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★ OCT 19 2012 ★

LONG ISLAND OFFICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DONALD ZARDA,

Plaintiff,

- against -

**ALTITUDE EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND, and RAY MAYNARD,**

Defendants.

Case No.: CV 10-4334 (JFB)(ARE)

**STIPULATION OF
CONFIDENTIALITY**

**STIPULATION AND ORDER FOR THE PROTECTION AND EXCHANGE OF
CONFIDENTIAL INFORMATION AND DOCUMENTS**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff, Donald Zarda (hereinafter "Plaintiff") and Defendants, Ray Maynard and Altitude Express, Inc. d/b/a Skydive Long Island, (hereinafter "Defendants"), through their undersigned counsel, as follows:

1. Defendants' legal waiver video, 2010 tandem jump videos, and any and all videos provided by defendants from this point forward that are not in the public domain shall be designated as "Confidential and Protected Matter."

2. Defendants' employee handbook is not in the public domain and shall be designated as "Confidential and Protected Matter."

3. "Confidential And Protected Matter" shall be used solely for the purposes of litigating this judicial action and not for any other purpose, action or proceeding.

4. This Stipulation and Order will extend to any document derived from a source other than a party to this litigation if the document received from that source is identical to or a copy of the videos or handbook designated as "Confidential and Protected Matter."

5. If any party or counsel wishes to use or inquire into a Confidential and Protected Matter at any deposition, the portion of the deposition transcript that relates to the Confidential and Protected Matter will be designated and treated as Confidential and Protected Matter and subject to the confidentiality/protective provisions herein.

6. Confidential and Protected Matter or information derived therefrom may only be disclosed or made available by the party receiving such information to "Qualified Persons," who are defined to consist of:

- (a) The Court;
- (b) The parties to this action, including those employees of each party deemed necessary to aid counsel in the prosecution and/or defense of this action;
- (c) Counsel for the parties to this action and the legal, paralegal, clerical and secretarial staff employed by such counsel;
- (d) Deponents, witnesses and possible witnesses, including experts (whether or not retained to testify) utilized in connection with this litigation;
- (e) Mediators;
- (f) Court reporters;
- (g) The jury and the witnesses at trial; and
- (h) Any other person(s) agreed to in writing by counsel for the parties.

7. All Confidential and Protected Matter or information (including, but not limited to, still photographs from the videos and/or portions of deposition transcripts) which is included in or attached to any papers filed with the Court, shall be labeled "Confidential" and filed under seal. After any Confidential and Protected Matter is filed with the Court, the only individuals who will be allowed access to such information and/or documents are those identified in

Paragraph 6 above. Within sixty (60) days after the completion of this action, counsel for any party on whose behalf documents containing Confidential and Protected Matter was submitted will retrieve all the confidential documents he or she has submitted to or filed with the Court. However, if counsel fails to remove such confidential documents after the expiration of this sixty (60) day period, the documents shall be destroyed.

8. Each non-lawyer given access to Confidential and Protected Matter or information pursuant to the terms of this Stipulation and Order shall be advised that the Confidential and Protected Matter or information is being disclosed pursuant to and subject to the terms of this Stipulation and Order and may not be disclosed other than pursuant to the terms hereof.

9. Entering into, agreeing to and/or complying with the terms of this Stipulation and Order shall not prejudice in any way the right of a party at any time: (1) to seek a determination by the Court of whether any particular item or piece of information should be subject to the terms of this Stipulation and Order; or (2) to seek relief on notice from any provisions of this Stipulation and Order, either generally or as to any particular document or piece of information.

10. The parties reserve the right to seek guidance from the Court regarding the specification of appropriate safeguards concerning evidence at trial or may do so by later agreement at or before trial.

11. Upon the termination of this action, including all appeals, the parties shall return to counsel for the producing party all documents containing the Confidential and Protected Matter produced by the other party and all copies thereof, or the parties may agree upon appropriate methods of destruction of these documents. Any copies of documents containing Confidential and Protected Matter which bear the notations of a non-producing party or the non-

producing party's counsel need not be returned to counsel for the producing party and shall be destroyed promptly by counsel for the non-producing party, who shall give written notice of the destruction of the documents to counsel for the producing party.

12. If Confidential and Protected Matter or information in the possession of a receiving party is subpoenaed or ordered to be produced by any court, administrative or legislative body, or any other person or organization purporting to have authority to subpoena or require the production of such data or information, the party to whom the subpoena or order is directed shall not provide or otherwise disclose such documents or information without first notifying counsel for the producing party in writing of: (1) the information and documentation which is requested for production in the subpoena or order; (2) the date on which compliance with the subpoena or order is requested; (3) the location at which compliance with the subpoena or order is requested; (4) the identity of the party or entity serving the subpoena or order; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or order has been issued.

13. Any objection to the designation of the Confidential and Protected Matter as Confidential and Protected must be asserted within five (5) business days of production. If the designation is objected to, the party objecting to the designation has the obligation to seek an order from this Court to render the matter nonconfidential. The parties agree to maintain the confidentiality of the document until the Court issues an order. **THIS PARAGRAPH APPLIES ONLY TO A PRE-MOTION LETTER UNDER THE COURT'S RULES, NOT A FULLY BRIEFED MOTION.**

14. This Stipulation and Order is without prejudice to the right of any person or entity to seek a modification of this Stipulation and Order at any time.

Respectfully submitted,

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

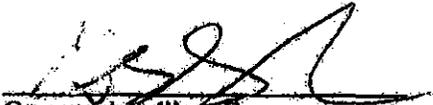
¹⁶
Dated: October 3, 2012
Bohemia, NY

By: 

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GREGORY ANTOLLINO, ESQ.
Attorney for Plaintiff

Dated: October ¹⁶ 2012
New York, NY

By: 

Gregory Antollino, Esq.
18-20 West 21st Street, Suite 802
New York, NY 10010

SO ORDERED this ¹⁶ day of
October, 2012


Hon. Joseph Bianco