

**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) (AYS)

DEFENDANTS' PRE-TRIAL MEMORANDUM OF LAW

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I. PRELIMINARY STATEMENT

Defendants, Altitude Express, Inc. d/b/a Skydive Long Island (“SDLI”) and Ray Maynard (“Maynard”) (collectively “Defendants”) did not discriminate against, Donald Zarda (“Zarda”) based upon his sexual orientation. Defendants were aware of Zarda’s sexual orientation each and every season (2001, 2008 and 2009) Zarda was welcomed to work for Defendants. In fact, throughout his employment with Defendants, Zarda was an openly gay male and referred to himself as “gay Don.” Contrary to Plaintiff’s allegations, the evidence proves that Plaintiff’s termination had nothing to do with the fact that he was gay, but rather was based completely on the fact that he “ruined” the tandem skydive experience for Defendants’ customers.

Defendants received a customer complaint regarding Zarda’s inappropriate and unprofessional behavior, including putting his hands on a customer’s hips, putting his head on her shoulder, whispering in her ear and telling her personal information during a tandem skydive. Throughout SDLI’s operation, Zarda is the one and only instructor customers logged complaints against. Zarda’s termination was based solely on his own behavior. Therefore, the evidence, which will be presented in this matter, contradicts Plaintiff’s key allegations against Defendants.

II. STATEMENT OF FACTS

SDLI is a domestic business corporation operating under the laws of the State of New York. (Zabell Ex. A). Maynard is the owner and chief executive officer of SDLI. (Maynard Dep. pg. 10:7-9; Zabell Decl. Ex. A). Maynard has been skydiving for over forty (40) years. (Maynard Dep. pg. 11:9).

Skydiving is a seasonal sport, as such, the skydiving season runs from approximately March to November each year. (Zarda Dep. pg. 286:4-14, 316:13-16). Skydiving can only be performed in good weather: “the sky must be clear, you must have visibility of three statute miles,

you must be 500 feet below clouds, there must be 1,000 feet above the clouds, and 2,000 feet separation from the clouds to be able to jump.” (Zarda Dep. pg. 288:9-14). Additionally, skydivers cannot “jump from planes while it’s raining.” (Zarda Dep. pg. 288:2-4).

A typical skydive takes between ten (10) and twenty (20) minutes to complete. (Zarda Dep. pg. 317:20-25). However, a tandem skydive generally takes anywhere from fifteen (15) to twenty (20) minutes. (Zarda Dep. pg. 318:20-22). The first priority for the instructor on a tandem jump is safety, the next is making the jump enjoyable for the customer. (Zarda Dep. pg. 140-141:18-6; Winstock Dep. pg. 91:20-22). While the airplane is loud, the instructors “can hear each other speak, it’s not deafening.” (Winstock Dep. pg. 50:22-24). Often jokes are made during the skydive to loosen the tension. (Maynard Dep. pg. 35:2-14, 38:13-18; Winstock Dep. pg. 30:9-12, 31:3-15). These jokes are made to make the situation less tense, “the calmer a passenger is to exiting, generally the safer the skydive will be.” (Winstock Dep. pg. 30:16-22).

Plaintiff’s Background Information

Plaintiff Donald Zarda (“Zarda”) resided in Richmond, Missouri. (Zarda Dep. pg. 129:11-12). In 2001, Zarda was an openly gay man, who “came out” sometime between 1999 and 2000. (Zarda Dep. pg. 54:7-12). However, prior to “coming out,” Zarda had relationships with women. (Zarda Dep. pg. 54:18).

Zarda was first hired by SDLI in the summer of 2001. (Zarda Dep. pg. 56:2-3). Maynard, the ultimate decision maker, was the person who made the decision to hire Zarda. (Zarda Dep. pg. 56:19-20). During his employment with SDLI, Zarda’s sexuality “was known” by everyone who worked at SDLI, including Maynard. (Zarda Dep. pg. 62-63:8-14; Winstock Dep. pg. 18:5-7). Maynard was aware of Zarda’s sexual orientation prior to his hire in 2001, as Zarda disclosed it to Maynard the first time they met. (Zarda Dep. pg. 78:11-17; Maynard Dep. pg. 135:17-20;

Winstock Dep. pg. 18:5-7). After working most of the skydiving season in 2001, Zarda was then terminated from SDLI in September, because of a customer complaint. (Zarda Dep. pg. 57:10-19, 216-217:20-6, 285:11-16).

Activities at SDLI

After not working at SDLI for several years, at the end of the skydive season in 2008, Zarda appeared at the drop zone at SDLI to discuss the possibility of his returning to work at SDLI in 2009. (Zarda Dep. pg. 60-61:12-13; Maynard Dep. pg. 148:24). As a result of these discussions, Maynard decided to re-hire Zarda to work at SDLI for the 2009 summer season (Zarda Dep. pg. 58-59:22-6), as Zarda was a good instructor, a safe instructor, and “a good guy.” (Maynard Dep. pg. 149:9-12). Like in 2001, Maynard was fully aware of Zarda’s sexual orientation when he made the decision to re-hire Zarda. (Zarda Dep. pg. 78:18-22; Winstock Dep. pg. 101:10-12). During the 2009 season at SDLI, Zarda enjoyed working with his co-workers and had a “great relationship” with everyone at SDLI. (Zarda Dep. pg. 72-73:24-6). However, on July 2, 2009, Zarda fractured his ankle during a landing with a tandem passenger, bringing his jumping season to an early close. (Zarda Dep. pg. 73:7-18, 75:6-22; Maynard Dep. pg. 150:12; Callanan Dep. pg. 44:17-20). After fracturing his ankle, Zarda was put into a cast. (Zarda Dep. pg. 73:19-21). Zarda then showed up at SDLI in a cast. (Winstock Dep. pg. 35:16-20; Callanan Dep. pg. 46:23-24, 47:10-13). Upon noticing the cast, Maynard requested Zarda put a sock over his foot. (Zarda Dep. pg. 347:12-18). Maynard requested the cast be covered up as he did not “appreciate anyone being at the drop zone in a cast and on crutches. The students are nervous enough and if they see someone on crutches with a cast on, it’s not going to be very good for the customers.” (Maynard Dep. pg. 160-161:24-9; Winstock Dep. pg. 96-97:15-14). This request was not specific to Zarda, as

Maynard did not “want anybody, if possible, to be there on crutches in a cast.” (Maynard Dep. pg. 162:17-18).

As a result of his injury, Zarda could not work the remainder of the 2009 season. After getting healthy, Maynard allowed Zarda to return for the 2010 season. (Zarda Dep. pg. 76:22-25, 77:17-22; Maynard Dep. pg. 155-156:23-6, 165:15-18). Like in 2001 and 2009, Maynard was fully aware of Zarda’s sexual orientation when he allowed him to return to work at SDLI for the 2010 season. (Zarda Dep. pg. 79:2-6). After taking the remainder of the 2009 season off, Zarda returned to work at SDLI on May 15, 2010. (Zarda Dep. pg. 78:4-6). During his time at SDLI, Zarda behaved like every other employee in his daily mannerisms and could not be distinguished from his co-workers based on his actions. Zarda admits that he acted normally, was “just like everybody else,” and “didn’t do anything special” that would distinguish him from his co-workers. (Zarda Dep. pg. 79-80:16-17).

