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June 20, 2012

**VIA ECF**

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:

We represent defendants in the above-referenced matter. We write pursuant to Your Honor's July 13, 2012 Order and respectfully request the issuance of a Protective Order preventing plaintiff from needlessly harassing Santine Megneco, defendant Ray Maynard's deceased sister's partner.

Foremost, Ms. Megneco does not wish to be contacted by plaintiff's counsel, and has executed an affidavit to that effect. See Affidavit of Santine Megneco attached herein as Exhibit A. For plaintiff's counsel to contact Ms. Megneco in light of her request for him not to do so would not only be inappropriate and unethical, but also a violation of Fed.R.Civ.P. 26(g)(2) (attorney making discovery request must certify it is "not unreasonable or unduly burdensome" and not "interposed for any improper purpose, *such as to harass*") (emphasis added). Second, any contact by Mr. Antollino would be fruitless, as a deposition of Ms. Megenco would be improper and, moreover, Ms. Megenco could provide *no* relevant or admissible information regarding this case.

Courts generally disallow depositions that "create a tool for harassment" or are "used as a litigation tactic to harass the other side or cause it wasteful expense." Treppel v. Biovail Corp., 2006 WL 468314 at \*1 (S.D.N.Y. Feb. 28, 2006); see also Armstrong Cork Co. v. Niagra Mohawk Power Corp., 16 F.R.D. 389, 390 (S.D.N.Y. 1956) ("The court should be alert to see that the liberal deposition procedure provided in the Federal Rules is used only for the purpose for which it is intended and is not used as a litigation



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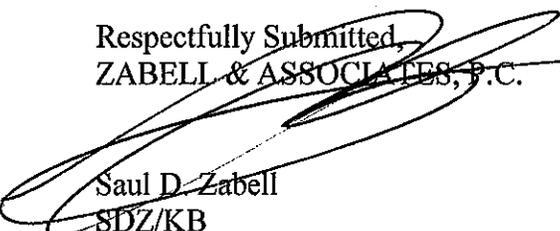
tactic to harass . . ."). Here, as Ms. Megneco has made it clear she has no desire to speak with Mr. Antollino, a notice of deposition would be an unnecessary and unwelcome burden, amounting to the harassment of a nonparty. As such, this Court should preemptively disallow plaintiff's counsel from contacting Ms. Megneco.

Further, a deposition would be inappropriate under the Federal Rules of Civil Procedure, as Fed.R.Civ.P. 26(b) only authorizes discovery of information that could "reasonably be calculated to lead to the discovery of admissible evidence." Nothing Ms. Megneco could provide would constitute such information. As argued in defendant's opposition to plaintiff's motion to compel, the only information plaintiff believes Ms. Megneco could proffer is information regarding "Maynard's attitudes towards gay people." Any purported attitudes, however, would be entirely inadmissible under the Federal Rules of Evidence, as "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Fed.R.Evid. 404(a); Hynes v. Coughlin, 79 F.3d 285, 290 (2d Cir. 1996) ("Evidence of other acts is not admissible to prove that the actor had a certain character trait, in order to show that on a particular occasion he acted in conformity with that trait."). Further, even if Ms. Megneco did wish to speak to plaintiff's counsel and *could* provide information other than propensity evidence, plaintiff's attempts to profiteer the details of defendant's deceased sister's relationships certainly falls within the boundaries of unfairly prejudicial evidence excludable under Fed.R.Evid. 403(b).

Lastly, we have attached the excerpts of plaintiff's deposition testimony, attached herein as Exhibit B, that indicate plaintiff was free to leave the premises of Altitude Express during days he was "on call," as requested by Your Honor. A complete copy of plaintiff's deposition transcript has also been mailed to Your Honor *via* Priority Mail.

For all the foregoing reasons, we respectfully request that Your Honor issue a Protective Order forbidding Mr. Antollino or any of his representatives from contacting Ms. Santine Megenco. We remain available should you have any further requests regarding this matter.

Respectfully Submitted,  
ZABELL & ASSOCIATES, P.C.



Saul D. Zabell  
SDZ/KB

cc: Gregory Antollino, Esq. (*via* ECF)

# **EXHIBIT A**



# **EXHIBIT B**

1 D. Zarda

2 times it was Rich. Sometimes it would be the  
3 pilot. Everybody has a different role in  
4 this.

5 The pilot could refuse not to  
6 fly if the conditions aren't good enough, so  
7 then if the pilot doesn't fly, then,  
8 obviously, the jumpers can't make the  
9 decision not to jump.

10 Q Did you maintain a schedule of  
11 your hours worked in 2009?

12 A A written schedule, no.

13 Q Did you maintain a schedule of  
14 your hours worked in 2010?

15 A No. We were expected to show up  
16 at work at a specific time, and that time was  
17 given to us either the prior day, we'd look  
18 at the schedule, see what tandems were coming  
19 in, and we were expected to stay until the  
20 work was complete, no matter how long that  
21 was or until we were dismissed, if we were  
22 ever dismissed.

