

Counseling and Advising Clients Exclusively on Laws of the Workplace



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December 16, 2010

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Tracking No.: 7006 3450 001 9600 7420**

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

**Re: Donald Zarda v. Altitude Express et al.
Case Number: 10-cv-4334 (JFB)(ARL)**

Dear Mr. Antollino:

By this letter, your client, Donald Zarda., (herein "Plaintiff") is hereby given notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on your client's computers and storage media (e.g., hard disks, floppy disks, backup tapes, Zip cartridges, flash drives, memory keys, CDs, DVDs, etc.), or any other electronic data, such as voice mail. We ask that if you have a policy involving periodic destruction of such information that you suspend the policy immediately in so far as it pertains to the subject information. Please be advised that merely opening a computer file or email will alter and obliterate important information.

As you know, your client's failure to comply with this notice can result in severe sanctions being imposed by the Court for spoliation of evidence or potential evidence. Through discovery we expect to obtain from your client, a number of documents and things, including files stored on your client's computers and your client's computer storage media.

In order to avoid spoliation, you will need to provide the data requested on the original media, or on exact copies of that media (sometimes referred to as image, evidentiary, or mirror copies), and be able to prove that the copy matches the original in every respect. Do not reuse any media to provide this data. Additionally, in order to avoid spoliation you may have to suspend certain normal computer maintenance procedures, including but not limited to such procedures as defragmenting hard drives, reformatting hard drives, deleting internet cookies, deleting browser history and favorites, and running any "disk clean-up" processes.

Although we may bring a motion for an order preserving documents and things from destruction or alteration, your client's obligation to preserve documents and things for discovery in this case arises in law and equity independently from any order on such motion.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we seek all documents in their electronic form along with information about those documents contained on the media. We also seek paper printouts of only those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist.

Our discovery requests will ask for certain data on the hard disks, floppy disks and backup media used in your client's computers, some of which data are not readily available to an ordinary computer user, such as "deleted" files and "file fragments." As you may know, although a user may "erase" or "delete" a file, all that is really erased is a reference to that file in a table on the hard disk; unless overwritten with new data, a "deleted" file can be as intact on the disk as any "active" file you would see in a directory listing.

Courts have made it clear that all information available on electronic storage media is discoverable, whether readily readable ("active") or "deleted" but recoverable. See, e.g., Easley, McCaleb & Assocs., Inc. v. Perry, No. E-2663 (Ga. Super. Ct. July 13, 1994) ("deleted" files on a party's computer hard drive held to be discoverable, and plaintiff's expert was allowed to retrieve all recoverable files); Santiago v. Miles, 121 F.R.D. 636, 640 (W.D.N.Y. 1988) (request for "raw information in computer banks" was proper and obtainable under the discovery rules); Gates Rubber Co. v. Bando Chemical Indus., Ltd., 167 F.R.D. 90, 112 (D. Colo. 1996) (mirror-image copy of everything on a hard drive "the method which would yield the most complete and accurate results," chastising a party's expert for failing to do so); Northwest Airlines, Inc. v. Teamsters Local 2000, et al., 163 L.R.R.M. (BNA) 2460, (USDC Minn. 1999) (court ordered imagecopying by Northwest's expert of home computer hard drives of employees suspected of orchestrating an illegal "sick-out" on the internet); and Zubulake v. UBS Warburg LLC, 217 F.R.D. 309, (S.D.N.Y. May 13, 2003) (requiring UBS to produce "all responsive emails that exist on its optical disks or on its active servers" and from its backup tapes); Friel v. Papa, 36 A.D.3d 754, 829 N.Y.S.2d 569 (2d Dep't. 2007) (stating that spoliation sanctions may be appropriate when a party destroys evidence important to the opposing side's case).

Accordingly, electronic data and storage media that may be subject to our discovery requests and that your client is obligated to maintain and not alter or destroy, include but are not limited to the following:

All digital or analog electronic files, including "deleted" files and file fragments, stored in machine-readable format on magnetic, optical or other storage media, including the hard drives or floppy disks used by your client's computers and their backup media (e.g., other hard drives, backup tapes, floppies, Jaz or Zip cartridges, flash drives, jump drives, memory keys, CD-ROMs, DVDs) or otherwise, whether such files have been reduced to paper printouts or not. More specifically, your client is to preserve all e-mails, both sent and received, whether internally or externally; all word-processed files, including drafts and



revisions; all spreadsheets, including drafts and revisions; all databases; all CAD (computer-aided design) files, including drafts and revisions; all presentation data or slide shows produced by presentation software (such as Microsoft PowerPoint); all graphs, charts and other data produced by project management software (such as Microsoft Project); all data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook or Lotus Notes); all data created with the use of personal or portable data assistants (PDAs), such as Blackberry, PalmPilot, HP Jornada, Cassiopeia or any other Windows CE-based or Pocket PC device; all data created with the use of document management software; all data created with the use of paper and electronic mail logging and routing software; all Internet and Web browser-generated history files, caches and "cookie" files generated at the workstation of each employee and/or agent in your client's employ and on any and all backup storage media; and any and all other files generated by users through the use of computers and/or telecommunications, including but not limited to voice mail.

Further, you are to preserve any log or logs of network use by employees or otherwise, whether kept in paper or electronic form, and to preserve all copies of your backup tapes and the software necessary to reconstruct the data on those tapes, so that there can be made a complete, bit-by-bit "mirror" evidentiary image copy of the storage media of each and every personal computer (and/or workstation) and network server in your control and custody, as well as image copies of all hard drives retained by you and no longer in service, but in use at any time from January 2001 to the present.

Your client is also to preserve and not destroy all passwords, decryption procedures (including, if necessary, the software to decrypt the files); network access codes, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view and (if necessary) reconstruct the electronic data we will request through discovery.

1. Personal Records: All documents and information about documents containing backup and/or archive policy and/or procedure, document retention policy, names of backup and/or archive software, names and addresses of any offsite storage provider.

a. All e-mail and information about e-mail (including message contents, header information and logs of e-mail correspondence system usage) sent or received by the following persons:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.



b. All correspondence, e-mail and other information about e-mail (including message contents, header information and logs of e-mail system usage) containing information about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

c. All databases (including all records and fields and structural information in such databases), containing any reference to and/or information about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";



- Any and all employees of Defendants’;
- Any and all of Defendants’ Payroll Department personnel;
- Any and all of Defendants’ Personnel Department personnel;
- Any and all of Defendants’ Accounting Department personnel;
- Any and all of Plaintiff’s supervisors or managers; and
- Any and all of Defendants’ Human Resources personnel.
- Plaintiff’s timesheets or time logs;
- Any and all of Plaintiff’s employment agreements, including all prior versions and/or drafts;
- Plaintiff’s personnel file;
- Defendants’ Handbook, including all past versions, from January 2001 through the present;
- Defendants’ overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants’ from January 2001 through the present.
- Any and all documentation referring to Plaintiff’s termination by Defendants’.
- Any and all documentation referring to Plaintiff’s complaints about gender/sexual orientation discrimination by Defendants’.
- Any and all documentation referring to the allegations contained within Plaintiff’s complaint against Defendants’.

d. All logs of activity (both in paper and electronic formats) on computer systems and networks that have or may have been used to process or store electronic data containing information about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna “Doe”;
- Any and all employees of Defendants’;
- Any and all of Defendants’ Payroll Department personnel;
- Any and all of Defendants’ Personnel Department personnel;
- Any and all of Defendants’ Accounting Department personnel;
- Any and all of Plaintiff’s supervisors or managers; and



- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

e. All word processing files, including prior drafts, "deleted" files and file fragments, containing information about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;



- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

f. With regard to electronic data created by application programs which process financial, accounting and billing information, **all** electronic data files, including prior drafts, "deleted" files and file fragments, containing information about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;



- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

g. All files, including prior drafts, "deleted" files and file fragments, containing information from electronic calendars and scheduling programs regarding or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;



- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

h. All electronic data files, including prior drafts, "deleted" files and file fragments about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and



- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

i. Any and all documentation, messages, correspondence, photos, videos, electronic postings, and blogs contained on personal electronic devices (personal computers, laptops, iPads, blackberrys, cell phones, netbooks, and other similar electronic devices) containing information about or related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.



- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

j. Any and all documentation information, messages, photos, videos, electronic postings, blogs, and statuses on Plaintiff's profiles on social networking sites (including but not limited to Facebook, Twitter, Myspace, Friendster, Classmates.com, LinkedIn, Flickr, and Livejournal) containing information related to:

- Donald Zarda
- Ray Maynard;
- Rosanna "Doe";
- Any and all employees of Defendants';
- Any and all of Defendants' Payroll Department personnel;
- Any and all of Defendants' Personnel Department personnel;
- Any and all of Defendants' Accounting Department personnel;
- Any and all of Plaintiff's supervisors or managers; and
- Any and all of Defendants' Human Resources personnel.
- Plaintiff's timesheets or time logs;
- Any and all of Plaintiff's employment agreements, including all prior versions and/or drafts;
- Plaintiff's personnel file;
- Defendants' Handbook, including all past versions, from January 2001 through the present;
- Defendants' overtime policies and procedures, including all past versions, from January 2001 through the present;
- Any and all correspondence between Plaintiff and Defendant, and/or its employees, agents or representatives from January 2001 through the present;
- Any and all written agreements involving Plaintiff from January 2001 through the present;
- Any and all forms of compensation paid to Plaintiff from January 2001 through the present;
- Any and all documentation referring to payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present;
- Any and all documentation referring to overtime payments paid to Plaintiff, including but not limited to pay stubs, time sheets and/or time logs, from January 2001 through the present; and
- Any and all documentation referring to overtime payments paid to other employees of Defendants' from January 2001 through the present.
- Any and all documentation referring to Plaintiff's termination by Defendants'.
- Any and all documentation referring to Plaintiff's complaints about gender/sexual orientation discrimination by Defendants'.
- Any and all documentation referring to the allegations contained within Plaintiff's complaint against Defendants'.

2. Online Data Storage on Mainframes and Minicomputers: With regard to online storage and/or direct access storage devices attached to your client's mainframe computers and/or minicomputers: they are not to modify or delete any electronic data files, "deleted" files and file fragments existing at the time of this letter's delivery, which meet the definitions set forth in this letter, unless a true and correct copy of each such electronic data file has been made and steps have been taken to assure that such a copy will be preserved and accessible for purposes of this litigation.

3. Offline Data Storage, Backups and Archives, Floppy Diskettes, Tapes and Other Removable Electronic Media: With regard to all electronic media used for offline storage, including magnetic tapes and cartridges and other media that, at the time of this letter's delivery, contained any electronic data meeting the criteria listed in paragraph 1 above:

Your client is to stop any activity that may result in the loss of such electronic data, including rotation, destruction, overwriting and/or erasure of such media in whole or in part. This request is intended to cover all removable electronic media used for data storage in connection with their computer systems, including magnetic tapes and cartridges, magneto-optical disks, floppy diskettes and all other media, whether used with personal computers, minicomputers or mainframes or other computers, and whether containing backup and/or archive data sets and other electronic data, for all of their computer systems.

4. Replacement of Data Storage Devices: Your client is not to dispose of any electronic data storage devices and/or media that may be replaced due to failure and/or upgrade and/or other reasons that may contain electronic data meeting the criteria listed in paragraph 1 above.

5. Fixed Drives on Stand-Alone Personal Computers and Network Workstations: With regard to electronic data meeting the criteria listed in paragraph 1 above, which existed on fixed drives attached to stand-alone microcomputers and/or network workstations at the time of this letter's delivery: Your client is not to alter or erase such electronic data, and not to perform other procedures (such as data compression and disk de-fragmentation or optimization routines) that may impact such data, unless a true and correct copy has been made of such active files and of completely restored versions of such deleted electronic files and file fragments, copies have been made of all directory listings (including hidden files) for all directories and subdirectories containing such files, and arrangements have been made to preserve copies during the pendency of this litigation.

6. Programs and Utilities: Your client is to preserve copies of all application programs and utilities, which may be used to process electronic data covered by this letter.

7. Log of System Modifications: Your client is to maintain an activity log to document modifications made to any electronic data processing system that may affect the system's capability to process any electronic data meeting the criteria listed in paragraph 1 above, regardless of whether such modifications were made by employees, contractors, vendors and/or any other third parties.



8. Personal Computers Used by Your Party and/or his agents: The following steps should immediately be taken to safeguard all personal computers used by your client and/or his agents:

a. As to fixed drives attached to such computers: (i) a true and correct copy is to be made of all electronic data on such fixed drives relating to this matter, including all active files and completely restored versions of all deleted electronic files and file fragments; (ii) full directory listings (including hidden files) for all directories and subdirectories (including hidden directories) on such fixed drives should be written; and (iii) such copies and listings are to be preserved until this matter reaches its final resolution.

b. All floppy diskettes, magnetic tapes and cartridges, and other media used in connection with such computers prior to the date of delivery of this letter containing any electronic data relating to this matter are to be collected and put into storage for the duration of this lawsuit.

