 18 caring and making you feel uncomfortable?
 19 MR. ZABELL: Objection to the form of
 20 the multiple questions.
 21 Q You can answer.
 22 MR. ZABELL: You can pick a question
 23 and answer it.
 24 MR. ANTOLLINO: Listen, don't give
 25 instructions to the witness and don't make

0054

1 Rosana Orellana 54
 2 speaking objections.
 3 MR. ZABELL: I'm doing neither.
 4 Q You can answer.
 5 MR. ZABELL: Can you repeat the
 6 question, please.
 7 (Whereupon, the requested section was
 8 read back.)
 9 Q You can answer.
 10 A It has to do with -- yes, there's a
 11 difference, but I'm not -- I paid money, I'm not
 12 enjoying what I'm doing because he is telling me
 13 about his like. You know, I don't care. I do not
 14 care. I think it was inappropriate for him to --
 15 you know, we don't know each other, it's something
 16 I didn't want to hear.
 17 So I felt like it was inappropriate and
 18 I felt like I didn't care to hear what he said,
 19 and that's why I felt uncomfortable.
 20 Q Did this ruin the whole jump for you?
 21 A Yes.
 22 Q The fact he gave you this personal
 23 information or the fact that he didn't point out
 24 the scenery?
 25 A Both.

0055

1 Rosana Orellana 55
 2 Q Did the fact that -- If he had told
 3 you, I'm a German, if he had said something like
 4 that, would that have been just the same, just as
 5 bad?
 6 A Yeah, because I don't care. I'm here
 7 to skydive. I want to know about what's going on.
 8 I don't care who you are, where you're -- I mean,
 9 it just wasn't my problem.
 10 Q Did you have any conversation with him?
 11 A Did I have any conversation with him?
 12 Q Yes.
 13 A I don't remember.
 14 Q You don't remember if you said anything
 15 to him at all?
 16 A About me myself, I don't remember. I
 17 probably didn't.
 18 Q Did you ask him to point out any
 19 scenery or anything like that?
 20 A No. I think that's his job, or it is
 21 his job to point out scenery.
 22 Q How do you know?
 23 A I'm imagining, right.
 24 Q So you're not sure if that's part of
 25 his job description, to point out scenery?

0056

1 Rosana Orellana 56
 2 A I'm sure it's not part of his job
 3 description to tell me about his personal life.
 4 Q Well, I'm just asking about the
 5 scenery.
 6 MR. ZABELL: There's no question.
 7 A I would imagine, I would imagine it was
 8 part of the job.
 9 Q What scenery did you see? What did you
 10 remember seeing up there?
 11 A Trees, water, people landing.
 12 Q Did you recognize any geographic
 13 characteristics from where you were?
 14 A I don't remember.
 15 Q How long was it that you were going up?
 16 A I don't remember.
 17 Q How long was that that you were going
 18 down?
 19 A Couple of minutes.
 20 Q Going up was between zero and five
 21 minutes?
 22 A I don't remember a time. It definitely
 23 took longer to fall with the parachute. When you
 24 go up with the parachute, it didn't take that
 25 long, but you fall for a couple of minutes.

0057

1 Rosana Orellana 57
 2 Q So when you got up, when you say --
 3 when you fell out of the plane, that was about how
 4 long?
 5 A When I'm falling?
 6 Q Yes, falling.
 7 A Very short.
 8 Q When you went up after he pulled the
 9 cord, how long was that?
 10 A It was a short moment too, and then you
 11 just fall. I just remember falling for a long
 12 time.
 13 Q Did he make you feel uncomfortable in
 14 any way other than when he said these things about
 15 how I hope you didn't feel uncomfortable on the
 16 plane, I'm gay?
 17 A Did he do anything?
 18 Q Yes.
 19 A The touching on the plane, and then the
 20 phrases that I let you know.
 21 Q What did you think he was referring to
 22 when he said, I hope I didn't make you feel
 23 uncomfortable?
 24 A What did I think?
 25 Q Yes.

0059

1 Rosana Orellana 59
 2 A No, not really. It was -- all of them
 3 were joking, and we can take jokes. You know,
 4 we're young people too, I can take a joke.
 5 Q Well then, why, can't you take
 6 information about his personal life when you're
 7 free falling?
 8 A Because that doesn't concern me.
 9 Q Well, does your relationship with your
 10 boyfriend concern him?
 11 A Probably not.
 12 Q So what's the difference between the
 13 two?
 14 A I wasn't -- he is on the job, he is
 15 working, he is customer service. He has to make
 16 people happy, and I'm sure people don't want to
 17 hear about his personal life.
 18 Q But they were joking about your
 19 personal life. Isn't there a chance that that
 20 made you unhappy?
 21 A I'm not working, they are working.
 22 Q But it was them joking about your
 23 personal life up in the plane, isn't that correct?
 24 A Everyone was joking, it was funny, and
 25 then they crossed the line.

0058

1 Rosana Orellana 58
 2 A Probably the jokes and probably the way
 3 he was acting.
 4 Q So the joke was something, according to
 5 what you believe -- Withdrawn.
 6 You believed that --
 7 MR. ZABELL: Are you taking down --
 8 MR. ANTOLLINO: Withdrawn.
 9 Counsel, stop interrupting.
 10 MR. ZABELL: You don't have a right to
 11 withdraw things that are in the deposition.
 12 You can say, I would like to withdraw that
 13 question, but it still gets written in the
 14 record that you're withdrawing that. But I'm
 15 just confirming that in the record.
 16 Q You said the jokes were something you
 17 might be --
 18 A I wasn't personally upset about the
 19 jokes, I was upset about the touching and my free
 20 fall.
 21 Q Why didn't you get upset about the
 22 jokes?
 23 A Because I can take a joke.
 24 Q But wasn't that about your personal
 25 life?

0060

1 Rosana Orellana 60
 2 Q And the crossing of the line was
 3 mentioning that he was gay?
 4 A The crossing of the line was when he
 5 put his hand on my hip and his chin on my
 6 shoulder, and then talking about his personal
 7 life. Not necessarily that he was gay, it was
 8 just talking about his life.
 9 Q Talking about his life was not okay,
 10 but talking about your life was okay?
 11 A I wasn't talking about my life, they
 12 were talking about my life.
 13 Q But that was okay?
 14 A It wasn't that it was okay, it's just
 15 that I can take a joke.
 16 Q I don't understand what's the
 17 difference between it not being okay and being
 18 able to take a joke.
 19 A Because I am not working there.
 20 Q But they are the ones who are making
 21 the jokes, right?
 22 A What could I do?
 23 Q So was it okay or not okay for them
 24 making jokes about your personal life?
 25 A It was --

0061

1 Rosana Orellana 61
 2 MR. ZABELL: Objection. Asked and
 3 answered.
 4 Q You can answer.
 5 MR. ZABELL: Now the answers to the
 6 questions are going a little quick, and I'm
 7 having a hard time and I'm sure the court
 8 reporter is.
 9 MR. ANTOLLINO: The court reporter
 10 shook her head no.
 11 MR. ZABELL: I'm going to ask Ms.
 12 Orellana to slow down. It's okay. It's not
 13 a conversation, it's a formal deposition, and
 14 I just want to make sure that the record is
 15 accurate and complete.
 16 MR. ANTOLLINO: Could you read it back.
 17 (Whereupon, the requested section was
 18 read back by this reporter.)
 19 Q Can you answer the question?
 20 A Is it appropriate?
 21 Q No, is it okay.
 22 A Is it okay?
 23 Q Right.
 24 A It's not okay.
 25 Q Who was making jokes about your

0062

1 Rosana Orellana 62
 2 personal life in the plane?
 3 A It was the instructors on the plane.
 4 Q It was Don and the other instructor,
 5 right?
 6 A Yes.
 7 Q Did you ever have a -- You're a server,
 8 right?
 9 A Yes.
 10 Q Do you ever joke with your clients?
 11 A Do I joke with my clients?
 12 Q With your customers, I should say.
 13 A Yes.
 14 Q You ever joke about your personal life?
 15 A No.
 16 Q Do you ever joke about their personal
 17 life?
 18 A No.
 19 Q What kind of things do you joke about?
 20 A Food related jokes, drink related
 21 jokes, and that's it.
 22 Q Anything else?
 23 A No.
 24 Q Did you ever joke about, you know, when
 25 I go home to my boyfriend, blah, blah, blah,

0063

1 Rosana Orellana 63
 2 anything like that?
 3 A No.
 4 Q Have you ever mentioned your boyfriend
 5 to any customers you've ever served?
 6 A Not unless they've known my boyfriend
 7 or I know the people that I'm serving. But
 8 otherwise, no.
 9 Q So in some cases you have mentioned
 10 your boyfriend to people you're serving?
 11 A If I know them.
 12 Q But in that instance you've been
 13 serving them and they were your customers,
 14 correct?
 15 A Right, and I knew them.
 16 Q And you knew them?
 17 A Yes.
 18 Q In that case, was it appropriate?
 19 A Because I knew them, yes.
 20 Q Have you known many gay people in your
 21 life?
 22 A Yes.
 23 Q How many?
 24 A In my life?
 25 Q Yes.

0064

1 Rosana Orellana 64
 2 A I really can't say. A couple, though.
 3 Q Were they friends of yours?
 4 A Yes.
 5 Q Are they still your friends?
 6 A Yes.
 7 Q Do you agree with their lifestyle?
 8 A Absolutely.
 9 Q Do you believe that being gay is a
 10 choice?
 11 A Yes, it's a choice -- I'm sorry, is it
 12 a choice for them or -- I didn't understand that
 13 question.
 14 Q Is it a choice for them?
 15 A They have a choice -- yeah, they have a
 16 choice if they want to....
 17 Q Be gay or not?
 18 A I believe that's the way they're born.
 19 It's the way they're born. It's, you know, being
 20 straight, it's what you are, who you are.
 21 Q So it's not a choice?
 22 A It's not a choice, no.
 23 Q Do you believe that gay people should
 24 be protected from discrimination?
 25 A Sure.

0065

1 Rosana Orellana 65
 2 Q What's your opinion on gay marriage?
 3 A Love is love, you know.
 4 Q So you agree with gay marriage?
 5 A I agree with it.
 6 MR. ZABELL: That's sweet.
 7 THE WITNESS: Thank you.
 8 Q So what happened after you landed?
 9 A After I landed?
 10 Q Yes.
 11 A We unharnessed each other and I went
 12 home.
 13 Q Was there anything else that happened?
 14 A No. After that it's very -- you know,
 15 you're kind of frazzled at the moment, because,
 16 you know, you just landed and the whole experience
 17 was crazy and exhilarating. But after that you
 18 don't really stick around, you just pretty much go
 19 home.
 20 Q Did you --
 21 A I believe they give you the videos, the
 22 DVDs.
 23 Q When was the first time you watched the
 24 DVD?
 25 A Probably as soon as I got home.

0067

1 Rosana Orellana 67
 2 life instead of the scenery, and then he was
 3 telling me what his instructor was telling him,
 4 you know, his instructor was pointing out scenery,
 5 letting him know where people are landing, having
 6 a, you know, different conversation than I was
 7 having.
 8 Q So what did your boyfriend say he felt
 9 was inappropriate about your instructor, that
 10 being Don?
 11 A He felt the way he was acting on the
 12 plane.
 13 Q Was what?
 14 A The hand and chin.
 15 Q Are you saying that he noticed that the
 16 hand was on your hip and the chin was on your
 17 shoulder?
 18 A Yes.
 19 Q Was there anything else that he noticed
 20 that he felt was inappropriate?
 21 A Well, he was on the plane, so that's
 22 all he saw, and then I told him afterwards, but he
 23 only saw what was on the plane.
 24 Q Okay. So what did he say specifically
 25 about the hand?

0066

1 Rosana Orellana 66
 2 Q Did you notice posing for a picture
 3 with Don?
 4 A Yes.
 5 Q Do you remember when you went up with
 6 the parachute, was there any improper touching at
 7 that point that you believed happened?
 8 A No.
 9 Q So you went home and you watched the
 10 video.
 11 At some point did you mention to your
 12 boyfriend why you were upset on the plane?
 13 A Yes.
 14 Q When was that?
 15 A As soon as we got -- on the car ride
 16 home, actually.
 17 Q What did you say to him?
 18 A Well, he mentioned to me that he wasn't
 19 too happy with the plane. He said that he felt
 20 like my instructor was inappropriate and he wasn't
 21 happy.
 22 Then I -- he was -- you know, he
 23 wouldn't have been too upset after that, but then
 24 I told him I was really unhappy when I was free
 25 falling and he was telling me about his personal

0068

1 Rosana Orellana 68
 2 A What did he say specifically?
 3 Q Yes.
 4 A I don't remember at that point.
 5 Q What did he say specifically about the
 6 chin?
 7 A He just told me that he thought
 8 everything was inappropriate. He thought that his
 9 instructor didn't have his hand on his hip and,
 10 you know, his instructor didn't have his chin on
 11 his shoulder, and he thought that was
 12 inappropriate.
 13 Q Was there anything about his instructor
 14 that he thought was inappropriate?
 15 A No.
 16 Q What about the joking?
 17 A He can take a joke. He thought it was
 18 funny.
 19 Q So he thought that was okay?
 20 A He didn't -- he can take a joke. We're
 21 young people, like I said, and he can take a joke.
 22 Q So when you told your boyfriend, Dave
 23 is his name, right?
 24 A David.
 25 Q When you told David about what Don had

0069

1 Rosana Orellana 69
 2 said to you when you were free falling, what did
 3 he say?
 4 A He was angry.
 5 Q How did he express his anger?
 6 A He just told me he thought that was
 7 inappropriate.
 8 Q Did he raise his voice?
 9 A No.
 10 Q What happened next?
 11 A Couple of days went by, and then -- I
 12 had no idea that he had made the phone call to --
 13 I can't remember his name -- Ray.
 14 Q So you didn't call Ray?
 15 A I did not call Ray.
 16 Q Did you have any intention to call
 17 Ray?
 18 A I personally did not.
 19 Q Why not?
 20 A Because I don't like confrontations.
 21 Q So in between the time that you spoke
 22 about what Don said to you falling and the time
 23 that your boyfriend said that he had called Ray,
 24 did your boyfriend talk about the jump at all?
 25 A Yes. He told me that he was upset. He

0070

1 Rosana Orellana 70
 2 thought that our experience was ruined and we
 3 didn't really -- you know, it was my birthday, I
 4 was excited, and it kind of ruined the experience
 5 for me a little.
 6 Q It ruined the experience for you a
 7 little or entirely?
 8 A Entirely.
 9 Q So how long did you continue to talk
 10 about it?
 11 A Not that long.
 12 Q So it's just in the car?
 13 A In the car, when we got home, after the
 14 video, and then he made the phone call. I don't
 15 remember when exactly he made the phone call.
 16 Q What did he say about the phone call?
 17 A I wasn't there. I don't know.
 18 Q Well, what did David say to you about
 19 the phone call?
 20 A He told me he was upset, so he called
 21 Skydive and complained.
 22 Q What did he tell you he said to
 23 Skydive?
 24 A He didn't tell me.
 25 Q He didn't tell you who he spoke to?

0071

1 Rosana Orellana 71
 2 A He told me he spoke to Ray, but that
 3 was it.
 4 Q Did he tell you what Ray said?
 5 A No.
 6 Q Did Ray call you shortly thereafter?
 7 A No.
 8 Q Did you call Ray?
 9 A No.
 10 Q Have you ever spoken to Ray?
 11 A No.
 12 Q I want you to take a look at Exhibit 1
 13 and turn to the second to last page.
 14 Do you see paragraph thirteen there?
 15 A Yes.
 16 Q I'm going to read that aloud.
 17 If I'm making a student jump, I
 18 understand that I will be wearing a harness which
 19 would need to be adjusted by the jump master and
 20 my jump is a tandem jump. I understand that the
 21 tandem master will attach my harness to his and
 22 that this will put my body in close proximity to
 23 tandem master. I specifically agree to this
 24 physical conduct between the tandem master and
 25 myself.

0072

1 Rosana Orellana 72
 2 Now, you said earlier that you only
 3 read the first page of this document, correct?
 4 A Okay.
 5 Q Is that correct?
 6 A Yes.
 7 Q So it would appear that you hadn't read
 8 the page that includes paragraph thirteen,
 9 correct?
 10 A Yes.
 11 Q Yes, you did not read it, correct?
 12 A Yes.
 13 Q Just to clear it up for the record.
 14 A I did not read it.
 15 Q This was a tandem jump, yes?
 16 A Yes.
 17 Q When your boyfriend called, what did
 18 you think Ray was gonna do in response to this?
 19 MR. ZABELL: Objection. You may
 20 answer, if you can.
 21 A I don't know. I didn't think about it.
 22 Q Did you have any expectations as to
 23 what might happen?
 24 A No.
 25 Q Did you think that maybe, you know, you

0073
 1 Rosana Orellana 73
 2 could get another jump?
 3 A No.
 4 Q Did you expect that Ray would get --
 5 that Don would get fired?
 6 A No.
 7 Q Did you think that it was what you
 8 wanted to happen?
 9 A No.
 10 Q Let's take a look at the video of your
 11 jump.
 12 MR. ZABELL: Are you planning on
 13 introducing the video as an exhibit?
 14 MR. ANTOLLINO: You know, I don't have
 15 a disk, and we're just going to have to deem
 16 this thing as an exhibit.
 17 MR. ZABELL: I can't deem it as an
 18 exhibit unless I have an exact copy of
 19 what --
 20 MR. ANTOLLINO: All right. I'll mail
 21 it to you then.
 22 (Whereupon, the DVD was deemed marked
 23 as Plaintiff's Exhibit 2 for identification,
 24 as of this date.)
 25 MR. ANTOLLINO: For the record, I'm

0075
 1 Rosana Orellana 75
 2 It'll lose -- All right, that's better.
 3 Q All right. I just showed a picture of
 4 you. There's a screen shot at timer number
 5 twenty-five.
 6 Is there anything in here that Don is
 7 doing that's inappropriate?
 8 A No.
 9 Q Let's go back. I'm at screen
 10 twenty-five and there's nothing at twenty-five
 11 that's inappropriate.
 12 What about twenty-six?
 13 A No.
 14 Q It appears that his chin is very close
 15 to your shoulder, is that right?
 16 A Fairly close.
 17 Q Was his hand on your hip at this time?
 18 A I don't remember, but I don't think so,
 19 because I see his hand on the side.
 20 Q It appears that everyone is having a
 21 good time in this video, right?
 22 A Yes.
 23 Q So is this before or after you felt
 24 uncomfortable?
 25 A Probably before.

0074
 1 Rosana Orellana 74
 2 looking at a file called Skydive AVI.AVI, and
 3 this is -- I'm trying to get more information
 4 on it -- this is on my laptop right now, and
 5 I'll burn a disk or send an e-mail to Mr.
 6 Zabell and I'll attach this to the transcript
 7 that I send to Ms. Orellana.
 8 Q All right. I'm going to show you what
 9 we're watching on the computer, Skydive AVI.AVI.
 10 So we're watching this. Right now we're just
 11 seeing a shadow. Just tell me when you recognize
 12 this.
 13 Is that you?
 14 A Yes.
 15 Q In that scene you were right next to
 16 Don. This is at or about .08 of the video.
 17 Did Don do anything inappropriate at
 18 that moment?
 19 A No.
 20 MR. ZABELL: Why don't you make it
 21 larger, Counsel.
 22 MR. ANTOLLINO: I'm sorry?
 23 MR. ZABELL: Why don't you make it
 24 larger.
 25 MR. ANTOLLINO: I don't think so.

0076
 1 Rosana Orellana 76
 2 Q We've moved to here. We're at marker
 3 number fifty. Let's start this again.
 4 MR. ZABELL: It's just skipping, the
 5 disk. It's twenty-six, right?
 6 MR. ANTOLLINO: Yes, I'm sorry.
 7 MR. ZABELL: You're just skipping the
 8 footage?
 9 MR. ANTOLLINO: Yes. That was just
 10 footage of the airplane.
 11 MR. ZABELL: I don't necessarily agree
 12 with that.
 13 MR. ANTOLLINO: We can go back and look
 14 at it frame by frame if you want, but I don't
 15 think there was anything --
 16 MR. ZABELL: If you have no interest in
 17 going through frame by frame, that's fine.
 18 Q We're looking at frame fifty-three. Is
 19 Don doing anything inappropriate here?
 20 A No.
 21 Q What is it that you're seeing right
 22 now?
 23 Let me just go back a second.
 24 I saw that Don was putting his hand in
 25 his mouth and smiling. Was that inappropriate?

0077

1 Rosana Orellana 77
 2 A No.
 3 Q At that point you said that it's great,
 4 you can't wait to jump, correct?
 5 A Yes.
 6 Q So was there anything inappropriate up
 7 to that point?
 8 A Up to that point, no.
 9 Q So here at frame 107, and Don is
 10 attached to you it appears, and is that an
 11 inappropriate use of his proximity to you?
 12 A I can't really see from here, I'm
 13 sorry. It's fairly blurry.
 14 Q We're just at 107. What can you see?
 15 A It's blurry.
 16 Q Do you see yourself and Don in
 17 here?
 18 A I can see myself and Don.
 19 Q Do you see his chin in there?
 20 A I can't. It's blurry.
 21 Q All right. Let's start again.
 22 All right. You see that we're at 107
 23 again. Can you see that?
 24 You can't?
 25 A It's blurry. I can see him, I can see

0078

1 Rosana Orellana 78
 2 myself. I can't tell where his chin is. It's
 3 dark, I have a harness.
 4 Q You see you're smiling in there?
 5 A Yes.
 6 Q Is that a fake smile?
 7 A No.
 8 MR. ZABELL: This must be a good
 9 looking record.
 10 Q Describe how you go out of the
 11 airplane.
 12 A Like he's going out -- I go first. I
 13 don't remember. I think I went first.
 14 Q We're at 119 now. It appears that the
 15 instructor is on the bottom and he has the student
 16 on his lap basically, is that correct?
 17 A I was never on his lap, no. Only on
 18 his lap when he harnessed me. I wasn't on his
 19 lap, I was sitting right in front of him.
 20 Q Do you see those two people there?
 21 A Yes.
 22 Q And they're going out of an airplane?
 23 A Yes.
 24 Q Is that your boyfriend right there?
 25 A Yes, it is.

0079

1 Rosana Orellana 79
 2 Q You're saying you did it differently
 3 than your boyfriend?
 4 A No, I did it the same.
 5 Q Does it appear to you that -- Well,
 6 let's go back a little.
 7 A It's very blurry. I'm sorry, I can't
 8 see.
 9 Q Do you wear glasses?
 10 A No.
 11 Q What is your vision?
 12 A Twenty/twenty.
 13 Q Hold on one second.
 14 You see that right there? Does that
 15 not appear to you as if David is on the lap of the
 16 other instructor?
 17 A No.
 18 Q So you're saying they're front to
 19 front?
 20 A Yes. As it appears.
 21 Q All right. Here's a picture at second
 22 marker 133.
 23 Is Don doing anything inappropriate
 24 here?
 25 A No.

0080

1 Rosana Orellana 80
 2 Q It appears that you're smiling there?
 3 A Yes.
 4 Q It appears that his chin is very close
 5 to yours, doesn't it?
 6 A Yes.
 7 Q Do you want him to be as close as
 8 possible to protect you in that circumstance?
 9 MR. ZABELL: Objection to the form.
 10 You may answer.
 11 A I said -- I didn't finish my sentence.
 12 Go ahead.
 13 A Did I want him to be as close to me so
 14 he could protect me? We are strapped together, so
 15 I didn't necessarily want him to be as close to me
 16 so he can protect me, but we are strapped
 17 together.
 18 Q You wanted him to do whatever needed to
 19 be done in order to protect you, correct?
 20 A Yes.
 21 Q You're falling out of the plane now.
 22 We're at marker number 135.
 23 Is Don doing anything inappropriate
 24 here?
 25 A No.

0081

1 Rosana Orellana 81
 2 Q We've just watched 135 to 143.
 3 Did you see all that?
 4 A Yes.
 5 Q Did Don do anything inappropriate
 6 during that section?
 7 A No.
 8 Q We're now at 146 and you watched 1431
 9 to 146 and Don touched your arms.
 10 Was that inappropriate?
 11 A No.
 12 Q You just grabbed someone's hands.
 13 We're now at 150.
 14 Do you know whose hands those were?
 15 A No.
 16 Q You just watched from whatever the last
 17 marker was to 211 -- I'm sorry, to 221, and Don
 18 just pulled the ripcord.
 19 Was there anything we watched in that
 20 last section where Don was inappropriate?
 21 A No.
 22 Q We've gone from the last marker number
 23 to 241.
 24 Is that you landing with Don?
 25 A Yes.

0083

1 Rosana Orellana 83
 2 Q How were you feeling at that time?
 3 A Probably nice.
 4 Q Don just said, I think she's doing
 5 better than you, man.
 6 Do you know who he was talking to?
 7 A No.
 8 Q Was there anything inappropriate in
 9 that conversation?
 10 A No.
 11 Q What did you just say it was?
 12 A It was awesome.
 13 Q Were you lying?
 14 A The falling out of the plane was
 15 awesome. The free fall wasn't awesome.
 16 Q So wait a minute. You just said it was
 17 awesome and you gave a high five.
 18 A Yes.
 19 Q When you said it was awesome, you were
 20 just referring to part of the experience?
 21 A Yes.
 22 Q Oh, wait, that's you posing right
 23 there, that's at the three minute marker, is that
 24 correct?
 25 MR. ZABELL: Objection to the form.

0082

1 Rosana Orellana 82
 2 Q Did he land you safely?
 3 A Yes.
 4 Q Did you suffer any injury?
 5 A No.
 6 Q Was there any physical pain that you
 7 suffered as a result of the jump?
 8 A No.
 9 Q Was there any stomach upset or anything
 10 like that?
 11 A No.
 12 Q That is you landing with Don right now
 13 at 241, correct?
 14 A Yes.
 15 Q I just stopped at 245. Someone said,
 16 nice. Do you know who that was?
 17 A No.
 18 Q So I just stopped it at 249 and someone
 19 said -- you're taking off your goggles and someone
 20 said, you feeling all right, and what was your
 21 response?
 22 MR. ZABELL: Objection to the form of
 23 the question. You may answer.
 24 Q You can answer.
 25 A Nice.

0084

1 Rosana Orellana 84
 2 You may answer.
 3 A Yes.
 4 Q It appears that you walked close to him
 5 and put your face close to him to take a picture
 6 with him, is that correct?
 7 MR. ZABELL: Objection to form. You
 8 may answer.
 9 A It was an instruction.
 10 Q Who instructed you?
 11 A One of the instructors there.
 12 Q So did you feel that you had to follow
 13 that instruction to pose with someone?
 14 A Absolutely.
 15 Q So you did it involuntarily?
 16 A I didn't do it involuntarily, but they
 17 said, pose, and I posed.
 18 Q So you voluntarily posed with Don,
 19 correct?
 20 A Yes.
 21 Q And you put your face close to his,
 22 right?
 23 A Yes.
 24 Q And you're smiling in that picture,
 25 correct?

0085
 1 Rosana Orellana 85
 2 A Yes.
 3 Q And you just put up your hand.
 4 What did that mean when you put up your
 5 hand?
 6 A I don't know.
 7 Q Let's go back and look at that again.
 8 Is that Mr. Kengle there?
 9 A Yes.
 10 Q You put up your hand. Did you see
 11 that, again, --
 12 A Yes.
 13 Q -- that little hand signal?
 14 A Yes.
 15 Q What does that mean?
 16 A I don't know.
 17 MR. ZABELL: If I may make an
 18 observation, I always termed that the surf
 19 naked sign.
 20 MR. ANTOLLINO: I believe it's hang
 21 loose.
 22 Q Do you know if that -- Have you ever
 23 heard of hang loose?
 24 A No.
 25 Q Is it an expression of happiness, or

0087
 1 Rosana Orellana 87
 2 escapades to mean?
 3 A I don't know. I don't know the word.
 4 Q You never heard the word escapade?
 5 A No.
 6 Q Have you ever used that word before?
 7 A No.
 8 Q Let's see if I can find a definition of
 9 escapade.
 10 Have you ever heard the word before?
 11 MR. ZABELL: Objection. Just asked and
 12 just answered.
 13 Q You've never heard the word escapade
 14 before?
 15 MR. ZABELL: Objection. Just asked and
 16 just answered.
 17 A No.
 18 Q You understand you're under oath?
 19 A Yes.
 20 MR. ZARDA: Dictionary.com.
 21 MR. ZABELL: Let the record reflect
 22 that we're waiting while counsel plays with
 23 his phone for the definition of escapade.
 24 MR. ANTOLLINO: The definition of
 25 escapade is an adventurous action that runs

0086
 1 Rosana Orellana 86
 2 what kind of expression is it?
 3 A I don't know. It's something I did. I
 4 don't think it had any meaning behind it.
 5 Q Let me ask you this. If you give
 6 someone the middle finger, does that have a
 7 meaning behind it?
 8 A Yes.
 9 Q But if you give someone the hang loose
 10 signal we'll call it, does that have a meaning
 11 behind it?
 12 A I'm sure it does.
 13 Q What would you say is the difference
 14 between the middle finger and the hang loose sign?
 15 A Middle finger has a bad meaning and
 16 hang loose can have a -- many feelings, you're
 17 happy, something you did because you felt like
 18 doing it. To me it doesn't have a meaning.
 19 Q Did Don tell you anything about his
 20 personal escapades while you were in the airplane
 21 or falling out of the airplane?
 22 MR. ZABELL: Objection to the form.
 23 You may answer.
 24 A By escapades, what do you mean?
 25 Q Do you understand what the word

0088
 1 Rosana Orellana 88
 2 counter to approved or a conventional
 3 conduct.
 4 MR. ZABELL: Ms. Orellana, I'm advising
 5 you that Mr. Antollino is not under oath, so
 6 you have no obligation to believe anything he
 7 says.
 8 MR. ANTOLLINO: She asked for a
 9 definition. I'm giving it to her.
 10 MR. ZABELL: No, I don't believe she
 11 did.
 12 MR. ANTOLLINO: Can you read back where
 13 she said, what does escapade means.
 14 MR. ZABELL: Please.
 15 (Whereupon, the requested section was
 16 read back by this reporter.)
 17 Q So the court reporter just read back
 18 when you had asked, what do you mean by escapade,
 19 correct?
 20 A Yes.
 21 Q So we're going to define escapade as an
 22 adventurous action that runs counter to approved
 23 conduct.
 24 Did using --
 25 MR. ZABELL: I repeat my direction.

0089

1 Rosana Orellana 89
 2 Q Using that definition, did Don tell you
 3 anything about his personal escapades that you can
 4 recall? Did Don tell you about any action that
 5 runs counter to approved conduct?
 6 A No. The only thing he told me was that
 7 he had recently broken up with his boyfriend and
 8 he said he hoped he didn't offend me on the plane.
 9 Q When you said that Don was flirting
 10 with you, did you think he was trying to come on
 11 to you?
 12 A No.
 13 Q Was he sexually harassing you?
 14 A It's a form of sexual harassing. Yes.
 15 Q In what way?
 16 A He has his hip on my -- his chin on my
 17 shoulder and his hand on my hip.
 18 Q That was sexual harassment in what way?
 19 A I didn't give him permission to do
 20 that.
 21 Q Well, you signed this agreement, didn't
 22 you? You signed this agreement, correct?
 23 A That says we are going to be in close
 24 proximity, but it doesn't mean that somebody is
 25 going to rest their chin on my shoulder.