23 Q Sometimes you would never be  
24 dismissed; right?

25 A Sometimes you wouldn't.

1 D. Zarda

2 Q And you would sleep there when  
3 you weren't dismissed; correct?

4 A You're just waiting. You could  
5 be using the computer or you could do  
6 nothing, or if there was something -- there  
7 was various things you could do. If you  
8 needed to pack your parachute or something, I  
9 suppose you could do that.

10 Q You could also drive off site  
11 and just when they call you back, return;  
12 correct?

13 A Sometimes they would let you do  
14 that, but not all the time.

15 Q You had a cellphone when you  
16 worked in 2009 and 2010; correct?

17 A Yes.

18 Q What was your cellphone number?

19 A Same as it is now.

20 Q Which is?

21 A (901)569-5860.

22 Q And that was known to Skydive  
23 Long Island; correct?

24 A Yes, of course.

25 Q And they could always call you

1 D. Zarda

2 on your cellphone; correct?

3 A Yes, they could.

4 Q And, you know, there were times  
5 during bad weather where you'd leave and go  
6 run some errands and maybe stop back, but if  
7 the skies opened up and it got more rainy,  
8 you would just go home; correct?

9 A No. Typically, for me, once I  
10 made the trip out there, I would stay from  
11 where I had come from, so I can't think of  
12 specifics, but there were not very many times  
13 that I would go run errands, because there's  
14 not too many things that you can do out  
15 there, where you could run errands, other  
16 than go get something to eat and come back.  
17 So for me, that doesn't work.

18 For some of the other people  
19 that live out there, have full-time homes and  
20 stuff, they could kind of come and go and do  
21 stuff like that, but it didn't really work  
22 out for me that way.

23 Q That's just because you lived a  
24 little bit of a distance away?

25 A It was a little bit of a

1 D. Zarda

2 distance; yeah.

3 Q It was just less convenient for  
4 you; correct?

5 A Yeah. It would have been kind  
6 of ridiculous to drive all the back to Coram  
7 and then come all the way back to that area.

8 Q Did you ever meet any of the  
9 customers of Skydive Long Island afterwards,  
10 after a jump?

11 A Did I ever meet -- be more  
12 specific about "after a jump." Are we  
13 talking the same day, like after they just  
14 made their jump and they were hanging out?

15 Q No. Did you ever make an  
16 acquaintance with a customer and then meet up  
17 with them at some later date?

18 A I made some acquaintances, but I  
19 haven't met up with them. I made a couple of  
20 acquaintances on FaceBook, one that I could  
21 think of. I haven't seen him since. I mean,  
22 we're still FaceBook friends.

23 Q Did you ever date any of the  
24 customers you met at Skydive Long Island?

25 A No, I never have.

1 D. Zarda

2 as I believe you said --

3 A Yes.

4 Q -- what does that mean?

5 A Well, in the summer solstice,  
6 the days are the longest. Skydiving goes on  
7 typically all way until one half hour before  
8 sunset. As the sunset gets longer and longer  
9 in the summer, then so does the workday.

10 Q What is the longest day in the  
11 summer?

12 A June 20.

13 Q From that point, it gets --

14 A It starts getting slowly  
15 shorter.

16 Q If there's more sunlight, does  
17 that mean you can perform more jumps in a  
18 day?

19 A It does.

20 Q What was the most amount of  
21 jumps that you had done in a day?

22 A Eighteen.

23 Q How much do you get, roughly,  
24 for each jump?

25 A \$40.

1 D. Zarda

2 Q And that's the amount that you  
3 agreed upon; correct?

4 A Right.

5 Q On a piecemeal basis, once your  
6 jump is completed, that's what you get paid;  
7 is that correct?

8 A Right.

9 Q Sometimes you get paid more than  
10 \$40; right?

11 A As Rich was kind of explaining,  
12 because the breakdown is kind of complicated  
13 and depending on the kind of jump, so if it  
14 was a training jump, training tandem versus  
15 just a joyride, then there was a slightly  
16 different schedule for that, and I don't  
17 recall right off the top of my head how much  
18 it was, because the majority of the jumps  
19 that take place at Skydive Long Island are  
20 passenger joyrides. They're not training  
21 jumps, so I don't have it off the top of my  
22 head.

23 There were times that if you  
24 were doing a different kind of jump, you got  
25 paid a different amount.

1 D. Zarda

2 Q Did you keep track of how many  
3 jumps you did in 2009?

4 A The computer kept track of it.  
5 My altimeter has it. I'm not sure if we  
6 provided that to you or not. It's in my  
7 altimeter. It's on my computer.

8 Q What does that mean, it's in  
9 your altimeter, it's on your computer?

10 A Well, the old standard way of  
11 logging jumps, and some people still use it,  
12 some people half-and-half it, is an actual  
13 logbook, like this (indicating) spiral bound.  
14 You write down the jump number and what you  
15 do. Many professional jumpers don't do that  
16 anymore because we're just doing so many  
17 jumps, and they're all just the same thing,  
18 and we have altimeters that electronically  
19 record the jump.