9. Evidence Created Subsequent to This Letter: With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence is not to be destroyed and your client is to take whatever steps are appropriate to avoid destruction of evidence. In order to assure that your and your client's obligation to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter.

Thank you for your cooperation with this matter. Should you have any questions please feel free to contact me.

Very truly yours,

ZABELL & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'Saul D. Zabell', is written over a horizontal line.

Saul D. Zabell

cc: Client

Subject: Re: Re your letter

Date: Monday, January 10, 2011 5:01 PM

From: Gregory Antollino <gregory10010@verizon.net>

To: Tim Domanick <tdomanick@laborlawsny.com>

In response, I was thinking that you had written to advise me that the videotape of the jump at issue had been destroyed, which I notice is not listed among the pretrial disclosures, although other things not contemplated by a Rule 26 disclosure, such as a proposed scheduling order, were.

In response to your spoliation letter, I hereby demand that your client take equal steps to avoid spoliation of evidence, in particular the videotape of my client and "Rosanna" jumping out of the airplane. If said videotape has been destroyed – and perhaps its omission from the Rule 26 disclosures was inadvertant - considering the circumstances of my client's termination, kindly let me know forthwith so that I can consider what steps to take in response to such spoliation .

Gregory Antollino

On 1/10/11 3:49 PM, "Tim Domanick" <tdomanick@laborlawsny.com> wrote:

Please see attached.

Tim Domanick, Esq.
Zabell & Associates, P.C.
4875 Sunrise Highway, Suite 300
Bohemia, NY 11716
(631) 589-7242

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail, facsimile or phone. Thank you.

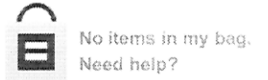
From: Gregory Antollino [mailto:gregory10010@verizon.net]

Sent: Monday, January 10, 2011 2:16 PM

To: Tim Domanick



100% of every purchase goes to HRC's fight for lesbian, gay, bisexual and transgender equality.



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DEPARTMENTS

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 - Customizable Items
 - Shirts & Polos
 - Kids

- Accessories
- Jewelry & Watches
- Home & Office
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OUTLET

- JOIN HRC**
- Membership
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Step 1. Choose Color

Navy

Step 2. Choose Size

Please select Size.

- XS
- S
- M
- L
- XL
- 2XL

select qty

\$18.00

- DETAILS**
- LEARN MORE
- MEDIA
- DONATE

Item #: HRC12169

- Classic fit
- Legalize Gay message tee exclusively for HRC
- Made in USA
- 100% Fine Jersey cotton construction

SUPPORTERS WHO BOUGHT THIS ALSO LIKED



\$10.00



\$28.00



\$25.00

POSTS:

WHAT OTHERS ARE SAYING

Through my early teens i knew i was gay but i had always been scared to say anything.. i had one of these shirts last year.. (im a senior and highschool now) and my mom found it in my closet and asked me if i was gay or an ally.. i simply replied "mom im gay" she cried for a minute and then screamed at me and said "what the hell chloe why didnt you tell me!! i wouldve accepted it!! we all knew!!!" so this shirt.. actually changed my life... i love it!

— Chloe- Youngstown Ohio

110793

Clothing

- Love Conquers Hate Shirt
- Campaign Shirt
- Born This Way Shirt
- Alex & Chloe Shirt
- Legalize Gay Shirt
- More...

Jewelry & Watches

- Love Conquers Hate Wristband
- Peace/Love/Equality Wristband
- Born this Gay Wristband
- End Bullying Wristband
- Equal Rights Wristband
- HRC Eclipse Ring

Accessories

- Equality Field Bag
- Equality Stickers
- Car Magnets
- Logo Cap

Home & Office

- Equality Flag
- Vision Mug

Features

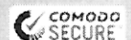
- New
- Top Sellers
- Last Chance
- Rainbow Collection
- Wedding Dept.
- Kids
- Publications

Customer Service

- Contact Us
- Order Status
- FAQ
- Shipping
- Easy Returns
- Store Locations

About Us

- About HRC
- Twitter
- Facebook
- Membership
- Privacy Policy



Style, action alerts & an exclusive offer when you sign up!



Skydive Long Island, Calverton, NY

We would like to thank all the Veterans for your service and letting us enjoy the freedoms that we have.

Do you know why Veterans Day is on November 11th.?