0091

1 Rosana Orellana 91
 2 MR. ANTOLLINO: Let me just go outside
 3 with Don and we'll go over some things, and
 4 we're almost done.
 5 (Whereupon, a short break was taken.)
 6 MR. ANTOLLINO: So I'm going to deem
 7 marked file VTS_01_1 -- Are you on the phone,
 8 Counsel?
 9 MR. ZABELL: No.
 10 MR. ANTOLLINO: I can hear your
 11 phone --
 12 MR. ZABELL: I'm not on the phone,
 13 Counselor.
 14 MR. ANTOLLINO: Are you done?
 15 MR. ZABELL: Go ahead.
 16 MR. ANTOLLINO: I'm deeming marked
 17 VTS_01_1.VOB dated February 19th, 2011, 171.1
 18 megabytes, as Plaintiff's Exhibit 3.
 19 (Whereupon, the DVD was deemed marked
 20 as Plaintiff's Exhibit 3 for identification,
 21 as of this date.)
 22 MR. ZABELL: I just ask that you
 23 prepare a copy for me of what is being
 24 admitted into evidence here.
 25 MR. ANTOLLINO: The problem with that

0090

1 Rosana Orellana 90
 2 Q Were you aware that close proximity of
 3 the harness has a hip attachment point that
 4 required him to attach his harness to yours at the
 5 hip?
 6 A At the hip?
 7 Q Yes.
 8 A Yes.
 9 Q In fact, the briefing video that you
 10 saw before you went on the jump showed you that
 11 you would be attached at the hip, correct?
 12 A Yes.
 13 MR. ZARDA: Can I ask you a question?
 14 MR. ANTOLLINO: No. Shut up.
 15 MR. ZABELL: You can excuse yourself if
 16 you like.
 17 MR. ANTOLLINO: We will in a second.
 18 MR. ZABELL: You don't have to tell
 19 your client to shut up.
 20 MR. ANTOLLINO: I know him well enough
 21 that I can say that.
 22 Q Did Don say anything to you regarding,
 23 don't worry about how close I am because I'm gay?
 24 Did he say something like that?
 25 A I don't remember.

0092

1 Rosana Orellana 92
 2 is I tried it with this, but I have the
 3 transferred file.
 4 MR. ZABELL: Just as long as you send
 5 me a copy of the transferred file so we all
 6 know we're looking at the same thing.
 7 MR. ANTOLLINO: I'm looking at this
 8 file and making it bigger. I tried several
 9 times to make it bigger. I can't make it
 10 bigger.
 11 I'm going to go on the other side to
 12 look at the video with you.
 13 MR. ZABELL: Counsel, you have to make
 14 sure you don't lean over the deponent.
 15 If he makes you feel uncomfortable,
 16 just move closer to me.
 17 Q Is that Mr. Kengle you see?
 18 A Yes.
 19 Q It appears that he is at Skydive Long
 20 Island?
 21 A Yes.
 22 Q Am I making you uncomfortable?
 23 A A little bit.
 24 Q How far would you like me to get from
 25 you?

0093

1 Rosana Orellana 93
 2 A Just a little bit.
 3 MR. ANTOLLINO: So let the record
 4 reflect we're about twelve inches away from
 5 each other and you've moved another foot
 6 away.
 7 Q Is that correct?
 8 A Yes.
 9 Q And the reason we're this close is
 10 we're trying to look at the video.
 11 You're three inches from Mr. Zabell.
 12 A Yes.
 13 Q Do you feel I'm going to harm you in
 14 some way?
 15 A No.
 16 Q Why is it that you feel uncomfortable?
 17 A Because you're reaching over and I'm
 18 claustrophobic, I need my own space.
 19 Q But you're very close to Mr. Zabell,
 20 though.
 21 A Facing away from him.
 22 Q That's you. Is that the same jump
 23 we're at?
 24 A Yes.
 25 Q We're just going to watch it the whole

0094

1 Rosana Orellana 94
 2 way through, and I want you to just raise your
 3 hand if you see something inappropriate that's
 4 happening, okay, and if so, I'll stop it and we'll
 5 make a record of it.
 6 All right. So we've watched the whole
 7 tape and you didn't raise your hand.
 8 Do you want to watch it again?
 9 A No.
 10 Q Did you feel that there was anything
 11 there that was inappropriate?
 12 A No.
 13 Q So the answer is, just to make sure we
 14 don't have any double negatives, --
 15 MR. ZABELL: Counsel, you can sit down.
 16 MR. ANTOLLINO: Counsel, no, I'm going
 17 to use this again. You don't tell me what to
 18 do.
 19 MR. ZABELL: I didn't.
 20 MR. ANTOLLINO: You don't own the
 21 place.
 22 MR. ZABELL: I didn't say I owned the
 23 place. I don't think there's anything in the
 24 place that says I own it.
 25 MR. ANTOLLINO: Quit acting like you

0095

1 Rosana Orellana 95
 2 own --
 3 MR. ZABELL: I'm saying so you don't
 4 question the deponent in an intimidating
 5 manner, you sit down.
 6 MR. ANTOLLINO: I'm going to use the
 7 video again.
 8 MR. ZABELL: Okay. Go ahead.
 9 Q Do you remember there was a point when
 10 the video was right on you? Do you remember that
 11 point?
 12 A In the previous video?
 13 Q No, in this video.
 14 Let's see if we can fast forward to
 15 that point.
 16 I'm trying to fast forward, but it's
 17 not working.
 18 MR. ZABELL: You just started it over
 19 again.
 20 MR. ANTOLLINO: I'm trying to fast
 21 forward. Thanks.
 22 Q Did you just see that?
 23 A Yes.
 24 Q What was your expression there?
 25 A I smiled.

0096

1 Rosana Orellana 96
 2 Q Do you know why you smiled?
 3 A Because I was excited.
 4 Q There was another expression. What was
 5 that?
 6 MR. ZABELL: Objection to the form of
 7 the question. You may answer.
 8 A I smiled.
 9 Q Was that more like a kiss?
 10 MR. ZABELL: Objection to the form of
 11 the question.
 12 A A smile.
 13 Q Well, you pursed your lips, right?
 14 A Yes.
 15 Q Someone might have interpreted that as
 16 a kiss.
 17 A Someone might have.
 18 Q We're at or just before 118.
 19 All right, I just have a few more
 20 questions.
 21 It was pretty loud up in the airplane,
 22 wasn't it?
 23 A Yes.
 24 Q Were there instructions that you were
 25 supposed to follow when you were doing this jump?

0097

1 Rosana Orellana 97
 2 A Certain instructions?
 3 Q Yes.
 4 A Yes.
 5 Q Did you want those instructions to be
 6 clearly understood by you?
 7 A Yes.
 8 Q Did you want Don to make sure that you
 9 clearly heard the instructions?
 10 A Yes.
 11 Q Did you want him to yell the
 12 instructions at you?
 13 A Loud enough so I could hear them.
 14 Q Did you show anyone your video?
 15 A Anyone else?
 16 Q Yes. Other than your boyfriend's
 17 grandmother.
 18 A His parents. I believe I showed his
 19 parents.
 20 Q When was that?
 21 A I don't remember the exact date.
 22 Q Did you show anyone else?
 23 A I believe that's it. I'm not sure if I
 24 showed anybody else.
 25 Q Do you know if Mr. Kengle asked for his

0098

1 Rosana Orellana 98
 2 money back from Mr. Maynard?
 3 A No.
 4 Q Did Mr. Maynard offer him a free jump?
 5 A I -- No, he didn't.
 6 Q How do you know that?
 7 A He didn't tell me about it, so I'm
 8 assuming.
 9 Q If Don had yelled at you in the
 10 airplane, do you think that would have been
 11 professional?
 12 A If it's loud and it's for my safety,
 13 yes.
 14 Q Would you want him to use his judgment
 15 as to how you can best understand his
 16 instructions?
 17 A Yes.
 18 Q Did you get all of the instructions
 19 that you needed to get in order to complete the
 20 dive safely?
 21 A Yes.
 22 Q Were there any times that Mr. Zarda
 23 moved closer to you to whisper into your ear or to
 24 speak clearly into your ear in giving those
 25 instructions?

0099

1 Rosana Orellana 99
 2 A I don't remember.
 3 Q You talked earlier about being
 4 claustrophobic. Have you ever been diagnosed with
 5 claustrophobia?
 6 A No.
 7 Q When you say you are, is it just -- I
 8 mean, when did you learn that you were
 9 claustrophobic?
 10 A I'm not -- I haven't been diagnosed
 11 that I'm claustrophobic, I just don't like being
 12 in small spaces, you know.
 13 Q This airplane was a very small space,
 14 correct?
 15 A Yes.
 16 Q And you were strapped very tightly to
 17 someone you had never met before, correct?
 18 A Yes.
 19 MR. ANTOLLINO: Nothing further.
 20 MR. ZABELL: I have a few questions.
 21 EXAMINATION BY SAUL D. ZABELL, ESQ.:
 22 Q How are you, Ms. Orellana?
 23 A Very good.
 24 Q Ms. Orellana, did you have any issue
 25 with Don Zarda's sexuality once he disclosed it to

0100

1 Rosana Orellana 100
 2 you?
 3 A No.
 4 Q Did you have an issue with the fact
 5 that he disclosed it to you?
 6 A Yes.
 7 Q Why is that?
 8 A Because I didn't care. You know, I
 9 didn't care if he was straight or gay or -- I
 10 didn't care about his personal life.
 11 Q Now, you were shown a video of your
 12 jump, is that correct?
 13 A Yes.
 14 Q Did that video contain every minute
 15 that you were strapped to Mr. Zarda?
 16 A No.
 17 Q Did you care that you were strapped to
 18 Mr. Zarda?
 19 A No.
 20 Q Did you care that you were close to Mr.
 21 Zarda?
 22 A No.
 23 Q Well, what was it about contact with
 24 Mr. Zarda that bothered you?
 25 A His hand on my hip, it was resting on

0101

1 Rosana Orellana 101
 2 my hip, and he put his chin on my shoulder.
 3 Q Could you describe how he put his chin
 4 on your shoulder?
 5 A Yes. It was resting on my shoulder.
 6 MR. ZABELL: Let the record reflect Ms.
 7 Orellana moved in about six to eight inches
 8 with her chin indicating that it was his chin
 9 moved forward.
 10 Q Did you find anything inappropriate
 11 about him resting his chin on your shoulder?
 12 A Yes.
 13 Q What was that?
 14 A It was unnecessary.
 15 Q Did you find anything inappropriate
 16 with Mr. Zarda putting his hand on your hip?
 17 A Yes.
 18 Q What was that?
 19 A It was unnecessary. I mean, he didn't
 20 have to rest his hand on my hip. Once you're
 21 fastened, you're fastened and you can put your
 22 hands on your side.
 23 Q Did there come a time that it appears
 24 that Mr. Zarda had crossed the line to you?
 25 A No.

0103

1 Rosana Orellana 103
 2 today's deposition?
 3 MR. ANTOLLINO: Yes.
 4 MR. ZABELL: Just put so we're assured
 5 a plain simple statement on the record
 6 concluding today's deposition.
 7 MR. ANTOLLINO: I have no further
 8 questions. I said that already.
 9
 10
 11
 12
 13 (Continued on following page to
 14 allow for signature and jurat.)
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0102

1 Rosana Orellana 102
 2 Q Did there come a time where he
 3 apologized for his conduct?
 4 A Yes.
 5 Q When was that?
 6 A When we were free falling.
 7 Q What did he say to you?
 8 A He apologized for -- he said, don't
 9 worry, I hope you didn't get offended, because I'm
 10 gay, what happened on the plane.
 11 Q Before he disclosed to you his
 12 sexuality, did you know what his sexuality was?
 13 A No.
 14 Q Did you care what his sexuality was?
 15 A No.
 16 MR. ZABELL: Thank you. I have no
 17 further questions.
 18 MR. ANTOLLINO: When you say he
 19 apologized for his conduct, do you know if he
 20 was referring to the comments that were made
 21 or these allegations that you've made about
 22 the chin and the hips?
 23 THE WITNESS: I don't know.
 24 MR. ANTOLLINO: Nothing further.
 25 MR. ZABELL: Would you like to conclude

0104

1 Rosana Orellana 104
 2 MR. ZABELL: Very well. Then it
 3 appears as if the deposition of Ms. Orellana
 4 is concluded.
 5 (Whereupon, the examination of
 6 this witness was concluded at 3:35 P.M.)
 7
 8 * * * *
 9
 10 STATE OF NEW YORK)
 11)ss.:
 12 COUNTY OF)
 13 I have read the foregoing record of my
 14 testimony taken at the time and place noted in the
 15 heading hereof and I do hereby acknowledge it to
 16 be a true and correct transcript of same.
 17
 18
 19 ROSANA ORELLANA
 20 Subscribed and sworn to
 21 before me on this ____ day
 22 of _____, 2011.
 23
 24
 25 NOTARY PUBLIC

0105

1		105
2	I N D E X	
3		
4	EXAMINATION OF	BY PAGE
5	Rosana Orellana	Mr. Antollino 11-99
6	Mr. Zabel	99-102

7 E X H I B I T S

9	PLAINTIFF'S	DESCRIPTION	PAGE
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12	3-DEEMED	DVD	91

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0106

1 106 2 C E R T I F I C A T I O N

3
4 I, Deborah Thier, a Notary Public
5 of the State of New York do hereby certify:
6 That the testimony in the within
7 proceeding was held before me at the aforesaid
8 time and place. That said witness was duly sworn
9 before the commencement of the testimony, and that
10 the testimony was taken stenographically by me,
11 then transcribed under my supervision, and that
12 the within transcript is a true record of the
13 testimony of said witness.

14 I further certify that I am not related
15 to any of the parties to this action by blood or
16 marriage, that I am not interested directly or
17 indirectly in the matter in controversy, nor am I
18 in the employ of any of the counsel.

19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this 28th day of November, 2011.

21
22
23
24
25

DEBORAH THIER

0001

1

2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

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4

DONALD ZARDA,

5

Plaintiff,

6

- against -

INDEX NO.:

7

CV-10-4334

8

ALTITUDE EXPRESS, INC., d/b/a

9

SKYDIVE LONG ISLAND AND RAY MAYNARD,

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Defendants,

11

-----X

Bee Reporting Agency, Inc.

12

800 Veterans Memorial Highway

13

Hauppauge, New York

14

November 9, 2011

15

3:39 P.M.

16

17

EXAMINATION BEFORE TRIAL OF DAVID

18

KENGLE, a non-party witness, taken by the

19

attorney for the Plaintiff, pursuant to Subpoena,

20

and held before Deborah Thier, a Notary Public of

21

the State of New York at the above-stated time and

22

place.

23

* * * *

24

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APPEARANCES:

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FEDERAL STIPULATIONS

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4

IT IS HEREBY STIPULATED AND AGREED,

5

by and between the parties hereto, through

6

their respective Counsel, that the certifi-

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cation, sealing and filing of the within

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examination will be and the same are hereby

9

waived;

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11

IT IS FURTHER STIPULATED AND AGREED

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that all objections, except as to the form

13

of the question, will be reserved to the

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time of the trial;

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16

IT IS FURTHER STIPULATED AND AGREED

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that the within examination may be signed

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before any Notary Public with the same

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force and effect as if signed and sworn to

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before this Court.

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0005

1 David Kengle 5
2 Q Did Mr. Zabell talk to you about that
3 before this deposition?
4 A He let me know that that was an option
5 that I have.
6 Q We'll certainly give you a copy of the
7 deposition transcript.
8 MR. ANTOLLINO: Before Mr. Zabell
9 interrupted me, what did I say.
10 (Whereupon, the requested section
11 was read back by this reporter.)
12 Q I represent Mr. Zarda.
13 Have you ever been deposed before?
14 A I was trying to remember. I don't
15 believe so.
16 Q Have you ever testified before?
17 A I don't think so.
18 Q Did you ever go to court and raise your
19 right hand and --
20 A I may have. When I was a teenager I --
21 Q One of the rules of the deposition, and
22 I'd like you to agree to, if you don't mind, is to
23 wait for me to ask the question in its entirety
24 before you give an answer.
25 A Sure.

0007

1 David Kengle 7
2 A No, I don't think so.
3 Q Do you understand what it means to
4 swear under oath?
5 A Do I, of course.
6 Q Do you know false testimony under oath
7 constitutes perjury, correct?
8 A Yes.
9 Q Do you know what perjury is?
10 A I do.
11 Q Are you employed at this time?
12 A No.
13 Q What were you employed last as?
14 A I worked at Four Food Studio as a
15 server.
16 Q When was the last time you were
17 employed?
18 A June.
19 Q When was the first time you spoke with
20 Mr. Zabell?
21 A The first time I spoke to Mr. Zabell
22 would probably be, what, early this year. I think
23 he notified me of -- maybe it could have been the
24 end of last year, early this year. Actually, it
25 was somebody in his office first that contacted us

0006

1 David Kengle 6
2 Q Will you agree if you don't understand
3 the question, to tell me you don't understand a
4 question?
5 A Sure.
6 Q Will you agree to tell me if you don't
7 an answer to a question?
8 A Sure.
9 Q You were talking about something that
10 happened when you were a teenager.
11 A I was once -- when I was a teenager,
12 one of the kids that we hung out with, he had like
13 an unloaded gun or something like that, and I
14 remember a couple of us had to answer some
15 questions about it. I don't remember if we were
16 actually deposed or anything like that. That was
17 the only thing.
18 Q So you went to court?
19 A No, I said I don't believe so. I said
20 I just remember having to answer questions to a --
21 police or something like -- some kid we went to
22 high school with -- I don't remember -- I don't
23 even remember his name.
24 Q So the police didn't say, raise your
25 right hand?

0008

1 David Kengle 8
2 and Mr. Zabell took up the case after, I guess,
3 when he was no longer on it.
4 Q Do you remember the names of any of
5 these people?
6 A What is his name, Tim? Tim, I believe,
7 maybe. I don't really know.
8 MR. ZABELL: I can't help you when
9 you're answering.
10 A Nobody who worked in his office.
11 Q When was the first time you met Mr.
12 Zabell?
13 A He came by my apartment once. I think
14 it was late spring, early summer.
15 Q What happened?
16 A You know, he just -- we had spoken on
17 the phone first. He let us know everything that
18 was going on and he said he needed to get my
19 statements. So he came over and we gave him our
20 statements.
21 Q Did he write anything down?
22 A I'm sure he did.
23 Q You saw him writing something down?
24 A I think he took notes. I could be
25 mistaken. I just assumed that he did.

0009

1 David Kengle 9
 2 Q Was anyone else there?
 3 A My girlfriend, Rosana.
 4 Q That was at this location, 9 Garfield
 5 Place?
 6 A Correct.
 7 Q That was the first time you had met Mr.
 8 Zabell?
 9 A Right, met him, and we'd spoke once on
 10 the phone before that, I believe.
 11 Q What did you talk about when you spoke
 12 on the phone?
 13 A Like I said, he just gave us -- he let
 14 us know that there was a lawsuit going about and
 15 he needed our statement.
 16 Q What did he tell you about the lawsuit?
 17 A He mentioned that the skydiving
 18 instructor that we had made a complaint about --
 19 had been fired and that he was now suing the owner
 20 of Skydive Long Island I believe it's called, for,
 21 you know, wrongful termination based on his
 22 sexuality, whatever.
 23 Q Did he say anything else?
 24 A No, he just gave us the broad strokes.
 25 Q What did you say in response?

0010

1 David Kengle 10
 2 A What did I say in responses? I
 3 didn't --
 4 Q Yes.
 5 A I didn't really have a response. I was
 6 wondering why we were being contacted, and he
 7 asked for our statement, and so I gave a statement
 8 when he came over to the apartment.
 9 Q Did you sign anything at the time?
 10 A No.
 11 Q How long was the phone conversation?
 12 A Very brief. You know, just setting up
 13 a time where he could, you know, meet.
 14 Q That was in the early part of this year
 15 or the spring, the summer?
 16 A I'm gonna -- well, the phone
 17 conversation -- I feel like we were getting
 18 messages a couple of times before I really knew
 19 what it was about. You know, I remember getting a
 20 couple of messages like, you know, I'm an attorney
 21 representing Skydive Long Island, and I just
 22 remembered kind of not wanting to be bothered with
 23 it. So I let them call back a couple of times
 24 before I talked.
 25 I'm pretty sure it was after the new

0011

1 David Kengle 11
 2 year, because I had -- I kind of clear out my
 3 stuff toward the end of the year, and I don't
 4 remember that being there. So I'm sure it was
 5 early this year.
 6 Q How long after the phone conversation
 7 did Mr. Zabell come to your apartment?
 8 A Within a couple of weeks.
 9 Q Did he tell you anything about a
 10 subpoena?
 11 A I believe I asked him if we would be
 12 subpoenaed, or I asked him if we would have to go
 13 to court for any of this, and he said, yeah, you
 14 might, there might come a point.
 15 Q Did you tell him to accept subpoenas on
 16 your behalf?
 17 A No.
 18 Q Did you hear anything in the media
 19 about this case?
 20 A Did I hear anything in the media?
 21 Q Yes.
 22 A No, I didn't hear anything in the
 23 media.
 24 Q When you met Mr. Zabell, how long was
 25 he at your house, how long was the meeting?

0012

1 David Kengle 12
 2 A Couldn't have been more than a half
 3 hour.
 4 Q What did he say to you and what did you
 5 say to him?
 6 A Well, we did most of the talking. We,
 7 you know, gave our accounts. He kind of again --
 8 already filled us in on what was going on, so he
 9 needed our statements and we gave him our
 10 statements and we told him our story.
 11 I can give you the whole story, if you
 12 like.
 13 Q Sure, I'll ask you about that, but did
 14 he say anything about what happened?
 15 A Did he say anything about what
 16 happened?
 17 Q Yes.
 18 A He told me there was a lawsuit, what I
 19 told you the first time.
 20 Q Did he say anything about my client,
 21 Mr. Zarda?
 22 A No.
 23 Q Did he say anything about his client,
 24 Mr. Maynard?
 25 A No. I mean, I know that, you know, Ray

0013

1 David Kengle 13
2 is the guy that owns Skydive Long Island and your
3 guy was the skydiving instructor, and nothing more
4 than that.
5 Q When you say Ray, do you know him by
6 his first name?
7 A No, I just -- I heard it mentioned
8 today.
9 Q Have you ever met Ray or just spoken to
10 him on the phone?
11 A I've spoken to him on the phone. I've
12 never met him.
13 Q How many times have you spoken to him
14 on the phone?
15 A Just the one time. Right? Once was
16 it, twice -- no, once.
17 Q Now, in preparation for preparing for
18 today's deposition, I sent you a subpoena that
19 asked you to attend today, and you have attended.
20 Thank you. But also there was a section in there
21 for you to produce any documents or e-mails that
22 you've received or sent to Mr. Zabell, any of his
23 employees, Mr. Maynard, any of his employees.
24 Do you remember that on the subpoena?
25 A Yeah.

0015

1 David Kengle 15
2 left-hand side starting on page two, there are a
3 lunch of initials under each paragraph, did you
4 initial those?
5 A Yes, I did.
6 Q Did you fill out this document after
7 watching a video?
8 A Yeah, I believe we filled it out,
9 actually, while we were watching the video. I
10 think they gave it to you to fill out while
11 watching.
12 Q So you're filling this out and watching
13 a video at the same time?
14 A Yeah, I think so.
15 Q Did you pay attention to the video?
16 A Yeah, for the most part.
17 Q Were you reading this carefully while
18 you were watching the video?
19 A For the most part, yeah.
20 Q So you were reading this document and
21 looking at the video at the same time?
22 A Well, I mean, you watch and then maybe
23 when there's silence or something, or maybe I
24 waited until after. Somehow I paid attention,
25 because I wanted to understand what, you know, the

0014

1 David Kengle 14
2 Q Is there anything that's responsive to
3 that?
4 A No, there are no documents.
5 Q I just wanted to make sure.
6 Q So let's go back to June 18th, 2010.
7 MR. ANTOLLINO: We can mark this as
8 Plaintiff's Exhibit, I guess we'll call this
9 4.
10 MR. ZABELL: Was there a 2 and a 3?
11 MR. ANTOLLINO: Yes, the two videos.
12 (Whereupon, the release was marked as
13 Plaintiff's Exhibit 4 for identification, as
14 of this date.)
15 Q Do you recognize this document?
16 A This looks like what we filled out.
17 Yeah, that's my handwriting. It's what we filled
18 out when we went skydiving.
19 Q It appears to have your signature on --
20 A Correct.
21 Q Is there any handwriting here that's
22 not yours?
23 A You know, the notes, the identifying
24 and stuff, but all the rest is mine.
25 Q What about on the pages on the

0016

1 David Kengle 16
2 deal was legally, and also what the deal was as
3 far as safety.
4 Q Did you talk to Rosana about it?
5 A Did I talk to her about it, no. I
6 mean, we just filled out our forms.
7 Q Was she reading the document?
8 A Yeah. I mean, she probably skimmed it.
9 I don't think she read it as attentively as I did.
10 Q She did not as attentively as you did
11 is what you recall?
12 A She may have. I don't know. Just
13 knowing her, I would assume that, you know, she
14 probably left it for me. She trusts my judgment,
15 and I'm kind of a -- the brains of the operation,
16 I guess. I'm the legal person, you know.
17 Q What is the highest level of education
18 you have --
19 A I graduated from Hofstra University
20 with a B.A. in liberal arts.
21 Q So you signed this form, you filled out
22 this form and you watched the video.
23 What happened next?
24 A Well, I mean, we got ready to go, make
25 the jump. I think they -- you know, we went

0017

1 David Kengle 17
 2 outside. We had to wait a while. I think
 3 somebody else -- I think another group was going
 4 about their jump, so they set us up. You know,
 5 they put our chute on and they just -- you know,
 6 we got ready to go.
 7 Q They put your shoe gun on?
 8 A The chute.
 9 Q Oh, your chute?
 10 A Yeah, the harness.
 11 Q Was the chute on you or on the tandem
 12 instructor?
 13 A Oh, right. The chute is actually on
 14 the tandem. So we had the harness, the vest.
 15 Q How were you attached to the
 16 instructor?
 17 A My back was attached to his front.
 18 Q So were you attached inside the plane
 19 or outside the plane?
 20 A Inside the plane.
 21 Q How were you situated with regard to
 22 the instructor?
 23 A He was sitting behind me, I was
 24 sitting, you know, between his open legs and we
 25 attached by, I think G clips, I guess, they were,

0018

1 David Kengle 18
 2 whatever they use.
 3 Q You're motioning towards your hips?
 4 A Correct.
 5 Q So you say he clipped himself to two
 6 clips at your hips?
 7 A I don't know if there were two. How
 8 many -- whatever equipment they use, but he
 9 attached himself at the hip, maybe the chest too.
 10 Q Do you remember at how many points
 11 there were clips?
 12 A I don't.
 13 Q Was your body, you know, except for the
 14 clothes, physically touching him?
 15 A Yeah, fairly close. I mean, I don't
 16 know how -- there was definitely contact. I don't
 17 know how closely pressed we were, but there was --
 18 we were definitely -- yeah, in close proximity.
 19 Q Could you feel his clothing through
 20 your clothing?
 21 A I don't understand what you mean.
 22 Q Did you feel that there was someone
 23 behind you?
 24 A I can feel that there was a presence
 25 behind me. I don't know that -- I didn't feel his

0019

1 David Kengle 19
 2 body like on top of my body, but, yeah, he was
 3 close.
 4 Q Did you expect him to be close?
 5 A We were aware that there would be close
 6 proximity.
 7 Q How long were you up in the air?
 8 A I mean, it took a little while to get
 9 up there. I think at least, right, ten minutes.
 10 Q What was going on on the way up?
 11 A Well, there was a bunch of instructors
 12 and people, you know, getting ready to jump. It
 13 wasn't just the four of us, it was at least ten
 14 people. The -- you know, the crowd -- the
 15 instructors I feel like were mostly guys, so there
 16 was a lot of comrade and there was a joke, I
 17 think, that when we were actually harnessing --
 18 when Roxie -- I call Rosana Roxie -- when they
 19 were harnessing Don to Roxie, you know, there was
 20 a joke, you know, how do you feel about, you know,
 21 your girlfriend's getting strapped to another guy,
 22 you know, ha ha.
 23 So, you know, we took it in stride.
 24 I'm not really threatened by a joke, but as time
 25 went on, I felt like he was being a little

0020

1 David Kengle 20
 2 familiar with my girlfriend. That's the word I
 3 like to use, a familiar way of touching, and I
 4 took notice because I noticed that my guy was not
 5 touching me like that and I didn't see anybody
 6 else touching their students like that. So it
 7 kind of struck me as, you know, inappropriate.
 8 Q So who made this joke about, did you
 9 know that your girlfriend was going to be strapped
 10 to another guy?
 11 A I think it was a third instructor that
 12 was neither one of our instructors.
 13 Q So did everyone laugh?
 14 A I think it was the guy with the camera,
 15 actually.
 16 Q The guy with the camera?
 17 A Maybe.
 18 Q You're not a hundred --
 19 A I'm not a hundred percent sure, but I
 20 think.
 21 Q You recall there was about ten people?
 22 A I shouldn't throw out numbers, because
 23 I can't be exact. It could be eight, it could be
 24 twelve. I don't really know.
 25 Q You got video in this case, right, you

0021

1 David Kengle 21
 2 got a video of your jump?
 3 A I got a video.
 4 Q Who have you shown that to?
 5 A You know, randomly to my family, my
 6 parents, grandparents. I don't know. You know,
 7 it hasn't really -- big a deal that we make a big
 8 mental note of it that we show it to somebody. If
 9 somebody asks us about it, we show it. It might
 10 just be my family.
 11 Q So you saw it about five or six times,
 12 would that be fair?
 13 A Yeah, five times.
 14 Q How many times --
 15 A We also watched it ourselves when --
 16 ourselves when we got home that night, you know.
 17 Q Let's talk about this inappropriate
 18 touching.
 19 What was inappropriate about what Don
 20 was doing?
 21 MR. ZABELL: Objection to form. You
 22 may answer.
 23 A There's a certain way that you, you
 24 know, touch a female, you know, especially
 25 someone's girlfriend. It's almost like dancing.

0023

1 David Kengle 23
 2 a little bit of an angle.
 3 Q What did you see Don do?
 4 A Well, the first thing I noticed was
 5 that he had his hands on her hips. Now, I
 6 understand that you have to harness, it requires,
 7 you know, clipping, but that's it. I mean, I sat
 8 there for the entire time with my guy and he
 9 didn't put his hands on me. He didn't have to
 10 hold me like this. It was just an unnecessary
 11 thing. So you're thinking to yourself, why is he
 12 touching her like this.
 13 MR. ZABELL: Let the record reflect
 14 when the deponent said, like this, he had
 15 both hands on his hips.
 16 Q So you saw Don putting his hands on
 17 Rosana's hips --
 18 A Right.
 19 Q -- from where you were situated?
 20 A Right.
 21 Q How long were they there for?
 22 A I mean, I felt practically the whole
 23 time he was just holding her. It was like he was
 24 holding her, that's what I mean. It wasn't like I
 25 with my instructor. He was sitting behind me and

0022

1 David Kengle 22
 2 You put your hands on their hips and you put, you
 3 know, your chin on their shoulder like in a very
 4 casual cavalier way.
 5 When I noticed that he's talking, you
 6 know, he's touching his lips in like a -- it's a
 7 provocative way of doing things. I mean, I'm not
 8 -- I don't know if that's a matter of opinion or
 9 not, but if you ask most people, they would feel
 10 uncomfortable with them acting like that with
 11 their significant other.
 12 Q Let's break it up one by one.
 13 Where were you situated in the plane
 14 that you could see Don touching his lips?
 15 A Let's see. If I was in the plane -- if
 16 we entered the plane and now, let's say, I'm
 17 facing forward, I'm on the left side of the plane,
 18 and I believe I was in the very last seat. So I'm
 19 pretty sure Roxie was just slightly to my
 20 right-hand corner. I don't believe she was
 21 directly next to me, I believe there was somebody
 22 there, and she was right in front of that person.
 23 So it's kind of like -- it was slightly
 24 to my left-hand corner, but not so much the
 25 corner. I couldn't see her front as well, just at

0024

1 David Kengle 24
 2 I was sitting in front of him, but he wasn't
 3 holding me. We happened to be latched together,
 4 but with him, with Don and my girlfriend, he was
 5 holding her the entire time.
 6 Q Did you say anything?
 7 A No, I didn't. Normally that would be
 8 -- you know, I mean, I'm very vocal. I'm used to
 9 -- my girlfriend is a very beautiful girl. I'm
 10 used to her getting attention. So I wouldn't feel
 11 uncomfortable voicing myself, but under this
 12 particular set of circumstances, getting ready to
 13 jump out of a plane, it's not something I can deal
 14 with at the time.
 15 Q Why?
 16 A Because I'm about to jump out of a
 17 plane. I didn't feel comfortable -- I mean,
 18 you're a little nervous about the actual jump the
 19 first time you're doing it, and also your
 20 instructors, you have to trust them. I mean, they
 21 aren't the type of people you want to have a
 22 confrontation with right before you're about to
 23 jump out of a plane. I mean, he wasn't my
 24 instructor, but it didn't seem like the time and
 25 place.

