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June 22, 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 write in response to Mr. Zabell's letter of June 18. First, just as I expected, Mr. Zabell went out to Ms. Megneco, and poisoned her against me and my client's motives. The only thing I was interested in was Mr. Maynard's relationship with his sister, something I think highly relevant in a lawsuit like this. How does a man go off his rocker when someone mentions he's gay to a client when his own sister was gay? I think the answer is rooted in shame, and would have been tangentially relevant to Mr. Maynard's motives in firing plaintiff, but now that Mr. Zabell has poisoned the witness, I have no interest. Notably, Ms. Mcnecgo did not say she would be unwilling to speak about Maynard's relationship with her sister; I had no interest in the other points. Nevertheless, I am not going to approach a hostile witness and won't push it any further. However, if defendant feels it must enter a "protective order," I must cross move and preclude Mr. Maynard from mentioning at trial that he had a gay family member in the attempt to gain juror sympathy. What's good for the goose is good for the gander and it would be unfair for him to mention having a lesbian sister to the jurors without letting me explore the tensions in their relations. If those tensions weren't there, the defendant wouldn't be fighting so hard to keep Maynard's sister's partner away from me.

As to the second item, the hours not worked and being on call and what have you: the several pages of deposition testimony attached to Zabell's paper prove nothing – and would not even at summary judgment. Being "on call" is a term of art under the minimum wage laws and the fact that one employee has to go to the mall whereas another can go to his living room is of no moment. See Owens v. Local No. 169, Ass'n of Western Pulp and Paper Workers, 971 F.2d 347, 350 (9th Cir. 1992). (time spent waiting for work is compensable if the waiting time is spent primarily for the benefit of the employer and his business). Although Zarda's claim is under state minimum wage rules, the case law developed under FLSA apply to state rules, as I will argue at summary judgment. Thus, there is no harm in allowing me to have the records of days

in which there were no jumps for plaintiff, and it will surely lead to discoverable evidence.

Finally, as to the expert issue that we discussed at the conference, and the motion I intend to make, I would ask that my papers be due no later than July 20, and that answer and reply be due on such dates as you choose. However, I will be out of the country until August 23, so I would request my reply not be due before August 31.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Antollino', with a long horizontal flourish extending to the right.

Gregory Antollino

Cc: Saul Zabell by ecf