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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 write to bring up a couple of points that we can perhaps address on this Monday's conference. First, Don Zarda obtained his degree from Embry Riddle Aeronautical Institute and we would like that to be admitted as an exhibit and to determine whether there will be any objections as to its authenticity. We had previously given the defense a release for Embry Riddle's files – as mitigation was based in part on plaintiff's taking extra coursework, and the diploma was obtained posthumously. It does not say "posthumous" on the diploma, however, it was simply that Don hadn't gotten together the paperwork to obtain it before he died. So, I want to be able to amend the pre-trial order: The good cause being that the document did not exist before the pre-trial order was written, and, indeed, not even while Don was alive. I would also want to know if there will be an authenticity objection, in which case I'll have to do something else before trial to lay a foundation.

Second, I'm thinking how to describe what happened that led to plaintiff's termination – the fateful tandem connection in which Don said, "Don't worry about me I'm gay and have the ex-husband to prove it." The reason he stated that was that the woman (whose boyfriend complained) and Don were strapped together in a tandem outfit. Someone else – an employee of Altitude Express – said, in order to lighten the atmosphere, "I bet you didn't think your girlfriend was going to be strapped to another guy!" It is very hard to describe this in words, and much easier to demonstrate. I would like, in my opening statement, to demonstrate this, with me playing the "role" of Don and Melissa Zarda playing the "role" of the complainant's girlfriend. A woman needs to fill this role, and Melissa is the only person on my team who is female. She won't say anything. I had previously wanted her to read Don's deposition testimony, but that caused an uproar, which you found would be prejudicial. In fact, the only reason I picked Melissa was that I wanted someone to practice reading the words, and Melissa agreed. There was no mal-intent. Testimony read at deposition can be dry, and I am not suggesting a drama, but the reader needs at least to be familiar with the material, and put inflections into the right words as we use them in English. As of now, I will use Mr. Cardinale for that role, or get someone else.

As for the opening statement demonstration, however, is this going to cause an uproar? Don is dead; we're not trying to milk that for sympathy, but given the reaction to the suggestion that Melissa read the deposition, I wanted to bring this to everyone's attention so that there is no consternation on anyone's part.

Perhaps there won't be time to discuss these matters on Monday, but I thought I would get this letter in rather than explain it during the conference.

Have a good weekend. I will be calling in on Monday from Washington where I will be getting in line the next morning for the Supreme Court Gay Marriage arguments, which I am looking forward to.

Sincerely,

/s/

Gregory Antollino

Cc: Saul Zabell by ecf