0025

1 David Kengle 25
 2 Q Had you ever been up in a plane before?
 3 A Plane skydiving, no.
 4 Q Had you ever taken any course in how
 5 it's appropriate to touch a person who's tandem
 6 skydiving?
 7 A Have I ever taken a course, no. I
 8 think common sense plays a big role.
 9 Q What does common sense tell you?
 10 A I mean, because I understand the video
 11 tells you there's going to be contact and the form
 12 tells you there's going to be contact, but all
 13 contact doesn't mean it's legitimate touching.
 14 But he can't grab her chest or breast and say --
 15 I'm not saying he did that, but there's definitely
 16 a line in the sand, as far as what's appropriate
 17 and not. Just because there's contact involved
 18 doesn't mean all contact, anything goes.
 19 Q So it depends on the circumstances?
 20 A Yeah, of course.
 21 Q If your girlfriend's safety were at
 22 issue, you'd want him to hold her breast?
 23 A If it meant saving her life, yes.
 24 MR. ZABELL: Don't answer his questions
 25 like you're having a conversation.

0027

1 David Kengle 27
 2 extreme a term, but it was -- made us feel
 3 uncomfortable enough to complain about it and it
 4 was inappropriate.
 5 So, I mean, is everything inappropriate
 6 sexual harassment, I don't know, but it was
 7 definitely inappropriate in my opinion, and being
 8 that I was a paying customer, I felt that I should
 9 complain about it.
 10 Q You say he was touching his lips. Was
 11 there anything else other than touching his lips
 12 or touching your girlfriend's hips that you felt
 13 was inappropriate?
 14 A And he rested his chin on her shoulder
 15 at a certain point, again, in a very familiar way
 16 of interacting with somebody you just met, and
 17 again, my instructor did not at any point put his
 18 chin on my shoulder. He did not put his hands on
 19 my lips and he did not touch his lips and wiggle
 20 his tongue around when he was talking to me, and
 21 he was, my impression in the camera, you know,
 22 look at this, guy. It was very unique what I was
 23 seeing going on between Zarda and my girlfriend.
 24 Q So you thought that he was flirting
 25 with Rosana?

0026

1 David Kengle 26
 2 THE WITNESS: Sure.
 3 Q What did you see Don doing with his
 4 lips?
 5 A I noticed he was putting his finger
 6 kind of in his mouth. He was talking kind of like
 7 this to me. It's a little provocative, I mean,
 8 it's a form of flirting, if you ask me, and that's
 9 my opinion, and I noticed on the video, I guess
 10 maybe I couldn't see his eyes, you know, the angle
 11 as well, but when I was watching the video, we
 12 noticed that not only was he doing that into the
 13 camera for a brief second, but he was also kind of
 14 going like this to the camera guy like this, as if
 15 to say, you know, check it out. So I think that
 16 added to my feelings of being uncomfortable with
 17 it.
 18 MR. ZABELL: Let record reflect the
 19 deponent was shaking his head in a gesturing
 20 manner.
 21 Q You felt that what he did was sexually
 22 harassing of Rosana?
 23 A Well, I mean, I don't know the legal
 24 definition of sexual harassment, if it's a
 25 textbook -- you know, if it qualifies for that

0028

1 David Kengle 28
 2 A Yes.
 3 Q Did you think he was sexually
 4 attractive to Rosana?
 5 A I don't know. I can't testify as to
 6 how he felt.
 7 Q Well, did it appear that he was
 8 sexually attracted to Rosana?
 9 A I honestly don't know.
 10 Q Based on what it appeared, not what he
 11 was actually feeling, what did it appear to you?
 12 A It appeared like he was being flirty.
 13 Now, one, he could have been flirty
 14 because he was sexually attracted to her, he could
 15 have been flirty just because he was showing off
 16 in front of his co-instructors, or he could have
 17 just been a flirty person. Some people are just
 18 flirty. I don't know why he was being like that,
 19 but that was the way he was --
 20 Q Was there anything --
 21 MR. ZABELL: Wait a minute, Counsel,
 22 you have to let him finish answering.
 23 MR. ANTOLLINO: You know what, I
 24 thought he was finished.
 25 A It was my fault.

0029

1 David Kengle 29
 2 Q Do you have anything more to say?
 3 A I assume that he motioned -- the way
 4 that he motioned in the video was if to say that's
 5 usually the way -- I mean, I know guys, that's a
 6 group of guys, you know, motioning, oh, check this
 7 girl out, she's attractive. So the fact he's
 8 motioning, kind of signaling she's attractive, I
 9 would assume that he found her attractive.
 10 Q How did you learn about Skydive Long
 11 Island?
 12 A I think I Googled Skydive Long Island.
 13 I wanted to go skydiving on Long Island.
 14 Q Did you pay cash or credit?
 15 A Cash I'm pretty sure. Yeah, it must
 16 have been cash.
 17 Q You jump out of the plane and you land
 18 on the ground. What happened then?
 19 A Well, I landed first because I jumped
 20 first. So there was a -- you know, I was waiting
 21 for Rosana to land. She finally landed. We, you
 22 know, finished up.
 23 We were both a little taken aback with
 24 the whole thing. We handed in our equipment. We,
 25 you know, got our stuff and we left.

0031

1 David Kengle 31
 2 already felt was inappropriate. So now you're
 3 talking about extra inappropriate behavior here.
 4 We went about the rest of our day.
 5 Like I said, it was her birthday. We went out for
 6 dinner, we went out for the night, and the more I
 7 thought about it -- and especially we paid
 8 whatever it was, eight, nine hundred dollars to go
 9 skydiving, and I felt it was not -- you know, that
 10 that was inappropriate for what we were paying for
 11 it. You know, the overall experience I felt was
 12 tainted because of the incidents described.
 13 So after thinking about it for a day, I
 14 decided to make a phone call, and I called Skydive
 15 Long Island. I believe I talked to a female
 16 worker there that took my story and let me know
 17 that she would pass the information along, and she
 18 was very upset about what I was telling her.
 19 She then, I guess, told the owner,
 20 because the owner contacted me by that day -- by
 21 the end of the day and, you know, he told me that
 22 he was very unhappy to hear -- you know, I told
 23 him the story pretty much as I just told you and,
 24 you know, he -- I'm trying to remember if he --
 25 'cause I answered you before that I only talked to

0030

1 David Kengle 30
 2 When we were driving home, I asked her,
 3 you know, what did you think, how was your
 4 experience. The experience was mostly for her, it
 5 was her birthday, it was something she wanted to
 6 do. I mean, I kind of wanted to skydive myself,
 7 but it was mostly for her.
 8 The first thing she said was, I would
 9 have liked it better if I had a different
 10 instructor, and I said, I noticed, he made me feel
 11 uncomfortable too, and she said, yeah, after we
 12 jumped, when he pulled the chute and we were
 13 floating down, we were talking about different
 14 things, and I was like, what do you mean, and he
 15 just kept mentioning his personal life -- I mean,
 16 his sex life. I don't think he got graphic.
 17 He mentioned -- I think he was
 18 apologizing about whatever, because -- he claimed
 19 that, you know, I hope I didn't make you feel
 20 uncomfortable, you know, like reassuring, and I
 21 think he was talking about his boyfriend or
 22 ex-boyfriend and like -- I don't know. This is
 23 what she said.
 24 So then I felt, you know, extra
 25 uncomfortable, because it added to what I had

0032

1 David Kengle 32
 2 him once, but I'm trying to remember if we only
 3 had the one conversation or if he told me he was
 4 going to look into it and get back to me. I'm not
 5 a hundred percent. But by that day he had
 6 basically let me know, you know, that he was
 7 really sorry.
 8 At first he said if we are ever
 9 interested in coming back for a second jump, he'd
 10 make sure we had a better experience. I told him
 11 we weren't really interested in -- we just kind of
 12 planned it for a special occasion, it's not the
 13 type of thing we're going to do every weekend or
 14 -- at that point he offered to refund our money
 15 because he was so upset with the fact that we had
 16 such a horrible experience.
 17 Q What did you say?
 18 A I told him that, you know, I appreciate
 19 that. I mean, I've worked -- I worked in customer
 20 services and I've seen that done. I definitely
 21 didn't think that was, you know, the wrong
 22 decision for him to make. I understand. Did he
 23 have to do that, no. I mean, I just -- it said a
 24 lot about his character, the fact he was willing
 25 to refund our whole money just because of the

0033

1 David Kengle 33
 2 experience. I felt that that was appropriate.
 3 Q So he refunded your money?
 4 A Yes.
 5 Q Why did you take it? You felt it was
 6 appropriate for you to get your money back?
 7 A I felt that it was appropriate, yeah.
 8 Like I said, we paid close to a thousand dollars
 9 and, I mean, for the experience that we had -- I
 10 mean, you know, you're paying for an experience.
 11 It's just like you're going to Disney
 12 World, going here, there. If you have an
 13 experience like that, they're going to say they
 14 want you to have that experience. That's what
 15 you're paying for, the experience. So if you're
 16 not getting the experience -- I'm not paying to
 17 meet the people there, I'm paying for the
 18 experience.
 19 Q Did you ask for a refund?
 20 A No, I did not.
 21 Q So he just offered it to you?
 22 A Yes.
 23 Q Did he offer you another free jump?
 24 A In other words, he said in order to
 25 make up for the, you know, bad experience that we

0034

1 David Kengle 34
 2 had, he would, you know, take us up free of charge
 3 again to give us the experience the way it was
 4 supposed to be. So we'd get one free jump. It
 5 wasn't so specific. You know, he was trying to
 6 ease the situation.
 7 Q But instead he gave you the money back
 8 so you --
 9 A But we declined.
 10 Q So you declined the free jump and he
 11 offered you the refund?
 12 A Right.
 13 Q Did he ask to speak to Rosana?
 14 A I don't remember. I mean, I think he
 15 told me to apologize on his behalf.
 16 Q Did he say what he was gonna do?
 17 A What do you mean?
 18 Q Did Ray say what he was gonna do?
 19 A Like as far as what?
 20 Q As far as what he's going to do in
 21 response to your complaint.
 22 A He refunded our money.
 23 Q Did he say he was gonna do anything
 24 else?
 25 A As far as Mr. Zarda?

0035

1 David Kengle 35
 2 Q Yes.
 3 A He just said he would handle the
 4 situation. I mean, I wasn't really interested, to
 5 be honest with you. I mean, I was calling to
 6 complain about the instructor, but it wasn't like,
 7 you know, I was calling because I was so
 8 interested, you know, in him getting punished. I
 9 didn't really ask.
 10 Q So you had no intention of Don getting
 11 fired as a result of this?
 12 A No. I mean, I don't want anybody to,
 13 you know -- it was -- definitely a complaint was
 14 warranted and it needed to be voiced because it
 15 was inappropriate. Again, it was something that
 16 -- the experience to me is important in that it's
 17 a -- it's not an everyday thing that you jump out
 18 of a plane, it's something you need to feel very
 19 comfortable doing.
 20 If that's going to be your career,
 21 profession, you can't make people feel
 22 uncomfortable when you jump, and the second thing
 23 is the cost. You go out for dinner for a hundred
 24 dollars and, you know, if the server or whoever --
 25 if you don't like the attitude, people find no

0036

1 David Kengle 36
 2 problem complaining, or the bartender or somebody
 3 who works in a movie theater.
 4 So to me this is even more amplified,
 5 because it's, as I said, something that's way more
 6 expensive and something way more extreme.
 7 Q Has a customer ever complained about
 8 your service as a server?
 9 A I'm sure they have.
 10 Q It's never been brought to your
 11 attention?
 12 A Sure it has. Anyone who has been a
 13 server in some way, shape or form has been
 14 complained about.
 15 Q That includes Rosana?
 16 A I don't know. I'm sure. It's almost
 17 impossible to interact with that many customers to
 18 not get a complaint unless you're just starting
 19 the business or something.
 20 Q You said something earlier about that
 21 you said Don was mentioning something about his
 22 sex life.
 23 A Well, his sexual preference.
 24 Q That's not the same as sex life?
 25 A Well, he mentioned his boyfriend. I

0037

1 David Kengle 37
 2 don't remember. Yeah, I guess not.
 3 Q What if he had mentioned his wife,
 4 would that be just as bad?
 5 A It's more the way it was -- I think it
 6 should not have even come up, first of all, the
 7 sentence, I hope you don't feel uncomfortable
 8 because, you know, I'm gay. The fact that she had
 9 anything to feel uncomfortable in the beginning,
 10 the fact that he was aware of that, it's evident
 11 that there was something inappropriate. Why else
 12 would she feel inappropriate?
 13 Q What was it you understood Don was
 14 referring to when asking about her feeling of
 15 discomfort, was it the statements made or
 16 something else?
 17 A I don't know what he thought because,
 18 first of all, I wasn't the one talking to him.
 19 Second of all, I'm not him. But, I mean, I would
 20 just -- from my perspective -- I mean, it just
 21 seemed like he was covering his bases, it seemed
 22 like -- you know, it seemed to me like I can kind
 23 of get away with this because I'm gay. That's
 24 what he was implying to me.
 25 I've had a similar situation another

0038

1 David Kengle 38
 2 time with somebody that kind of made the -- a
 3 similar statement like somebody that was gay, I
 4 witnessed them kind of, you know, being a little
 5 -- having a lot of contact with a girl and they
 6 were like, oh, I can get away with that kind of
 7 thing.
 8 Q When was that?
 9 A I don't know. At some point in time.
 10 I can't remember an exact instance. I've noticed
 11 that's kind of -- it's almost like some people
 12 feel that is accepted because, you know, there's
 13 nothing you have to worry about. It's kind of
 14 like I can get away with a little bit of contact
 15 because it's not like I would sleep with her or
 16 anything like that. I don't agree with that.
 17 Q So you've observed that attitude on a
 18 number of occasions, haven't you?
 19 A I'm not saying that I've experienced
 20 it, I said I feel like I've noticed that that is,
 21 you know, an idea that exists to some people.
 22 Q So there have been a number of people
 23 who have expressed this belief, a number of gay
 24 people who have expressed this belief to you that
 25 they can get away with a little flirting with

0039

1 David Kengle 39
 2 women because they're gay?
 3 MR. ZABELL: Objection to the form.
 4 Q You can answer. You may answer.
 5 A I'm not saying that I've had a number
 6 of people express to me, I'm saying that I've
 7 noticed this idea has been floated around from
 8 time to time.
 9 Q Well, I just want to know when it's
 10 been floated around.
 11 A Specifically I don't have an answer for
 12 you.
 13 Q This is you personally hearing other
 14 people, watching T.V., in what circumstance?
 15 A No, more, you know, my own experience,
 16 you know, social interactions, you know, going
 17 out, and it's like you saying, the economy is bad,
 18 how do you know the economy is bad, you know, it's
 19 just an idea that exists. Like when did you find
 20 out, I don't remember a specific answer, but I've
 21 encountered that idea.
 22 Q Have you ever complained about it
 23 before?
 24 A No.
 25 If I may, I'm not saying that I have

0040

1 David Kengle 40
 2 had experience on a personal level with this, I'm
 3 just saying I've encountered the idea. This is
 4 the first time a situation warranted my reacting
 5 to this.
 6 Q When you encountered the idea, I want
 7 to get as much information as possible how you
 8 encountered the idea. It must have been people
 9 talking.
 10 A Well, I've been -- socially I've been
 11 around people. I don't remember who -- you know,
 12 I've been around gay people, to be honest with
 13 you. I mean, I went to college. I've had gay
 14 people interact with me and other people I'm with
 15 and, you know, gay associates, acquaintances. I
 16 was in an R.A. staff. There were gay people in my
 17 R.A. staff. So it's not like I've never been
 18 around gay people.
 19 Q So somewhere along in these
 20 interactions someone has expressed --
 21 A I've worked with gay people.
 22 Q Have you ever had gay friends?
 23 A Like are my best friends gay? I have a
 24 handful of people that I call friends, but none of
 25 them are gay. But I definitely have had people --

0041

1 David Kengle 41
 2 I worked with R.A. staff, and when you're on an
 3 R.A., it's a very -- you tend to have people
 4 on --
 5 Q Does Rosana have any gay friends?
 6 MR. ZABELL: You have to let him
 7 finish.
 8 A You know, I remember her having people
 9 that she worked with -- she's a little more --
 10 she's worked at her job for a decent number of
 11 years, that the people that she works with she's
 12 very friendly with.
 13 One girl that she's worked with for a
 14 number of years, I think she doesn't work there
 15 anymore, but did work there for a number of years
 16 she's very friendly with, her name was Fran, she
 17 was a lesbian. There was another gentleman, Mike,
 18 another gentleman she worked with who she was very
 19 friendly with who she worked with.
 20 Q You used the phrase earlier sexual
 21 preference. Do you remember that?
 22 A Yes.
 23 Q What does that mean?
 24 A It means your sexual preference. I
 25 mean what does that mean?

0043

1 David Kengle 43
 2 the multiple questions. You may answer.
 3 A It was definitely somebody else because
 4 it was -- I remember it being, how do you feel
 5 about this guy getting strapped, you know, to your
 6 girlfriend. I don't remember exactly which of the
 7 other instructors it was, but it was definitely
 8 not Don.
 9 Q How did that make you feel?
 10 A You know, I can take a joke. I would
 11 -- as I said, my girlfriend is a very beautiful
 12 girl, she gets a lot of attention. It's natural.
 13 Like I never had anybody joke around
 14 with me before, to be honest. If that was the
 15 joke -- there was no complaint if that was the
 16 only thing that happened.
 17 Q Did you mention that when you called
 18 Ray?
 19 A I'm sure I did. I'm pretty good at
 20 giving a whole sweep of a narrative.
 21 Q Did you tell Ray it was somebody other
 22 than Don who made that joke initially?
 23 A I really don't remember what, you know,
 24 -- I don't think he asked. I don't think that it
 25 was -- the story just kind of flowed out. I

0042

1 David Kengle 42
 2 Q Yes.
 3 A It means what your sexual preference
 4 is.
 5 Q You're kind of using the phrase to
 6 define the phrase.
 7 A Because, I mean, what you're asking me
 8 -- you're asking me for a textbook definition.
 9 Q No, I want you to explain it in your
 10 own words what you mean by sexual preference.
 11 A In my own words?
 12 Q Yes.
 13 A It's my basic understanding of the term
 14 that it's what or whom you prefer sexually, hence
 15 the name.
 16 Q Do you believe that being gay is a
 17 choice?
 18 A I don't have -- I really don't know.
 19 You know, that is -- you're asking me something
 20 that is, you know, a question that I can't answer
 21 because I've never experienced it. I never felt
 22 it.
 23 Q Who made the joke about being strapped
 24 to your girlfriend, was that Don or someone else?
 25 MR. ZABELL: Objection to the form of

0044

1 David Kengle 44
 2 probably told it that way, but, I mean, do I
 3 remember verbatim what I said, I probably just
 4 said somebody made a joke. So did he take it that
 5 somebody was Don or somebody other than Don, I
 6 don't know.
 7 Q What else did you say in this
 8 conversation with Ray?
 9 A Pretty much the exact story that I gave
 10 you. Again, you know, that was the story that I
 11 gave him. I told him that I thought it was
 12 inappropriate what I witnessed and what she told
 13 me. I thought it was inappropriate and I used the
 14 metaphor again of what you're paying for, the
 15 experience, you know, what the experience is, and,
 16 you know, there's a certain level of satisfaction
 17 you expected, you know, to be had from this kind
 18 of experience.
 19 It's an exciting thing. It's something
 20 that you think is gonna be a special kind of
 21 experience and you don't expect it to kind of be
 22 deflated with this kind of behavior.
 23 Q Did you tell Ray that Rosana's birthday
 24 had been ruined?
 25 A Well, I mean, it was -- I mean, did I

0045

1 David Kengle 45
 2 say it like that -- I mean, did we go home and
 3 cry, no. I don't know if I said it that
 4 extremely, but I said it was on her birthday, it
 5 was the activity we chose, it was definitely --
 6 you know, the experience was, you know, ruined to
 7 an extent. It was not as good as it should have
 8 been.
 9 Q The experience was ruined or her
 10 birthday was --
 11 A I mean, I'm sure that we didn't harp on
 12 it indefinitely, but it tainted the day. It did.
 13 Q So it tainted the day, but it didn't
 14 ruin it?
 15 A Ruin? I mean, it wasn't like somebody
 16 dying. You know, it wasn't like a plane crash.
 17 When you say the word ruined, I'm not gonna use
 18 that extreme a word just because -- I feel tainted
 19 would be a better word.
 20 Q I'm going to show you what we
 21 previously marked as Plaintiff's Exhibit 3, and if
 22 you don't mind, I'm going to come over to your
 23 side.
 24 Do you recognize this video?
 25 A Yes.

0047

1 David Kengle 47
 2 asked before?
 3 Q What's that?
 4 A The videos they gave you, there's a lot
 5 of footage that overlaps, so you can't give me
 6 certain periods of time and me be able to
 7 distinguish, because the way to distinguish is
 8 when you're dropping out of the plane. There's an
 9 inch short -- I don't remember which one -- which
 10 one they're -- where the video overlaps. So the
 11 way to show me is by showing me who is jumping out
 12 of the plane.
 13 Q We'll talk about that later, but for
 14 now I want you to raise your hand if you see
 15 anything inappropriate happening, and we're going
 16 to stop right there.
 17 All right. We've watched the whole
 18 tape and I see you haven't raised your hand at any
 19 point, is that correct?
 20 A That's right.
 21 Q So we didn't see anything
 22 inappropriate?
 23 A Yeah.
 24 Q Would you like to watch it again?
 25 A No. She was only in the video ten

0046

1 David Kengle 46
 2 Q Am I standing too close to you?
 3 A No.
 4 Q Is this the video of jumping out of a
 5 plane?
 6 A Yes.
 7 Q Is this your video or Rosana's?
 8 A I really don't know, because the only
 9 -- you can't distinguish until before and after.
 10 Q Let's go back to the beginning and
 11 let's see if you can tell.
 12 We've gone to the second marker for
 13 you, and it appears the video begins with you and
 14 someone talking to you.
 15 Is this what you recall being your
 16 video as opposed to Rosana's?
 17 A I really don't remember, to be honest
 18 with you.
 19 Q Well, I'm going to have you watch the
 20 entire video, it's about a minute and a half or
 21 something like that, and I want you to raise your
 22 hand when you see something that you think is
 23 inappropriate.
 24 A Sure.
 25 Can I answer your question that you

0048

1 David Kengle 48
 2 seconds, and she was -- we were in the plane ten,
 3 fifteen minutes. We were definitely in the plane
 4 for longer than two minutes, and when you add the
 5 jump time in it, the footage covers less than ten
 6 percent of the time we were in the plane, and she
 7 was in the video twenty seconds, and I see there's
 8 no --
 9 MR. ANTOLLINO: Motion to strike.
 10 MR. ZABELL: Counsel, to the extent I
 11 can, your motion is denied.
 12 MR. ANTOLLINO: Thanks, Counsel.
 13 Q I'm just looking for an answer. I want
 14 to make it clear you didn't see anything
 15 inappropriate in that video?
 16 A No.
 17 Q I see at some point at the very end you
 18 were asked how your experience was, and what was
 19 your exact words?
 20 MR. ZABELL: Objection to form. You
 21 can answer.
 22 A Awesome.
 23 Q Was it really more than that?
 24 A I'm sorry?
 25 Q Was it something awesome or an

0049

1 David Kengle 49
 2 adjective to describe awesome?
 3 A Fucking awesome I believe it was.
 4 Q Was that true at the time?
 5 A Jumping out of the plane, yeah, it was
 6 pretty fucking awesome.
 7 Q Did they ask you specifically what was
 8 awesome or just how it was?
 9 A They asked me how it was. To me it was
 10 jumping out the plane. That's the question I was
 11 answering.
 12 Q At the time you didn't look upset, did
 13 you?
 14 A No. I probably felt uncomfortable in
 15 the plane, but, I mean, you're jumping out of a
 16 plane and your mind switches gears kind of
 17 quickly. So at that point I'm sure I was just
 18 thinking about the adrenaline rush.
 19 I don't know if you ever experienced an
 20 adrenaline rush, but it kind of takes over what's
 21 going on.
 22 As I said, what really amplified the
 23 situation was -- in my book, was the conversation
 24 we had on the way home. So, I mean, maybe I felt
 25 uncomfortable on the plane and something I took

0050

1 David Kengle 50
 2 notice of and felt a little uncomfortable about,
 3 but it was amplified by the fact that even after
 4 he jumped out the plane, he was still talking
 5 about -- he turned her experience into the Don
 6 Zarda experience. You know, it was all about him.
 7 I remember my guy's name. When I just
 8 heard the guy's name, Duncan, and he had an
 9 accent, I asked where he was from. Other than
 10 that, we had no conversation. He was giving me
 11 instructions, one, two, he was telling me about
 12 where we were, pointing out certain things.
 13 He was very involved in the experience,
 14 that you're here to skydive, and I asked him, just
 15 because I noticed he had an accent, because I was
 16 curious, because I noticed his accent. That was
 17 the only information he gave on himself, and I
 18 don't think --
 19 Q Do you feel like you're defending
 20 yourself in this --
 21 A No, I'm being vindicated.
 22 Q You said something about you asked
 23 Duncan where he was from. At what point was that?
 24 A When I noticed his accent.
 25 Q When was that?

0051

1 David Kengle 51
 2 A In the plane.
 3 Q That was while you were jumping or on
 4 the way out?
 5 A No, as I said, it takes a while for the
 6 plane to get up to whatever altitude. So I was
 7 making conversation.
 8 Q So while you were on the plane?
 9 A I was making conversation, just because
 10 I was curious.
 11 Q And he told you he was from where?
 12 A I think it was Switzerland or
 13 Australian.
 14 Q That's personal information, right?
 15 A Yeah, sure.
 16 Q But that was appropriate for him to
 17 say?
 18 A Well, I asked him.
 19 Q What if he had just told you I'm from
 20 New Zealand, would that have been inappropriate?
 21 A No.
 22 Q Let's look at what's previously been
 23 marked as Exhibit 2, which is Rosana's skydive,
 24 and I'll just let you watch this and --
 25 MR. ZABELL: I'm going to object,

0052

1 David Kengle 52
 2 because I don't think anything was identified
 3 or labeled as Exhibit 2.
 4 MR. ANTOLLINO: Well, the record will
 5 speak for itself.
 6 MR. ZABELL: Records don't speak,
 7 Counselor.
 8 Q I'm just pausing not.
 9 Do you recognize Don and Rosana on that
 10 video?
 11 A Yes.
 12 Q Does that refresh your recollection as
 13 to this being the video that was taken of Rosana's
 14 skydive?
 15 A Yes.
 16 Q We'll go frame by frame, but I want you
 17 to raise your hand when you think that you see
 18 something that's inappropriate. We're going to
 19 start from the beginning again.
 20 A See, that.
 21 Q Let's stop.
 22 So we stopped at one minute and you
 23 actually raised your hand a little bit before that
 24 and we're at like fifty-six seconds and Don has
 25 his finger in his teeth?

0053

1 David Kengle 53
 2 A Right.
 3 Q And you think that's inappropriate?
 4 A Well, when you play it in motion, the
 5 overall --
 6 Q Is that picture inappropriate, just
 7 that picture right now?
 8 A Well, in my opinion, to be completely
 9 honest with you, I don't think you should have
 10 your fingers in your mouth when you have contact
 11 with a human being that you're -- you know, it's
 12 your job to kind of interact with them.
 13 Is that inappropriate in the way I'm
 14 describing? I mean, it adds to it. My opinion is
 15 I don't think he should have his fingers in his
 16 mouth.
 17 Q Is it a sanitary issue or sexual
 18 harassment issue or flirting, or all of the above?
 19 A This particular frame, I mean, it looks
 20 kind of gross that he has his fingers in his
 21 mouth. When you play the next three seconds of
 22 the clip and you see it in motion, it seems
 23 inappropriate in a flirty motion because he's
 24 motioning to her right now.
 25 Q Let's play it.

0055

1 David Kengle 55
 2 Don had his chin right next to your girlfriend's
 3 -- the nape of her neck. Did you see that?
 4 MR. ZABELL: Objection to the form of
 5 the question and the characterization of the
 6 video, and I advise you, Mr. Kengle, that Mr.
 7 Antollino's not under oath, so you're under
 8 no obligation to believe anything he says.
 9 A Okay, I'll --
 10 Q The question is --
 11 A I'll answer the question.
 12 Did I notice his chin being in the
 13 vicinity of her neck?
 14 Q Yes.
 15 A Did I notice him placing his chin on
 16 her neck, no, which is what I witnessed on the
 17 plane.
 18 Q So there's nothing inappropriate about
 19 it being near her neck, it's the placing of the
 20 chin on the neck that's inappropriate?
 21 A It's the context of the contact. You
 22 know, there's contact -- I noticed there was
 23 contact with people, you know, touching hands and,
 24 you know, touching arms. You know, it's the
 25 context of the, you know, contact.

0054

1 David Kengle 54
 2 A See, there.
 3 Q So in that three seconds or actually
 4 five seconds between fifty-six seconds and 101, he
 5 looked at Rosana, he rolled his eyes and he went
 6 with his finger like this and you thought that was
 7 being flirtatious?
 8 A In the context of the situation, based
 9 on what I witnessed and, you know, I know, being
 10 that I was there, and I understand the context of
 11 the situation, yes, because had I -- if I was a
 12 person that was not there and never seen this,
 13 would I understand that to be inappropriate, maybe
 14 not, because maybe it's something you can pass
 15 over. But being I was there and I understand the
 16 situation and I understand how that added to
 17 everything I was witnessing, yes, I do think it
 18 was inappropriate.
 19 Q Let's keep going.
 20 So you didn't raise your hand for any
 21 of the other video. So I take from that you
 22 didn't see anything else that you thought was
 23 inappropriate?
 24 A No.
 25 Q There were a few times, though, where

0056

1 David Kengle 56
 2 I can shake your hand right now or I
 3 could grab your thigh right now, and two different
 4 forms of contact are not equal, they have
 5 different meanings and have different forms of
 6 contact. So I don't understand what you're asking
 7 me.
 8 Q We're talking about the chin being on
 9 your girlfriend's neck. Did you see in that video
 10 Don's chin next to the nape of her neck, yes or
 11 no?
 12 MR. ZABELL: Objection. Asked and
 13 answered.
 14 A I noticed it being in the vicinity of
 15 my girlfriend's neck.
 16 Q What did she say at the very end of the
 17 event when asked how was it?
 18 A Verbatim, I kind of put it out of my
 19 head.
 20 Q So she was asked, pretty intense, ha.
 21 Did you hear that?
 22 A Yes.
 23 Q What was her response?
 24 A It was awesome.
 25 Q So she didn't ask, how was it, correct?

0057

1 David Kengle 57
 2 A She didn't ask, how was it.
 3 Q Someone didn't ask her how was it,
 4 correct?
 5 A Right, they asked her if it was
 6 intense.
 7 Q And her response was spontaneous, it
 8 was awesome?
 9 A Yes.
 10 Q Did she say anything about the touching
 11 there?
 12 A No.
 13 Q At the very end of the frame she moves
 14 her face in close to Mr. Zarda's to take a
 15 picture, right?
 16 A Yes.
 17 Q Did anyone force her to do that?
 18 A No.
 19 Q You went in and took a picture too?
 20 A Sure.
 21 Q Do you still have that?
 22 A Well, I mean, it's whatever is included
 23 with the DVD. I think they're in the -- on the
 24 same disk. We don't have anything else other than
 25 the DVD.