Zarda is admittedly masculine in both appearance and actions. (Zarda Dep. pg. 121-122:16-6, 365:3-10, 116:21-25, 364:21-23). As an individual who works out frequently and stays in shape, Zarda has an “athletic” appearance, which he admits often leads others to believe he is heterosexual. (Zarda Dep. pg. 87:20-21, 89:10; 121-122:16-6, 365:3-10). Zarda admits that he does not “look like a lot of gay people might look.” (Zarda Dep. pg. 121:7-8). Zarda also acts masculine, not feminine. (Zarda Dep. pg. 116:21-25, 364:21-23). While masculine in appearance, Zarda would occasionally wear a pink baseball cap during work at SDLI to protect his head from the sun. (Zarda Dep. pg. 120:4-14, 125-126:22-7). While Zarda claims that his pink cap was viewed as a “feminine thing,” he admits that heterosexual men also occasionally wear pink articles of clothing. (Zarda Dep. pg. 120:15-17, 126-127:13-4). Zarda asserts that some employees of SDLI would comment on his pink cap; however, when asked, he could not identify any individuals who

allegedly made comments, or what comments were made about the cap. (Zarda Dep. pg. 120-121:4-9). Additionally, Zarda failed to identify Maynard, his boss and SDLI's decision maker, as one of the individuals who allegedly made comments about his pink cap. (Zarda Dep. pg. 120-128). Nor was Maynard ever heard making comments about Zarda's pink clothing. (Winstock Dep. pg. 36:9-11). Despite the fact that Zarda claims comments were made about his pink cap, Zarda admits that he "wasn't offended" by any comments made about his cap. (Zarda Dep. pg. 122:15-19).

Zarda admits that his sexual orientation came up "all the time" at SDLI; it was "routine and so ordinary" for it to come up at work. (Zarda Dep. pg. 48:2-23). Zarda was not offended when his sexual orientation was brought up. (Zarda Dep. pg. 51:21-25, 239-240:24-15). Zarda was open and notorious about his sexual orientation; he even had the nickname "gay Don" at SDLI. (Zarda Dep. pg. 49:6-15). Zarda "referred to himself as gay Don" and made jokes about being "gay Don." (Maynard Dep. pg. 137:14-20). In fact, Winstock was introduced to Zarda as "gay Don." (Winstock Dep. pg. 25:9-12). Zarda's co-workers would sometimes engage in what he referred to as "gay banter" or "gay fun," saying things like "easy with gay Don." (Zarda Dep. pg. 270-271:5-4). Again, Zarda conceded he "wasn't offended" when his co-workers referred to him as "gay Don" or engaged in "gay banter," because they did not intend it to be malicious or derogatory. (Zarda Dep. pg. 51:21-25). Zarda conceded that no one at SDLI made "gay jokes" to Zarda out of malice. Zarda didn't believe anyone at SDLI was being malicious toward him when bringing up his sexuality. (Zarda Dep. pg. 239-240:24-15). Zarda was admittedly not offended by jokes about his sexual orientation. (Zarda Dep. pg. 239:17-23).

Furthermore, it was common for Skydivers to pick on each other; all of the instructors at SDLI got picked on. (Zarda Dep. pg. 342:6-16). Zarda conceded he was treated just like everyone

else at SDLI; he was not treated differently, or picked on more, because of his sexual orientation. (Zarda Dep. pg. 341:10-15, 343:8-16; Winstock Dep. pg. 87:6-9, 97:22-25). Rather, Zarda enjoyed positive working relationships with all his co-workers during his employment at SDLI in 2009 and 2010. (Zarda Dep. pg. 81:12-16, 82:6-9). If any problems arose at SDLI, Zarda could have brought them to the attention of Rich Winstock, the Chief Instructor (“Winstock”), or Maynard. (Zarda Dep. pg. 101:7-16; Winstock Dep. pg. 89:20-23). Zarda felt comfortable speaking to Winstock about his problems, enough so that he disclosed a personal problem to Winstock in 2009. (Zarda Dep. pg. 102:18-23, 103:9-17). However, Zarda admittedly “didn’t make any complaints to the owner, [Maynard], or [Winstock] about” about any gender or sexual orientation discrimination. (Zarda Dep. pg. 335:7-11, 101-102:22-9. The only complaint Zarda made about SDLI was an oral complaint to Winstock, informing him that he had been suspended. (Winstock Dep. pg. 90:9-18).

The Jump in Question

On June 18, 2010, David Kengle (“Kengle”) brought his girlfriend, Rosana Orellana (“Orellana”), to SDLI for a tandem skydive for her birthday. (Zarda Dep. pg. 201-202:24-4). Zarda was the assigned instructor on the tandem jump with Orellana. (Zarda Dep. pg. 201-202:24-7). During the skydive, Kengle and Orellana were in close proximity to their respective instructors. (Kengle Dep. pg. 18:13-18; Orellana Dep. pg. 43:13-18, 100:17-22). Orellana sat in front and Zarda sat directly behind her. (Orellana Dep. pg. 43:13-18). Kengle was also sitting in front of his instructor. (Kengle Dep. pg. 17:17, 23-25). Zarda then attached Orellana’s harness to his harness. (Orellana Dep. pg. 41:12-20). Orellana was not bothered by the close proximity to Zarda. (Orellana Dep. pg. 100:17-22).

During the plane ride up, a joke was made to Kengle by another instructor on the plane, stating: “how do you feel about your girlfriend being strapped to another man.” (Zarda Dep. pg. 201-202:7-12; Orellana Dep. pg. 44:10-17; Kengle Dep. pg. 19:18-23). Both Orellana and Kengle laughed at the joke made by the instructor (Orellana Dep. pg. 45:5-6), as it was funny and they can both “take a joke.” (Orellana Dep. pg. 58:21-23; Kengle Dep. pg. 43:10). This type of joke was often made by the skydiving instructors during a tandem jump. (Zarda Dep. pg. 202:13-18). Customers are not usually bothered when this joke is made. (Zarda Dep. pg. 206-207:21-4).

During the plane ride, sometime prior to the jump, Orellana believed Zarda was touching her inappropriately. She noticed that “[h]e had his hand on [her] hip” and was “resting his chin on [her] shoulder.” (Orellana Dep. pg. 47:5-13; 48:15-18, 89:10-20). This contact made her uncomfortable during the jump. (Orellana Dep. pg. 100-101:25-2). During this time, Zarda also “leaned forward to give [Orellana] instructions . . . in her ear.” (Zarda Dep. pg. 230-231:21-7). Kengle also noticed Zarda touching Orellana inappropriately in the plane. He observed Zarda putting his “hands on her hips” for practically the entire plane ride. (Kengle Dep. pg. 19-20:24-7, 22:2-4, 23:4-12, 23:16-24, 27:14-23). Kengle observed that no other instructor, including his own instructor, was touching their customer in the same manner Zarda was touching Orellana. (Kengle Dep. pg. 23-24:22-5, 62-63:20-3, 66:15-18). Kengle felt uncomfortable with the behavior he observed from Zarda based on his observations of the other instructors. (Kengle Dep. pg. 23-24:22-5, 27:2-9, 62-63:20-3, 66:15-18). While touching the customer’s hips is required at some point during the tandem jump, it does not require the instructor to touch the customer inappropriately. (Zarda Dep. pg. 173:3-6). Then, “[a]t some point during the jump, [Zarda] sensed that [Orellana] was uncomfortable.” (Zarda Dep. pg. 174-175:22-6, 173:12-14).

After pulling the parachute (Orellana Dep. pg. 50:11-18), in an attempt to allay Orellana's discomfort, Zarda disclosed his sexual orientation to Orellana. (Zarda Dep. pg. 139-140:22-8, 173:15-19; 228-229:2-10). He told her: "I hope I didn't make you feel uncomfortable on the plane, I'm gay," and that he "had recently broken up with his boyfriend." (Orellana Dep. pg. 50:14-18). It was only after Zarda noticed Orellana's discomfort with the jump that he disclosed this information to Orellana. (Zarda Dep. pg. 176:6-9, 177:14-16). Orellana felt uncomfortable after Zarda disclosed this information to her. (Orellana Dep. pg. 52:2-7, 54:11-19, 55:6-9). It made her uncomfortable because she "wanted to learn about the scenery," and "wanted him to speak about what was going on around" them during the jump. She did not "want to hear about his personal life" during the jump. (Orellana Dep. pg. 52:2-7, 54:11-19, 55:6-9). She wanted information about her tandem jump instead. (Orellana Dep. pg. 52:2-7, 100:4-10). Orellana felt that Zarda's conduct, putting his hands on her hips and his chin on her shoulder during the jump, crossed the line. (Orellana Dep. pg. 60:4-8). Orellana complained that "he should have been more professional" in his interactions with her. (Orellana Dep. pg. 49:3-5). In her opinion, Zarda's actions ruined the jump. (Orellana Dep. pg. 54:20-21, 60:6-8). Kengle also felt that the overall experience had been tainted because of Zarda's actions. (Kengle Dep. pg. 31:11-12). After leaving SDLI, Orellana told Kengle that she would have liked the experience better if she had a different instructor. (Kengle Dep. pg. 30:8-9).

