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September 7, 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 case, in which a motion to compel I made was largely granted in June. In July, I made an in limine motion, which is scheduled for argument next week.

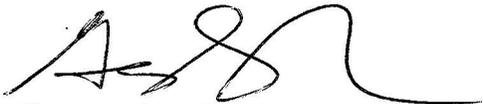
In late July, just before the motion or after, I wrote you asking for permission to move for sanctions if the discovery you ordered was not tendered within 30 days. Since that would have given Mr. Zabell more than sixty days to produce discovery, I thought it reasonable. Mr. Zabell's only response was that my request was somehow "premature." It is not. It is now approximately ninety days since my motion was granted in part, and Mr. Zabell has tendered nothing; nor has he confirmed the date of his client's deposition so that my client can plan his schedule and attend. You ordered several non-confidential items in June and Mr. Zabell's only excuse is that my request is "premature." In fact, it is not, but Mr. Zabell's behavior shows outrageous contempt for your authority. He objected to a discovery deadline in November, yet does nothing to comply with your discovery orders, or to cooperate, as I will explain below.

One of the items you ordered tendered was arguably confidential – a safety videotape. Mr. Zabell produced a proposed confidentiality stip. to me, which included that video as confidential *as well as* areal videos of the type that his client regularly posts on YouTube which you ordered produced. I agreed to let Mr. Zabell get away with this new item to avoid this letter, but he has hung up execution of the stipulation on two other grounds: First, the date upon which a motion is to be made if I believe an item should not be confidential. Mr. Zabell wants to limit me to five days. I ask for only 20, but Mr. Zabell won't budge. The second issue is who has the burden of proof in any such motion – i.e., do I have to prove that such video marked confidential should not be confidential, or vice versa for the defendants. I suggested that we put it in the agreement to let the court decide that the issue *if there even is a motion*. Mr. Zabell won't budge on that either, probably because, as I recall, the case law always puts the burden on the party seeking to keep discovery out of the public eye. I will not object to the stipulation overallly, but I won't take on a burden that I don't have. But why even worry about it until

a motion is made. And if I do feel it is necessary to make a motion, I cannot do it within five days.

I wish that I had been able to get Mr. Zabell's cooperation on these issues, but was not able to; therefore I present them to the Court as further issues to discuss on September 12. Thank you for your consideration.

Sincerely,

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

Gregory Antollino

Cc: Saul Zabell by ecf