0058

1 David Kengle 58
 2 Q So the DVD came with pictures as well
 3 as a video?
 4 A Yeah, I think so. I think there's two
 5 disks, actually. When you get each case, it has a
 6 set of stills and a DVD.
 7 Q You still have those?
 8 A Correct.
 9 Q I'm going to send you a copy of this
 10 transcript and I'm also going to send you another
 11 subpoena with an empty disk.
 12 Would you mind copying those pictures
 13 onto the disk, because we never got those
 14 pictures?
 15 A If I have it, yeah.
 16 Q You said you have it.
 17 A Yeah, I'm saying --
 18 Q You're not going to throw them away
 19 when you get home, are you?
 20 A No.
 21 MR. ANTOLLINO: I just have a few other
 22 questions.
 23 Q Is Rosana claustrophobic a little?
 24 A Well, I mean, are you asking like in a
 25 clinical sense or is it like --

0059

1 David Kengle 59
 2 Q In any way.
 3 A People use terms like that to describe,
 4 you know, everyday quirks. So like in a quirky
 5 sense, she doesn't like to be boxed in sometimes,
 6 but she's not claustrophobic in that we can sleep
 7 with the bedroom door closed and she doesn't have
 8 breathing -- she doesn't hyperventilate.
 9 MR. ANTOLLINO: Let me go over my notes
 10 and speak to my client, and I think we're
 11 almost done. We'll just take a break now,
 12 okay.
 13 (Whereupon, a short break was taken.)
 14 Q Do you belong to any organizations?
 15 A Do I belong to any organizations?
 16 Q Yes.
 17 A I mean, off the top of my head, you
 18 know, I'm a member of Barnes and Noble. I don't
 19 know what that means.
 20 Q Do you belong to any political
 21 organizations?
 22 A No.
 23 Q Are you a member of a church?
 24 A Am I a member, no. My family is a
 25 member, but --

0060

1 David Kengle 60
 2 Q So you don't practice any religion?
 3 A I read religious texts, if that's what
 4 you're asking, but I don't pray every Sunday
 5 morning, if that's what you mean.
 6 Q What religious texts do you read?
 7 A I've read Nome (phonetics), ancient
 8 literature and that kind -- I don't really do it
 9 for a religious perspective, but history.
 10 Q Do you have an opinion as to whether
 11 homosexuality is a sin?
 12 A No, I don't really get into all the
 13 sinning and like that. It's not my -- I don't
 14 really have an opinion on that. I don't really
 15 believe in the doctrine of, you know, the church
 16 in that sense that like, you know, what's a sin,
 17 what's not a sin.
 18 I'm more of a historian when it comes
 19 to religion. I just look at the history of it,
 20 and that's all that's of importance.
 21 Q When Rosana said Don said, you don't
 22 have to worry about me because I'm gay, did you
 23 interpret that as the possibility that Don was
 24 apologizing for the jokes for being strapped to
 25 another guy?

0061

1 David Kengle 61
 2 A Well, as I said the first time you
 3 asked me this, I believe that he was covering his
 4 bases in the fact that he thought there was
 5 something inappropriate in the plane. It could
 6 have been the jokes or the contacts or a
 7 combination of two, but he was aware there was
 8 something inappropriate and he felt it was
 9 justified because he was gay. That's what I get.
 10 Q Do you understand what is inappropriate
 11 in terms of what an instructor is to do to strap
 12 in or in terms of how to maintain proximity?
 13 A I understand.
 14 Q Do you understand anything about what's
 15 appropriate in terms of a tandem instructor in
 16 terms of how to strap a person in and how to
 17 maintain proximity?
 18 A Do I understand how to strap persons in
 19 in terms of proximity? I don't have an
 20 understanding of the procedures they're trained
 21 in, as far as attaching gear or a harnessing or
 22 what their physical actions are supposed to be in
 23 terms of protocol, no, I don't have an
 24 understanding of that.
 25 I do have an understanding of proper

0062

1 David Kengle 62
 2 behavior in, you know, an ethical sense of any
 3 situation as far as -- you know, I mean, if
 4 somebody kisses my girlfriend, is it because I
 5 don't have an understanding of skydiving protocol
 6 that's not inappropriate or grabbed her backside.
 7 Like I said before, I have an understanding of
 8 what I believe is inappropriate for any situation
 9 in terms of that.
 10 Q Is there any allegation that my client
 11 kissed your girlfriend?
 12 A No. I was using a metaphor.
 13 Q Is there any allegation that my client
 14 touched your girlfriend's backside?
 15 A No.
 16 Q For all you know, it could be a
 17 procedure for instructors to remain attached by
 18 the hands to the client's hips, for all you know,
 19 correct?
 20 A For all I know, but from what I
 21 witnessed on the plane, the other instructors,
 22 nobody else was doing it except him. So, I mean,
 23 am I inclined to believe that he was the only one
 24 following the correct procedure or am I inclined
 25 to believe everybody else was doing it the right

0063

1 David Kengle 63
 2 way and he was not doing it the correct way?
 3 Q How many instructors were on the plane?
 4 A Off the top of my head, at least five,
 5 six, seven.
 6 Q You don't know how much experience any
 7 of those instructors had, correct?
 8 A Well, I remember asking an instructor,
 9 I don't think it was my instructor, I think it was
 10 while we were waiting outside for our jump and we
 11 had time to kill, I believe I was asking somebody
 12 that worked there how much experience you had to
 13 have in order to be an instructor or even just
 14 jump without a tandem. So they gave me the
 15 answer. You know, ten jumps before you can jump
 16 alone and ten thousand hours to be an instructor.
 17 Q So you don't know how many hours any of
 18 those instructors had, correct?
 19 A No.
 20 Q You don't know how many jumps any of
 21 those instructors had done, correct?
 22 A Right, including your client, no.
 23 Q So you don't know if the other
 24 instructors you saw other than my client were
 25 acting appropriately or not according to

0064

1 David Kengle 64
 2 procedures for tandem instructors, correct?
 3 A I'm sorry?
 4 MR. ANTOLLINO: Could you read it back.
 5 (Whereupon, the requested section was
 6 read back by this reporter.)
 7 A I feel like you're asking me do I know
 8 whether or not my instructor not touching me by
 9 the hips or the other instructors not instructing
 10 him -- not putting their clips on their students
 11 -- I feel like you're asking me whether or not
 12 that was correct protocol. I don't know if --
 13 Q I asked you a question and she read it
 14 back.
 15 A I don't understand your question.
 16 Q Doesn't matter what the meaning is.
 17 A I feel its meaning is not -- the
 18 question is not clear.
 19 Q You don't know if any of those four
 20 instructors other than my client followed proper
 21 procedure at all?
 22 MR. ZABELL: Objection to the question.
 23 Q You can answer.
 24 A From what I experienced and what I saw,
 25 based on the video -- they were moving in sync

0065

1 David Kengle 65
 2 with what I saw in the video. They were following
 3 the procedures outlined in the video.
 4 Did I know anything more than that, no.
 5 In the video I watched, I didn't see anything
 6 necessarily about it's necessary to hold hands on
 7 her hip, and the -- put your chin on the neck and
 8 touch your lips and roll it around your tongue. I
 9 didn't see any of that on the video.
 10 Q We're talking about the chin and hips,
 11 and you don't know if that was according to
 12 protocol or not, correct?
 13 A No.
 14 Q And you don't know whether the hands on
 15 the hips were according to protocol or not, I
 16 correct?
 17 A No.
 18 MR. ANTOLLINO: No further questions.
 19 MR. ZABELL: I have a few questions.
 20 EXAMINATION BY SAUL D. ZABELL, ESQ.:
 21 Q Did your diving instructor rest his
 22 chin on your shoulder?
 23 A No.
 24 Q Did you happen to observe Mr. Zarda
 25 resting his chin on Ms. Orellana's shoulder?

0066

1 David Kengle 66
 2 A Yes.
 3 Q Did it look as if he was nuzzling her?
 4 A I don't know about -- I mean, nuzzling
 5 I think implies movement. I don't think that
 6 there was movement. I think it was, you know,
 7 resting more like I'm kind of doing right now in a
 8 more familiar way. It was more than just leaning
 9 over to whisper instructions or something like
 10 that. I don't even think he was talking. I think
 11 it was just a very casual cavalier movement to
 12 kind of rest your chin on my girlfriend's
 13 shoulder. I don't think I would call it nuzzling,
 14 I think I would just call it resting.
 15 Q Did you happen to recall any other
 16 instructors resting their chin on the shoulder of
 17 their jumping partner?
 18 A No.
 19 Q Did you happen to notice any of the
 20 other instructors pulling on their lips and
 21 motioning towards their dive partners?
 22 A No.
 23 Q Did your instructor rub his lips and
 24 then motion to you?
 25 A Not that I recall, no.

0067

1 David Kengle 67
 2 Q I think you were trying to say it
 3 before, before you were rudely interrupted, that
 4 the video only showed a fraction of the actual
 5 time that you were on the plane.
 6 Is that correct?
 7 A Correct.
 8 Q And it only showed a fraction of the
 9 time that you were descending from the plane, is
 10 that correct?
 11 A Correct.
 12 Q Were there acts that you observed that
 13 were inappropriate that were not on the video?
 14 A Yes.
 15 Q So there was much more contact than
 16 just the brief part of the video that you were
 17 shown, is that correct?
 18 A Yes.
 19 Q Did you complain about Mr. Zarda's
 20 behavior?
 21 A Yes.
 22 Q What exactly did you complain about?
 23 A I complained that -- I mean, it's like
 24 I said, the experience that, you know, we had
 25 planned, that we had thought about doing, it was

0068

1 David Kengle 68
 2 supposed to be a special kind of experience. It's
 3 not something you do everyday. I haven't gone
 4 skydiving since, I'd never gone before.
 5 This was -- we considered this to be a
 6 special kind of thing and a thing we expected to
 7 be an expense, so we expected a certain level of
 8 quality with the experience, and I think
 9 inappropriate behavior affected the quality of the
 10 experience.
 11 I also understand that, you know, it's
 12 not to say that, you know, if the experience was
 13 an hour and, you know, fifty-eight minutes of it
 14 are -- there's nothing inappropriate, the two
 15 minutes that are inappropriate are important, and
 16 I feel like me getting subpoenaed here and me
 17 having to go through all this when I'm being asked
 18 to defend myself, I feel like the fact that I have
 19 to explain all this, it seems very common sense to
 20 me this is an inappropriate thing, and this is
 21 something I wouldn't think twice about complaining
 22 about a second time.
 23 Q Did you complain because of Mr. Zarda's
 24 sexual orientation?
 25 A No.

0069

1 David Kengle 69
 2 Q Did Mr. Zarda's sexual orientation have
 3 anything to do with your complaint?
 4 A No, because -- to be honest, I don't
 5 know his sexual orientation. I don't anything
 6 about him. I know what he said, but how do I
 7 know? People can say whatever they want.
 8 The fact of the matter is what I
 9 witnessed didn't seem like -- I didn't think he
 10 was gay, homosexual, whatever term you want to
 11 use. I didn't think that from the acts I saw and
 12 the fact that he had to re-enforce it almost like
 13 a defense on his way going down just shows this is
 14 something that shouldn't have been a topic of
 15 conversation. It's something that shouldn't have
 16 been referenced. There should have been no call
 17 for it, in my opinion, when you're jumping out of
 18 a plane for nine hundred dollars and trying to
 19 feel as comfortable as possible.
 20 Q What do you mean when you say the
 21 behavior he was exhibiting did not seem like --
 22 A Again, I thought he was being very
 23 flirty, and usually people that are flirty are
 24 interested in the person they're flirting with.
 25 Q Did you get a sense from your

0070

1 David Kengle 70
 2 observations that he was interested in Ms.
 3 Orellana?
 4 A Yeah, whether for -- I mean, yes. I
 5 mean, I don't know that he was interested in the
 6 extent of like, you know, I want to try to get her
 7 number, you know, when her boyfriend -- when he's
 8 not looking, but I think he was interested in
 9 engaging in flirtatious behavior, yes.
 10 MR. ZABELL: Thank you. I have no
 11 further questions.
 12 MR. ANTOLLINO: I have at least one
 13 further question.
 14 Part of your complaint about Mr. Zarda
 15 was that he told Ms. Orellana that he was
 16 gay, correct?
 17 THE WITNESS: Say it again?
 18 (Whereupon, the requested section was
 19 read back.)
 20 THE WITNESS: Part of my complaint is
 21 that you're talking to my girlfriend about
 22 your sexual preference, sex life, your -- the
 23 fact that sex is a topic of conversation when
 24 you're talking to another person's girlfriend
 25 or significant other is an issue, yes.

0071

1 David Kengle 71
 2 MR. ANTOLLINO: No further questions.
 3 I'll be sending you a copy of your
 4 transcript with the exhibits and a subpoena
 5 for the pictures. So just get those for me.
 6 Thank you.
 7 (Whereupon, the examination of
 8 this witness was concluded at 4:55 P.M.)
 9 * * * * *
 10 STATE OF NEW YORK)
 11)ss.:
 12 COUNTY OF)
 13 I have read the foregoing record of my
 14 testimony taken at the time and place noted in the
 15 heading hereof and I do hereby acknowledge it to
 16 be a true and correct transcript of same.
 17
 18
 19 DAVID KENGLE
 20 Subscribed and sworn to
 21 before me on this ____ day
 22 of _____, 2011.
 23
 24
 25 NOTARY PUBLIC

0072

1 72
 2 I N D E X
 3
 4 EXAMINATION OF BY PAGE
 5 David Kengle Mr. Antollino 4-65
 6 Mr. Zabell 65-70
 7
 8 E X H I B I T S
 9 PLAINTIFF'S DESCRIPTION PAGE
 10 4 Release 14
 11
 12 INFORMATION TO BE SUPPLIED
 13 DESCRIPTION PAGE
 14 Pictures and copy of DVD 58
 15
 16
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0073

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CERTIFICATION

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I, Deborah Thier, a Notary Public

of the State of New York do hereby certify:

That the testimony in the within

proceeding was held before me at the aforesaid

time and place. That said witness was duly sworn

before the commencement of the testimony, and that

the testimony was taken stenographically by me,

then transcribed under my supervision, and that

the within transcript is a true record of the

testimony of said witness.

I further certify that I am not related

to any of the parties to this action by blood or

marriage, that I am not interested directly or

indirectly in the matter in controversy, nor am I

in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set

my hand this 28th day of November, 2011.

DEBORAH THIER

0001

1
 2 UNITED STATES DISTRICT COURT
 3 EASTERN DISTRICT OF NEW YORK
 4 -----X
 5 DONALD ZARDA,

6 Plaintiff

7 -against- CASE NO.:
 8 10 civ 4334
 9 (JFB) (ARL)

10 ALTITUDE EXPRESS, INC. d/b/a SKY DIVE
 11 L.I. and RAY MAYNARD,

12 Defendants

13 -----X
 14 4875 Sunrise Highway
 15 Bohemia, New York
 16 December 21, 2011
 17 1:00 P.M.

18 EXAMINATION BEFORE TRIAL of LAUREN CALLANAN, a

19 Non-Party Witness, taken by the attorney for the

20 Plaintiff pursuant to Subpoena and held at the above

21 stated time and place before Joseph J. Pontillo, a

22 Notary Public of the State of New York.

23 -----

24

25

0002

1

2 A P P E A R A N C E S:

3

4

5

6 GREGORY ANTOLLINO, ESQ.
 7 Attorney for the Plaintiff
 8 18-20 West 21st Street, Suite 802
 9 New York, New York 10010

10

11

12 ZABELL & ASSOCIATES
 13 Attorneys for the Defendants
 14 4875 Sunrise Highway
 15 Bohemia, New York 11716

16 BY: SAUL ZABELL, ESQ.

17

18

19

20

21 ALSO PRESENT: GERT DEKEGEL

22

23

24

25

0003

1 LAUREN CALLANAN,

2 The witness herein, having first been duly sworn

3 by Joseph J. Pontillo, a Notary Public in and for the

4 State of New York, was examined and testified as

5 follows:

6 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:

7 Q State your name for the record, please.

8 A Lauren Callanan.

9 Q What is your address?

10 MR. ZABELL: Your business address.

11 A My business address is 525 Jan Way,

12 Calverton, New York 11933.

13 Q You're here pursuant to a Subpoena, is that

14 correct?

15 A That is correct.

16 Q Did you receive that Subpoena in the mail?

17 A I did not.

18 Q You did not. Is your address P.O. Box 353

19 Yaphank, New York?

20 A Yes.

21 Q You received the Subpoena?

22 A I have not been to my post office box

23 probably since the second week of November.

24 MR. ANTOLLINO: Let's mark this as

25 Callanan Exhibit 1.

0004

1 LAUREN CALLANAN

2 (Whereupon, a Subpoena was marked as

3 Callanan Exhibit 1 for identification, as of

4 this date.)

5 Q Have you ever seen this before?

6 A I have not.

7 Q Why do you have a post office box?

8 A Because I need a place to get my mail.

9 Q Do you get mail anyplace else?

10 A Sometimes at work. Most of my mail is

11 electronic.

12 Q You have not been to that post office box in

13 how long?

14 A Since my birthday, which was November 13th.

15 Q You have never seen that Subpoena before?

16 A I have not.

17 Q Well, you're here today at 1:00, which is a

18 date that Mr. Zabell and I agreed upon. The Subpoena

19 requests certain information that you provide. I'd

20 like you to read the production box to yourself and

21 tell me when you're finished.

22 MR. ZABELL: You may do so.

23 A I have finished, yes.

24 Q Would it be fair to say that you have not

25 searched for any documents such as those that are referred

0005

1 LAUREN CALLANAN
2 to in the production box?
3 A I have not.
4 MR. ANTOLLINO: So counsel, I'll put it
5 on the record. We don't have to argue about
6 it now.
7 You gave me Lauren Callanan's P.O. Box
8 in the list of employees. I couldn't serve
9 her with a Subpoena. The witness has never
10 seen the Subpoena. I sent it to you. I told
11 you that I didn't have her physical address.
12 I hoped that mailing it would be
13 acceptable. The witness has not responded to
14 the Subpoena so we don't have an answer as
15 to whether or not there is anything.
16 MR. ZABELL: That is actually incorrect.
17 You could have asked the deponent if she has
18 in her personal possession any documents
19 that would have matched or have been
20 responsive to those requested at which
21 point she would have told you no, she does
22 not. You did not ask that question, so you
23 don't know the answer to that question.
24 MR. ANTOLLINO: She has not done a
25 search for them. Therefore, the answer is

0007

1 LAUREN CALLANAN
2 A No.
3 Q Are you taking any medications or suffering
4 from any illness that would prevent you from
5 understanding my questions?
6 A I am not.
7 Q If you don't understand any of my questions,
8 will you let me know?
9 A Yes.
10 Q I don't think we'll be here for too long,
11 but if you need a break will you let me know?
12 A Yes, I will.
13 Q Did you prepare for this deposition?
14 A I met with Mr. Zabell.
15 Q When was that?
16 A Earlier today.
17 Q At what time?
18 A I got here about twelve-twenty.
19 Q Did you look at any documents?
20 A I saw one document, yes.
21 Q What document?
22 A Regarding a letter that my name was on that I
23 had written.
24 Q Would that be the document that is part of
25 Exhibit 1?

0006

1 LAUREN CALLANAN
2 unclear. We'll deal with that at a later
3 date.
4 Q Have you ever testified under oath before?
5 A For a traffic violation multiple years ago.
6 Q Anything else?
7 A No.
8 Q Do you understand what it means to be under
9 oath?
10 A Yes.
11 Q Do you understand that you are sworn to tell
12 the truth?
13 A Yes.
14 Q Do you understand that even though we are in
15 an informal setting here in this office, your answers
16 have the same force and effect as if you were in a
17 courtroom with a judge and jury?
18 A Yes.
19 Q Do you understand that any false testimony
20 could be a basis for a perjury charge?
21 A Yes.
22 Q Do you understand what perjury is?
23 A Yes.
24 Q Is there anything that would prevent you from
25 giving me your full attention today?

0008

1 LAUREN CALLANAN
2 A That is the document, yes.
3 MR. ANTOLLINO: Why not mark this as
4 Callanan 1-A, since it is part of Exhibit 1.
5 (Whereupon, a letter was marked as
6 Callanan Exhibit 1-A for identification, as
7 of this date.)
8 Q When did you retain Mr. Zabell.
9 A Earlier today.
10 Q Was it a suggestion made by him that he would
11 represent you?
12 MR. ZABELL: Objection. I'm going to
13 advise you that if answering that question
14 requires you to reveal the contents of
15 conversations that you had between yourself
16 and myself, you may simply say, I can't
17 answer that question. If you can answer the
18 question without revealing the content of
19 conversations between yourself and myself,
20 you may do so.
21 A I apologize. The question is?
22 * Q Did Mr. Zabell tell you that he was going to
23 represent you or did you ask him to represent you?
24 A I apologize, I can't answer the question.
25 MR. ANTOLLINO: Mark it for a ruling.

0009

1 LAUREN CALLANAN

2 Q Did Ray talk to you about this deposition?

3 A All I was told was that there was a

4 deposition going on. I made a call.

5 Q Who told that you?

6 A Ray told me that.

7 Q Did Ray tell you anything about the case?

8 A No, not anything specific. Just basically

9 that the case was going on.

10 Q Did you speak to Mr. Zabell before today?

11 A Before today I spoke with him regarding --

12 MR. ZABELL: You can only confirm that

13 you spoke to me. You cannot disclose the

14 contents of our conversation.

15 Q You can answer.

16 A Yes.

17 Q How many times?

18 A Once.

19 Q When was that?

20 A That was, I believe, on Friday. I believe on

21 Friday. I apologize. Was it Monday? I don't recall.

22 Either Monday or Friday regarding a deposition today at

23 one p.m.

24 Q Within the last week or so?

25 A Yes, within the past week.

0010

1 LAUREN CALLANAN

2 Q Anytime before that?

3 A No.

4 Q The time that you spoke to him last Friday or

5 Monday, whenever it was, was before you retained Mr.

6 Zabell this morning, correct? I note you're looking at

7 your lawyer.

8 A I apologize. Can you repeat the question.

9 MR. ANTOLLINO: Can you read it back.

10 (Whereupon, the above referred to

11 question was read back.)

12 A When I spoke to him within the past week,

13 yes, that was before I retained him this morning.

14 Q Who dialed the number? Was that Mr. Zabell

15 that called you or was it you that called Mr. Zabell?

16 MR. ZABELL: Objection to the form of

17 the multiple questions. You may pick one and

18 answer.

19 A I dialed the phone and called the office.

20 Q You dialed the phone from where?

21 A On my cell phone. I called the office.

22 Q You called this office or Sky Dive Long

23 Island?

24 A I called this office.

25 Q Why did you call this office?

0011

1 LAUREN CALLANAN

2 A Because I received a message to call the

3 office.

4 Q Who did you receive the message from?

5 A I don't recall. Actually, I do believe I

6 received a message from Ray to call the office.

7 Q What did Ray say in the message, simply to

8 call the office or something else?

9 A To call the office regarding the deposition.

10 Q Was anything else said?

11 A No.

12 Q When you called the office, did you speak to

13 Mr. Zabell?

14 A I did.

15 * Q What did you say to him?

16 MR. ZABELL: Objection. The same

17 direction I gave you before regarding

18 communications between yourself and myself.

19 A I cannot answer the question.

20 MR. ANTOLLINO: Mark it for a ruling

21 since she said she retained you this morning.

22 Q Did you do any search for documents in

23 connection with this lawsuit?

24 MR. ZABELL: Objection to the form. You

25 may answer.

0012

1 LAUREN CALLANAN

2 A I previously did gather information, yes.

3 Q When was that?

4 A That was over the winter last year.

5 Q How did you gather information?

6 A I searched e-mails and documents.

7 Q How did you search e-mails?

8 A I believe by doing a general search.

9 Q How did you do a general search?

10 A I went into the e-mails and I searched Don or

11 Zarda.

12 Q And.

13 A To see if any correspondences populated.

14 Q What did you come up with?

15 A I don't recall specific documents off the top

16 of my head.

17 Q You said you searched documents, how did you

18 search documents?

19 A I searched documents in terms of a legal

20 waiver that was written.

21 Q Anything else?

22 A Also other legal waivers.

23 Q When was that?

24 A Last winter.

25 Q What other documents did you search for?

0013

1 LAUREN CALLANAN

2 A I can't remember specific documents?

3 Q On what computer did you search for the

4 e-mails?

5 A One of the computers at Altitude Express.

6 Q Did you search any of the other computers at

7 Altitude Express?

8 A We have multiple computers. I'm not aware of

9 which computer I used to perform any search.

10 Q Do you have a server?

11 MR. ZABELL: Objection to the form. You

12 may answer?

13 A We currently have a server. We did not

14 previously have a server.

15 Q In order to do a search for e-mails, a

16 comprehensive search for e-mails, you would have to go

17 to each individual computer before you had the server.

18 Is that a fair statement?

19 MR. ZABELL: Objection to the form of

20 the question. You may answer.

21 A I cannot confirm whether I went to each

22 individual station to perform any type of comprehensive

23 search. Therefore, I can't say whether I performed a

24 comprehensive search or not.

25 Q So, you don't remember the particular

0014

1 LAUREN CALLANAN

2 computer you looked on, correct?

3 A Correct. It may have been multiple

4 computers.

5 Q Wait a minute. Before you said it was one

6 computer. Now, you're saying it was multiple computers

7 perhaps.

8 MR. ZABELL: Objection to the form. To

9 the extent you can, you may answer.

10 A I'm saying, I do not recall which computer I

11 used. I did not say it was a single computer that I

12 used to perform the search. I may have used multiple

13 computers to perform the search. I use multiple

14 computers on a daily basis.

15 Q How many computers are there in total?

16 MR. ANTOLLINO: Objection to the form of

17 the multiple question. You may pick one and

18 answer.

19 A Last year there were four computers in my

20 office or in the manifest office, the office which I

21 work in.

22 Q The computer or computers that you searched

23 were in the manifest office alone, correct?

24 A Correct.

25 Q You didn't search anything on Ray's computer,

0015

1 LAUREN CALLANAN

2 correct?

3 A Not that I recall, no.

4 Q Have you ever used Ray's personal computer?

5 A I have previously, yes. It's not his

6 personal multiple computer. It's a business computer.

7 Q What do you mean by that? Is it one of the

8 four in the manifest room or a different one

9 altogether?

10 A A different computer.

11 Q Do you have any document retention policy at

12 Sky Dive Long Island?

13 A Document retention in what respect?

14 Q For how long do you keep documents?

15 MR. ZABELL: Objection to the form. You

16 may answer.

17 A It depends on the document.

18 Q What is the longest you would keep a

19 document?

20 MR. ZABELL: Objection to the form. You

21 may answer.

22 A There is no time line that we have set aside

23 for a particular document. It depends on the document.

24 Q Well, I guess -- you say it's depending on the

25 document. Is it just a document by document basis or

0016

1 LAUREN CALLANAN

2 do you have a category of documents that you keep for

3 longer than others?

4 MR. ZABELL: Objection to the form of

5 the multiple questions. You may pick a

6 question and answer.

7 A It depends on the actual document at hand,

8 whether we are going to keep it for a length of time or

9 not. A general e-mail, I may discard it. If it's a

10 legal waiver, I would keep it on file.

11 Q How long would you keep a legal waiver on

12 file?

13 A I would never destroy a legal waiver.

14 Q How about employee time and wage documents?

15 MR. ZABELL: Objection to the form. You

16 may answer.

17 A Everything is in digital format and

18 automatically stored.

19 Q Forever?

20 A To my knowledge, I cannot tell you how long

21 it is stored. I would imagine it being stored with the

22 actual payroll company.

23 Q What is your title at Sky Dive Long Island?

24 MR. ZABELL: Objection to the form of

25 the multiple question. You may pick a

0017

1 LAUREN CALLANAN
2 question and answer it.
3 A I'm the office manager at Altitude Express.
4 Q Can you describe the chain of command at Sky
5 Dive Long Island?
6 A You have Ray, the owner and president of the
7 company. You have Rich Winstock, our safety and
8 training advisor. Myself in the office. Multiple
9 instructors, vidiographers, packers and grounds crew,
10 that all work together on the common grounds.
11 Q Anyone else in the office?
12 A Currently or at that time?
13 Q Well, start with at that time.
14 A On a daily basis there may have been two
15 other girls present in the office.
16 Q Who are they?
17 A Who, the manifest workers?
18 Q Yes.
19 A Employees, office employees.
20 Q What are their names?
21 A One is Megan Ayers and the other is Alison
22 Rodriguez.
23 Q Are they still working at Sky Dive Long
24 Island?
25 A The business is currently closed for the

0019

1 LAUREN CALLANAN
2 A A bachelor degree.
3 Q In what?
4 A Social sciences.
5 Q When did you graduate?
6 A I graduated in January of 2010.
7 Q From what institution?
8 A Dowling College.
9 Q Where is that?
10 A There is a campus in Oakdale and a Campus in
11 Brookhaven.
12 Q Are they both on Long Island?
13 A Correct.
14 Q After that what did you do?
15 MR. ZABELL: Objection to the form of
16 the question. Did you throw your mortar
17 board in the air, did you have a drink.
18 Q After you graduated did you obtain any
19 employment?
20 A I remained employed at my current employer.
21 Q What was that?
22 A Altitude Express.
23 Q Were you working at Altitude Express while
24 you were in college?
25 A Correct.

0018

1 LAUREN CALLANAN
2 winter, so no.
3 Q Are they expected to come back in the summer?
4 A I do not believe that the hiring has been
5 done for next year.
6 Q Is there any reason, that you know of, why
7 Megan or Alison would not be hired next year?
8 A No.
9 Q Do you have a year long job there?
10 MR. ZABELL: Objection to the form. You
11 may answer.
12 A My main employment is during the spring,
13 summer and fall months. Now, during the winter, I'm
14 sometimes in and out. But, I'm not employed full-time.
15 Q Do you collect a part-time salary during the
16 winter or a full-time salary?
17 MR. ANTOLLINO: Objection to the form of
18 the multiple question. Objection to the form
19 of the question. You may answer.
20 A I do not collect a salary during the winter.
21 Q What is your training and experience?
22 MR. ZABELL: Objection to the form.
23 Training and experience in what?
24 MR. ANTOLLINO: Withdrawn.
25 Q What is your highest level of education?

0020

1 LAUREN CALLANAN
2 Q Have you worked for any company, other than
3 Altitude Express, in between the time you graduated and
4 the present?
5 A In between the time I graduated, yes.
6 Q Where?
7 A I worked at an oil company during the winter.
8 Q Other than that?
9 A No.
10 Q When did you start working at Altitude
11 Express?
12 A In June or July of 2005.
13 Q How did you get the job?
14 A I moved out to Long Island with my
15 ex-boyfriend. Then I asked if they needed help in the
16 office.
17 Q How did you get in contact with Sky Dive Long
18 Island?
19 A My boyfriend was an instructor at the time.
20 Q Who is that?
21 A His name was Russ Smith.
22 Q Where were you working before that?
23 A Sky's the Limit.
24 Q Where is that?
25 A It's currently in Stroudsburg, Pennsylvania.

0021

1 LAUREN CALLANAN

2 Q How long had you been working there?

3 A From 2003, to the best of my knowledge.

4 Q From 2003 to 2004 or 2005?

5 A Correct, 2003 to 2005.

6 Q Have you ever worked in any other drop zones?

7 A No.

8 Q What is your training in skydiving, if any?

9 A Pertaining to?

10 Q Pertaining to any aspect of the actual

11 activities?

12 A Formal training, it depends on what you're

13 asking, how to answer the question.

14 Q Well, have you ever done a tandem?

15 A Yes, I have.

16 Q How many?

17 A I have multiple tandems.

18 Q More than ten?

19 A Yes.

20 Q More than a hundred?

21 A No.

22 Q More than fifty?

23 A I do believe so. I can't guarantee the exact

24 number.