The idea of honoring US soldiers in November reaches back to the First World War, though we didn't call it Veterans Day back then.

VETERANS DAY: America's wartime vets, by the numbers

American troops made significant headway in 1918, rebuffing a German offensive along the western front and moving Allied forces deeper into enemy territory. By November, Germany had had enough. It agreed to a cease-fire, signing the official armistice at 5 a.m. on November 11. The treaty took effect six hours later. On the "eleventh hour of the eleventh day of the eleventh month," as the saying goes, the world knew peace once again.

The "War to End All Wars" had ended. For the next 36 years, America remembered November 11 as Armistice Day.

However, as we all know, war broke out again in 1939. A new generation of Americans risked their lives in World War II and the Korean War. By 1954, the name Armistice Day didn't sound right anymore. The scope felt too narrow. So Congress swapped out "Armistice" in favor of a word that could honor all of America's veterans, and Veterans Day was born.

But remember Armistice Day this year. Why? For the first time, this holiday has landed on the eleventh day of the eleventh month – of the eleventh year. That's right, 11-11-11.

**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)(ARL)

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S SECOND COMBINED
DISCOVERY DEMANDS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Local Rule 26.3, Defendants **ALTITUDE EXPRESS, INC., d/b/a Skydive Long Island, and RAY MAYNARD** (hereinafter "Defendants") respond to Plaintiff **DONALD ZARDA**, (hereinafter "Plaintiff") Second Combined Discovery Demands, as follows:

GENERAL STATEMENTS

By making information and/or documents available to Plaintiff in this action in response to Plaintiff's Discovery Demands, Defendants do not waive, and do not intend to waive, any objections that Defendants may have regarding the use of the information and/or documents or of the truth or accuracy of any characterization contained therein.

Defendants expressly reserve: (1) all objections regarding the competency, privilege, relevance, materiality and admissibility of all information and/or documents produced and the contents thereof; (2) the right to object to the use of any document(s) produced, in whole or in part, or to the subject matter covered thereby in any later stage or proceeding in this litigation or any other proceeding on any or all the grounds set forth herein; (3) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or relating to the subject matter of any document or information produced by Defendants; and (4) all objections as to vagueness and ambiguity. Furthermore, where a Discovery Demand seeks to impose on Defendants obligations broader than those imposed by the Federal Rules of Civil Procedure (hereinafter "FRCP"), Defendants shall respond in conformance with the FRCP. Privileged documents responsive to a particular Document Request, if any such documents exist, are not being produced, and will be identified consistent with the FRCP.

Defendants have been assisted in the preparation of responses and objections to Plaintiff's Discovery Demands by counsel. Accordingly, the word usage and sentence structure of Defendants' responses and objections may be that of the individual attorney who assisted in their preparation, and no representation is made that these objections and responses contain the precise language of the executing party. Defendants' responses are based upon information and documents known to Defendants and/or Defendants' attorneys as of the date such responses are served. Defendants will continue to review files, and accordingly, reserve the right to

supplement, amend or correct the responses and objections in the event that future discovery reveals documents and/or information that would justify its supplementation, correction and amendment. Should Defendants at any time amend or supplement the responses, by agreement or otherwise, Defendants reserve the right to assert any available privilege or objection with respect to any information or documents which might otherwise be discoverable in connection with any amendment or supplementation.

GENERAL OBJECTIONS

Defendants submit the following General Objections, which apply to each and every one of Plaintiff's Discovery Demands. For convenience, these General Objections are set forth below and are not necessarily repeated after each Demand. The assertion of the same, similar or additional answers or responses in the specific answers to Plaintiff's Discovery Demands does not waive any of Defendants' General Objections as set forth below:

1. Defendants reserve the right to challenge the competency, relevance and admissibility, at trial or any subsequent proceeding, in this or any other action, of any statement made or information provided in response to Plaintiff's Discovery Demands.
2. Defendants object to Plaintiff's Discovery Demands insofar as they seek to impose upon Plaintiff obligations greater than those required by FRCP.
3. Defendants object to Plaintiff's Discovery Demands insofar as they are directed to or made on behalf of entities or persons who are not parties to this litigation.
4. Defendants object to Plaintiff's Discovery Demands insofar as they attempt to elicit protected documents or information subject to the attorney-client privilege; the work product doctrine; the confidentiality of documents containing the impressions, conclusions, opinions, legal research or theories of Defendants or their attorneys; or seek materials prepared in anticipation of litigation. Defendants assert each and every one of the foregoing privileges and protections applicable to the information sought to the fullest extent provided by law or applicable rules and future Orders by the Court herein.
5. Defendants object to Plaintiff's Discovery Demands to the extent they seek documents or information not within the possession, custody or control of Defendant.
6. Defendants object to Plaintiff's Discovery Demands insofar as they seek documents or information, which is within Plaintiff's exclusive custody, control and possession, or to which Plaintiff has equal access.
7. Defendants object to Plaintiff's Discovery Demands insofar as they are vague, ambiguous, overbroad, unduly burdensome, and seek documents and/or information outside the scope of permissible discovery pursuant to the FRCP.

