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October 3, 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, which is scheduled for conference/argument tomorrow at 4:30. The first item on the agenda is discovery ordered in June, for which I have still received none. The items you ordered in June to be produced from plaintiff's largely ignored demand (see Exhibit G to plaintiff's motion), include as follows:

1. Demand number 1, employee handbook. The defendants testified to its existence and it hasn't been produced.
2. Demands 2-5: There has been no affidavit as to the existence of and/or search for electronic information about Donald Zarda. If the electronic information is destroyed, the rule is that plaintiff is entitled to an appropriate jury instruction under Zublake v. UBS Warburg, 220 FRD 212 (SDNY 2003).
3. Demands 7-8: Confirmation of, or production of Complaint from Ripoff Report. Both the defendant and his office manager testified to the existence of an internet complaint about the defendant on Ripoffreport.com. I searched for and produced that complaint, and asked for the defendant to admit its authenticity. I thought this would be easy enough, but the defendant refused to do so. You ordered the defendant either to admit OR to produce the complaint that the defendant and his office manager testified to. In his most recent letter to the Court, Mr. Zabell now says there have been no complaints. Not true – let's not go round in circles. The defendant and his office manager attested to the existence of the complaint. The defendant has not followed your order either to admit authenticity of the ripoff report that I found, or to produce the report. Mr. Zabell's suggestion that there is no complaint is a falsehood and directly contradicts his clients' testimonies.
4. Demands 11 & 12 were waived in the event of a further deposition of Mr. Maynard. You gave me another hour, but the defendant has thus far refused to schedule that hour so that my client can make plans to attend

- without inconvenience like the last time.
5. Demand 15 – You ordered this subject to a confidentiality order whose terms we cannot agree on. You will have to decide the terms tomorrow. This is the only item that was ordered confidential.
 6. Demand 16. I agreed to delay production of these videos to defendant's continued deposition, but see ¶ 4, supra.

The other item on the agenda is the in limine motion about which there have been many filings and I have little else to say in addition to answering Any questions. Thank you for your consideration.

Sincerely,

/s/

Gregory Antollino

Cc: Saul Zabell by ecf