25 Q In the range of up to fifty, is that fair?

0022

1 LAUREN CALLANAN

2 A That is fair.

3 Q What about solo jumps?

4 A Yes.

5 Q How many?

6 A Up to three-hundred.

7 Q You have done fifty tandems, approximately.

8 I'm not holding you to that.

9 A I can't say that I have done fifty. I have

10 done more than one, multiple tandems, yes.

11 Q Were you the instructor for any of the

12 tandems?

13 A No.

14 Q The solo jumps about three-hundred.

15 A Up to.

16 Q Up to three-hundred?

17 A Yes.

18 Q Have you received any training to be a tandem

19 instructor?

20 A I have not.

21 Q Have you ever received any other type of

22 training to do anything other than go on fun jumps or

23 be the tandem passenger in skydiving?

24 A I'm a USPA coach.

25 Q What is that?

0023

1 LAUREN CALLANAN

2 A A coach could teach new jumpers different

3 functions of a skydive, under the direct supervision of

4 a safety training advisor or a coach examiner.

5 Q So, a safety training advisor or a coach

6 examiner, who at Sky Dive Long Island would fit that

7 category, if anyone?

8 A Either Ray Maynard or Rich Winstock.

9 Q So, you can do a tandem with a passenger?

10 A No, I did not say I could do a tandem.

11 Q I'm just asking for a clarification.

12 A I have never received any tandem training to

13 become an instructor or instruct, for that matter.

14 Q What is it that you can do? Can you describe

15 that in a conversational way. What is it that you can

16 do under the supervision of Ray or Rich at the drop

17 zone?

18 MR. ZABELL: Objection to the form.

19 A I can perform the functions of a USPA Coach.

20 Q What is it that you do as a USPA Coach, in

21 laymen terms?

22 A I could basically take a student that

23 graduated the AFP program and take them on a coached

24 jump, training them on different aspects of the

25 skydive.

0024

1 LAUREN CALLANAN

2 Q But not to tandem?

3 A No.

4 Q If you did that would you both be solo

5 jumpers?

6 A Correct.

7 Q You'd be giving the person instructions, do

8 this next, do that next, look out there, follow certain

9 procedures?

10 A Yes, follow certain guidelines.

11 Q Okay. When did you meet Don?

12 A In 2009, I believe.

13 Q Under what circumstances?

14 A Don had been hired back by Ray for the 2009

15 season.

16 Q Alright. Did Ray say anything about Don

17 before Don arrived on the grounds of Sky Dive Long

18 Island?

19 A I can't remember anything specific.

20 Q Did anyone say anything about Don?

21 A Other than that he was an employee, I can't

22 remember anything specific said.

23 Q When you say, a former employee, was anything

24 said about the ending of the relationship that was

25 previous to 2009?

0025

1 LAUREN CALLANAN

2 A I don't remember any discussions verbatim.

3 But, I do believe it was mentioned in passing that Don

4 had previously been let go from the company.

5 Q Who said that?

6 A I cannot absolutely tell you for sure.

7 Q Could it have been Ray?

8 A It could have.

9 Q It could have been someone else?

10 A It could have been another instructor. It

11 could have been anyone that knew Don previously.

12 Q Didn't you meet Don in 2008 at a fun jump?

13 A I don't recall.

14 Q Don worked at Sky Dive Long Island in 2009

15 and 2010 when you were at Sky Dive Long Island,

16 correct?

17 A Yes.

18 Q You were not at Sky Dive Long Island in 2001?

19 A I was not.

20 Q What do you know about his employment in

21 2001, other than what you have just testified to?

22 A I don't have any knowledge. I was not there,

23 I cannot say.

24 Q Did you have an opinion on whether Don was a

25 good instructor or not?

0026

1 LAUREN CALLANAN

2 MR. ZABELL: Objection to the form. You

3 may answer.

4 A I never received instructions from Don. So,

5 I couldn't form that opinion.

6 Q Did anybody ever say that they were happy

7 with Don's instructions?

8 MR. ZABELL: Objection to the form. You

9 may answer.

10 A Absolutely. Customers would come up and

11 leave tips and say that they had a great time.

12 Q That happened on a regular basis?

13 A It happened for all the instructors on a

14 regular basis.

15 Q Including Don?

16 A I would imagine so, yes.

17 Q Do you remember anyone in particular

18 mentioning Don and saying how much they enjoyed their

19 jump with Don?

20 A Any specific cases, off the top of my head, I

21 cannot. But, there might be. I'm sure there were.

22 Q Do you remember ever giving Don an e-mail

23 from a customer that really enjoyed his tandem?

24 A Like I said, I'm sure there were many happy

25 customers. Specifically, I cannot remember.

0027

1 LAUREN CALLANAN

2 MR. ANTOLLINO: Plaintiff's Exhibit 2,

3 please.

4 (Whereupon, an e-mail was marked as

5 Callanan Exhibit 2 for identification, as of

6 this date.)

7 Q Do you recognize that document?

8 A No. Unfortunately, I do not remember it off

9 the top of my head.

10 Q Do you see what the e-mail address is?

11 A I do see it's addressed, fun jumps.

12 Q What is fun jumps?

13 A It's printed for Ray Maynard, Jumper Ray, who

14 is Ray Maynard.

15 Q Can you tell what computer that came from?

16 A No, unfortunately not.

17 Q Do you know whose e-mail that was?

18 A Fun jumps is a general e-mail for Sky Dive

19 Long Island.

20 Q Can you think of any reason why this would

21 not have been found in the search that you did?

22 A I can't say that it wasn't found. But,

23 seeing as it was printed for Ray Maynard, I would take

24 it that Ray printed that.

25 Q Do you recall handing that to Don and saying

0028

1 LAUREN CALLANAN

2 Don, look someone just complimented you on a jump, I

3 wanted to give that to you?

4 A That specific piece of paper, no. I do not

5 recall. I apologize.

6 Q No need to apologize.

7 MR. ZABELL: Counsel, I'll ask that the

8 documents you have marked, put them in the

9 center of the table, at least until we get

10 them photocopied. Thank you, counselor.

11 Q Have you watched any videos of Don do a

12 tandem jump?

13 A I have seen video footage before, yes.

14 Q How many times?

15 A I couldn't tell you with any certainty.

16 Q Have you seen the video in this particular

17 case?

18 A What video?

19 Q Do you understand that there was a customer

20 that made a complaint about Don?

21 A I do understand a complaint was made, yes.

22 Q Did you ever watch the video of the customer

23 and his girlfriend?

24 A What customer are you referring to?

25 Q Do you know who the customer was that made

0029

1 LAUREN CALLANAN
2 the complaint?
3 MR. ZABELL: Objection to the form. You
4 may answer.
5 A The customer that made what complaint?
6 Q How many complaints have there been about
7 Don?
8 A I couldn't tell you off the top of my head.
9 Q Were there more than one?
10 MR. ZABELL: Objection to the form of
11 the question. You may answer.
12 A There may have been.
13 Q You don't know if there were or not, correct?
14 A I cannot remember specific complaints. But I
15 do believe that yes, multiple complaints have been
16 made.
17 Q Why do you believe that?
18 A Because I don't recall only receiving one
19 complaint.
20 Q What other complaints?
21 A Unfortunately, I don't remember.
22 Q It could have been anything?
23 MR. ZABELL: Objection. That is a
24 statement to which no response is required.
25 Q Correct?

0031

1 LAUREN CALLANAN
2 answered. You can answer again, if you can.
3 A At this time, I do apologize, I do not.
4 MR. ANTOLLINO: We'll leave a space in
5 the transcript. Since you'll ask for a copy
6 of the transcript, I'll send it to you.
7 Q Will you fill in anything, at a later date,
8 that you remember when you review the transcript.
9 We'll leave a space in the transcript.
10 A Of course.
11 INSERT:
12 Q Have there been complaints about other
13 skydivers?
14 A I'm sure that complaints have been received
15 in the past. I don't remember any specifically off the
16 top of my head.
17 Q You do remember that there were some
18 complaints made about other instructors at some point,
19 correct?
20 A I can't answer that one way or the other. I
21 don't have any specific complaints that I can think of.
22 Q I'm not asking about specifics, just --
23 A Unfortunately, if I can't remember specific
24 complaints, I can't verify whether a complaint had been
25 made.

0030

1 LAUREN CALLANAN
2 MR. ZABELL: Objection. That is one
3 word to which no response is required.
4 Q It could have been anything, correct?
5 MR. ZABELL: Counsel, are you
6 withdrawing your two previous statements?
7 Q You can answer the question.
8 MR. ZABELL: If you can. If you can't,
9 you don't have to.
10 A I apologize. Yes, the complaint could have
11 been regarding anything.
12 Q It could have been a complaint of the color
13 of his hat, correct?
14 A No. I don't believe that is what a complaint
15 was. No, I don't believe so.
16 Q You have no documentation about any of these
17 complaints, correct?
18 A I don't believe -- personally, I don't have
19 anything on me, no.
20 Q I know you don't have anything on you. You
21 don't have anything back at the office either, do you?
22 A I don't think so, but I don't know.
23 Q You don't remember anything about these other
24 complaints?
25 MR. ZABELL: Objection, asked and

0032

1 LAUREN CALLANAN
2 Q You were able to verify that complaints had
3 been made about Don. You couldn't remember the
4 specifics of those complaints --
5 A No, that --
6 Q Wait until I finish asking the question.
7 MR. ANTOLLINO: Read back the question,
8 please.
9 MR. ZABELL: Slow down a little bit.
10 When he says wait, he means wait, please.
11 Because we are going to maintain all
12 appropriate levels of civility at the
13 deposition. Correct, counsel?
14 MR. ANTOLLINO: Can you read it back.
15 MR. ZABELL: If he will not maintain all
16 appropriate levels of civility, I will impose
17 my standards civility. If he refused to say
18 please, please allow me to ask you please.
19 MR. ANTOLLINO: Can you read it back.
20 (Whereupon, the above referred to
21 question was read back.)
22 Q Can you answer that question, please.
23 A I know that a specific complaint was made
24 against Don. I could not verify whether other
25 complaints had been made.

0033

1 LAUREN CALLANAN

2 Q So, there was at least one complaint made
3 against Don, correct?

4 A Correct.

5 Q You could not verify whether there were any
6 other complaints, whatsoever, against Don, correct?

7 A At this time I do not have anything to
8 support any other complaints. I couldn't tell you with
9 a hundred percent accuracy.

10 Q I'll leave another line in the transcript.

11 Would you agree to fill that in if you come up with any
12 other complaints?

13 A Sure.

14 INSERT:

15 Q Do you know who made the complaint about Don,
16 the one you are aware of?

17 A Okay, yes. It was the boyfriend. David, I
18 do believe is the name.

19 Q Is the name David Kengle?

20 A That does ring a bell, yes.

21 Q Did you take his complaint, initially?

22 A I did receive a phone call, yes.

23 Q What did he say?

24 A He called very upset. He brought his
25 girlfriend skydiving for her birthday. Her birthday

0034

1 LAUREN CALLANAN

2 was ruined because she felt very uncomfortable during
3 the skydive and when she landed. Basically, he said
4 that it had ruined her birthday.

5 Q Did he say anything else, anything more
6 specific than that?

7 A He basically told me that Don rested his head
8 on his girlfriend's shoulder and was whispering into
9 her ear. Multiple times during the plane ride or
10 rather the time that they spent together, he told her
11 multiple times that he was gay. And not to worry while
12 he was adjusting certain straps because he was gay.

13 Q Anything else?

14 A That was basically the phone call that I
15 remember.

16 Q Did you speak to Mr. Kengle any other time?

17 A I don't recall having any further
18 conversation with him after that.

19 Q Did you speak to the girlfriend?

20 A I don't recall speaking to the girlfriend.

21 Q Do you know the girlfriend's name off the top
22 of your head?

23 A I believe it's Roseanna.

24 Q Have you ever seen the jump video of Don and
25 Roseanna or the other instructor and David Kengle?

0035

1 LAUREN CALLANAN

2 A I do not recall seeing a video of David. I
3 did see a video of Roseanna and Don.

4 Q Did you notice anything improper in the
5 video?

6 A Unfortunately, it was a short video. I did
7 recall seeing Don making gestures with his fingers
8 around his lips, I do believe, or hand gestures in
9 general.

10 Q When you say it was unfortunately a short
11 video, why was it unfortunately a short video?

12 MR. ZABELL: Objection to the form. You
13 may answer.

14 A The video clip was very short with respect to
15 the actual plane ride and skydive. A plane ride
16 typically takes about fifteen to twenty-five minutes.

17 Q When you say unfortunately, why was it
18 unfortunate that it was short?

19 A Because it only showed a very short picture
20 of the plane ride.

21 Q So, when was the first time that you saw that
22 video?

23 A I do believe I saw the video after the
24 complaint was made.

25 Q When?

0036

1 LAUREN CALLANAN

2 A I don't remember.

3 Q After the complaint was made, the complaint
4 was made, I believe, in June of 2010, correct?

5 A Unfortunately, I don't remember. I don't
6 have any notes with me.

7 Q It was a couple of years ago, correct?

8 A It was not within this past year.

9 Q Not within this past year, okay. Do you
10 remember when Ray fired Don?

11 A Do I remember?

12 Q Yes.

13 A I don't remember when, specifically. I do
14 remember when Don was fired.

15 Q It was before this lawsuit was filed,
16 correct?

17 A I would imagine so.

18 Q Did you see the video before the lawsuit was
19 filed?

20 A I do not recall. I don't remember.

21 Q Is it fair to say that you were the one that
22 searched for the raw footage of the video in response
23 to this lawsuit?

24 A No.

25 Q No?

0037

1 LAUREN CALLANAN

2 A No.

3 Q So, you don't remember if you saw the video

4 before the lawsuit was filed or not, correct?

5 A I do not remember.

6 Q When was the last time you saw the video?

7 A I saw the video today.

8 Q You're reaction to it was that you thought

9 there was something wrong with the way Don was using

10 his hands or something?

11 A I didn't say that I thought there was

12 something wrong with it. You asked if I noticed

13 anything.

14 Q Have you seen a lot of skydive videos in your

15 career?

16 A I have.

17 Q About how many do you do in one season?

18 MR. ZABELL: Objection to the form. You

19 may answer.

20 A I don't do any videos. I own video

21 equipment, but I don't actually -- I'm not a

22 videographers.

23 Q How many videos of skydivers does Sky Dive

24 Long Island do in a season?

25 A A couple of thousand maybe.

0038

1 LAUREN CALLANAN

2 Q Do most people who go on skydives request

3 video?

4 A Not everyone. I want to say half, maybe

5 fifty percent.

6 Q So as we sit here today, you can't remember

7 any other complaints that have been made about any

8 other instructors?

9 A No specific complaints come to mind at this

10 time.

11 Q I'm not asking you whether or not a specific

12 complaint comes to mind. Whether or not there have

13 been any complaints or not?

14 A If I cannot verify a specific complaint, I

15 cannot say whether or not one has come through.

16 Q I'm not asking you to verify a complaint. Do

17 you have in your mind, do you ever remember anyone

18 complaining about something, without being able to put

19 your finger on what the complaint was about?

20 MR. ZABELL: Objection to the form of

21 the multiple questions pending before you.

22 You may pick any one of the questions and

23 provide an answer to that.

24 A I do not recall any complaints at this time.

25 Q We'll leave a space again in the transcript.

0039

1 LAUREN CALLANAN

2 If you can think of any complaints, you can put them

3 the there. Would you agree to do that.

4 A I would.

5 INSERT:

6 Q I just have to ask you again, just to make

7 sure I understand. As we sit here today, regardless of

8 what the complaint was, you cannot recall anyone

9 complaining about any other skydiver, other than Don,

10 is that a fair statement?

11 MR. ZABELL: Objection to the form of

12 the question. Objection, asked and answered.

13 You can answer.

14 A Were you asking about complaints against

15 instructors?

16 Q Yes.

17 A I can't remember any complaints at this time.

18 Q How about complaints against any employees at

19 Sky Dive Long Island?

20 A Complaints from who?

21 Q From any customers.

22 A Complaints from customers, I cannot recall

23 any other complaints, other than the complaint at hand,

24 from any other customers at this time.

25 Q About any employees, whatsoever.

0040

1 LAUREN CALLANAN

2 A At this time, no. I do apologize.

3 Q There are some complaints about Sky Dive Long

4 Island on-line, is that correct?

5 A There may be.

6 Q Are you aware of any websites that have

7 complaints on-line?

8 A I don't recall the name. Rip Off Report. I

9 recall one web-site with a complaint that is on-line,

10 yes.

11 Q Was that responded to?

12 A That was responded to.

13 Q Who responded to that?

14 A Multiple people.

15 Q Who were they?

16 A I don't know specifically, at this time, who

17 responded.

18 Q Do you know anyone that responded?

19 A I know I responded.

20 Q Did Ray respond?

21 A I do believe he did, yes.

22 Q Did anyone else that works at Sky Dive Long

23 Island respond?

24 A I believe Alison may have responded. Yes

25 Alison, I do believe, responded to it.

0041

1 LAUREN CALLANAN

2 Q Who is Alison?

3 A Alison was one of the other manifest workers

4 at that time.

5 Q Is there anyone else that responded?

6 A I don't have --

7 Q Anyone else that worked at Sky Dive Long

8 Island that you recall?

9 A I don't recall.

10 Q So, Ripoffreport.com. Have you ever worked

11 at any other drop zones on Long Island?

12 A No.

13 Q What was the complaint at Rip Off Report

14 about?

15 A I don't recall, unfortunately.

16 Q Did you think that it was an actual customer?

17 A From what I do remember I do not believe it

18 was an actual customer.

19 Q Who do you think it was?

20 A I can't point fingers. I don't know who it

21 was. From what I remember, the information that was in

22 the complaint was false, from my knowledge.

23 Q What was in the complaint?

24 A I don't have the complaint to tell you that.

25 I don't remember what was in it.

0042

1 LAUREN CALLANAN

2 Q Do you remember when it was posted?

3 A No, I do not recall.

4 Q Did the complaint concern any of the

5 instructors.

6 A I do believe that it did quite possibly, but

7 there were no names.

8 Q Did you do a search to find out who the

9 customer might have been?

10 A There was no way to search for that

11 information.

12 Q Have you seen any other complaints about Sky

13 Dive Long Island on-line?

14 A I believe I saw a complaint from a gentleman

15 that was upset about not receiving his video.

16 Q That was a complaint, I believe, he was

17 complaining about the ladies in the office, correct?

18 A I don't know what complaint you're referring

19 to.

20 Q What about that complaint did you do to

21 address the problem?

22 A What complaint are we talking about?

23 Q The complaint you just spoke about.

24 A The complaint, which I vaguely recall, was

25 regarding a video that a customer did not receive. I

0043

1 LAUREN CALLANAN

2 do believe it was a weekend day. I can't say for sure

3 when he jumped.

4 There were two people with similar names and

5 the videos got mixed up. I recall once that customer,

6 I do believe if that is the correct complaint that we

7 are speaking of, had left, we mailed him out another

8 copy of the right video. Making sure that he had the

9 proper video in his possession.

10 Q Did he suggest, in that complaint, that the

11 people that he dealt with on the phone were rude?

12 A I don't recall.

13 Q Did you or anyone else discipline anyone as a

14 result of that complaint?

15 A As a direct result of that complaint, I can't

16 say that any disciplinary action came of it. I know

17 from my office experience, I very definitely would have

18 talked to everyone, if we received any type of

19 complaint. I'm sure that no customer is treated with

20 any disrespect.

21 Q Are you aware of an injury that Don suffered

22 in 2009?

23 A I am.

24 Q What was that injury?

25 A It was an ankle injury, a fractured ankle.

0044

1 LAUREN CALLANAN

2 Q Do you remember how it happened?

3 A That happened on a landing.

4 Q Did you see the video?

5 A I don't recall if I saw the video.

6 Q Was there an overweight passenger that he was

7 taking on that trip, if you know?

8 A I don't know what is classified as

9 overweight.

10 Q Did he just look like he was two-hundred

11 fifty pounds or higher, if you recall?

12 A I can't really judge that. I do apologize.

13 I don't remember.

14 Q What happened after Don was injured? Did he

15 say, I got hurt, I need to go to the hospital? Do you

16 recall any specifics?

17 A This is definitely going back some time. I

18 recall Don coming into the office. He was basically

19 limping into the office and telling me that he hurt his

20 ankle on the landing.

21 I recall Don not wearing sneakers and

22 advising him that he should probably be jumping in

23 tennis shoes or a more supportive footwear. He should

24 go and get his ankle x-rayed.

25 I remember Don telling me later that he went

0045

1 LAUREN CALLANAN
 2 to Tanger Outlets and bought a pair of sneakers, I do
 3 believe. I can't guarantee they were sneakers. He
 4 bought a different footwear. He then went to the
 5 emergency room to get an x-ray, in which it was
 6 determined that his ankle was fractured.
 7 Q When you said that he was not wearing
 8 sneakers, are you saying he was bare foot?
 9 A No. He had footwear on. I believe he was
 10 wearing boots.
 11 Q Why do you believe that sneakers would be
 12 better than the boots that he was wearing?
 13 A We always advise, tandem passengers and
 14 jumpers in general, to wear supportive footwear. No
 15 shoes with hooks or boots or anything of the sort.
 16 Q Do you think that Don did anything wrong on
 17 that jump?
 18 A I can't be the judge of that.
 19 Q Did you doubt Don's injury?
 20 A I did not doubt Don's injury. I asked Don to
 21 go get an x-ray. I may have even offered to take him
 22 to get an x-ray.
 23 Q Was Ray notified about Don's injury?
 24 A He was.
 25 Q What did you say?

0047

1 LAUREN CALLANAN
 2 Exhibit 3.
 3 (Whereupon, a photograph was marked as
 4 Callanan Exhibit 3 for identification, as of
 5 this date.)
 6 Q Does this photograph fairly and accurately
 7 represent the cast that Don wore to the drop zone after
 8 he was injured?
 9 MR. ZABELL: Before you answer that.
 10 Counselor, it's been our practice
 11 throughout the depositions, and I know you
 12 know this, at previous depositions you have
 13 had copies of the exhibits ready to go. I
 14 don't understand why you don't feel it's
 15 appropriate to have courtesy copies of the
 16 exhibits which are introduced into evidence.
 17 MR. ANTOLLINO: I didn't have the time
 18 to get a color copy. Off the record.
 19 (Whereupon, a discussion was held off
 20 the record.)
 21 MR. ZABELL: I want this on the record.
 22 MR. ANTOLLINO: We don't need to discuss
 23 it. I'll get you a copy.
 24 MR. ZABELL: Just understand Counsel,
 25 it's not just the color copies that you are

0046

1 LAUREN CALLANAN
 2 A I don't recall whether Don notified Ray or I
 3 notified Ray or who notified him of the injury.
 4 Q What was Ray's reaction?
 5 A I don't recall.
 6 Q Do you remember having a conversation with
 7 Don's partner, from the hospital, about Don's injury?
 8 A No, I do not recall.
 9 Q Do you know Bill Moore?
 10 A I believe I met Bill Moore before. I can't
 11 say that I know him.
 12 Q Do you know what his relationship to Don is?
 13 A I do believe, to the best of my knowledge,
 14 that he was his partner, business partner and possible
 15 boyfriend, I believe. But I do not know for sure.
 16 Q Did you have a conversation with Bill Moore
 17 from the hospital?
 18 A I don't recall.
 19 Q Do you remember Don ever coming to the drop
 20 zone with a cast?
 21 A I do.
 22 Q Do you remember what the cast looked like?
 23 A I remember that Don came to the drop zone
 24 with a fluorescent pink cast.
 25 MR. ANTOLLINO: Let's mark this as

0048

1 LAUREN CALLANAN
 2 not providing, it's even the black and white
 3 copies that you failed to provide today.
 4 MR. ANTOLLINO: I did not make copies
 5 before I left. There are very few exhibits
 6 in this deposition. You'll get copies, don't
 7 worry.
 8 Q Can you answer the question, please.
 9 MR. ZABELL: You may, if you can.
 10 A I do apologize. I must have been mistaken of
 11 the color of the cast. The cast is apparently pink,
 12 not fluorescent. It appears that the toenails are
 13 fluorescent pink.
 14 Q When you say the toenails, what do you mean,
 15 that his toenails are painted?
 16 A Correct.
 17 Q Did you make any comments about the toenails
 18 to Don?
 19 A Not that I can recall.
 20 Q Did you believe that it was inappropriate for
 21 Don to paint his toenails?
 22 A Inappropriate, not necessarily. I paint my
 23 nails.
 24 Q What color do you paint your nails?
 25 A I paint my nails any color to go with what

0049

1 LAUREN CALLANAN

2 I'll be wearing that requires painted toenails or
3 fingernails.

4 Q Including the color pink?

5 A Sure. I can't say what color or what shade.

6 I have definitely had pink coral, fluorescent pink, red
7 fingernails and toenails before.

8 MR. ANTOLLINO: Let's mark Exhibit 4.

9 (Whereupon, a photograph was marked as

10 Callanan Exhibit 4 for identification, as of

11 this date.)

12 Q Does this fairly and accurately represent the

13 color of Don's pink toenails after he was injured?

14 A I cannot recall if that is the exact shade or

15 if that is, unfortunately, the color that I saw. That

16 does appear much more faded and orange than what I
17 recall.

18 Q How would you characterize that color? What

19 would you call that?

20 A If I had to come up with a color I would --

21 Unfortunately, the picture is very, to me, it appears

22 to be pixilated. It looks like a mixture of colors.

23 It doesn't appear to be a clear picture. There is not

24 one color that could describe the color I'm seeing

25 based on the mixture of colors.

0051

1 LAUREN CALLANAN

2 A Not that I recall.

3 Q Do you remember ever making fun of Don or his

4 pink cast or his toenails?

5 A I don't recall that, no.

6 Q Do you recall saying to him, that's a bit
7 much?

8 A Unfortunately, I do not recall.

9 Q Do you deny saying that?

10 A I do not deny it. I just do not recall.

11 Q Did you say anything to Don like, Don that's

12 really just too gay?

13 A I don't believe I'd say anything like that.

14 Q Do you recall Ray saying anything about the

15 pink cast or the toenails?

16 A I do not recall anything specific.

17 Q Well, would you recall anything in general?

18 A I do recall Don was sitting at the entrance

19 of our office building. Everyone was walking through

20 that door to which Don was sitting next to at the

21 office. I recall that everyone would have to walk past

22 him at that specific point.

23 I do believe that's when he first arrived

24 with the pink cast. Other than that, I can't recall

25 anything specific that was said.

0050

1 LAUREN CALLANAN

2 Q When you say a mixture of colors, the big toe

3 has a happy face on it, right?

4 A I can't make out a happy face on the big toe.

5 Q There is a little face there, right?

6 A I can't tell if that is a happy face or not

7 that I'm looking at currently.

8 Q Aside from the big toe, can you identify the

9 color on the other two toes?

10 A The image quality is the same.

11 Q So sitting here today, you could not pick a

12 shade of nail polish that you know and describe it?

13 A Not with the picture provided. There is a

14 mixture of colors.

15 Q What about the toenails in Exhibit 3?

16 A It's a much smaller picture. They look much

17 brighter. I would have to say they look much more like

18 a shade of pink or an identifiable color. Then again,

19 it's a very small picture.

20 Q Is that a color that you have worn before?

21 A I can't say that I have worn the exact shade.

22 But, I think my toenails are probably painted a very

23 similar color at this time.

24 Q Has anyone ever complained about that, to

25 you, at work?

0052

1 LAUREN CALLANAN

2 Q Do you recall Ray asking Don to paint the

3 cast black?

4 A I do not recall that.

5 Q Do you recall Ray asking Don to cover his

6 toenails with a sock?

7 A I do not specifically recall that, no.

8 Q Do you remember Ray saying, that's really

9 gay?

10 A I do not recall that.

11 Q Are you denying that that happened or you

12 just don't recall?

13 A I am not denying it. I just don't remember.

14 Q Was that time when Don first showed at the

15 drop zone, for the first time after injury, at a staff

16 meeting?

17 A I honestly don't remember if it was. It's a

18 possibility.

19 Q Did you think that Don's cast was funny?

20 A I don't think any cast is funny.

21 Q The way that he decorated it, I mean.

22 A It was not a decorated cast to me. It was a

23 regular cast.

24 Q He has a certain color, he chose a certain

25 color, didn't he?

0053

1 LAUREN CALLANAN

2 A You can go to the orthodontist and choose
3 colored bans for your teeth. You can go and choose
4 colors to paint your room. Everyone has a right to
5 choose their own colors.

6 Q You felt there was nothing wrong with Don
7 choosing those colors?

8 A Personally, I don't think there is anything
9 wrong with that, no.

10 Q What about professionally, did you think it
11 was unprofessional?

12 A He was not instructing at that point. So,
13 from a professional level, I mean he was not working at
14 that point.

15 MR. ZABELL: You have something to say,
16 counsel.

17 MR. ANTOLLINO: I don't have to say
18 anything.

19 MR. ZABELL: You're grunting. I'm
20 trying to clarify on the record what the
21 grunting is.

22 MR. ANTOLLINO: I have no clarification
23 to make.

24 MR. ZABELL: Your grunting, you'll just
25 leave it at that.

0054

1 LAUREN CALLANAN

2 Q Did Ray ever talk to you about the cast
3 later?

4 MR. ZABELL: Objection to the form. You
5 may answer.

6 A I don't recall.

7 Q What time of day was it?

8 MR. ZABELL: Objection to the form.

9 MR. ANTOLLINO: Withdrawn.

10 Q The day you first saw the cast, what time of
11 day was it?

12 A Unfortunately, it was so long ago, I can't
13 remember.

14 Q That's the answer then. Do you know Don's
15 sexual orientation?

16 A I do, from what he has told me, yes.

17 Q Was it that he told you or someone else told
18 you?

19 A He told me.

20 Q When was that?

21 A I don't remember specifically.

22 Q Were you offended, in anyway, that he told
23 you his sexual orientation?

24 A No.

25 Q Why not?

0055

1 LAUREN CALLANAN

2 A Because I have many friends that are gay as
3 well and that doesn't offend me.

4 Q Have you ever talked to any of them about
5 whether or not homosexuality is something that is
6 inborn or not?

7 A Have I talked to who?

8 Q Your gay friends about whether or not they
9 were born that way?

10 A No, I haven't had that conversation with my
11 friends. I have taken college classes regarding human
12 sexuality.

13 Q In your opinion, is someone born that way or
14 is that something that is --

15 A That is a very vague question to ask. I

16 mean, I have not thought about that deeply enough to
17 tell you absolutely one way or the other. I don't
18 really have an opinion on that.

19 Q You said before that you have a boyfriend?

20 A I have had a boyfriend, yes.

21 Q That implies that you're a heterosexual,
22 correct?

23 A I am.

24 Q Do you believe that you were born that way?

25 A I could have been. It could have been a

0056

1 LAUREN CALLANAN

2 process of socialization. It could have been a process
3 or a product of the environment that I grew up in.

4 Q Do you keep a record of the tips that workers
5 get at the drop zone?

6 A No.

7 Q How are the tips divided up?

8 A We have tip envelopes. Basically, we have
9 little coin envelopes that we leave out for the
10 students. They can grab a coin envelope and put
11 whatever tip they feel they would like to leave for an
12 instructor.

13 Then they will typically either hand it
14 directly to the instructor if they didn't hand it to
15 them previously or if they are going to at all.

16 Otherwise, they can leave them at the office and we put
17 them in a specific envelope for that instructor.

18 Q You don't keep a record of how much is
19 tipped?

20 A No. Lots of times they're sealed envelopes.

21 The student will put a tip in an envelope, seal it and
22 there is no record.

23 Q What is a typical tip for a tandem jump, if
24 you can answer?

25 A Unfortunately, I'm not an instructor. I

0057

1 LAUREN CALLANAN

2 can't say for sure what a typical tip is.

3 Q What have they discussed with you?

4 MR. ZABELL: Objection to the form. You

5 may answer.