The Complaint

After thinking over the aforementioned events, on Monday, June 21, 2010, Kengle called the SDLI office to lodge a complaint about Zarda's behavior. (Maynard Dep. pg. 179:14-22, 180:2-14; Kengle Dep. pg. 31:13-15). Kengle believed a complaint was warranted because Zarda's actions were "inappropriate." (Kengle Dep. pg. 35:13-15). When he called SDLI, Kengle spoke

to Lauren Callanan ("Callanan"), who "took [his] story and let [him] know she would pass the information along." (Kengle Dep. pg. 31:15-17; Callanan Dep. pg. 33:21-22). Callanan relayed to Maynard that a customer complained, and provided him with Kengle's name and phone number. (Maynard Dep. pg. 181:2-3). Maynard then contacted Kengle later that day, telling Kengle "that he was very unhappy" with what Kengle and Orellana experienced during their skydive. (Kengle Dep. pg. 31:9-16).

During their phone conversation, Kengle complained to Maynard about what he and Orellana believed to be inappropriate touching by Zarda. (Zarda Dep. pg. 156:16-23; Orellana Dep. pg. 69:11-13; Maynard Dep. pg. 181-182:16-12). Kengle expressed to Maynard "his disappointment" in the company and with what the tandem master, Zarda, did during their jump. (Maynard Dep. pg. 181:16). Kengle explained that the skydive "was a present for [Orellana's] birthday and that her birthday was completely ruined" because of Zarda's behavior. He further stated that would never recommend SDLI in the future because of the unprofessional conduct. (Maynard Dep. pg. 181:21-23; Callanan Dep. pg. 33-34:24-4). Kengle explained to Maynard that, during the jump, Zarda had his hands on Orellana's hips, put his head on her shoulder, and whispered in her ear, which made her feel very uncomfortable. (Maynard Dep. pg. 182:6-17; Callanan Dep. pg. 34:7-12). He also explained that Zarda tried to justify his behavior by telling her that he was gay. (Maynard Dep. pg. 182:6-17; Callanan Dep. pg. 34:7-12) He told Maynard that Orellana was upset that Zarda discussed his personal life with her. (Maynard Dep. pg. 182-183:22-8, 289:11-15; Callanan Dep. pg. 34:7-12).

In response to Kengle's complaint, Maynard offered to refund the money Kengle paid for the skydives and accompanying video. (Kengle Dep. pg. 32:9-16). Kengle did not request the refund, Maynard insisted on it. (Kengle Dep. pg. 33:19-22). In the course of investigating this

complaint from Kengle, Maynard did not speak to Orellana, (Maynard Dep. pg. 185:11-13) nor did he speak to the other individuals present on the plane. (Maynard Dep. pg. 199:7-16). However, Maynard did review the video of Zarda's jump with Orellana. (Maynard Dep. pg. 199:17-22). In his twenty plus years at the helm of SDLI and the successful completion of thousands of tandem jumps, no one has complained to Maynard about any instructor, other than the two (2) complaints made against Zarda: (1) by Kengle; and (2) the customer complaint in 2001. (Maynard Dep. pg. 66:8-21, 69:9-14, 297:11-21; Winstock Dep. pg. 19:10-13).

The Suspension and Termination

Immediately subsequent Kengle's complaint, Maynard had a conversation with Zarda regarding the jump, in the course of his investigation of the complaint. (Zarda Dep. pg. 36:10-12, 37:7-14, 39:15-17; Maynard Dep. pg. 183:15-21). During the conversation, Maynard questioned Zarda as to whether he remembered the jump with Rosanna Orellana on June 18, 2010. (Zarda Dep. pg. 36:19-25). Zarda responded that he did not remember the specific jump. (Zarda Dep. pg. 37:2-5, 362:18-19, 37:8-11). Maynard then told Zarda that he "took a girl named Rosanna" on a tandem jump that day. (Zarda Dep. pg.). "At that time, [Zarda] didn't remember anything specific about that jump." (Zarda Dep. pg. 37:15-16). Maynard then informed Zarda "there were some customers that came out and jumped, and it was a boyfriend and a girlfriend, and that [he] had taken the girl, and they had called and made a complaint." (Zarda Dep. pg. 37:15-22; Maynard Dep. pg. 187:8-22, 196:10-18). Zarda again did not remember anything about the jump. (Zarda Dep. pg. 38: 3-6).

Maynard informed Zarda that the customer complained about how Zarda touched her, that he "touched her in a way that made her feel uncomfortable", and that he touched her inappropriately "at the hips." (Zarda Dep. pg. 43:10-13, 44:3). Maynard explained that Zarda made

Orellana feel “very uncomfortable with the way he was touching her on her legs, the way he was putting his head on her shoulder” and that she was “very uncomfortable for the entire jump” and his actions even led her to believe Zarda “was hitting on her”. (Maynard Dep. pg. 196:10-18). Admittedly, this is not a complaint about Zarda’s sexual orientation. (Zarda Dep. pg. 360:14-17). Maynard also questioned Zarda whether “anything about [his] sexual orientation came up” during the jump, and Zarda responded that he did not know. (Zarda Dep. pg. 38:8-10). He then told Maynard “that that comes up all the time around here,” as it is often joked about at the drop zone by the SDLI staff. (Zarda Dep. pg. 38:12-15). Maynard then informed Zarda that the customers also complained that Mr. Zarda discussed his sexual orientation with the customer during the jump. (Zarda Dep. pg. 40:2-4).

Due to the nature of a tandem jump, discussing the instructor’s sexual orientation is not recommended during a jump. (Winstock Dep. pg. 95:5-9). As “that pre-jump phase is one of building trust, . . .there’s better ways to build trust.” (Winstock Dep. pg. 95:11-15). Following this conversation, Maynard suspended Zarda for a week without pay. (Zarda Dep. pg. 40:6). Zarda’s suspension had “nothing to do with him being gay.” (Maynard Dep. pg. 189:4-5) Rather, it was a function of the customer’s complaint regarding Zarda’s behavior. (Maynard Dep. pg. 187:18-22, 196:10-18). After this discussion with Maynard, Zarda “sought Winstock’s counsel” to discuss the events that had just occurred. (Zarda Dep. pg. 35:11-22, 207-208:16-6). In response, Winstock notified Zarda he would discuss the matter with Maynard. (Zarda Dep. pg. 208:6-10). After his one-week suspension, Maynard terminated Zarda, based on the complaint from Kengle. (Zarda Dep. pg. 218:20-21, Maynard Dep. pg. 282:3).

The termination conversation between Maynard and Zarda was tape-recorded by Zarda. (Maynard Dep. pg. 221:2-25). During the termination conversation, in response to Zarda’s inquiry

regarding his sexual orientation, Maynard informed him “[i]t wasn’t a gay issue. It was a personal issue Because if it was a heterosexual thing -- if Ritchie Winstock was telling some chick of his escapades, he would be in the same situation. It’s not about gay. It’s about your personal life, talking to people about it I don’t care what you do and I don’t care what those guys do, but what I do care about is that it’s not shared with my customers.” (Maynard Dep. pg. 226:3-16). “It’s not a gay thing. It’s about your personal escapades and what you’re telling people.” (Maynard Dep. pg. 226:19-22). During the termination meeting, Maynard and Zarda discussed Kengle’s complaint. They discussed the fact that Orellana felt Zarda touched her inappropriately, which made her uncomfortable. (Maynard Dep. pg. 227:8-10). Maynard explained that Kengle was upset because Orellana’s birthday was ruined by Zarda’s unprofessional behavior, including him telling her “Don’t worry about me, I’m gay.” (Maynard Dep. pg. 229:3-21, 247:14-15).