8. Production of documents offered herein shall be made subject to redaction or withholding of documents of information to which objection has been made. Defendants will not create a privilege log for documents post-dating the commencement of this litigation, all of which are subject to the work product doctrine and all or almost all of which are subject to the attorney-client privilege.
9. Defendants object to Plaintiff's Discovery Demands to the extent they are unlimited in time or otherwise not limited to a time frame relevant to this litigation on the grounds that each such Discovery Demand seeks information and/or documents neither relevant to the subject matter of the litigation, nor reasonably calculated to lead the discovery of admissible evidence. Defendants further object to each such Discovery Demand as overbroad and unduly burdensome.
10. Defendants have based the objections and responses to these Discovery Demands on information currently available to Defendants, and reserve the right to amend objections and responses to include information and documents which may be obtained through ongoing discovery and investigation, in accordance with the FRCP.
11. The foregoing General Objections are incorporated by reference within each of the following responses and objections. Responses to specific Discovery Demands are made subject to and without waiving these General Objections, whether or not specifically reiterated in the responses themselves.
12. Defendants reserve the right to supplement, amend or correct their responses in the event of the development or availability of additional, responsive, non-privileged information to the extent such supplementation, correction or amendment is warranted, pursuant to the FRCP.

DEFINITIONS

1. As used herein, objections containing the phrase "seeks the discovery of irrelevant information or documents" or words to that effect means that the Discovery Demand seeks information or documents (1) having no tendency to make the existence of any fact or consequences to the determination of the instant case more or less probable than it would be without such information or documents; and (2) which do not appear to be reasonably calculated to lead to the discovery of admissible evidence.
2. As used herein, "unduly burdensome" means that the Discovery Demand requires a search for documents which are of little or no benefit to this action in that the value of their production is far outweighed by the burden of producing them, especially where Plaintiff can obtain the information of documents from other sources.
3. As used herein, "overbroad" means that the Discovery Demand requires production, at least in part, of information and/or documents which are irrelevant to the instant litigation in subject matter or time period or both.

4. As used herein, "vague" means that Defendant is unable to ascertain with certainty what information or documents are being requested.

DISCOVERY DEMANDS

DEMAND NO. 1

Produce all copies of the employee manual that both Lauren Callanan and Raymond Maynard testified to at their depositions.

RESPONSE NO. 1

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, and is not reasonably calculated to lead to the discovery of admissible evidence.

DEMAND NO. 2

Produce all electronic documents pertaining to Donald Zarda, or the facts underlying his complaint, that have not yet been produced.

RESPONSE NO. 2

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants are not in possession of documentation responsive to this request.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 3

INTERROGATORY: Please state all electronic devices, including but not limited to cell phones, blackberries and personal computers in the possession of the defendant since January 1, 2009.

RESPONSE NO. 3

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 4

INTERROGATORY: Please identify which person(s) searched for discoverable information about Donald Zarda, his complaint or other information demanded by plaintiff in December 2010, or in response to demand number 2, supra.

RESPONSE NO. 4

Defendants object to this demand on the grounds that it attempts to elicit protected information subject to the attorney-client privilege; the work product doctrine; the confidentiality of documents containing the impressions, conclusions, opinions, and legal research of Defendants or their attorneys; and seeks materials prepared in anticipation of litigation. Defendants assert each and every one of the foregoing privileges and protections applicable to the information sought to the fullest extent provided by law or applicable rules and future Orders by the Court herein.

DEMAND NO. 5

INTERROGATORY: Please set forth in detail how the person set forth in ¶ 4 searched for such electronic information.