6 A I have heard that the average is about ten to

7 twenty dollars. I have heard people say they have not

8 gotten a tip. I have heard people say that have gotten

9 a hundred dollar tip.

10 Q Are there ever any days that no one gets a

11 jump at all?

12 A Of course, it's a very weather related sport.

13 Q Are there ever any days that are sunny where

14 people still don't get a jump?

15 A It goes back to being a very weather

16 dependant sport as well. Even though it's sunny, it

17 may be very windy.

18 Q Do you keep a record of those days? What are

19 the rules for the employees who are at the drop zone

20 when you're waiting for customers?

21 MR. ZABELL: Objection to the compound

22 question, the multiple questions. You may

23 pick any of one of the multiple questions

24 that were posed before you and answer.

25 A So, basically it is depending upon the

0058

1 LAUREN CALLANAN

2 schedule. In the season, you know, some days we may

3 not have anyone scheduled. In that respect, we may

4 choose to close. Or if we get a call that people want

5 to come in, we may call and see who is available to

6 possibly come in and work.

7 On weather related days, basically, it

8 depends on the weather. Quite honestly, if it's a

9 beautiful July day and a passing shower goes through,

10 then everyone will typically wait until the shower

11 passes. If the forecast is for a hurricane, then

12 probably more so likely that we will call it a day and

13 everyone can go about their business.

14 Q Who makes the final decision?

15 A That would be Ray.

16 Q Sometimes is there any pressure put on Ray to

17 call the day?

18 MR. ZABELL: Objection to the form. You

19 may answer.

20 A I'm sure there is pressure when people don't

21 want to hang around or it looks like there is going to

22 be inclement weather for an extended period of time.

23 Q What are the instructors instructed to do

24 with regard to waiting for customers to come?

25 A Are we talking about weather related issues

0059

1 LAUREN CALLANAN

2 or are we talking about waiting for customers as per on

3 a schedule?

4 Q Let's talk about, first, waiting for

5 customers without weather related issues.

6 A We have a schedule. So, the instructors will

7 basically find out what time we have tandems coming in

8 or students coming, for that matter. Then they will be

9 there for the student's arrival. Typically, Ray would

10 like people there a half an hour prior.

11 Q You don't always know when someone is going

12 to show up, right?

13 A That is correct. People could show up, but

14 if we're not open or we have already called the day,

15 there is no guarantee that those people will be able to

16 jump.

17 Q If you have not called the day, is the

18 instructor expected to stay on the grounds?

19 A Not necessarily. It's depending on the day

20 and the time.

21 Q Explain how certain circumstances may vary.

22 Can you give me an example.

23 MR. ZABELL: Objection to the form of

24 the multiple questions. You may pick anyone

25 of those questions that were posed before you

0060

1 LAUREN CALLANAN

2 and provide an answer.

3 A Sure, on a busy Saturday if we have a hundred

4 people scheduled and you know, we basically will go

5 until five o'clock. Five o'clock comes and we're done

6 with work for the day. If we don't have anything

7 scheduled, Ray will typically allow everyone to go

8 home.

9 If people come in at seven o'clock, even

10 though there is still daylight, unfortunately we're

11 done for the day at that point. We're not going to

12 call everyone back when Ray has let everyone go for the

13 day. The work has been done.

14 Q When you say, let everyone go, what does that

15 mean, just go home?

16 A We're done working for the day, you can go

17 home. If more students come in and we are still able

18 to fly and there is still daylight, then there is a

19 possibility of calling instructors and seeing if they

20 want to work. But, at that point, if people have gone,

21 they're gone.

22 Q Is it fair to say that Ray wants them to stay

23 on the grounds, during the day, until he calls the day?

24 MR. ZABELL: Objection to the form. You

25 may answer.

0061

1 LAUREN CALLANAN

2 A It depends on the weather. It depends on the
3 day.

4 Q If the weather is good?

5 A If the weather is good on a busy Saturday,
6 then yes. He would like people to be available to work
7 on a busy Saturday when the weather is good. If
8 they're scheduled to work and if the weather is bad,
9 then no. He doesn't expect them to be on property. If
10 it's raining outside and we're not able to jump, he
11 doesn't expect people to sit there.

12 Q What are his expectations?

13 A We put people usually on call. If all of a
14 sudden it starts raining and it doesn't look like we're
15 able to jump, then instructors are free. Staff, in
16 general, are free to go do whatever they would like to
17 do.

18 Then typically if they could be within a
19 twenty to thirty minute radius, we typically call it a
20 twenty minute call. That's basically what we put the
21 plane on, a twenty minute call. If you can be within
22 the vicinity and ready, that's what's expected.

23 Q Do you have an employee handbook now?

24 A There is an employee handbook that is in -- I
25 do not personally have an employee handbook, no.

0062

1 LAUREN CALLANAN

2 Q Does Sky Dive Long Island have an employee
3 handbook?

4 A I believe so.

5 Q Have you ever seen it?

6 A I have seen an employee handbook. I,
7 unfortunately, do not know what is contained within it.

8 I do not know if it's an official handbook or not.

9 Q Where did you see this employee handbook?

10 A I saw the employee handbook at the office.

11 Q When? When was the first time you saw it?

12 MR. ZABELL: Objection to the form of
13 the multiple question.

14 MR. ANTOLLINO: Withdrawn. I'll ask it
15 again.

16 Q When was the first time you saw it?

17 MR. ZABELL: Objection to the form of
18 the question. If you understand what he is
19 asking you, you may answer.

20 A Saw the handbook?

21 MR. ZABELL: Let the record reflect that
22 counsel shook his head in the affirmative.

23 A I do believe last year.

24 Q In 2010?

25 A No. The first time I saw and held the

0063

1 LAUREN CALLANAN

2 handbook or what may be the handbook would have been
3 in 2011.

4 Q Did someone tell you about the handbook?

5 A Ray told me that he wanted to make a
6 handbook.

7 Q When did he tell you that?

8 A We have been talking about having a handbook
9 for years. When was the first time that we talked
10 about it, I can't say for sure.

11 Q Was it shortly after you started working at
12 Sky Dive Long Island?

13 MR. ZABELL: Objection to the form. You
14 may answer.

15 A I do recall inquiring if we had any type of
16 employee or instructor contract, after I started
17 working at Sky Dive Long Island, Altitude Express, yes.
18 I do not believe, at that time, we did.

19 Q Did you discuss the possibility of the
20 handbook with Ray at the time you discussed this
21 contract?

22 A I do believe so. That probably would have
23 gone hand in hand.

24 Q Why did Ray say he wanted a handbook?

25 A Back when we first discussed it, I can't say

0064

1 LAUREN CALLANAN

2 that he did say he wanted a handbook.

3 Q When was the first time Ray expressed that he
4 wanted a handbook?

5 MR. ZABELL: Objection to the question.

6 Objection to the form of the question. I'll

7 advise you that you can reveal that, to the

8 extent that it does not reveal the contents
9 of any communications between you and counsel
10 or Ray and counsel. You may answer.

11 A I don't know when the first time that Ray
12 expressed the desire for a handbook. I do believe it's
13 going back a number of years.

14 Q Why did he say he wanted a handbook?

15 MR. ZABELL: Objection, asked and
16 answered. You may answer.

17 A I, unfortunately, don't know exactly his
18 reasoning.

19 Q Did he tell you what his reasoning was?

20 A I don't recall, no. I recall asking him,
21 when I first started working for the company, whether
22 we had any type of contracts or anything in place.

23 But, I don't recall him saying any specific reason
24 behind him wanting a handbook.

25 Q What color is the handbook?

0065

1 LAUREN CALLANAN

2 A I don't recall.

3 Q Is it in a spiral bound notebook or is it

4 bound on the sides like a book?

5 MR. ZABELL: Objection to the form of

6 the multiple questions. You can pick a

7 question and provide an answer.

8 A I do not believe it is a bound handbook.

9 Q How would you describe it?

10 A If it is an official handbook of the company,

11 which I do not know, the only thing that I can possibly

12 say might be the handbook was printed on regular

13 paper, I believe. I believe it was in some type of

14 folder. It might be slipped into a folder, but I can't

15 say for certain.

16 Q Is there only one or are there many copies?

17 A Many copies of whatever the document was were

18 made.

19 Q Did employees see them in 2011?

20 A At that time employees did see them, yes.

21 Q Did they have to sign that they would abide

22 by the employee handbook?

23 A They were asked to sign the handbook at that

24 time.

25 Q What does the signature signify?

0066

1 LAUREN CALLANAN

2 A Unfortunately only a few people signed the

3 paper.

4 Q Not everyone?

5 A Not nearly half, I don't believe, signed the

6 paper.

7 Q Have you ever been injured?

8 A Injured how?

9 Q Were you ever in a wheelchair?

10 A Yes, I was.

11 Q Did you ever go to the drop zone in a

12 wheelchair?

13 A I did not.

14 Q Have you ever seen any other injured

15 skydivers at a drop zone?

16 A I have.

17 Q On how many occasions?

18 A I have been at a skydiving center for ten

19 years. I cannot really tell you how many occasions

20 specifically.

21 Q More than ten?

22 A I don't believe so.

23 Q Anyone other than Don?

24 A Have I seen anyone other than Don at a drop

25 zone that had been injured?

0067

1 LAUREN CALLANAN

2 Q Yes.

3 A Yes, I'd have to say yes. I don't recall how

4 many people.

5 Q Do you remember Don owning a pink parachute?

6 A I do not.

7 Q You received a call from David Kengle. What

8 did you say to Ray?

9 MR. ZABELL: Objection to the form of

10 the question.

11 Q After receiving the call.

12 MR. ZABELL: Objection to the form. You

13 may answer.

14 A I recall going into Ray's office and

15 informing him that we had received a complaint. I gave

16 him David's name and phone number. It was basically

17 exactly what I said before, what I heard from what I

18 recall on the phone, from David.

19 Q Did Ray say anything in response?

20 A I do believe Ray said that he was going to

21 call him.

22 Q When you say him, you mean?

23 A David.

24 Q Did he say anything about Ray?

25 A I'm sorry, who?

0068

1 LAUREN CALLANAN

2 Q Did Ray say anything about Don, I should say.

3 MR. ZABELL: Are you withdrawing the

4 previous question?

5 MR. ANTOLLINO: Yes.

6 MR. ZABELL: Objection to the form. You

7 may answer.

8 A Did Ray say anything about Don in what

9 respect?

10 Q In anyway.

11 A I don't recall anything specifically, no.

12 Q How long was the conversation about David

13 Kengle's complaint?

14 A The conversation with Ray, are you asking?

15 Q Yes.

16 A It was enough time for me to tell him about

17 the phone call I received as well as give him the

18 information that I had for David.

19 Q So, one or two minutes at most?

20 A I'd say less than ten.

21 Q Well, do you remember anything Ray was saying

22 other than he was going to call David Kengle?

23 A I'm sorry, it's a very long time ago. I

24 don't remember specifically, no.

25 Q What did Ray do in response to David Kengle's

0069

1 LAUREN CALLANAN

2 complaint?

3 A I don't know details of what Ray did in

4 response to the complaint.

5 Q You don't know anything about what Ray did in

6 response?

7 MR. ZABELL: Asked and answered.

8 A I don't recall.

9 Q Well, I mean were you present at the time

10 that Don was terminated?

11 A I was.

12 Q Would you agree that David Kengle's complaint

13 was a factor in terminating Don?

14 A I do believe that, yes.

15 Q Were there any actions taken by Ray before

16 the termination with regard to Don?

17 MR. ZABELL: Objection, asked and

18 answered multiple times. Objection to the

19 form of the question. You may answer.

20 A To the best of my knowledge, Don was

21 suspended before he was terminated.

22 Q Were you present at the moment when Don was

23 suspended?

24 A I don't recall.

25 Q Did you speak to Ray about why Don was

0070

1 LAUREN CALLANAN

2 suspended?

3 A I don't recall.

4 Q Did you speak to Rich Winstock about why Don

5 was suspended?

6 A I don't recall.

7 Q Did you have any curiosity, at that time,

8 about why Don was suspended?

9 A I don't recall. I know I was notified that

10 Don was suspended and would not be working for the next

11 week. That was pretty much what had affected me, in

12 terms of the office, trying to run the office. We

13 were going to be down an instructor. Other than that,

14 I don't recall details of what was said.

15 Q Do you recall wondering why Don was

16 suspended?

17 A Sure, I was curious. But I can't say that

18 that was the only concern that I had on that day.

19 Q Did Ray dock Don's pay at the time that he

20 was suspended?

21 MR. ZABELL: Objection to the form of

22 question. You may answer.

23 A Dock his pay how?

24 MR. ZABELL: He is not under oath. You

25 don't have to ask him questions. For that

0071

1 LAUREN CALLANAN

2 matter, if you do ask him questions, because

3 he is not under oath, you have no obligation

4 to believe him or that his words are

5 accurate. That's just a fancy way of saying,

6 don't ask him questions. Just answer the

7 question, if you can.

8 Q Would you like it read back?

9 A I can't answer the question in the format you

10 asked.

11 Q What is it that you didn't understand about

12 the question?

13 A You're asking me if Ray docked his pay. I

14 don't know, in what respect?

15 Q In any respect.

16 A Instructors are paid per jump. So, if an

17 instructor is not jumping, there is no money to be

18 made.

19 Q But there were jumps that Don had not been

20 paid for at the time that he was suspended, correct?

21 A I don't recall.

22 Q Do you do the payroll?

23 A I do.

24 Q Were you aware that Ray had taken the amount

25 that he had refunded to Mr. Kengle and Ms. Orlana, out

0072

1 LAUREN CALLANAN

2 of Don's pay, that he had not been paid for?

3 A I do not specifically recall that. But I

4 remember him giving money back to Don. I believe that

5 that is what that was for. Specifically, no I cannot

6 say for certain. I do recall him giving Don money

7 back.

8 Q Do you think that was fair for Ray to take

9 that money away from Don for even a week?

10 MR. ZABELL: Objection to the form of

11 the question. You may answer.

12 A It's Ray's business. So, Ray has the

13 executive decision.

14 Q Therefore, the answer to the question is yes,

15 you think it was fair?

16 MR. ZABELL: Objection.

17 A I did not say that.

18 MR. ZABELL: That is not what she said.

19 Q I know it's Ray's decision. I'm asking you,

20 in your opinion, whether you thought it was fair?

21 MR. ZABELL: Objection, asked and

22 answered.

23 Q You can answer.

24 MR. ZABELL: You may answer. You may

25 simply say if it is appropriate. The same

0073

1 LAUREN CALLANAN
 2 way --
 3 MR. ANTOLLINO: Don't direct her to
 4 answer in a certain way.
 5 MR. ZABELL: Counsel, stop. I will not
 6 allow you to badger her. I will not allow
 7 you to make unsupported comments to me. Ask
 8 your questions like a human being and we'll
 9 get through this. Are we clear?
 10 MR. ANTOLLINO: Can you read the
 11 question back.
 12 MR. ZABELL: Are we clear, counselor?
 13 MR. ANTOLLINO: Can you read the
 14 question back, please.
 15 (Whereupon, the above referred to
 16 question was read back.)
 17 A My opinion is irrelevant. It's not my
 18 business. I don't make decisions.
 19 * Q You're here pursuant to a Subpoena and your
 20 under oath. I'm asking you to give your opinion, even
 21 if it is irrelevant.
 22 A Unfortunately, I don't feel that I can answer
 23 that. Because, if it was my business I may have acted
 24 differently. I'm not in that position.
 25 Q Are you refusing to answer or --

0075

1 LAUREN CALLANAN
 2 A To take money out of an employee's paycheck.
 3 That, to me, would be docking pay.
 4 Q Given that definition of docking pay, has Ray
 5 ever docked anyone's pay, other than Don?
 6 A I do not know.
 7 Q I forgot if I asked this. Were you present
 8 when Ray suspended Don?
 9 MR. ZABELL: Objection, asked and
 10 answered.
 11 Q Remind me of your answer. You were not
 12 present.
 13 A I do not remember.
 14 Q After Don was suspended, did you speak to Ray
 15 about Don in between that time and the time of his
 16 termination?
 17 MR. ZABELL: Objection to the form. You
 18 may answer.
 19 A I had to have talked to Ray, yes. But I
 20 don't recall what was talked about.
 21 Q Do you recall if you spoke to Ray about Don
 22 during that period?
 23 MR. ZABELL: Objection, asked and
 24 answered.
 25 A I don't recall what we spoke about. But, I'm

0074

1 LAUREN CALLANAN
 2 MR. ZABELL: She answered the question.
 3 Don't ask if she is refusing to answer a
 4 question when you have just asked a question.
 5 Counsel, move on. If you want a
 6 different answer, ask a different question.
 7 This is not your first day at the rodeo.
 8 Let's land this plane and get it over with.
 9 MR. ANTOLLINO: I'd like an answer as to
 10 what her opinion is.
 11 MR. ZABELL: You just got the answer.
 12 MR. ANTOLLINO: No, I didn't. Mark it
 13 for a ruling.
 14 Q Has Ray ever docked anyone else's pay for even
 15 a week?
 16 MR. ZABELL: Objection to the multiple
 17 questions asked of you and to the form of the
 18 questions. To the extent you can, you may
 19 pick a question and provide an answer.
 20 A I don't know what you mean. In what respect,
 21 docking pay?
 22 Q Do you know what it means to dock pay?
 23 A I do believe I know what docking pay is, in
 24 my own definition.
 25 Q What would your definition be?

0076

1 LAUREN CALLANAN
 2 sure we had to have spoken about Don. He was an
 3 instructor and I would have needed to know whether we
 4 were going to be properly staffed.
 5 Q Did you recommend to Ray that he get Don back
 6 on staff?
 7 A It was not my business to say. It was Ray's
 8 decision.
 9 Q I just asking you if you recommended it or
 10 not?
 11 MR. ZABELL: Objection, asked and
 12 answered. You can answer it again.
 13 A I couldn't make any recommendation. I was
 14 not in that position.
 15 Q Therefore, you didn't make a recommendation.
 16 Is that fair to say?
 17 A I can't say that one way or another. It was
 18 not my position to make a recommendation.
 19 Q I understand entirely that it was not your
 20 position to make a recommendation. Are you saying that
 21 you did or you did not make a recommendation to Ray
 22 about whether he should put Don back on staff?
 23 A I do not recall.
 24 Q When Ray was firing Don, were you aware that
 25 Don was recording the conversation?

0077

1 LAUREN CALLANAN

2 MR. ZABELL: Objection to the form. You

3 may answer.

4 A I was not.

5 Q Did you learn that at a later time?

6 MR. ZABELL: Objection to the form. You

7 may answer.

8 A I did.

9 Q Have you listened to the tape?

10 A I have.

11 Q Do you remember, at the end of the tape, Don

12 asking you whether or not the complaining customers had

13 gotten video?

14 A I do recall.

15 Q Do you remember what your response was?

16 A I believe it was something along the lines

17 of, I was not able to release information or if any

18 information was to be released, it was to come from

19 Ray. Something along those lines.

20 Q Did you know, at that time, whether those

21 people had gotten video?

22 A I do not recall.

23 Q Did Ray tell you not to give him information

24 about the customers?

25 A No.

0079

1 LAUREN CALLANAN

2 whether Don was asking to see the video or whether or

3 not there was actual video?

4 A No, it does not. In what respect is the

5 question?

6 Q Did you hear your voice on the tape?

7 A Yes.

8 Q You heard Don's voice on the tape?

9 A I did.

10 Q Did you hear Don, twice, asking you to look

11 and see if these people got video?

12 A I do recall him asking that, yes.

13 Q Just asking to look if they had video,

14 correct?

15 A Correct.

16 Q You refused to do that, correct?

17 MR. ZABELL: Objection to the form.

18 A At that time Don had been terminated and I

19 could not give out any information unless it was

20 cleared with Ray.

21 Q You did not ask Ray, did you?

22 A At that time, no. Don very well could have

23 asked Ray as well.

24 Q Did Ray instruct you not to provide any

25 information to Don about the video?

0078

1 LAUREN CALLANAN

2 Q Did you provide Don with a list of his jumps

3 in the past week?

4 A I believe Don asked me for a printout of his

5 jump log for the season. I believe I provided him with

6 a jump log. Which I did on a regular basis for many

7 instructors.

8 Q Why did you provide him information and not

9 provide him information about whether or not there was

10 video?

11 A Because the video was specific to something

12 that should come from the owner. The jump log was the

13 actual instructors log of jumps. They need to record

14 their jumps, because their jumps are definitely

15 important to their profession.

16 Q Is it fair to say that Don just wanted to

17 find out if there was video at all at the end of the

18 termination interview?

19 A I do not know.

20 Q Why not listen to a portion of the tape to

21 see if it refreshes your recollection.

22 MR. ANTOLLINO: This does not need to be

23 transcribed.

24 (At this time a recording was played.)

25 Q Does that refresh your recollection as to

0080

1 LAUREN CALLANAN

2 A He did not.

3 Q Do you remember when Don asked you twice

4 would you please look to see if these people got video,

5 you responded, Don it doesn't make a difference?

6 A I said Ray made a decision. It does not make

7 a difference. I have to go with what Ray has said.

8 Unfortunately, at that time, Don had already been

9 terminated. I could not give out any information.

10 Q Could not Don have learned more about the

11 jump and the complaint by knowing if there was a video?

12 MR. ZABELL: Objection to the form. You

13 can answer, if you can.

14 A There is a possibility. I don't know what

15 was contained on the tape that would be of importance.

16 It's not my place to say.

17 Q In between the time that this jump took place

18 and the time that Don was suspended, he had

19 approximately thirty jumps. Is that fair to say?

20 A I do not recall.

21 Q Would it be typical in a weekend for an

22 instructor to have twenty to thirty jumps?

23 A Yes, depending on the weather.

24 Q If you recall, the jump took place on a

25 Friday and the complaint was not made until Monday,

0081

1 LAUREN CALLANAN

2 correct?

3 A I do not recall.

4 Q You did have the ability, at that moment, to

5 look up and see, simply yes or no, whether those

6 customers had video, correct?

7 MR. ZABELL: Objection to the form. If

8 you can, you may answer.

9 A It is a confidential system. But yes, I

10 could have looked it up.

11 Q Have you ever known Ray to fire an

12 instructor?

13 A It's not a regular practice, no. But yes, he

14 has fired an instructor in the past.

15 Q Other than Don?

16 A Yes.

17 Q Who?

18 A He fired Jerry Hannon, Gerard Hannon.

19 Q When?

20 A I don't recall the date.

21 Q Anyone else?

22 A I believe that he did not ask an instructor

23 back after a lapse of work over the winter.

24 Q Who was that?

25 A Specifically during the season, I don't

0082

1 LAUREN CALLANAN

2 remember him firing anyone while I was there.

3 Q Who was not asked back?

4 A There was a Michael Thamaras.

5 Q When was that?

6 A I do not recall the actual date.

7 Q What about Alex Allen?

8 MR. ZABELL: Objection to the form.

9 What about Alex Allen?

10 Q Has Alex Allen ever been fired?

11 MR. ZABELL: Are you withdrawing your

12 previous question?

13 Q You can answer.

14 MR. ZABELL: Are you withdrawing your

15 previous question?

16 Q You can answer.

17 A No, I cannot answer.

18 Q Why was Jerry Hannon fired?

19 A I don't know the specifics. I don't know the

20 specifics of why Jerry Hannon was fired. I can't

21 comment on that.

22 Q What do you believe Jerry Hannon was fired

23 for?

24 A I'm aware that Jerry Hannon assaulted

25 another employee.

0083

1 LAUREN CALLANAN

2 Q Who?

3 A He had punched Duncan Shaw.

4 Q What about Michael Thamaras, why wasn't he

5 asked back?

6 MR. ZABELL: Asked and answered.

7 A I don't why he was not asked back.

8 Q Has Ray ever suspended an employee, other

9 than Don?

10 A I can't remember.

11 Q Do you ever remember a time that a group of

12 gay skydivers came to Sky Dive Long Island in the

13 summer of 2010?

14 A I don't know what you're referring to. I

15 can't answer.

16 Q That doesn't ring a bell, a group of about

17 twenty gay skydivers who came to Sky Dive Long Island

18 in 2010?

19 MR. ZABELL: Objection to the form of

20 the multiple questions. You may answer

21 questions such as whether it rang a bell or

22 the remainder of the question, either one.

23 A I can't comment on that. We have hundreds of

24 people skydiving on the weekend alone. I cannot

25 comment on a specific group of twenty individuals, no.

0084

1 LAUREN CALLANAN

2 Q Were you aware that one of your instructors

3 told a tandem customer that we used to have a gay

4 instructor here?

5 A Not that I recall, no.

6 Q Would that have been inappropriate in any

7 way?

8 MR. ZABELL: Objection to the form. You

9 may answer.

10 A I can't remember it being said. So, I can't

11 comment on it.

12 Q If it did happen, would it have been

13 inappropriate?

14 MR. ZABELL: Are you asking a

15 hypothetical, counselor?

16 Q You can answer.

17 MR. ZABELL: You don't have to answer

18 until he clarifies whether or not he is

19 asking a hypothetical question.

20 MR. ANTOLLINO: I asked a clear

21 question.

22 MR. ZABELL: Are you asking a

23 hypothetical question?

24 Q You can answer the question.

25 MR. ZABELL: Please don't.

0085

1 LAUREN CALLANAN
 2 MR. ANTOLLINO: Mark it for a ruling.
 3 You're not allowed to limit my questions. If
 4 you want to do it this way --
 5 MR. ZABELL: I am not limiting the
 6 questions.
 7 MR. ANTOLLINO: I asked a very clear
 8 question.
 9 MR. ZABELL: You have. I just want to
 10 clarify whether it's hypothetical or not.
 11 MR. ANTOLLINO: I don't have to. Then
 12 you'll come up with something else. I asked
 13 a clear question. I'd like an answer. If
 14 you don't want to, I'll just make it a part
 15 of the discovery pile motion I'm going to
 16 make.
 17 MR. ZABELL: Identify whether the
 18 question is hypothetical or not and I'll
 19 allow her to answer it.
 20 MR. ANTOLLINO: It's a clear question.
 21 I don't have to ask it in your way. I have
 22 asked it my way. I am not going to be
 23 bullied by you. We'll just take it up for a
 24 ruling. If you are directing the witness not
 25 to answer the question, I'll take it up for a

0087

1 LAUREN CALLANAN
 2 zone?
 3 A I have heard of drop zones referred to as
 4 playgrounds in the past.
 5 Q Have you seen them or referred to as an adult
 6 playground?
 7 A Not necessarily an adult playground. But as
 8 I said, you have to be eighteen in order to skydive.
 9 Q Are pets allowed at Sky Dive Long Island?
 10 A Currently, not at this time.
 11 Q Were there any times when pets have been
 12 allowed?
 13 A Previously, I would imagine so, yes.
 14 Q Why?
 15 A I previously brought my dog to the drop zone.
 16 Q You're not allowed to bring your dog to the
 17 drop zone anymore?
 18 A No. My dog passed away.
 19 Q I'm sorry. What about Ray?
 20 MR. ZABELL: Ray is not a dog.
 21 Q What about Ray, does Ray bring his dog to the
 22 drop zone?
 23 A Ray previously brought his dog to the drop
 24 zone.
 25 Q Does he no longer do that?

0086

1 LAUREN CALLANAN
 2 ruling.
 3 MR. ZABELL: I'm directing you not to
 4 answer the question, unless he clarifies
 5 whether or not it is a hypothetical question.
 6 Once he makes a clarification as to yes or
 7 no, it is hypothetical, you are free to
 8 answer.
 9 MR. ANTOLLINO: It's clear on its face.
 10 MR. ZABELL: What is clear on its face.
 11 Question don't have faces.
 12 Q Are you aware of the rules of conduct
 13 governing instructors at Sky Dive Long Island?
 14 A To the best of my knowledge, there is no
 15 official written words. So, therefore no. I am not
 16 aware of rules of conduct, no.
 17 MR. ZABELL: You answered.
 18 Q Do you ever remember Don bringing some of his
 19 friends to Sky Dive Long Island and not being able to
 20 jump because of weather?
 21 A I do not recall.
 22 Q Is Sky Dive Long Island an adult playground?
 23 A You need to be eighteen years of age in order
 24 to skydive. So, it is for adults, yes.
 25 Q Have you ever seen a sign like that at a drop

0088

1 LAUREN CALLANAN
 2 A I have not seen his dog in a long time.
 3 Q Did Ray ever instruct you that, from now on
 4 we're are not going to be able to bring our dogs to the
 5 drop zone?
 6 A Ray has expressed yes, the desire to not have
 7 any pets at the drop zone.
 8 Q Do you, in fact, have a sign at the drop
 9 zone, no pets allowed?
 10 A There is a sign or there was a sign at the
 11 drop zone. There has been a sign for years at the drop
 12 zone, no dogs allowed or no pets allowed. I don't
 13 remember the exact terminology of the sign. There has
 14 probably been signs long before I got there.
 15 Q Do you recall a time when Don's cat died?
 16 A I do.
 17 Q What do you remember about that?
 18 A I recall Don being very upset.
 19 Q In what way did you come to the conclusion
 20 that he was upset?
 21 A Don came into the manifest office and sat
 22 there for a length of time expressing his sadness.
 23 Q In what way was he expressing his sadness?
 24 A He was talking about the passing of the cat.
 25 Q Was he crying?

0089

1 LAUREN CALLANAN

2 A I can't remember if he was actually crying.

3 I cannot say for sure.

4 Q Did he say he was unable to do tandems?

5 A I don't recall.

6 Q Did you commiserate with about that with him?

7 MR. ZABELL: Objection to the form.

8 A Of course I would sympathize with the loss of

9 a pet.

10 THE WITNESS: Can we take a break.

11 MR. ZABELL: Sure.

12 (Whereupon a pause in the proceeding was

13 taken.)

14 Q Your ex, Ben Lowe, was fired by Ray, wasn't

15 he?

16 MR. ZABELL: Objection to the form of

17 the question. If he is offending you, feel

18 free to tell me. If you think he is being

19 obnoxious, you may tell him that. You may

20 answer.

21 MR. ANTOLLINO: Withdrawn.

22 Q Did I just offend you?

23 A Well, I wouldn't say offended.

24 Q You described earlier that Ben Lowe was your

25 ex, didn't you?

0090

1 LAUREN CALLANAN

2 A He was, yes.

3 Q I asked and I'll ask again, was your ex, Ben

4 Lowe, ever fired by Ray?

5 MR. ZABELL: Same objection. You may

6 answer.

7 A No. No, he was not fired, I don't believe.

8 Q Were you in a relationship with Ben when Ben

9 ended working for Ray?

10 A I was.

11 Q Do you know a Doug Smith?

12 A I do not know Doug Smith.

13 Q Did anyone call after Don was fired to find

14 out about Don's work?

15 A No, I do not know.

16 Q Has that ever happened before, where someone

17 has called to inquire about a previous employee?

18 MR. ZABELL: Objection to the form. You

19 may answer.

20 A Other employers may have called to verify

21 employment, sure.

22 Q What is the practice in responding to those

23 inquires?

24 MR. ZABELL: Objection to the form. You

25 may answer.

0091

1 LAUREN CALLANAN

2 A It depends on the question.

3 Q Well, if a person was calling to verify

4 employment, would you answer the questions?

5 MR. ZABELL: Objection to the form. You

6 may answer.

7 A Yes.

8 Q If a person was calling to verify employment

9 and get an assessment of the instructor's ability,

10 would you answer the question?

11 MR. ZABELL: Objection to the form of

12 the question. You may answer.

13 A I personally would not be able to answer

14 that.

15 Q Do you know if Ray does and what his practice

16 is?

17 MR. ZABELL: Objection to the form of

18 the question. You may answer.

19 A I'm not aware of his practice in that

20 respect.

21 Q Do you ever do reference checks before hiring

22 your employees?

23 MR. ZABELL: Objection to the form. You

24 may answer.

25 A I'm not in charge of hiring employees.

0092

1 LAUREN CALLANAN

2 Q When did you learn that Don was suing Sky

3 Dive Long Island?

4 A I don't recall the exact time when I was

5 informed.

