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May 14, 2012

U.S. District Judge Joseph F. Bianco
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, New York 11722

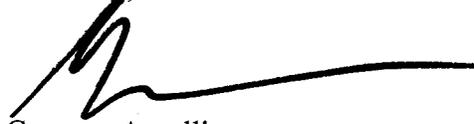
RE: Zarda v. Altitude Express, Inc. & Ray Maynard, 10 Civ 4334 (JFB)

Dear Judge Bianco:

I represent plaintiff in this action and respond to Zabell's belated attempt to have the witnesses change their testimony regarding whether Zabell authorized them to accept service on their behalf. First, it is untimely – he should have corrected the record in his opposition. Second, both affidavits reflect inaccurate facts. By the time the Court ordered Mr. Zabell to tender the names and addresses of Kengle and Orellana, I served the witnesses – by mail, mind you – with the subpoenas. I referred to that with Ms. Orellana at her deposition. See Orellana Dep. pp.12-13. She also acknowledged getting a letter from me. See id. at 21. So, in Mr. Zabell's overzealousness to escape the charge of perjury, he's not only prejudiced his client – the witnesses are now changing their stories twice, effectively – but he has created new perjury where he has both witnesses testify "When Gregory Antollino served a subpoena for my appearance at a deposition through Mr. Zabell, Mr. Zabell notified me and arranged for my attendance at the deposition."

The only subpoena I served through Zabell was in the spring of 2011, which subpoena was not forwarded to the witnesses because they did not attend the subpoena. When the court ordered Mr. Zabell to tender the names of witnesses, there was no longer any reason for me to go through Zabell, and I did not. Thus, Mr. Zabell has created even more of a tangled web by attempting to correct testimony that – at least in the case of Orellana – was crystal clear. I pinpointed her repeatedly about this authority, and her testimony on the matter was clear. See Orellana deposition at pp. 21-22. I do not withdraw any motion I have made and, indeed, Mr. Zabell has now made things worse.

Sincerely,



Gregory Antollino

Cc: Saul Zabell (via ecf)