Despite his contention that he could not have touched Orellana inappropriately because of his sexual orientation (Zarda Dep. pg. 43:17-22), Zarda admits that a homosexual man can touch a woman inappropriately. (Zarda Dep. pg. 228:13-15). Zarda testified that Maynard terminated him because Kengle and Orellana complained about the conduct that occurred on their jump. (Zarda Dep. pg. 235:17-22). Zarda explained that Maynard terminated him because the customers accused him of inappropriately touching a “female passenger in a way that made her feel uncomfortable” and “because the issue of [his] sexuality came up in front of the customers.” (Zarda Dep. pg. 172:13-18, 243:11-14, 227:4-15, 227-228:23-7, 281:21-24). However, contradictorily, Plaintiff testified repeatedly that he believes the reason he was terminated is because of his sexual orientation. (Zarda Dep., pg. 116:9-12, 134:12-15, 215:8, 278-279:11-2, 281:21-24). If an instructor does something to make a customer uncomfortable, the instructor is responsible for damaging the customer’s skydive experience. (Winstock Dep. pg. 92-93:22-4).

III. ARGUMENT

Only one (1) contested legal issues remains in this matter: Plaintiff's sexual orientation claim under the NYSHRL. Additionally, although the Court already dismissed Plaintiff's Title VII claims, Plaintiff's motion requesting this Court to reconsider its decisions and reinstate the Title VII claim is now pending. [ECF Doc. No. 211]

POINT I

The Second Circuit's Preclusion of Sexual Orientation Claims Precludes this Court from Reinstating Plaintiff's Title VII Claims

This Court properly dismissed Plaintiff's Title VII's claims. [ECF Doc. No. 145] "Title VII does not, by its express terms, prohibit all arbitrary employment practices. Rather, it is directed only at specific impermissible bases of discrimination such as race, color, religion, sex, or national origin." *Dollinger v. State Ins. Fund.*, F.Supp.2d 467, 475 (N.D.N.Y. 1999). "Sexual orientation is not included in the statutory protected class." *Kiley v. American Soc. for Prevention of Cruelty to Animals*, 296 Fed. Appx. 107, 109 (2d Cir. 2008); *see also Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000) (noting that "[t]he law is well-settled in this circuit . . . that [the Plaintiff] has no cause of action . . . because Title VII does not prohibit harassment or discrimination because of sexual orientation"). Plaintiff's pending motion must be denied in its entirety as the Second Circuit decisions are binding precedent in this Court. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982); *F.D.I.C. v. Bear Stearns Asset Backed Sec. I LLC*, No. 12CV4000-LTS-MHD, 2015 WL 1311300, at *7 (S.D.N.Y. Mar. 24, 2015).

Despite clear binding precedent, Plaintiff urges this Court to "be the first judge to hold that Title VII protects sexual orientation" and adopt a mere advisory opinion from the U.S. Equal Employment Opportunity Commission's ("EEOC"). [See ECF Doc. No. 221 p. 1] *See Anonymous v. Foxx*, EEOC Appeal 0210133080. Absent an intervening decision from either the Supreme

Court or the Second Circuit the holding in *Simonton* continues to be binding upon this Court. Therefore, this Court's original decision, dismissing Plaintiff's Title VII claims, must stand.

POINT II

Plaintiff was not subjected to Sexual Orientation Discrimination

Plaintiff cannot prevail on a claim for sexual orientation discrimination under the NYSHRL (or Title VII, in the unlikely this Court reinstates Plaintiff's Title VII claim) *Stephenson v. Hotel Employees & Rest. Employees Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271 (2006); *Dawson v. Bumble & Bumble*, 398 F.3d 211, 224 (2d Cir. 2005). To prevail on a claim for sexual orientation, Plaintiff must prove that "(1) he is a member of a protected class; (2) he is competent to perform the job or is performing his duties satisfactorily; (3) he suffered an adverse employment decision or action; and (4) the decision or action occurred under circumstances giving rise to an inference of discrimination based on his membership in the protected class." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Even if Plaintiff proves each element, only "a presumption of discrimination arises and the burden shifts to the defendant to proffer some legitimate, nondiscriminatory reason for the adverse decision or action." *Dawson*, 398 F.3d at 216.

Plaintiff cannot meet the burden under the *McDonnell Douglas* analysis. Plaintiff cannot establish that Zarda was terminated under circumstances which give rise to an inference of discrimination. *McDonnell Douglas Corp.*, 411 U.S. at 792. Here, Maynard hired Zarda on three (3) separate occasions: 2001, 2009 and 2010. (Zarda Dep. pg. 56:19-20, 58-59:22-6, 76:22-25, 77:17-22; Maynard Dep. pg. 155-156:23-6, 165:15-18). Each time Maynard invited Zarda to work at SDLI, Maynard had full knowledge of his sexual orientation, as Zarda was openly gay. (Zarda Dep. pg. 54:7-12, 62-63:8-14, 78:11-22, 79:2-6; Maynard Dep. pg. 135:17-20; Winstock Dep. pg. 18:5-7, 101:10-12). Zarda admitted that his sexual orientation came up "all the time" at SDLI; it was "routine and so ordinary" for it to come up at work. (Zarda Dep. pg. 48:2-23). He even had

the nickname “gay Don” at SDLI. (Zarda Dep. pg. 49:6-15). Zarda openly “referred to himself as gay Don” and made jokes about being “gay Don.” (Maynard Dep. pg. 137:14-20).

Only after Maynard received a customer complaint did Maynard fire Zarda. (Zarda Dep. pg. 56:19-20, 58-59:22-6, 76:22-25, 77:17-22, 218:20-21; Maynard Dep. pg. 155-156:23-6, 165:15-18, 282:3). Given that Maynard decided to hire Zarda, with full knowledge of his sexual orientation, and subsequently decided to fire him, there can be no inference of discrimination. *See Grady v. Affiliated Cent., Inc.*, 130 F.3d 553, 560 (2d Cir. 1997); *Chin v. ABN-AMRO N. Am., Inc.*, 463 F. Supp. 2d 294, 304 (E.D.N.Y. 2006) (noting that “where the person who made the decision to fire was the same person who made the decision to hire, it is difficult to impute to [that person] an invidious motivation that would be inconsistent with the decision to hire”); *Cooper v. Morgenthau*, 2001 WL 868003, at *6 (S.D.N.Y. July 31, 2001) (noting that “the ‘underlying rationale for the [same actor] inference is simple: it is suspect to claim that the same manager who hired a person in the protected class would suddenly develop an aversion to members of that class”). Therefore, it is illogical to suggest that Maynard would re-hire Zarda, knowing his sexual orientation, if he had any aversion to homosexuals.

Additionally, Zarda was terminated within two (2) years of his hire date - he was hired late in 2008 and terminated in June 2010. (Zarda Dep. pg. 60-61:12-13, 218:20-21, Maynard Dep. pg. 282:3, 148:24). The short time period between his hire date and his termination bears a strong inference that Zarda was not subjected to invidious discrimination. *Grady*, 130 F.3d at 560; *see Cooper*, 2001 WL 868003, at *6 (holding the inference of no discriminatory animus due when plaintiff was hired and fired by the same person “should be accorded substantial weight where the time period between the hiring and firing is less than two years”). Moreover, Zarda was suspended and terminated in the immediate wake of a customer complaint. (Zarda Dep. pg. 36:10-12, 37:7-

14, 39:15-17, 40:6; Maynard Dep. pg. 183:15-21). The mere proximity between the complaint about Zarda's conduct and his termination confirm that he was not fired under circumstances giving rise to an inference of discrimination.