20 Q Would that electronically record  
21 a fun jump for you?

22 A Yes, it would.

23 Q Would it distinguish it as a fun  
24 jump?

25 A It doesn't, but when you

1 D. Zarda

2 neighborhood.

3 Q In a ten to twenty-minute  
4 period, you would earn somewhere around \$40;  
5 is that correct?

6 A That's correct. You could do  
7 pretty well, depending on which plane you're  
8 in. If you're lucky and in the KingAir all  
9 day, you did better because it was a faster  
10 plane. You could get up and down quicker and  
11 do more jumps.

12 Q That was the ten-minute jumps;  
13 right?

14 A Well, the reason I said ten is  
15 because that's if you are doing some kind of  
16 jump mastering with a student that's not a  
17 tandem and they're getting out at a low  
18 altitude on the way up to a higher altitude,  
19 so that's why I included that. That's not  
20 the typical tandem jump. A typical tandem  
21 jump is going to be fifteen to twenty  
22 minutes.

23 Q Okay.

24 A Tandems were, you know, were the  
25 main staple. There's all kinds of other

1 D. Zarda

2 variables.

3 Q Most of the jumps took between  
4 fifteen and twenty minutes for which you  
5 would earn the \$40; correct?

6 A Yeah. Sometimes a little less  
7 if it was in the KingAir and you didn't get  
8 full altitude, for whatever reason, and  
9 sometimes that happened because of traffic or  
10 clouds.

11 Q And again, if it was a cloudy  
12 day or a rainy day, you ended up hanging out  
13 around there, but you could go run errands or  
14 whatever, but you didn't go home because it  
15 just didn't work out for you; correct?

16 A I typically didn't go home  
17 because it was too far, but it depends on the  
18 kind of clouds. I know that maybe sounds a  
19 little hard to understand, and the kind of  
20 weather.

21 Q No, I understand. You got your  
22 nimbus, your cumulonimbus, your thunder.

23 A If it was, you know, stuff is  
24 moving in, it's definitely not going  
25 anywhere, then you know probably we're done

1 D. Zarda

2 for the day. If it was hit-and-miss stuff  
3 coming and going, you know, you could maybe  
4 get a few loads off in between the stuff, and  
5 then more rain would come, so it would just  
6 depend, and then it depends on the altitude  
7 of the clouds.

8 Sometimes the ceiling might be  
9 10,000 feet. We could still do jumps below  
10 10,000 feet without breaking the law. It  
11 depends.

12 Q. You would judge from the weather  
13 whether or not you would hang around or not;  
14 correct?

15 A. We wouldn't judge. The decision  
16 had to come down from Lauren. Lauren, a lot  
17 of times, made the call, and I think when she  
18 made the call, it was probably with Ray's  
19 approval. It would come down from Ray or  
20 Lauren and possibly Rich on whether we're  
21 done or the pilot.

22 Keep in mind, it's a little bit  
23 complicated. I want everybody to be able to  
24 understand this. Ray runs the drop zone, he  
25 owns the drop zone, he controls most things.

1 D. Zarda

2 However, the drop zone cannot operate if the  
3 pilot does not or cannot fly the aircraft,  
4 and the pilot has the absolute final say on  
5 whether anybody goes anywhere, bar none.

6 Q What was the least amount of  
7 jumps that you had performed on a day?

8 A That would be easy. It would be  
9 zero.

10 Q And that's if you showed up and  
11 the weather just didn't permit a jump;  
12 correct?

13 A That's right.

14 Q In which case, you'd --

15 A You'd just have to see what the  
16 situation was going to be. It was an  
17 on-the-fly thing.

18 Q But while you're waiting around  
19 for the weather to clear, you can go --

20 MR. ANTOLLINO: Objection.

21 Q -- get a sandwich, order a  
22 pizza, or something?

23 A It depends. I'm not going to  
24 make a general statement about that because  
25 it just simply depends.

1 D. Zarda

2 Q Just some days you could, and  
3 some days you couldn't?

4 A Some days you could, and some  
5 days you couldn't.

6 Q Some days you could go home; and  
7 some days you couldn't?

8 A Yeah.

9 Q You just wouldn't go home  
10 because it was pretty far; right?

11 A Well, yup. If I had to go home  
12 and come back, it would have been too far, so  
13 really that wasn't an option for me, because  
14 what if I'm on the way home and almost to  
15 Coram, and then a hole opens up and we got  
16 twenty or thirty --

17 Q Jumpers?

18 A -- customers standing there that  
19 we can get in the air and I'm not there to do  
20 it, that wouldn't be good.

21 Q Some people live pretty close to  
22 the --

23 A They do.

24 Q -- jump zone; right?

25 A Yes, they do.