6 Q How were you informed?

7 A I believe I overheard people talking about

8 it.

9 Q Where?

10 A At the drop zone.

11 Q What people?

12 A Staff members.

13 Q What staff members?

14 A I said I don't remember.

15 Q What was said?

16 A I just recall that there was talk about a

17 lawsuit.

18 Q Do you remember what was said about the

19 lawsuit?

20 A No, I don't remember.

21 Q Were any opinions expressed about the

22 lawsuit, in anyway?

23 A I don't recall.

24 Q Did Ray say anything about the lawsuit?

25 A I do not recall.

0093

1 LAUREN CALLANAN

2 Q Has Ray said anything to you about this
3 lawsuit from the day you learned about it at the drop
4 zone to the present?

5 A Other than that there was a lawsuit, I don't
6 recall what was said about anything pertaining to the
7 lawsuit.

8 Q Has he ever complained about Don since the
9 time the lawsuit was filed and the present?

10 A Not that I'm aware of. I don't remember.

11 Q Has he ever complained about how much he has
12 had to pay his attorney between the time the lawsuit
13 was filed and the present?

14 A Not that I can verify, no. I don't recall.

15 Q I don't want you to verify anything. I just

16 want you to testify to the best of your recollection.

17 To the best of your recollection, has Ray ever

18 complained about how much he has had to pay defending
19 this lawsuit?

20 MR. ZABELL: Objection, obnoxious

21 question asked and obnoxious question

22 answered. You can answer again.

23 A I don't recall specific to this case, no.

24 Q Has he complained about his legal bills in

25 general?

0094

1 LAUREN CALLANAN

2 MR. ZABELL: Same objection.

3 A I don't remember.

4 Q Ever?

5 A I can't say for certain.

6 Q Has Ray ever talked about his wife at the

7 work place?

8 A Yes.

9 Q Would you say that he has talked about his

10 wife on numerous occasions?

11 A I don't know to whom he talks to. But I have

12 talked to Ray about his wife on numerous occasions, his

13 ex-wife.

14 Q What have you talked to Ray about his ex-wife

15 about on numerous occasions in the past?

16 A On a personal level I have talked to Ray

17 about his ex-wife.

18 Q On what personal level?

19 A As a friend, I have talked about his past

20 relationships.

21 Q What advice have you offered him with regard

22 to his past relationships?

23 MR. ZABELL: Objection to the form of

24 the multiple question. You may answer.

25 A I do not recall specific advice.

0095

1 LAUREN CALLANAN

2 Q Has he complained about his ex-wife to you?

3 A Yes, I have talked to him about complaints
4 about his ex-wife.

5 Q Has he told you things that she has said to
6 him?

7 A Previously, I'm sure he has. Specifically, I
8 don't recall.

9 Q On more than one occasion?

10 A Yes.

11 Q Would you agree that skydiving is not for
12 everyone?

13 MR. ZABELL: Objection to the form.

14 A I would.

15 Q What type of people should not consider
16 skydiving?

17 A General rules for skydiving, you must be at
18 least eighteen and in good general health.

19 Q Okay.

20 A There is a published weight limit, which is
21 very flexible, depending on how you compare the
22 weights.

23 Q So, say someone meets the weight limit, is
24 old enough and in good health, are there any people
25 that are not well suited for skydiving that fall within

0096

1 LAUREN CALLANAN

2 those parameters?

3 A Those are the general qualifications. Beyond
4 that --

5 Q What about someone that is claustrophobic, do
6 you think that someone that is claustrophobic should go
7 skydiving?

8 A I'm claustrophobic and I skydive. I have
9 never been diagnosed.

10 Q What do you mean you have never been

11 diagnosed? Describe your claustrophobia?

12 MR. ZABELL: Objection.

13 MR. ANTOLLINO: Withdrawn.

14 MR. ZABELL: Which question?

15 MR. ANTOLLINO: Both.

16 Q Describe your claustrophobia?

17 A I don't enjoy being enclosed in small spaces.

18 Q How small?

19 A A room like this is not a problem. If I was
20 in a very small room, very small, where I could not
21 move, I would not be comfortable.

22 Q Like a closet?

23 MR. ZABELL: Objection.

24 Q Correct?

25 MR. ZABELL: Putting correct at the end

0097

1 LAUREN CALLANAN

2 of a statement doesn't make it a question.

3 That is a statement to which no answer is

4 required.

5 Q You can answer.

6 MR. ZABELL: There is no question

7 pending before you.

8 MR. ANTOLLINO: Counselor, you're just

9 making this longer. It's so unnecessary.

10 Withdraw the question. I'll ask it like

11 this.

12 Q Like a closest, correct?

13 MR. ZABELL: That is not a question that

14 you can answer.

15 Q Would you answer the question.

16 MR. ZABELL: You need not answer the

17 question.

18 MR. ANTOLLINO: Counsel, you can't tell

19 me how to ask my questions. It's a follow up

20 question that is completely appropriate.

21 You're making speaking objections. You have

22 the right to object to the form. I am asking

23 you not to make this kind of objection.

24 MR. ZABELL: Ask big boy questions and

25 you'll get adult answers.

0098

1 LAUREN CALLANAN

2 Q Can you answer the question, please.

3 A I don't enjoy being confined in tight spaces,

4 such as a small closet. However, I couldn't say that

5 someone else that feels that they may be

6 claustrophobic, shouldn't go skydiving. Because, who

7 knows what they don't feel comfortable with.

8 Q There might be some people that feel

9 uncomfortable being in a room this size, correct?

10 A Sure.

11 Q This is about twelve by twenty,

12 approximately?

13 A Okay.

14 Q I'm asking you. Would that be a fair

15 estimate of how big this room is?

16 A I don't have a tape measure. It is a

17 conference room, yes. It's not a closet.

18 Q Okay. It's a conference room, not a closet.

19 What about someone that doesn't like being touched, is

20 that a good person that is well suited for skydiving?

21 MR. ZABELL: Objection to the form.

22 Q You can answer.

23 MR. ZABELL: If you can.

24 A People who are going skydiving for the first

25 time, are going tandem. They are going tandem under

0099

1 LAUREN CALLANAN

2 the assumption that an instructor will be attached to

3 them. That is their own decision to make whether they

4 would like to partake in those activities. If they

5 don't like to be touched, then no, I wouldn't recommend

6 a tandem for them.

7 Q Have you ever heard sexually suggestive jokes

8 made at the drop zone?

9 A Specifically, no. But I cannot remember.

10 Q Have ever seen a situation where a boyfriend

11 and a girlfriend are getting strapped to different

12 instructors and one instructor says to the boyfriend, I

13 bet you didn't expect that your girlfriend is going to

14 be strapped to another guy?

15 A I'm in the office. So I, unfortunately, do

16 not see when people are getting geared up.

17 Q You have never heard that?

18 A Unfortunately, I cannot say that I have.

19 Q You have been up in a plane before?

20 A I have.

21 Q Other people have been tandem and you have

22 done some tandems too, correct?

23 A Yes, I have.

24 Q Have you ever heard jokes like that up in the

25 planes you have been in?

0100

1 LAUREN CALLANAN

2 A No, not that I recall.

3 Q What kind of atmosphere is it up in the plane

4 before people exit the airplane?

5 MR. ZABELL: Objection to the form. You

6 may answer.

7 A There are multiple emotions going on until

8 the time of exit.

9 Q Explain that. What are some of the emotions

10 going on?

11 A The people are excited. There is lots of

12 adrenalin. People are scared. It's exhilarating.

13 Q Are there any ways that instructors loosen

14 the tension for tandem skydivers?

15 A I'm sure that there are.

16 Q Have you ever seen any evidence of that?

17 A Not that I can comment on.

18 Q Has Ray ever talked to you about his sister?

19 A Yes, I do talk about his sister.

20 Q When?

21 A I believe when she started getting ill, is

22 when I last recall speaking of her.

23 Q What about the first time, was that the first

24 time also?

25 A No. I believe I talked about her in the

0101

1 LAUREN CALLANAN

2 past. I don't remember.

3 Q How would you characterize their

4 relationship, if you could?

5 A Unfortunately, I can't.

6 Q Did he attend her funeral.

7 A I believe so.

8 Q Are you sure?

9 A No, I'm not. But I don't know why he

10 wouldn't.

11 Q Has Ray ever said anything derogatory about

12 gay people in your presence?

13 A Not that I'm aware of.

14 Q Have you ever spoken to any particular

15 employees about Don since this lawsuit has been filed?

16 A Yes.

17 Q Who?

18 A I have spoken to Ray. I spoke to Rich

19 Winstock. I believe I spoke to Marco Marcovich.

20 Q Anyone else?

21 A Not that I can specifically recall.

22 Q When did you speak to Marco?

23 A Probably about a month ago.

24 Q What did you say to Marco?

25 A I don't recall specifically.

0102

1 LAUREN CALLANAN

2 Q Why were you calling Marco?

3 A I didn't call Marco.

4 Q Did Marco call you?

5 A No. I don't recall.

6 Q Do you remember any circumstances as to how

7 you spoke to Marco?

8 MR. ZABELL: Objection to the form of

9 the question.

10 A I can't remember. Unfortunately, I can't

11 recall. I can't say.

12 Q Do you remember what you asked Marco about

13 Don?

14 MR. ZABELL: Object to the form of the

15 question.

16 A I can't remember asking Marco anything about

17 Don. I recall asking Marco if he heard anything about

18 the court case or anything pertaining to a deposition.

19 Q What did he say?

20 A He said he had not.

21 Q Was there any further conversation?

22 A He was aware that Rich Winstock was scheduled

23 for a deposition.

24 Q Did you ask Marco to come in and meet with

25 anyone?

0103

1 LAUREN CALLANAN

2 A I did not.

3 Q Why did you ask Marco that question about the

4 deposition?

5 A It was general conversation.

6 Q There was no reason to ask the question. You

7 just felt like it?

8 MR. ZABELL: Objection.

9 MR. ANTOLLINO: Withdrawn.

10 Q Why were you curious about what Marco knew

11 about this lawsuit?

12 A I was curious if I may have to come in for a

13 deposition.

14 Q Were you trying to find out if Marco was

15 going to have to come in for a deposition also?

16 A No. I was just curious if he had heard

17 anything.

18 Q Was there any further conversations, other

19 than what you just testified to?

20 MR. ZABELL: Object, asked and answered.

21 You may answer.

22 A Not that I recall.

23 Q What was Marco's relationship with Don?

24 A He was a co-worker.

25 Q Did they have any other aspect to their

0104

1 LAUREN CALLANAN

2 relationship?

3 A I know they had jumped together at least on

4 one base jumping trip. Which, I don't recall where

5 they went. I know they did go away. I believe

6 together. I don't know how they ended up in the same

7 place. But they were jumping together at another

8 location.

9 Q You don't know the extent of whether they are

10 just acquaintances or friends or jumping buddies or

11 anything like that?

12 A I don't know personal details, no.

13 Q Has Marco said anything negative about Don?

14 A Not that I recall.

15 Q What was your relationship with Don?

16 A Co-workers.

17 Q Well, would you characterize it as a good

18 relationship?

19 A I would say so.

20 Q Why?

21 A I never had any problems with Don on a

22 personal level or a professional level.

23 Q Do you think he's a nice guy?

24 A I do.

25 Q A good instructor?

0105

1 LAUREN CALLANAN

2 A I have never received instructions. So, I
3 can't comment on the instructions.

4 Q Is it okay for an instructor to tell a
5 customer that he is married?

6 A That's an opinion. I can't unfortunately
7 comment on that. I would have to say that if a
8 customer asked the instructor, are you married, then it
9 would be an okay response.

10 Q Otherwise, not?

11 A I don't see how that would come up otherwise.

12 Q What about military status?

13 A We have a lot of military jumpers at the drop
14 zone. Again, if a student asked if an instructor was
15 in the military, I would expect the instructor to want
16 to talk about that, sure.

17 Q If they just offered the information, would
18 that be inappropriate?

19 A I don't know why they would offer that
20 information. There is really no need for it on a
21 professional level.

22 Q What about age, do instructors ever tell the
23 students their age?

24 A If the student asks, I'm sure they would.

25 Q Under any other circumstances?

0106

1 LAUREN CALLANAN

2 A I don't feel there would be a need to share
3 that.

4 Q Did you ever see Don flirt with any women at
5 the drop zone?

6 A Not that I recall, no.

7 Q Do you believe that Don has any interest in
8 women, whatsoever?

9 MR. ZABELL: Objection to the form. You
10 may answer.

11 A I don't know.

12 Q Were there any complaints about Don from
13 other employees at SDLI?

14 A I cannot recall specifically. I know I have
15 heard people say in passing that Don liked to talk a
16 lot, if you want to classify that as a complaint.

17 Q Anything else that you recall?

18 A There is nothing else that I can specifically
19 remember.

20 Q Did Ray ever make that complaint, that Don
21 liked to talk a lot?

22 A I don't recall.

23 Q After Don was fired he applied for
24 unemployment insurance, is that right?

25 A That is correct.

0107

1 LAUREN CALLANAN

2 Q When did you find out about that application?

3 A When Ray received the letter in the mail?

4 Q Did you open that letter?

5 A No, I do not believe so.

6 Q Did Ray tell you about the letter?

7 A Correct, I do believe so. I can't say for
8 sure.

9 Q Did he show you the letter?

10 A I believe he did, yes.

11 Q What did he say to you in response to that
12 application for unemployment insurance?

13 A I believe, we're going back some time, that
14 he had asked me if I knew or had heard that Don may
15 have been working elsewhere or possibly owned another
16 business, while he was collecting unemployment or
17 attempting to collect unemployment.

18 Q Did he say anything else?

19 A He asked me to basically write back in
20 response.

21 Q What did he tell to write back in response?

22 A He asked me to basically look into whether
23 Don was working, as well as just drafting the letter.
24 Which I did. I basically showed it to him.

25 Q Did he review it?

0108

1 LAUREN CALLANAN

2 A He did.

3 Q Did he say this is accurate?

4 A He said, yes.

5 Q Is this the letter, Exhibit 1-A, that you
6 drafted in opposition to Don's unemployment insurance?
7 A Correct.

8 Q Did Ray ask you to make any changes in the
9 letter?

10 A Not that I recall.

11 Q That is your signature there, correct?

12 A Yes, that is my signature.

13 Q Whether or not he asked you to make any
14 changes, he definitely didn't ask you to make any
15 changes in this one, correct?

16 (Continued on the next page to include
17 the jurat and signature line.)

18

19

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0109

1 LAUREN CALLANAN

2 A I do not believe so.

3 MR. ANTOLLINO: I have nothing further.

4 Thank you very much.

5 (Whereupon, the examination of

6 this witness was concluded at 3:40 p.m.)

7 * * *

8

9 I have read the foregoing record of my testimony

10 taken at the time and place noted in the heading hereof

11 and I do hereby acknowledge it to be a true and correct

12 transcript of the same.

13

14 _____

15 LAUREN CALLANAN

16

17 Subscribed and sworn to

18 before me this ____ day

19 of _____, 2012

20

21 _____

22 NOTARY PUBLIC

23

24

25

0110

2 I N D E X

3

4 EXAMINATION OF BY PAGES

5 Lauren Callanan Mr. Antollino 3-109

6

7 E X H I B I T S

8 CALLANAN EXHIBIT DESCRIPTION PAGE

9 1 Subpoena 4

10 1-A Letter attached to Subpoena 8

11 2 E-mail 27

12 3 Photograph 47

13 4 Photograph 49

14

15 INFORMATION TO BE SUPPLIED

16 DESCRIPTION PAGES

17 Other complaints 31-33-39

18

19 RULINGS

20 PAGE LINE

21 8 22

22 11 15

23 73 20

24 84 13

25

0111

2 C E R T I F I C A T I O N

3

4 I, Joseph J. Pontillo, a Notary Public of the

5 State of New York do hereby certify:

6 That the testimony in the within hearing was

7 held before me at the aforesaid time and place. That

8 said witness was duly sworn before the commencement of

9 the testimony, and that the testimony was taken

10 stenographically by me then transcribed under my

11 supervision, and that the within transcript is a true

12 record of the testimony of said witness.

13 I further certify that I am not related to any

14 of the parties to this action by blood or marriage,

15 that I am not interested directly or indirectly in the

16 matter in controversy, nor am I in the employ of any of

17 the counsel.

18

19 IN WITNESS WHEREOF, I have hereunto set my hand

20 this 11th day of January, 2012.

21

22 _____

23 JOSEPH J. PONTILLO

24

25

**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.: CV- 10- 4334 (JFB)(ARL)

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S SECOND COMBINED
DISCOVERY DEMANDS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Local Rule 26.3, Defendants **ALTITUDE EXPRESS, INC., d/b/a Skydive Long Island, and RAY MAYNARD** (hereinafter "Defendants") respond to Plaintiff **DONALD ZARDA**, (hereinafter "Plaintiff") Second Combined Discovery Demands, as follows:

GENERAL STATEMENTS

By making information and/or documents available to Plaintiff in this action in response to Plaintiff's Discovery Demands, Defendants do not waive, and do not intend to waive, any objections that Defendants may have regarding the use of the information and/or documents or of the truth or accuracy of any characterization contained therein.

Defendants expressly reserve: (1) all objections regarding the competency, privilege, relevance, materiality and admissibility of all information and/or documents produced and the contents thereof; (2) the right to object to the use of any document(s) produced, in whole or in part, or to the subject matter covered thereby in any later stage or proceeding in this litigation or any other proceeding on any or all the grounds set forth herein; (3) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or relating to the subject matter of any document or information produced by Defendants; and (4) all objections as to vagueness and ambiguity. Furthermore, where a Discovery Demand seeks to impose on Defendants obligations broader than those imposed by the Federal Rules of Civil Procedure (hereinafter "FRCP"), Defendants shall respond in conformance with the FRCP. Privileged documents responsive to a particular Document Request, if any such documents exist, are not being produced, and will be identified consistent with the FRCP.

Defendants have been assisted in the preparation of responses and objections to Plaintiff's Discovery Demands by counsel. Accordingly, the word usage and sentence structure of Defendants' responses and objections may be that of the individual attorney who assisted in their preparation, and no representation is made that these objections and responses contain the precise language of the executing party. Defendants' responses are based upon information and documents known to Defendants and/or Defendants' attorneys as of the date such responses are served. Defendants will continue to review files, and accordingly, reserve the right to

supplement, amend or correct the responses and objections in the event that future discovery reveals documents and/or information that would justify its supplementation, correction and amendment. Should Defendants at any time amend or supplement the responses, by agreement or otherwise, Defendants reserve the right to assert any available privilege or objection with respect to any information or documents which might otherwise be discoverable in connection with any amendment or supplementation.

GENERAL OBJECTIONS

Defendants submit the following General Objections, which apply to each and every one of Plaintiff's Discovery Demands. For convenience, these General Objections are set forth below and are not necessarily repeated after each Demand. The assertion of the same, similar or additional answers or responses in the specific answers to Plaintiff's Discovery Demands does not waive any of Defendants' General Objections as set forth below:

1. Defendants reserve the right to challenge the competency, relevance and admissibility, at trial or any subsequent proceeding, in this or any other action, of any statement made or information provided in response to Plaintiff's Discovery Demands.
2. Defendants object to Plaintiff's Discovery Demands insofar as they seek to impose upon Plaintiff obligations greater than those required by FRCP.
3. Defendants object to Plaintiff's Discovery Demands insofar as they are directed to or made on behalf of entities or persons who are not parties to this litigation.
4. Defendants object to Plaintiff's Discovery Demands insofar as they attempt to elicit protected documents or information subject to the attorney-client privilege; the work product doctrine; the confidentiality of documents containing the impressions, conclusions, opinions, legal research or theories of Defendants or their attorneys; or seek materials prepared in anticipation of litigation. Defendants assert each and every one of the foregoing privileges and protections applicable to the information sought to the fullest extent provided by law or applicable rules and future Orders by the Court herein.
5. Defendants object to Plaintiff's Discovery Demands to the extent they seek documents or information not within the possession, custody or control of Defendant.
6. Defendants object to Plaintiff's Discovery Demands insofar as they seek documents or information, which is within Plaintiff's exclusive custody, control and possession, or to which Plaintiff has equal access.
7. Defendants object to Plaintiff's Discovery Demands insofar as they are vague, ambiguous, overbroad, unduly burdensome, and seek documents and/or information outside the scope of permissible discovery pursuant to the FRCP.

8. Production of documents offered herein shall be made subject to redaction or withholding of documents of information to which objection has been made. Defendants will not create a privilege log for documents post-dating the commencement of this litigation, all of which are subject to the work product doctrine and all or almost all of which are subject to the attorney-client privilege.
9. Defendants object to Plaintiff's Discovery Demands to the extent they are unlimited in time or otherwise not limited to a time frame relevant to this litigation on the grounds that each such Discovery Demand seeks information and/or documents neither relevant to the subject matter of the litigation, nor reasonably calculated to lead the discovery of admissible evidence. Defendants further object to each such Discovery Demand as overbroad and unduly burdensome.
10. Defendants have based the objections and responses to these Discovery Demands on information currently available to Defendants, and reserve the right to amend objections and responses to include information and documents which may be obtained through ongoing discovery and investigation, in accordance with the FRCP.
11. The foregoing General Objections are incorporated by reference within each of the following responses and objections. Responses to specific Discovery Demands are made subject to and without waiving these General Objections, whether or not specifically reiterated in the responses themselves.
12. Defendants reserve the right to supplement, amend or correct their responses in the event of the development or availability of additional, responsive, non-privileged information to the extent such supplementation, correction or amendment is warranted, pursuant to the FRCP.

DEFINITIONS

1. As used herein, objections containing the phrase "seeks the discovery of irrelevant information or documents" or words to that effect means that the Discovery Demand seeks information or documents (1) having no tendency to make the existence of any fact or consequences to the determination of the instant case more or less probable than it would be without such information or documents; and (2) which do not appear to be reasonably calculated to lead to the discovery of admissible evidence.
2. As used herein, "unduly burdensome" means that the Discovery Demand requires a search for documents which are of little or no benefit to this action in that the value of their production is far outweighed by the burden of producing them, especially where Plaintiff can obtain the information of documents from other sources.
3. As used herein, "overbroad" means that the Discovery Demand requires production, at least in part, of information and/or documents which are irrelevant to the instant litigation in subject matter or time period or both.

4. As used herein, "vague" means that Defendant is unable to ascertain with certainty what information or documents are being requested.

DISCOVERY DEMANDS

DEMAND NO. 1

Produce all copies of the employee manual that both Lauren Callanan and Raymond Maynard testified to at their depositions.

RESPONSE NO. 1

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, and is not reasonably calculated to lead to the discovery of admissible evidence.

DEMAND NO. 2

Produce all electronic documents pertaining to Donald Zarda, or the facts underlying his complaint, that have not yet been produced.

RESPONSE NO. 2

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants are not in possession of documentation responsive to this request.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 3

INTERROGATORY: Please state all electronic devices, including but not limited to cell phones, blackberries and personal computers in the position of the defendant since January 1, 2009.

RESPONSE NO. 3

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 4

INTERROGATORY: Please identify which person(s) searched for discoverable information about Donald Zarda, his complaint or other information demanded by plaintiff in December 2010, or in response to demand number 2, supra.

RESPONSE NO. 4

Defendants object to this demand on the grounds that it attempts to elicit protected information subject to the attorney-client privilege; the work product doctrine; the confidentiality of documents containing the impressions, conclusions, opinions, and legal research of Defendants or their attorneys; and seeks materials prepared in anticipation of litigation. Defendants assert each and every one of the foregoing privileges and protections applicable to the information sought to the fullest extent provided by law or applicable rules and future Orders by the Court herein.

DEMAND NO. 5

INTERROGATORY: Please set forth in detail how the person set forth in ¶ 4 searched for such electronic information.

RESPONSE NO. 5

Defendants object to this demand on the grounds that it attempts to elicit protected information subject to the attorney-client privilege; the work product doctrine; the confidentiality of documents containing the impressions, conclusions, opinions, and legal research of Defendants or their attorneys; and seeks materials prepared in anticipation of litigation. Defendants assert each and every one of the foregoing privileges and protections applicable to the information sought to the fullest extent provided by law or applicable rules and future Orders by the Court herein.

DEMAND NO. 6

Please produce any documents outlining “appropriate” or “inappropriate” topics for discussion in the workplace, including any documents concerning “appropriate” or “inappropriate” topics for discussion with customers.

RESPONSE NO. 6

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope.

DEMAND NO. 7

REQUEST FOR ADMISSION: The document attached as “Exhibit A” is the complaint from the “Rip-off Report” that Lauren Callanan referred to in her deposition starting at page 41.

RESPONSE NO. 7

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants admit only that the document attached as "Exhibit A" is a complaint from the "Rip-off Report" and, without further information, can neither admit nor deny its authenticity as the complaint referenced in Lauren Callanan's deposition testimony.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 8

REQUEST FOR ADMISSION: The document attached as "Exhibit A" is the complaint that Raymond Maynard referred to in his deposition starting at page 55.

RESPONSE NO. 8

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants admit only that the document attached as "Exhibit A" is a complaint and, without further information, can neither admit nor deny its authenticity as the complaint referenced in Raymond Maynard's deposition testimony.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 9

REQUEST FOR ADMISSION: The document attached as "Exhibit B" is Raymond Maynard's response to the complaint attached as "Exhibit A."

RESPONSE NO. 9

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants admit only that the document attached as "Exhibit B" appears to be a response written by Raymond Maynard and, without further information, can neither admit nor deny its authenticity as a response to the complaint attached as "Exhibit A."

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 10

CONDITIONAL INTERROGATORY: If the answers to 7, 8 & 9 were not unqualified admissions, please produce the complaint(s) referred to in the depositions, and Ray Maynard's responses referred to in the deposition.

RESPONSE NO. 10

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants are not in possession of documentation responsive to this demand.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 11

INTERROGATORY: Please state in detail, what, if anything, Mr. Maynard did to investigate the complaint attached as "Exhibit A," including but not limited to finding out who the author of the complaint was, when it happened, or whether anything in the complaint actually occurred.

RESPONSE NO. 11

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 12

INTERROGATORY: Were any employees disciplined, i.e., fired, counseled, reprimanded, suspended or warned as a result of the complaint attached as "Exhibit A?"

RESPONSE NO. 12

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 13

CONDITIONAL INTERROGATORY: If the answer to the previous interrogatory is in the affirmative, please state the name of the employee and level of discipline imposed.

RESPONSE NO. 13

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 14

DEMAND FOR INSPECTION OF PREMISES and/or DEMAND FOR DISCOVERY AND INSPECTION: Please offer an agreeable date upon which the plaintiff and/or is counsel may inspect the premises of Altitude Express, Inc. and review each tandem video made in the summers of 2009 and 2010. Please note that plaintiff does not wish to review every tandem videotaped, but merely to take a sampling. Plaintiff also wishes to photograph the workplace.

RESPONSE NO. 14

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants deny Plaintiff's request as set forth herein. Should Plaintiff amend his request with a reasonable scope and greater specificity, Defendants shall endeavor to comply.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 15

DEMAND FOR DISCOVERY AND INSPECTION: Please produce the videotapes that Altitude Express requires/required customers to view before engaging in a tandem jump. In his deposition, Maynard referred to two different videotapes used at different times.

RESPONSE NO. 15

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, and is not reasonably calculated to the lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants shall make the requested videos available for inspection at the offices of Defendant's Counsel located at 4875 Sunrise Highway, Suite 300, Bohemia, New York 11716 at a date and time to be agreed upon by both parties.

DEMAND NO. 16

INTERROGATORY: Please set forth every day that Plaintiff worked during the seasons 2009 and 2010 in which he was paid for (a) no tandems; (b) one tandem; or (c) three tandems.

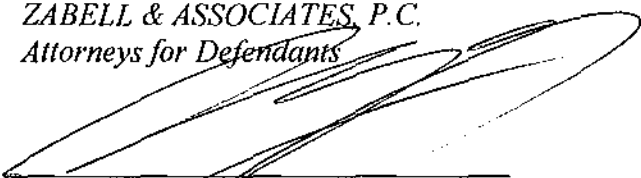
RESPONSE NO. 16

Defendants object to Plaintiff's demand on the grounds that it seeks information already within Plaintiff's custody, control and possession and to which Plaintiff has equal access.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

Dated: Bohemia, New York
February 17, 2012

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

Saul D. Zabell, Esq.
ZABELL & ASSOCIATES, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel: (631) 589-7242
Fax: (631) 563-7475



**COMPLETE FRAUD
ON EVERY LEVEL**
Las Vegas Nevada
Internet.



**A.S. Radin &
Associates Scott
Radin Scott Radin**
ripped me off and
7 other trainees
for \$4,650. Total
scan artist. Hasn't
returned my calls
since Oct 09 West
Seneca, New

York.



**Marcelene B.
DuBois, Young
Minds Learning
Academy Ormond
Beach Marcelene
Reed stalking,**

slander, liable,
domestic violence Ormond Beach



**Nick Miccarelli Self
Serving Career
Politician, Piece of
Garbage, RINO
Republican, Wants to
kill 44,000 jobs
created in a bad**

economy Ridley Park,
Pennsylvania.



**RISK
MANAGEMENT -
PERMANENTE
MEDICAL GROUP
- OAKLAND, CA
Kaiser Plaza
Headquarters**

Patient Abandonment, Violation of
Federal and State Elder Abuse
Laws, Fraud (Charging \$5,000 for
Zero Services) OAKLAND,
California.



**Diagnose-Me.com
By Stefan Muth
Stefan Muth,
Stefan Andreas
Muth The owner**

victimized me, abused me,
threatened me, broke his promises
to me, failed to pay debts owed to
me, turned me into his enemy, and
backstabbed me, even though I
was nothing but kind and obedient.
Hawaii Internet.



**Best Buy Christian
Reich GM Forcing
me to lie to
customers about**

York

*Consumer Comment: Thanks Ronkonkoma!



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Tweet 0



Like

Me and my friends went to Skydive Long Island for a so called great day to jump out of a plane. We had reservations and waited all long to jump. Its obvious all they care about is the money as the tandems instructors actually run to the next customer after their prior jump. They spent no time with us and made it very dangerous. They spent no time to explain anything at all. other places where i did a tandem skydive the instuctors spent atleast 45 minutes to explain the whole process. Skydive Long Island does NOT do this at all and made the experience a complete nightmare. Once in the Plane the tandem instuctor was feeling up my girl friend and her friends as well. The girls explained once the parachute opened they were touching their breats and it was not a good feeling as they could not protect themselves. We paid for a skydive from 13,500 feet and only got 10,000 feet, and we went threw alot of clouds in which i heard this was illegal, they did not refund any money to us after complaining and putting our lives at risk, once the parachute was opened the camera guy almost flew into us and then i saw another tandem pair flying right next to us as the tandem instructors were laughing and chasing each other. Is this normal ???? After that experience one of out friends broke their ankels due to a real low turn into the ground.... Do they care about ANYONE ???? OMG these guys should be shut down. Then we paid for a video for \$125.00 and noone recieved the videos and we kept calling and they just ignored us someone needs to report this business to the proper authorities, maybe thats why we did not recieve our videos because all they care about is money and will jump out of planes in any weather...

<http://www.youtube.com/watch?v=T-FcL5GOP1Y>

<http://www.youtube.com/watch?v=JP4J7ZdVxvA>

2

4

1

Author Consumer Employee/Owner

Respond to this Report

Respond to this report!

File a Rebuttal ?

Also a victim?

File a Report ?

Arbitrate

[Set The Record Straight!](#)

Repair Your Reputation ...the right way!

[Corporate Advocacy Program](#)

This report was posted on Ripoff Report on 10/24/2009 9:20:40 AM and is a permanent record located here: <http://www.ripoffreport.com/sports-instruction/skydive-longisland/skydive-longisland-skydive-lon-b4f48.htm>.

Ripoff Report has an exclusive license to this report. It may not be copied without the written permission of Ripoff Report.