Assuming, *arguendo*, that Plaintiff can somehow demonstrate that he was terminated under circumstances which give rise to an inference of discrimination, Defendants have a legitimate, non-discriminatory reason for his termination. *McDonnell Douglas*, 411 U.S. 792. Plaintiff's termination was a result of a customer complaint regarding Zarda's behavior. (Zarda Dep. pg. 235:17-22, 172:13-18, 243:11-14, 227:4-15, 227-228:23-7, 281:21-24).

A customer complaint is a legitimate business reason for terminating Plaintiff. *See Iverson v. Verizon Communications*, 2009 WL 3334796, at *5 (S.D.N.Y. Oct. 13, 2009) (holding plaintiff was terminated for legitimate business reasons because plaintiff had poor performance and received multiple customer complaints); *Hayes v. Cablevision Sys. New York City Corp.*, 2012 WL 1106850, at *15 (E.D.N.Y. Mar. 31, 2012) (holding customer complaints and written reprimands were sufficient to show a legitimate business reason for plaintiff's termination). Defendant SDLI is first and foremost a customer service business, in which the highest priority is customer safety and the second is ensuring an enjoyable experience. (Zarda Dep. pg. 140-141:18-6; Winstock Dep. pg. 91:20-22).

On June 18, 2010, Zarda failed to provide Defendants' customer with an enjoyable experience. (Zarda Dep. pg. 201-202:24-4; Orellana Dep. pg. 49:3-5, 100-101:25-2). Instead, Kengle and Orellana were placed in an uncomfortable position when Zarda put his hands on Orellana's hips, rested his chin on her shoulder, and disclosed intimate details of his personal life. (Orellana Dep. pg. 47:5-13; 48:15-18, 49:3-5, 89:10-20, 100-101:25-2; Kengle Dep. pg. 23-24:22-5, 62-63:20-3, 66:15-18). As a result, Orellana and Kengle had a dissatisfactory experience and

called SDLI to lodge a complaint. (Maynard Dep. pg. 179:14-22, 180:2-14; Kengle Dep. pg. 31:13-15, 35:13-15). This alone is the reason Zarda was terminated. (Zarda Dep. pg. 40:6; 218:20-21, 235:17-22, 172:13-18, 243:11-14, 227:4-15, 227-228:23-7, 281:21-24; Maynard Dep. pg. 282:3). Defendant made a business decision to eliminate an employee who failed to provide the customer with one of the core goals of skydiving – an enjoyable experience. This decision was based on SDLI's desire to please its customer base, not Plaintiff's sexual orientation. Even Zarda admitted that the customer's complaint regarding his behavior is unrelated to his sexual orientation. (Zarda Dep. pg. 360:14-17). As Plaintiff is the only instructor which Maynard has received complaints about in his twenty years at SDLI, Maynard properly responded to the complaint with immediate and unbiased corrective action. (Maynard Dep. pg. 66:8-21, 69:9-14, 297:11-21). *Spiess v. Xerox Corp.*, 481 Fed. Appx. 700, 701 (2d Cir. 2012) (stating that "it is not the province of Courts to second-guess business decisions. What matters is why the employer took action, not whether it was wise to do so"). Parenthetically, this was not the first incidence in which a customer complained about Zarda during a jump; Zarda was the subject of a prior customer complaint in 2001. (Zarda Dep. pg. 57:10-19, 216-217:20-6, 285:11-16). In terminating Plaintiff, Maynard simply eliminated an employee who, on at least two (2) occasions, failed to provide satisfactory customer service. Therefore, Plaintiff was terminated for a legitimate, non-discriminatory reason.

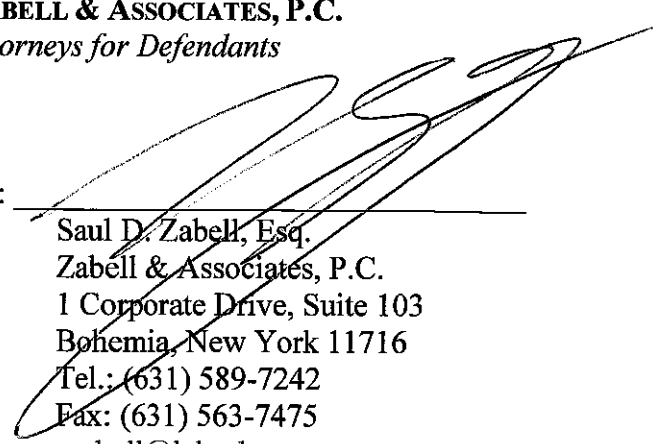
IV. CONCLUSION

This Court should Order judgment for Defendants.

Dated: October 6, 2015
Bohemia, New York

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: _____



Saul D. Zabell, Esq.
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**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) (AYS)

**DECLARATION OF SAUL D. ZABELL
IN SUPPORT OF DEFENDANTS'
PRE-TRIAL MEMORANDUM OF LAW**

SAUL D. ZABELL, ESQ., attorney duly admitted to practice before this Court, hereby affirms the following under the penalty of perjury:

1. I am the managing principal of Zabell & Associates, P.C., and counsel for Defendants Altitude Express, Inc. d/b/a Skydive Long Island and Ray Maynard in the above-captioned Action. I submit this Declaration in support of Defendants' Pre-trial Memorandum of Law.

EXHIBITS

2. Attached hereto as "Exhibit A" is a true and correct copy of the New York State Department of State Entity Information for "Altitude Express, Inc."
3. Attached hereto as "Exhibit B" is a true and correct copy of the deposition transcript of Donald Zarda.
4. Attached hereto as "Exhibit C" is a true and correct copy of the deposition transcript of Raymond Maynard.
5. Attached hereto as "Exhibit D" is a true and correct copy of the deposition transcript of Richard M. Winstock.

6. Attached hereto as "Exhibit E" is a true and correct copy of the deposition transcript of Lauren Callanan.
7. Attached hereto as "Exhibit F" is a true and correct copy of the deposition transcript of David Kengle.
8. Attached hereto as "Exhibit G" is a true and correct copy of the deposition transcript of Rosana Orellana.

Dated: Bohemia, New York
October 6, 2015

ZABELL & ASSOCIATES, P.C.

By: 

Saul D. Zabell, Esq.
Zabell & Associates, P.C.
1 Corporate Drive, Suite 103
Bohemia, New York 11716
Tel: (631) 589-7242
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szabell@laborlawsny.com

EXHIBIT A

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 22, 2013.

Selected Entity Name: ALTITUDE EXPRESS, INC.

Selected Entity Status Information

Current Entity Name: ALTITUDE EXPRESS, INC.

DOS ID #: 1882009

Initial DOS Filing Date: JANUARY 05, 1995

County: SUFFOLK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

ALTITUDE EXPRESS, INC.

525JAN WAY

CALVERTON, NEW YORK, 11933

Chairman or Chief Executive Officer

RAYMOND F. MAYNARD

525 JAN WAY

CALVERTON, NEW YORK, 11933

Principal Executive Office

ALTITUDE EXPRESS, INC.

525- JAN WAY

CALVERTON, NEW YORK, 11933

Registered Agent

NONE

This office does not record information regarding

the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JAN 05, 1995	Actual	ALTITUDE EXPRESS, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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EXHIBIT B

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff,

-against-

Index No.
10-CV-04334

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

Defendants.

-----X

December 9, 2011
10:15 a.m.

4875 Sunrise Highway
Bohemia, New York

EXAMINATION BEFORE TRIAL OF DONALD ZARDA,
the Plaintiff herein, taken by the
Defendants, pursuant to Article 31 of the
Civil Practice Law and Rules of Testimony,
and Notice and order, held at the
above-mentioned time and place, before Karen
LaMendola, a Professional Court Reporter and
Notary Public of the State of New York.

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A P P E A R A N C E S:

GREGORY ANTOLLINO, ESQ.
Attorney for Plaintiff
18-20 West 21 Street, Suite 802
New York, New York 10010

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants
4875 Sunrise Highway
Bohemia, New York 11716

BY: SAUL ZABELL, ESQ.