RESPONSE NO. 5

Defendants object to this demand on the grounds that it attempts to elicit protected information subject to the attorney-client privilege; the work product doctrine; the confidentiality of documents containing the impressions, conclusions, opinions, and legal research of Defendants or their attorneys; and seeks materials prepared in anticipation of litigation. Defendants assert each and every one of the foregoing privileges and protections applicable to the information sought to the fullest extent provided by law or applicable rules and future Orders by the Court herein.

DEMAND NO. 6

Please produce any documents outlining “appropriate” or “inappropriate” topics for discussion in the workplace, including any documents concerning “appropriate” or “inappropriate” topics for discussion with customers.

RESPONSE NO. 6

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope.

DEMAND NO. 7

REQUEST FOR ADMISSION: The document attached as “Exhibit A” is the complaint from the “Rip-off Report” that Lauren Callanan referred to in her deposition starting at page 41.

RESPONSE NO. 7

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants admit only that the document attached as “Exhibit A” is a complaint from the “Rip-off Report” and, without further information, can neither admit nor deny its authenticity as the complaint referenced in Lauren Callanan’s deposition testimony.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 8

REQUEST FOR ADMISSION: The document attached as “Exhibit A” is the complaint that Raymond Maynard referred to in his deposition starting at page 55.

RESPONSE NO. 8

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants admit only that the document attached as “Exhibit A” is a complaint and, without further information, can neither admit nor deny its authenticity as the complaint referenced in Raymond Maynard’s deposition testimony.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 9

REQUEST FOR ADMISSION: The document attached as “Exhibit B” is Raymond Maynard’s response to the complaint attached as “Exhibit A.”

RESPONSE NO. 9

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants admit only that the document attached as “Exhibit B” appears to be a response written by Raymond Maynard and, without further information, can neither admit nor deny its authenticity as a response to the complaint attached as “Exhibit A.”

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 10

CONDITIONAL INTERROGATORY: If the answers to 7, 8 & 9 were not unqualified admissions, please produce the complaint(s) referred to in the depositions, and Ray Maynard’s responses referred to in the deposition.

RESPONSE NO. 10

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants are not in possession of documentation responsive to this demand.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 11

INTERROGATORY: Please state in detail, what, if anything, Mr. Maynard did to investigate the complaint attached as “Exhibit A,” including but not limited to finding out who the author of the complaint was, when it happened, or whether anything in the complaint actually occurred.

RESPONSE NO. 11

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 12

INTERROGATORY: Were any employees disciplined, i.e., fired, counseled, reprimanded, suspended or warned as a result of the complaint attached as “Exhibit A?”

RESPONSE NO. 12

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 13

CONDITIONAL INTERROGATORY: If the answer to the previous interrogatory is in the affirmative, please state the name of the employee and level of discipline imposed.

RESPONSE NO. 13

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope.

DEMAND NO. 14

DEMAND FOR INSPECTION OF PREMISES and/or DEMAND FOR DISCOVERY AND INSPECTION: Please offer an agreeable date upon which the plaintiff and/or is counsel may inspect the premises of Altitude Express, Inc. and review each tandem video made in the summers of 2009 and 2010. Please note that plaintiff does not wish to review every tandem videotaped, but merely to take a sampling. Plaintiff also wishes to photograph the workplace.

RESPONSE NO. 14

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in either time or scope. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants deny Plaintiff's request as set forth herein. Should Plaintiff amend his request with a reasonable scope and greater specificity, Defendants shall endeavor to comply.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

DEMAND NO. 15

DEMAND FOR DISCOVERY AND INSPECTION: Please produce the videotapes that Altitude Express requires/required customers to view before engaging in a tandem jump. In his deposition, Maynard referred to two different videotapes used at different times.

RESPONSE NO. 15

Defendants object to this demand on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, irrelevant, and is not reasonably calculated to the lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Defendants respond as follows:

Defendants shall make the requested videos available for inspection at the offices of Defendant's Counsel located at 4875 Sunrise Highway, Suite 300, Bohemia, New York 11716 at a date and time to be agreed upon by both parties.

DEMAND NO. 16

INTERROGATORY: Please set forth every day that Plaintiff worked during the seasons 2009 and 2010 in which he was paid for (a) no tandems; (b) one tandem; or (c) three tandems.

RESPONSE NO. 16

Defendants object to Plaintiff's demand on the grounds that it seeks information already within Plaintiff's custody, control and possession and to which Plaintiff has equal access.

Pursuant to the FRCP, Defendants reserve the right to supplement this response should additional information become available.

Dated: Bohemia, New York
February 17, 2012

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: _____

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