Nothing but Lies from a Skydiver with an agenda !!

AUTHOR: Ray-Drop zone owner - Calverton (United States of America)

SUBMITTED: Thursday, November 05, 2009

I am the owner of Skydive Long Island In Calverton, it would have been nice to know who the person from Ronkonkoma actually is.

This "report" is nothing but a bunch of lies. If what this person said is true, he or she should go to the authorities and file a formal complaint and we can sort it out in court if need be.

Skydive Long Island in Calverton has been in business for 24 years, if we are doing what Ronkonkoma is saying, we could never still be operating.

This "report" was not sent by a new customer--it was sent by another Skydiver with an agenda to discredit Skydive Long Island in Calverton.

It also seems that this "report" was written by a fourth grader that failed spelling and grammar.

Everyone of our 1st time Tandem students have to watch our twenty minute training video--no exceptions, then their Tandem instructor goes over every thing before the jump.

The Tandem Masters are ALL Professional Instructors and do not engage in any activity the "report" says.

Personally if some one was feeling up my girlfriend, I would do something on the spot to defend her dignity--unless of course I am that fourth-grader. Oh--and what are "breasts" ?

We jump from 13,500', unless there is cloud cover, or a situation with other air traffic, we do not charge for 13,500' and then jump from 10,000', we also do not jump through clouds--we know that is not allowed.

To get a good video the cameraman does fly very close, and some takes the passengers hand for a few seconds--that is how it is done to get a good quality video.

Yes we did a Tandem passenger break his ankles this year--it was his second Tandem, and he did not pick up his feet as he was instructed to do--it was not a low turn.

Hey Ronkonkoma, If you paid for videos and did not receive them, come down to the airport, ask for me, Ray, DZO, and I will gladly refund you your money.--Oh yea--is "noone" a person That jumped with you that day, or maybe was it a night jump?

This is nothing but slander by some one who does not have what it takes to come face to face with me.

Skydive Long Island In Calverton has a great record and reputation--please check with the governing body of Parachuting in the United States--USPA.org That is the United States Parachute Association.

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If anyone would like to speak with a live person that has gone through our program please contact us at Skydive Long Island in Calverton, and we will get you in touch with them.

Thank You,

Truthfully,

R.M. ,DZO

Skydive Long Island in Calverton

**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.: CV-10-4334 (JFB)(ARL)

**DECLARATION OF SAUL D.
ZABELL, ESQ. IN OPPOSITION
TO PLAINTIFF'S MOTION
TO DISQUALIFY AND FOR
SANCTIONS**

SAUL D. ZABELL, ESQ., an attorney duly admitted to practice before this Court, hereby declares under penalty of perjury as follows:

1. I am the managing principal of Zabell & Associates, P.C., attorney for Defendants in the above-captioned case.
2. I am fully familiar with the facts and circumstances of this case, based on a review of the files and records in this matter and conversations with Defendants.
3. I submit this declaration in opposition to Plaintiff's motion to disqualify and for sanctions.
4. For the reasons set forth in the accompanying memorandum of law and upon the documents attached hereto, Plaintiff's motion should be denied with prejudice.

DECLARATION

5. Upon obtaining the contact information of Ms. "Drellana" and Mr. Kengle, I advised their contact information was being sought in connection with this lawsuit.
6. In response, they informed me they did not want their personal contact information disclosed, and in exchange, authorized us to accept service of a subpoena on their behalf.

7. Mr. Antollino served this office with a subpoena seeking to depose third parties Ms. “Drellana” and Mr. Kengle on May 26, 2011 in Brooklyn, New York.
8. Over the course of the next several weeks, I advised Mr. Antollino the timing and location of the proposed depositions were unacceptable.
9. Specifically, inasmuch as Mr. Kengle and Ms. “Drellana” are residents of Suffolk County, being deposed in Brooklyn is unreasonable.
10. Additionally, the proposed date of the depositions was objectionable as the third party witnesses, as well as all members of Zabell & Associates, P.C. were unavailable on May 26, 2011.
11. Additionally, we advised the third party witnesses were only available for depositions on Wednesdays.
12. Unfortunately, the collective schedules of Zabell & Associates, P.C., the witnesses, Mr. Antollino, and Plaintiff could not be reconciled during the unilaterally imposed narrow window established by Mr. Antollino.
13. Knowing the depositions could not occur on May 26, 2011, Mr. Antollino still had his client incur the expense of traveling to New York from Missouri.
14. Such a course of action was wholly unreasonable as Mr. Antollino was well aware the third party witnesses would be unavailable for deposition on May 26, 2011.
15. Regarding Plaintiff’s claims of improper solicitation of clients, we have not solicited any employee of Defendants or third party witnesses.
16. Zabell & Associates, P.C. only represent the named Defendants; Altitude Express, Inc. and Ray Maynard.
17. However, should an employee of Defendants request representation in the course of this

proceeding, and our clients seek to have us represent that employee, we intend to undertake such representation.

18. Furthermore, notwithstanding Mr. Antollino's suspicions, Zabell & Associates, P.C. has neither coached, nor intimidated any witness in this case.

EXHIBITS

19. Attached hereto as "Exhibit A" is a true and correct copy of Defendants' April 20, 2011 letter to Plaintiff.

20. Attached hereto as "Exhibit B" is a true and correct copy of Defendants' May 16, 2011 letter to Plaintiff.

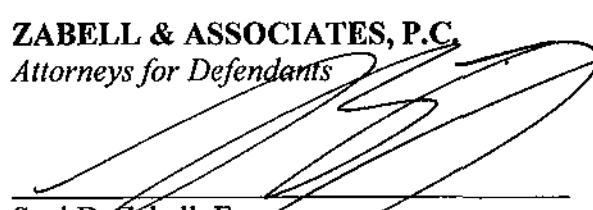
21. Attached hereto as "Exhibit C" are true and correct copies of Defendants' May 23, 2011 and May 26, 2011 letters to Plaintiff.

22. I have read the above twenty-one (21) numbered paragraphs and know them to be true to my own knowledge or upon information and belief.

WHEREFORE, for the reasons set forth in Defendants' accompanying Memorandum of Law, Defendants respectfully requests that this Court deny Plaintiff's motion in its entirety.

Dated: Bohemia, New York
July 6, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

Saul D. Zabell, Esq.
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4875 Sunrise Hwy., Suite 300
Bohemia, New York 11716
Tel. (631) 589-7242
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szabell@laborlawsny.com

2/18/12

Please propose a time for me to call, other than Weds. morning, to discuss these responses before I move for relief.

GA

2/21/12

Greg, Please advise me in writing what your purported issues are. To the extent you have case law to support your position include that as well. Once that is received I will consider your position and respond.

Saul D. Zabell Zabell & Associates, PC 4875 Sunrise Highway Bohemia, NY

2/21/12

Here we go again - We are required to meet and confer. The legal standard is whether my demand is calculated to lead to admissible evidence. I do not intend to write a letter citing case law; the rules do not so require. Rather, they require a meet and confer. Are you refusing to meet and confer? If so, then I have fulfilled my obligation to meet and confer.

GA

On 2/21/12 3:45 PM, "SZabell@laborlawsny.com" <SZabell@laborlawsny.com> wrote:

Greg, Please advise me in writing what your purported issues are. To the extent you have case law to support your position include that as well. Once that is received I will consider your position and respond.

2/21/12

I want to discuss each one of the objections you made to my demand to resolve differences before the judge. You can handle it without an advance cheat sheet. The law requires us to meet and confer, not to write letters. We'll discuss my issues on the phone. Obviously, I believe your objections were not well founded and would like to narrow issues before the motion. I am not required to put them in writing, but you are required to meet and confer with me. If you won't, I'll just tell the judge in my motion. I will not be wasting my time writing a letter.

GA

On 2/21/12 4:45 PM, "SZabell@laborlawsny.com" <SZabell@laborlawsny.com> wrote:

Just put your specifics in a letter. I will waive your obligation to provide a legal basis for your positions AT THIS TIME.

2/22/12

No. Once again, you can hear my points on the phone. In brief, I believe that all of your objections are misplaced and my demands are reasonable. The rules do not require me to write my objections to your objections, just that we meet and confer. When will we meet and confer, or are you refusing to. I refuse to list my objections to your objections. Given that, do you refuse to meet and confer. This is the final go-round on this.

From: Gregory Antollino [<mailto:gregory10010@verizon.net>] **Sent:** Thursday, March 08, 2012 1:26 PM **To:**

As I prepare my motion, I once again would ask you to comply with "Local Civil Rule 37.3. Mode of Raising Discovery and Other Non-Dispositive Pretrial Disputes With the Court (Eastern District Only)"

(a) Good-Faith Effort to Resolve. Prior to seeking judicial resolution of a discovery or non-dispositive pretrial dispute, the attorneys for the affected parties or non-party witness shall attempt to confer in good faith **in person or by telephone** in an effort to resolve the dispute, in conformity with Fed. R. Civ. P. 37(a)(1). (Emphasis added.)

I do not have any obligation under this rule to send you a letter, cite case law, or do anything other than attempt to explain to you why the demands I am making are reasonably calculated to lead to the discovery of admissible evidence." *Fed. R. Civ. P. 26(b)(1)*. "[R]elevant information need not be admissible at trial"; it need only be "reasonably calculated to lead to the discovery of admissible evidence." See Muñoz v. Manhattan Time Share, attached hereto.

The purpose of the conference is to resolve disputes that the Court need not resolve. If I do not hear from you by Friday setting up a time early next week to conduct this conference, I will attach this email to my motion (as well as my many others) to make sure the Court is amply aware that you refused to comply with Local Rule

37.3, thereby likely making his job more difficult because of your mistaken understanding that you have the right to demand that I put my objections to your objections in writing. Once again, the rule does not require that; it requires you to make yourself available to me.

Gregory Antollino, Esq. 18-20 West 21st Street, Suite 802 New York, NY 10010 (212) 334-7397

On 3/8/12 3:53 PM, "SZabell@laborlawsny.com" <SZabell@laborlawsny.com> wrote:

Greg, I do not understand why you sent me a copy of a motion you lost. Please advise me if it serves any purpose. We have previously advised you that we would be more than willing to meet and confer with you on any issue. Simply advise us in writing of the specifics of your issue so that we may be prepared to discuss them with you. In the past you have attempted to address various issues that have never been raised and we had to advise that we would get back to you with appropriate responses. If you handle it this way (just like everybody else does) you will be saving your own time as well as my client's time.

3/8/12

Saul, you are so droll; you know I won that motion and may be citing it in my brief to the Judge.

In any case, once and for all, I will not under any circumstances live up to Saul Zabell's rule that I write a letter to you in advance of the conference requirement. "Everyone else" does not do it your way; that is a fiction that you have no way of proving by case law, statute, or anything else except your own ipse dixit assertion. The rules require you to confer; they do not require me to write you a letter objecting to your objections in advance of the conference we are supposed under Rule 37.3. The motion schedule has been set. So again, let me know by tomorrow a time early next week that we can confer verbally, or I will inform the judge that you are refusing to follow Local Rule 37.3. I am open all of Monday and Tuesday and Wednesday afternoon.

GA

On 3/9/12 11:04 AM, "SZabell@laborlawsny.com" <SZabell@laborlawsny.com> wrote:

Greg,
Your representations regarding my purported motivations are completely off-base. My insistence that you write a letter or an e-mail in advance (not in lieu) of our meet and confer is not born from case law, but rather, your propensity for histrionics and a demonstrated inability to stay on topic. We have had numerous conversations

surrounding discovery disputes and I have found the haphazard manner in which you litigate frequently leaves issues unresolved, or more importantly, unaddressed.

3/9/12

What?

In any case, let me know by close of business today if there's a time in the next few days except for Weds. until 2 that we can confer under the local rule.

GA

0084

1

2

MR. HLAWATI: Objection to replacement.

3

A Again, I don't know. Clive is part of
4 the staff. I don't know whether he was a
5 replacement. I don't know. I don't know that.

6

Q We have looked at Exhibit 1. You said
7 that you'd serve as a reference for Ms. Betts.
8 Why did you offer to do that?

9

A Because I -- even though I was in the
10 position as pastor of the church and had to make
11 a decision to terminate her, because we had to
12 have the position filled, I still cared a great
13 deal about her and wanted to see her find
14 something going forward. So of course I'm happy
15 to help her.

16

Q Has anyone called you to ask for a
17 reference?

18

A No.

19

Q Is the offer still open?

20

A Sure. The offer is still open.

21

Q Is she eligible to be rehired at the
22 church?

23

A Probably not at this point.

24

Q Why?

25

A Well, we have had a little -- we have

0085

1

2 had a little history here and probably it would
3 not -- so we would not be very enthusiastic about
4 bringing Liz back at this point.

5 Q Why?

6 MR. HLAWATI: Objection. He answered
7 the question.

8 Q When you say the history, do you mean
9 the lawsuit and the complaints?

10 A Yes. I mean it would be a little
11 challenging for all of us to be back together in
12 the same workplace.

13 Q Have you had any openings in custodial
14 staff since then, since Liz was terminated?

15 MR. HLAWATI: Objection.

16 A The positions have changed. I mean
17 there have been people who were terminated who
18 are not there since Liz.

19 Q Like who?

20 A I don't -- I don't -- I mean I think
21 you have the list there, if you call the names --

22 Q Jason?

23 A Jason is no longer employed.

24 MR. HLAWATI: Objection. What is the
25 full name?

REQUEST NO.9

Any customer complaints against *any* Altitude Express employee within the last five years.

RESPONSE NO.9

Defendants object to this request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants are not in possession of documentation responsive to this request.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

REQUEST NO.10

The releases for each and every passenger whom plaintiff dove with in the last three years.

RESPONSE NO.10

Defendants object to this request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants are still in the process of searching its corporate records, and upon completion of same, will provide any relevant, responsive documentation to this request.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

REQUEST NO.11

Names and addresses and phone numbers of each and every passenger whom plaintiff dove with in the last three years.

RESPONSE NO.11

Defendants object to this request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

Counseling and Advising Clients Exclusively on Laws of the Workplace



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Saul D. Zabell
SZabell@laborlawsny.com

April 7, 2011

VIA FIRST CLASS MAIL
& ELECTRONIC MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

Re: Zarda v. Altitude Express, Inc., et al.
Case No.: CV-10-4334 (JFB)(ARL)

Dear Mr. Antollino:

We write in response to your April 5, 2011 email. We respond to each open issue as follows:

Initial Disclosure #15:

This information was previously provided to you in connection with our March 24, 2011 letter.

Initial Disclosure #24:

While Defendant Altitude is in possession of its own jump log, this information is not relevant in the case at bar. Despite your assertions to the contrary, Defendants are not under any duty to produce these documents. According to the 1993 Committee Note of FRCP 26, the listing of documents does not waive objections to their production, even on grounds of relevance. ("The disclosing party does not, by describing documents under subparagraph (B), waive its right to object to production on the basis of privilege or work product protection, or to assert that the documents are not sufficiently relevant to justify the burden or expense of production.") Committee Note, 146 F.R.D. at 631. Inasmuch as you have failed to articulate how Defendant Altitude's entire jump log for 2010 is relevant to Plaintiff's claims of discrimination, Defendants' objections are well founded. Based upon the foregoing, Defendants will not produce this information absent court Order.

Initial Disclosure #26:

This information was previously provided to you in connection with our March 24, 2011 letter.

Initial Disclosure #27:

While Defendant Altitude is in possession of the contact information for its employees, this information is not relevant in the case at bar. Despite your assertions to the contrary, Defendants are not under any duty to produce this information. According to the 1993 Committee Note of FRCP 26, the listing of documents does not waive objections to their production, even on grounds of relevance. ("The disclosing party does not, by describing documents under subparagraph (B), waive its right to object to production on the basis of privilege or work product protection, or to assert that the documents are not sufficiently relevant to justify the burden or expense of production.") Committee Note, 146 F.R.D. at 631. Inasmuch as you have failed to articulate how a list of every single employee, along with their contact information, is relevant to Plaintiff's claims, Defendants' objections are well founded. Moreover, inasmuch as these individuals are represented by counsel, you would be precluded from contacting them directly. Based upon the foregoing, Defendants will not produce this information.

Customer Contact Information:

Similar to the above discussion concerning Defendants' employees, the identity of every single passenger that Plaintiff jumped with is irrelevant to Plaintiff's claims of discrimination. By Plaintiff's own admission, as discussed in Plaintiff's Complaint, the only relevant passenger in the case at bar is "Rosanna" as Plaintiff alleges it was her complaint that was the impetus behind Plaintiff's termination. As stated in your April 5, 2011 email, you have no proof that any of these individuals possess relevant information. Rather, you state they "may have discoverable information." Such speculation and conjecture does not meet the burden necessitating the production of every single passenger who jumped with Plaintiff. Absent a court Order or convincing case law, Defendants will not produce this information.

Depositions:

Regarding Plaintiff's deposition, in order to avoid having to recall Plaintiff for additional deposition dates, and to avoid the added expense imposed upon him for having to fly to New York multiple times, Defendants will not depose Plaintiff until paper discovery is substantially complete. Inasmuch as you have already conceded deposition priority, Defendant Maynard will only be deposed after Plaintiff.

Concerning Mrs. Maynard, your email references a subpoena you have sent out for service. We have not been provided a copy of this subpoena previous to your attempts to serve Mrs. Maynard. Moreover, while you state in your email a copy of the subpoena is attached, no such attachment is found in the email. Kindly remedy this situation so that we may file a motion to quash.



Regarding the marital privilege, it is unlikely we would agree to Mrs. Maynard's deposition in the event this action was discontinued against Mr. Maynard. However, we will broach that topic with our client.

Please do not hesitate to contact me should you have any further questions regarding the enclosed.

Very truly yours,

ZABELL & ASSOCIATES, P.C.

Saul Zabell

cc: client

Counseling and Advising Clients Exclusively on Laws of the Workplace



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Saul D. Zabell
SZabell@laborlawsny.com

April 20, 2011

VIA ELECTRONIC MAIL

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

Re: Zarda v. Altitude Express, Inc., *et al.*
Case No.: CV-10-4334 (JFB)(ARL)

Dear Mr. Antollino:

We write in response to your April 16, 2011 email. As an initial matter, it is important to note that during the March 24, 2011 telephone conference, you agreed to provide a release of Plaintiff's educational records without any precondition. Now, for the first time, you state you will only provide this document if we provide a signed release so that you may obtain your client's unemployment records. While such behavior is wholly unacceptable, and is further evidence of your attempts to delay this case, in an attempt to avoid yet additional judicial intervention for your pedantic behavior, enclosed please find a copy of your requested release executed by the undersigned as attorneys for Altitude Express.

Regarding your repeated requests for the contact information for Rosanna and her boyfriend, our client has located the relevant documents. However, upon discussing the situation with Rosanna and her boyfriend, they do not wish us to disclose this information to you. Rather, they have authorized us to accept service of a subpoena on their behalf.

Please do not hesitate to contact me should you have any further questions regarding the enclosed.

Very truly yours,

ZABELL & ASSOCIATES, P.C.

A handwritten signature in dark ink, appearing to read 'Saul Zabell', is written over the typed name.

Saul Zabell

Encl.

cc: client

Waiver to Permit Release of Information

I, Ray Maynard, am owner of Altitude Express Inc. of Calverton, New York, Employer Registration Number 83-74949. I do hereby consent to release any information in concerning my response to the claim for unemployment insurance benefits by Donald Zarda social security number 489-86-2464, and such documents may be released to:

Gregory Antollino
Attorney at Law
18-20 West 21st Street # 802
New York, NY 10010

Saul D. Zabell
Zabell & Associates, P.C.
4875 Sunrise Highway,
Suite 3000

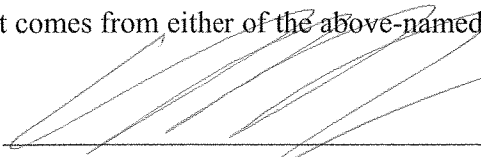
Bohemia, New York 11716

A facsimile of this waiver shall be valid if it comes from either of the above-named individuals.

Date:

4/20/11

Signature:


as attorneys

Submit two copies of the waiver to: NYS
Department of Labor
W. Averell Harriman
State Office Campus Building 12
Albany, NY 12240

Date: Mon, 29 Jun 2009 20:18:44 -0400
From: Jim McVie <classicinteriortrim@gmail.com>
Subject: Thanks
To: funjumps@skydivelongisland.com
Reply-to: nst1@optonline.net
DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=gmail.com;
s=gamma; h=domainkey-signature:mime-version:received:reply-to:date:message-id
:subject:from:to:content-type;
bh=cf4nZ0VgIBcUdKrxv/fCjdDD6XaDnFetYDnpPRtZVF8=;
b=leP0GAbOX0E2liBy/DbkRwoGzlf/1p214wKEW0CquS6Llpcqeb8LW4+RDAdHSczgF2
z8C/bWq1ex0NdWhsZeWubh0zUMIDSi1YWEWdDCzHSZw+CwpkSWgD80g5hwWJIW1xsbCA
SYvSjdCZ5b9U1QWmdlCrfG6dtzBMKIOv7505c=
DomainKey-Signature: a=rsa-sha1; c=noews; d=gmail.com; s=gamma;
h=mime-version:reply-to:date:message-id:subject:from:to:content-type;
b=SlntYfZ0Z+CNFYLABDO6gqiYjU0r1kGNgbpXW9Heoa9svdBzbvwYcdHSrOG9Ut1miZ
1WlcHWpF3tChJ94wZAZVZSYeTey+Gc7SiRUIRJozFcsLQo2cCauh+hS2PdUqg1Itxc1L
OdGHXcjlUI8I7fMAshEHBxbpXJi+G1dgRApbU=
X-EN-OrigIP: 72.14.220.153
X-EN-IMPSID: A0Jk1c03w3KAQgQ0A0JIEv
Original-recipient: rfc822;jumperay@optonline.net

Just wanted to drop a note and compliment your tandem jump instructor Don from Kansas. He was very professional in every way and that made the entire experience even better. Employees like Don will be the reason for continued success. Looking forward to my next jump.

Jim McVie

Jumped Sat. 6-27-09

Counseling and Advising Clients Exclusively on Laws of the Workplace

Z Zabell & Associates, P.C.
EMPLOYMENT COUNSELING, LITIGATION, LABOR & BENEFITS LAW
April 12, 2011

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Saul Zabell
Email: szabell@laborlawsny.com

VIA ELECTRONIC CASE FILING

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

Re: Zarda v. Altitude Express, Inc., et al.
Case No.: CV-10-4334 (JFB)(ARL)

Your Honor:

This firm is counsel to Altitude Express, Inc., et al., Defendants in the above-referenced action. We write in opposition to Plaintiff's April 8, 2011 letter motion seeking to compel discovery. For all the reasons set forth below, Defendants respectfully request Your Honor deny Plaintiff's letter motion.

As an initial matter, during the previous court conference, Your Honor directed the parties, after meeting and conferring, to file any motions to compel *via* formal motion practice, and not letter motion. Accordingly, Plaintiff's motion is procedurally defective, violates Your Honor's directive, and therefore requires dismissal.

Notwithstanding Plaintiff's claims for alleged discrimination based on sexual orientation and sexual stereotyping, Plaintiff was terminated due to inappropriate workplace behavior. Moreover, while Plaintiff alludes to the potential withdrawal of his overtime claims due to the fact Defendants are exempt under the Fair Labor Standards Act, any such withdrawal also requires withdrawal of his federal minimum wage law claim. See 29 U.S.C. § 213(a)(3).

Defendants respond to Plaintiff's specific arguments as follows:

- 1. Names and addresses of co-workers at the defendant company for the summers of 2009 and 2010.**

While Defendant Altitude is in possession of the contact information for its employees, this information is not relevant in the case at bar. Plaintiff is correct that Defendants identified they were in possession of this information in its Automatic Disclosure Statement. However, this fact alone does not mandate disclosure. According to the 1993 Committee Note of FRCP 26, the



listing of documents does not waive objections to their production, even on grounds of relevance. (“The disclosing party does not, by describing documents under subparagraph (B), waive its right to object to production on the basis of privilege or work product protection, or to assert that the documents are not sufficiently relevant to justify the burden or expense of production.”) Committee Note, 146 F.R.D. at 631. Moreover, while Plaintiff argues co-workers regularly engaged in sexual banter, and although appropriately demanded in discovery, he has yet to identify any specific co-worker he believes to have done so. Accordingly, this vague request for identifying information is nothing more than an attempt to annoy and harass Defendants and their employees. We have previously stated that should Plaintiff identify any specific employee he thinks possesses relevant information, we would revisit this position. See Exhibit “A.” To the extent Plaintiff alleges his co-workers regularly engaged in this conduct, he should be able to identify, with specificity, any employee who has purportedly engaged in this conduct.

Regarding Plaintiff’s renewed threats of a motion to disqualify, Plaintiff misstates the relevant case law. In U.S. v. Occidental Chemical Corp., 606 F.Supp. 1470 (W.D.N.Y. 1985), Counsel for the defendants offered, by letter, to represent any non-party employee witnesses who were subpoenaed for deposition in that case. The Court held that this constituted an improper solicitation of business, but did not warrant disqualification. The Court did not preclude defendant’s counsel from representing non-party employees at future depositions, but stopped the defendant’s counsel from soliciting such representation. Occidental, 606 F.Supp. at 1476-1477, 1478. In Rivera v. Lutheran Medical Ctr., 22 Misc.3d 178, 866 N.Y.S.2d 520 (Kings Cnty. 2008), the Court found that defendant’s counsel should be disqualified from representing non-party witnesses (but not the defendant), based upon similar solicitation and because of a history in that case of defendant’s counsels “improperly thwarting plaintiff’s attempts to obtain discovery.” Rivera, 22 Misc.3d 178 at 186, 866 N.Y.S.2d 520. In the case at bar, Plaintiff ignores the fact the undersigned has not actively solicited any employee of Defendants. However, should an employee request representation in the course of this proceeding, we intend to undertake such representation.

2. Names and addresses of customers with whom plaintiff jumped in 2009 and 2010

The identity of every single passenger with whom Plaintiff jumped is irrelevant to Plaintiff’s claims of discrimination. By Plaintiff’s own admission, as confirmed in the Complaint, the only relevant passenger in the case at bar is “Rosanna;” Plaintiff alleges it was her complaint that was the impetus behind his termination. Additionally, Plaintiff cannot identify with specificity any relevant information these individuals possess, but rather, has routinely stated they “**may** have discoverable information.” Such speculation and conjecture does not meet the burden associated with Defendants’ review of their records and corresponding production of contact information for every single passenger who jumped with Plaintiff.

Regarding the complaining witnesses, Defendants are in the process of obtaining the contact information for “Rosanna” and anticipates producing same shortly. However, Plaintiff has identified a customer by the name “Steve.” See Exhibit “B.” Defendants do not know the individual to which Plaintiff refers. To that end, Defendants requested additional contact information, but Plaintiff denied this request. See Exhibit “C.” As such, Defendants cannot provide this information.



3. Plaintiff's Jump Logs

Once again, while Defendants confirmed they are in possession of this information, Defendants have not waived their objections to its production, and are under no obligation to produce it. See 146 F.R.D. at 631. In his April 8, 2011 application, Plaintiff makes the conclusory statement that "in unusual case[s]" a document identified in an Automatic Disclosure Statement can be withheld, this case is "surely not... one." Inasmuch as the jump logs contain information beyond dates worked (including customer identification information) Defendants have properly withheld production as such information is both confidential and irrelevant. Plaintiff's conclusory statement that this information is improperly withheld is insufficient to warrant production.

4. Depositions

Plaintiff's hyperbole concerning deposition priority would have this Court believe that Defendants are delaying the process. However, that is simply not the case. Defendants do not wish to depose Plaintiff until they are in possession of the requisite paper discovery necessary to do so. As Plaintiff admits, he is in possession of significant paper discovery which remains outstanding. As a consequence, Defendants will move to compel shortly. Defendants wish to avoid prejudice associated with starting Plaintiff's deposition before he has met his discovery obligations, and having to recall him after he has finished producing the relevant documentation in discovery. As Your Honor is aware, Plaintiff is not a resident of New York, and will be required to fly to New York for his deposition. This added expense on the part of Plaintiff, as well as the potential scheduling difficulty that will likely exist when attempting to schedule future flights, requires the parties to complete paper discovery prior to commencing depositions.

Additionally, as Plaintiff stated, he has conceded deposition priority. See Exhibit "D." Plaintiff should not be permitted to renege on this earlier concession due to his failure to adequately provide documentation in discovery. If allowed, Your Honor would be rewarding Plaintiff for purposefully failing to meet his discovery obligations.

Based upon the foregoing, Plaintiff respectfully requests Your Honor deny Plaintiff's application as it is both procedurally and substantively defective.

As always, counsel remains available should Your Honor require additional information regarding this submission.

Respectfully submitted,

ZABELL & ASSOCIATES, P.C.


Saul Zabell

cc: Gregory Antollino, Esq. (via electronic case filing)

STATE OF NEW YORK

SS.:

COUNTY OF NEW YORK

My name is Jhon Sanchez, and I am a lawyer licensed in New York since November 2010. I have been under the mentorship of Mr. Gregory Antollino observing and assisting him in his litigation practice. During the litigation of Zarda v. Skydive Long Island, I declare under penalty of perjury that I have witnessed the following facts in relation to Mr. Zabell's behavior:

FIRST: Mr. Antollino, Mr Zarda and me traveled to Long Island to depose a witness early fall last year. Mr. Antollino was wearing a shirt long sleeves, a leather jacket, and dressing pants, and shoes.

SECOND: After the deposition, while we were preparing to leave, Mr. Zabell said to Mr. Antollino, "I hope that next deposition you dress in more professional manner."

THIRD: After the deposition, but before Mr. Zabell made the above-statement regarding Mr. Antollino's attire, when Mr. Antollino and the witness, David Kengle, were discussing how he could get a hold of certain still photographs from the witness, Mr. Antollino suggested mailing him, Mr. Kengle, a subpoena. The witness stated that that was acceptable, but Mr. Zabell interrupted him, asking whether he was going to send a process server. Mr. Zabell then suggested that he could accept a subpoena for Mr. Kengle. In the end, the agreement between Mr. Kengle and Mr. Antollino was that he would mail the subpoena to Kengle

FOURTH: We had another deposition schedule for 10:00 AM in Manhattan on December 14. I specifically remember that there was a major problem with the trains. I arrived precisely on time but Mr. Antollino arrived ten minutes early. I told Mr. Zabell that there was a serious delayed in the train system, but I was sure that Mr. Antollino was in his way. Mr. Zabell said, "Counsel, why you don't start with the deposition?"

"Me?" I replied.

He responded either, "You're not capable?" or "You're not prepared?"

I found the statement, and the tone of the statement insulting, and responded, "Mr. Antollino was the attorney on this case." I was there simply to observe and to learn.

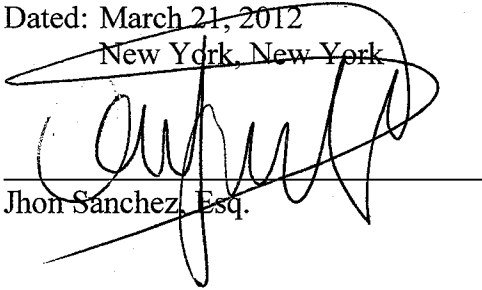
FIFTH: During the deposition, Mr. Antollino called the attention to Mr. Zabell several times because Mr. Zabell's Ipad was ringing, buzzing while Mr. Zabell

was texting. This was probably caught on the transcript, but I am not sure. The noises were distracting.

SIXTH: Mr. Antollino was wearing a suit, tie and dressing shoes. At the end of the deposition, while we were leaving, Mr. Zabell called attention to Mr. Antollino and said, "I am glad that you followed my recommendation to dress professionally."

Dated: March 21, 2012

New York, New York


Jhon Sanchez, Esq.

D. Zarda

MR. ANTOLLINO: Okay.

Q How are you feeling today?

A Great.

Q Are you currently taking any medications?

A None other than prescribed.

Q What prescribed medications are you taking?

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

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

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

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

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