ALSO PRESENT:
William L. Murphy

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1

2 D O N A L D Z A R D A, the witness

3 herein, having been first duly sworn

4 by a Notary Public in and of the

5 State of New York, was examined and

6 testified as follows:

7 EXAMINATION BY

8 MR. ZABELL:

9 Q Would you please state your full
10 name for the record.

11 A Donald Zarda.

12 Q What is your current address?

13 A P.O. Box 312, Richmond, Virginia
14 64085.

15 Q Good morning, Mr. Zarda. How
16 are you?

17 A Good morning. How are you?

18 Q Good. You know my name is
19 Saul Zabell. We've met before; correct?

20 A Correct.

21 Q We haven't had much of a
22 conversation before, but we've met in the
23 context of this case; correct?

24 A Correct.

25 Q And you know me to be the

1 D. Zarda

2 attorney who represents Altitude Express;
3 correct?

4 A I do.

5 Q You also know me to be the
6 attorney who represents Ray Maynard; is that
7 correct?

8 A Yes.

9 Q Today I am conducting this
10 deposition on behalf of Altitude Express. Do
11 you understand that?

12 A Yes.

13 Q You know that I'm going to be
14 asking you questions; correct?

15 A Correct.

16 Q You're going to be providing
17 answers to those questions; correct?

18 A Yes.

19 Q And you are swearing that the
20 answers that you are providing are truthful
21 and accurate?

22 A Yes.

23 Q Do you understand that?

24 A To the best of my recollection;
25 yes.

1 D. Zarda

2 Q Do you understand that you took
3 an oath today to swear to tell the truth?

4 A Yes.

5 Q And you understand that if you
6 provide answers that are not truthful, you
7 are subject to charges of perjury?

8 A Yes.

9 Q Giving false answers in this
10 deposition today would be no different than
11 providing false testimony before a Court. Do
12 you understand that?

13 A Yes.

14 Q And have the ramifications of
15 that been explained to you by your Counsel?

16 A Yes.

17 MR. ANTOLLINO: Objection.

18 Anything that you've discussed with me
19 is not going to be asked or answered.

20 MR ZABELL: I believe the answer
21 is on the record.

22 MR. ANTOLLINO: Motion to
23 strike.

24 MR. ZABELL: To the extent I
25 can, your motion is denied.

1 D. Zarda

2 MR. ANTOLLINO: Okay.

3 Q How are you feeling today?

4 A Great.

5 Q Are you currently taking any
6 medications?

7 A None other than prescribed.

8 Q What prescribed medications are
9 you taking?

10 MR. ANTOLLINO: Well, I'm going
11 to object on the grounds that that is
12 not relevant. I'll let you ask him
13 whether there is any medications that
14 he takes that would affect his ability
15 to testify or recall events truthfully.

16 MR. ZABELL: Counsel, what
17 you're doing now is making an improper
18 objection. If you would like, I would
19 be more than happy to provide you with
20 a copy of the Federal Rules of Civil
21 Procedure to familiarize yourself
22 before you continue.

23 I can also tell you that we will
24 allow each other to finish speaking
25 before we interrupt each other. Am I

1 D. Zarda

2 clear on that?

3 MR. ANTOLLINO: Mr. --

4 MR ZABELL: Am I clear on that?

5 MR. ANTOLLINO: Mr. Zabell,
6 Mr. Zabell, you're not going to
7 denigrate or derisive me or make any
8 more accusations or criticisms about my
9 knowledge of the Federal Rules, or
10 whatever.

11 I'm trying to get through the
12 deposition. I'm not going to let you
13 ask him, generally, what medications he
14 takes, and we can mark that for a
15 ruling if you deem it necessary.

16 MR. ZABELL: No, no, we'll not
17 mark it for a ruling.

18 MR. ANTOLLINO: Okay.

19 MR. ZABELL: We will stop this
20 deposition right now, and we will call
21 the Judge if you feel it is absolutely
22 necessary.

23 MR. ANTOLLINO: I do.

24 MR. ZABELL: If you'd like, I
25 think the prudent thing is to ask me

1 D. Zarda

2 why I need to ask him those questions.

3 MR. ANTOLLINO: All right. Do
4 you want to explain why you need to ask
5 those questions?

6 MR. ZABELL: Sure.

7 MR. ANTOLLINO: Okay, go ahead.

8 MR. ZABELL: There are claims
9 for emotional damages. I have an
10 absolute right to explore what
11 medications this individual was taking,
12 A, to ensure that those medications do
13 not affect his ability to testify
14 truthfully and accurately, and, B, to
15 determine if those medications are
16 related to illnesses that have not been
17 disclosed pursuant to discovery, and if
18 any of those medications he's taking
19 can be related in any possible way to
20 emotional distress.

21 If you maintain your position,
22 and I strongly suggest that after I
23 finish explaining this to you that you
24 ask for a short break to discuss it
25 with your client, if you maintain the

1 D. Zarda

2 position that you will not allow him to
3 answer that question, then it is my
4 intention to call Judge Bianco and get
5 a ruling.

6 MR. ANTOLLINO: Why don't you
7 ask him the question that you just
8 asked me. If you ask those questions,
9 those questions would not be
10 objectionable, but to ask him,
11 generally, what medications he's on,
12 that's a violation of what I've
13 asserted in this lawsuit as medical
14 privilege. I have no problems with
15 those questions whatsoever, and if you
16 had asked those questions, I wouldn't
17 have objected, but you asked a very
18 open-ended question which could go into
19 something that is, you know, completely
20 irrelevant and medically privileged.

21 MR. ZABELL: You have my
22 position.

23 MR. ANTOLLINO: All right.

24 MR. ZABELL: Again, I strongly
25 recommend that you take a moment to

1 D. Zarda

2 speak to your client. Beyond that, I
3 will call Judge Bianco.

4 MR. ANTOLLINO: Okay. I don't
5 have any reason to speak to my client.
6 I think there's a compromise, there's a
7 compromise. I have sent the Judge the
8 medical records with my objections
9 under that case that came down in the
10 Second Circuit, okay, he hasn't ruled
11 yet. I think there is a compromise
12 here.

13 I'm allowing you to ask those
14 questions more particularly, but to ask
15 a general, open-ended question invades
16 the doctor/patient privilege in a way
17 that hasn't been waived in this
18 lawsuit, so I ask you to compromise on
19 that, and what I'd also ask you to do
20 is let's call the Judge once rather
21 than --

22 MR. ZABELL: No.

23 MR. ANTOLLINO: -- several
24 times.

25 MR. ZABELL: No.

1 D. Zarda

2 MR. ANTOLLINO: I know you like
3 to do it your way, Mr. Zabell. You
4 don't like to compromise, so let's just
5 call the Judge.

6 (Whereupon, a call was made to
7 Judge Bianco, and the following
8 colloquy was had:)

9 LAW SECRETARY: Judge Bianco's
10 chambers.

11 MR. ZABELL: Good morning. It's
12 Saul Zabell. How are you?

13 LAW SECRETARY: Good. How about
14 you?

15 MR. ZABELL: I'm well, thanks.

16 I'm calling from a deposition
17 with my adversary, Gregory Antollino,
18 in the matter of Zarda against Altitude
19 Express. Do you want the CV Number?

20 LAW SECRETARY: Yes, please.

21 MR. ZABELL: It's 10-04334.

22 We are about four questions into
23 the deposition, and my adversary has
24 objected and advised the deponent not
25 to answer a question.

1 D. Zarda

2 LAW SECRETARY: Hold on one
3 second, please.

4 Let me talk to the clerk that's
5 assigned to this case; okay?

6 MR. ZABELL: Thank you.

7 MS. MAXWELL: Hi, this is
8 Ms. Maxwell.

9 MR. ZABELL: Hi. Saul Zabell,
10 and I'm here with my adversary,
11 Gregory Antollino. We're at a
12 deposition, and I'm deposing the
13 Plaintiff, Donald Zarda.

14 As part of my introductory group
15 of questions, I asked him if he's
16 currently taking only prescription
17 medications. He said, only
18 prescription medications, and I asked
19 him to identify them. Counsel gave a
20 speaking objection and advised his
21 client not to answer in what I believe
22 to be a contradiction of the Federal
23 Rules of Civil Procedure, and
24 apparently, I need a ruling on this
25 issue.

1 D. Zarda

2 MS. MAXWELL: As I recall, there
3 were issues with medical records on
4 this case; correct?

5 MR. ANTOLLINO: Yes.

6 MR. ZABELL: Yes, Counsel
7 refused to provide them and provided
8 them to His Honor for an in camera
9 inspection.

10 MS. MAXWELL: Okay. I
11 understand that you guys are not that
12 far into the deposition; is that right?

13 MR. ZABELL: About three
14 questions.

15 MS. MAXWELL: Would it be
16 possible for you guys to take maybe a
17 ten-minute break while I try to get the
18 Judge's attention?

19 MR. ZABELL: Absolutely.

20 MR. ANTOLLINO: If I could just
21 say something.

22 MS. MAXWELL: Sure.

23 MR. ANTOLLINO: I objected to
24 the question based entirely on the fact
25 that I have made, essentially, a

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D. Zarda

protective order for this type of information. Furthermore, I allowed Mr. Zabell to ask more particularized questions. He explained the reason why he wanted to ask the question. He asked three questions that I thought were reasonable, and then I offered him the opportunity to ask those questions and he refused.

I also asked him if we could continue the deposition and go to the Judge once towards the middle of the day because I bet we're going to have more disputes later on, but he refused to do that, as well.

Furthermore, since he's insisted on calling the Judge, I want to explain to the Judge that I want Mr. Zabell to be admonished because he has continually been snide, condescending, and rude to me. He has insulted my attire. He has insulted me in front of witnesses. He has insulted the way that I deal with my client. He offered

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D. Zarda

me, on the record, a copy of the Federal Rules so I could familiarize myself with them. I'm not going to take any more of this snide, condescending behavior, and I want the Judge to admonish him to not do that anymore.

MS. MAXWELL: Well, it sounds like there is a lot going on here, so it may be a little bit longer than ten minutes, so what I would suggest is that you guys take a break. Give me a number where I can reach you.

MR. ZABELL: Sure. You can reach my office. It's (631) 589-7242, and I can say that everything that has transpired today is on the record, so we have a transcript, including what we're discussing right now, as well.

MS. MAXWELL: All right. We'll be in touch.

MR. ZABELL: Thank you.

MR. ANTOLLINO: Thank you.

MS. MAXWELL: Goodbye.

1 D. Zarda

2 MR. ZABELL: Goodbye.

3 Let's take a short break.

4 (Whereupon, a recess was taken
5 from 10:26 a.m. to 10:55 a.m.)

6 (Whereupon, Judge Bianco's
7 chambers called and the following
8 colloquy was had:)

9 MR. ZABELL: Good morning, Saul
10 Zabell here.

11 MS. MAXWELL: I spoke to the
12 Judge, and he asked me to let you know
13 that given that he has not ruled on the
14 medical issue, there should be no
15 medical questions, other than whether
16 the witness is taking any medications
17 that would affect his ability to
18 remember, and the Judge warns both
19 Counsel to be civilized, and also that
20 he will be reviewing the transcript.

21 MR. ZABELL: Very well. I'll
22 ensure that at the conclusion of the
23 transcript, as soon as I receive a
24 copy, to send it on to His Honor.

25 MS. MAXWELL: Okay.

1 D. Zarda

2 MR. ZABELL: Thank you kindly.

3 MS. MAXWELL: Thank you.

4 MR. ZABELL: We hope to not have
5 to bother you again.

6 MS. MAXWELL: Okay.

7 MR. ZABELL: Have a good day.

8 MS. MAXWELL: Have a good day.

9 MR. ZABELL: You, as well.

10 MS. MAXWELL: Thank you.

11 (Whereupon, the call was
12 concluded.)

13 MR. ANTOLLINO: I would like you
14 to read back to my client what the
15 Judge ruled.

16 (Whereupon, the requested
17 portion of the record was read by the
18 court reporter.)

19 Q Mr. Zarda?

20 A Yes, sir.

21 Q You just provided testimony that
22 you are currently taking prescription
23 medications; is that correct?

24 A Yes.

25 Q How many prescriptions --

1 D. Zarda

2 MR. ANTOLLINO: No, no, no, no,
3 come on. No, no, no. You heard what
4 the Judge said.

5 Q How many are you taking?

6 MR. ANTOLLINO: Don't answer
7 that question. Don't answer that
8 question, Don.

9 Q Are you familiar with the
10 prescription medications that you are taking?

11 A I have some familiarity. I do
12 not --

13 MR. ANTOLLINO: Just answer the
14 question.

15 A -- carry the list with me, so I
16 don't have them all in my head.

17 MR. ANTOLLINO: Answer just the
18 question.

19 Q Are you aware of any of the side
20 effects that are listed for each prescription
21 medication that you're taking?

22 MR. ANTOLLINO: Don't answer the
23 question.

24 Q Do you know if any of the side
25 effects for the prescription medications that

1 D. Zarda

2 you're taking impact your ability to
3 remember?

4 A I do not believe that they do.

5 Q Well, do you know from reading
6 the side effects from each medication that
7 they do not affect your memory?

8 A It's been a long time since I've
9 read the side effect information that you get
10 with the medication, so I can't recall at
11 this time.

12 Q So as you're sitting here today,
13 you don't know if any of the side effects of
14 the medications that you're taking would
15 affect your memory; is that correct?

16 A I don't believe they would.

17 Q The question that I asked you
18 is: As you're sitting here today, you don't
19 know if any of the side effects of the
20 medications you're taking affect your memory;
21 is that correct?

22 A I can't say that I have specific
23 knowledge about the medications as I sit
24 here. I'm not a doctor or pharmacist.

25 Q Do you have a memory?

1 D. Zarda

2 A Yes, we all have memories.

3 Q How would you characterize your
4 memory?

5 A Good.

6 Q Why would you characterize your
7 memory as good?

8 A My sister says I have a very
9 good memory, and I remember things very well
10 from the past. She reminds me of that all
11 the time, and I think I have a good memory.

12 Q So you have a good memory
13 because you think you have a good memory and
14 because your sister reminds you that you have
15 a good memory --

16 MR. ANTOLLINO: Objection to
17 form.

18 Q -- is that correct?

19 A She tells me I have a good
20 memory, both of them. My friends tell me I
21 remember things quite well from the past; fun
22 events and things we have done together, and
23 I remember things well.

24 Q Have you always had a good
25 memory?

1 D. Zarda

2 A As far as I know.

3 Q As far as you remember?

4 (Whereupon, the witness's
5 cellphone began ringing and the
6 following colloquy was had:)

7 MR. ZABELL: Let the record
8 reflect that the deponent's cellphone
9 is ringing, and I'm just going to ask
10 that it be put on vibrate, please.

11 THE WITNESS: (Witness
12 complies.) Sorry. Okay, I got it.
13 All right. There we go.

14 Q Everything all right?

15 A Yes.

16 Q Getting back to the procedure of
17 the deposition.

18 I'm going to be asking you
19 questions; do you understand that?

20 A Right, yes.

21 Q You are required to give verbal,
22 word responses to the questions I ask you; do
23 you understand that?

24 A Yes.

25 Q I say verbal, word responses

1 D. Zarda

2 because sometimes in depositions, people will
3 grunt to signify a yes or a no, and it's
4 difficult for the court reporter to take that
5 down.

6 Do you understand what I'm
7 saying?

8 A Yes.

9 Q If you give a verbal response
10 that is not a word, we're going to prompt you
11 to give a word response; do you understand
12 that?

13 A Yes.

14 Q Have you ever been deposed
15 before?

16 A No.

17 Q Do you know what a deposition
18 is?

19 A Yes.

20 Q Have you prepared for this
21 deposition in any way?

22 A Yes.

23 Q How have you prepared for this
24 deposition?

25 A Well, I discussed how a

1 D. Zarda

2 deposition would be conducted.

3 Q Okay. I just want to caution
4 you now, as I'm sure your attorney is going
5 to want to caution you, you can tell me when
6 you met with your attorney, how long you met
7 with your attorney, and where you met with
8 your attorney. You cannot discuss with me,
9 or you should not discuss, you can if you'd
10 like, what was said between you and your
11 attorney.

12 Do you understand that?

13 A Okay.

14 Q That is your right to keep
15 private between your attorney and yourself.
16 If you choose to waive that right, you may do
17 so.

18 Do you understand that?

19 A Yes.

20 Q When did you meet with your
21 attorney in preparation for this deposition?

22 A We've met a few times, but
23 coming up here for this trip, prior to this
24 deposition.

25 Q When was the last time you met

1 D. Zarda

2 with your attorney to prepare for this
3 deposition?

4 A When we talked about it
5 yesterday.

6 Q For how long did you talk about
7 it yesterday?

8 A We talked about it on and off,
9 here and there. There wasn't one specific
10 sitting. There wasn't one specific session
11 just about the deposition.

12 Q Did you review any documents in
13 preparation for this deposition?

14 A I reviewed the interrogatories
15 that I submitted to you, I believe, and the
16 admissions.

17 THE WITNESS: Can I turn this
18 (indicating) off because that was an
19 alarm?

20 MR. ZABELL: Yes, you may
21 absolutely turn your phone off.

22 THE WITNESS: Thank you.

23 MR. ANTOLLINO: Don, just do it.

24 THE WITNESS: I'm doing it.

25 MR. ZABELL: He's fine. He's

1 D. Zarda

2 doing fine. There's no need to caution
3 or yell at him.

4 Q Okay, sir. Are you all set?

5 A Yes.

6 Q When you were explaining to me
7 the documents that you reviewed, you pointed
8 to a folder in front of you; correct?

9 A Yes.

10 Q Are those the documents that you
11 reviewed?

12 A They are.

13 Q May I see them?

14 A Yes. (Handing.)

15 Q I see some notes. Did you
16 review those in preparation for this
17 deposition?

18 A No, I didn't. They're just
19 sitting in the folder.

20 Q What we're going to do is, we're
21 going to take copies of these documents and
22 introduce them as exhibits, and this way I
23 can give you your originals back; okay?

24 A Okay.

25 (Four-page document consisting

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D. Zarda

of a copy of a Supplemental Response to Requests for Admissions was marked as Defendants' Exhibit A, for identification, as of this date.)

(Thirteen-page document consisting of a copy of Amended Response to Demand for Interrogatories was marked as Defendants' Exhibit B, for identification, as of this date.)

Q We're going to call Supplemental Response to Requests for Admissions as Defendants' Exhibit A, and that is a one, two, three, four-page document, and then we have Amended Response to Demand for Interrogatories, which we've identified as Defendants' Exhibit B. That is a one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen-page document; is it not?

A (No verbal response.)

MR. ANTOLLINO: Don?

THE WITNESS: Yes.

(Whereupon, Mr. Antollino took witness's phone off conference table.)

1 D. Zarda

2 Q Is everything all right?

3 A Yes.

4 Q Do you want a moment to speak to
5 your attorney about him taking your phone
6 away?

7 A I do, yes.

8 Q While you talk to your attorney,
9 we're just going to make copies.

10 A That's perfect. That's perfect
11 timing.

12 (Whereupon, a recess was taken
13 from 11:05 a.m. to 11:10 a.m.)

14 MR. ZABELL: You guys had your
15 moment?

16 MR. ANTOLLINO: We're good.

17 MR. ZABELL: Everything is all
18 right?

19 MR. ANTOLLINO: Yes.

20 Q You have in front of you a
21 document that you reviewed in preparation for
22 today's deposition; is that correct?

23 A I believe they are.

24 Q Are those the only documents
25 that you reviewed in preparation for today's

1 D. Zarda

2 deposition?

3 A They are.

4 Q Yesterday you were at a
5 deposition; were you not?

6 A I was.

7 Q Whose deposition was that?

8 A That was for Rich Winstock.

9 Q Is Mr. Winstock someone you
10 would characterize as a friend of yours?

11 A Yes.

12 Q He was also a colleague;
13 correct?

14 A Yes.

15 Q Was he a supervisor, as well?

16 A Yes.

17 Q Where was he a supervisor?

18 A At Skydive Long Island.

19 Q Do you currently maintain a
20 friendly relationship with him?

21 A I would say so.

22 Q And you had an opportunity to
23 hear Mr. Winstock testify yesterday; did you
24 not?

25 A I did.

1 D. Zarda

2 Q Do you think Mr. Winstock lied
3 at all during his deposition?

4 A I have no way to be able to
5 access that. That's only something
6 Mr. Winstock could answer.

7 Q Well, as you were sitting next
8 to Mr. Winstock during his deposition, do you
9 think he was wrong about anything he
10 testified about?

11 MR. ANTOLLINO: Objection to
12 form.

13 Q You may answer.

14 A I can't characterize whether
15 Mr. Winstock was lying or whether -- I don't
16 know what facts that he had, so I was
17 learning what facts that he had at the same
18 time that you were and that everybody was in
19 the room, so that's the first time I was able
20 to hear anything that he's had to say about
21 it, so there is no way for me to really be
22 able to judge that.

23 I think he has maybe some
24 different views about the way things and
25 procedures might be done for doing our job,

1 D. Zarda

2 perhaps, but I can't say whether he was lying
3 about something or not.

4 Q Are you referring to the grading
5 of the 97 out of 100 that he gave you on your
6 jump?

7 A That would be one item.

8 Q Did that bother you?

9 A It didn't bother me at all.

10 Q Because if I relayed to you that
11 Mr. Winstock, after the deposition, relayed
12 to me that a 97 out of 100 is pretty damn
13 good, would that surprise you?

14 A It wouldn't make any difference
15 either way. We're both highly experienced
16 instructors who've been doing this a really
17 long time. I think we both hold each other
18 in the same regard.

19 Q Do you find that Mr. Winstock is
20 qualified to, essentially, grade your jumps?

21 A Yes, he is.

22 Q In fact, at Long Island Skydive,
23 he was the most qualified person to grade
24 your dives; is that correct?

25 A Well, as he defined what most

1 D. Zarda

2 qualified and senior is and was, he's one of
3 the higher qualified people there. He's an
4 examiner, an evaluator for the manufacturers
5 that give the licenses to us for the gear
6 that we use, so I would say a decent,
7 qualified individual to that.

8 Q Other than the 97 out of a 100
9 that he gave you on the jump, did you
10 disagree with anything he said yesterday?

11 MR. ANTOLLINO: Objection to
12 form.

13 A I would have to be able to go
14 over the transcript of everything he said, so
15 I can't, as a blanket statement, say that I
16 don't disagree with anything he said because
17 he said a lot of things over the course of
18 five hours.

19 As far as his characterization
20 of that one jump, a 97 out of a 100, I think
21 the issue that we were discussing was handle
22 checks that are performed when the tandem
23 instructor leaves the aircraft. I just don't
24 think that he was able to see from the
25 vantage point of that camera person that I

1 D. Zarda

2 had actually, in fact, done the required
3 handle checks at the appropriate time, so
4 that was the only reason that he gave that
5 assessment.

6 Q I think he'd probably agree with
7 you on that, and, in fact, the videotape of
8 that specific jump that he graded you on
9 where you stuck the landing, and he commented
10 that you stuck the landing perfectly, there
11 were parts of that full jump that you
12 couldn't see; correct?

13 A Yes, that's true.

14 Q It wasn't videotaped; correct?

15 A Well, all the jump is videotaped
16 from the time you leave the plane until the
17 time that you land. It's just that sometimes
18 there's separation in free fall from the time
19 you leave the aircraft, or the cameraman is
20 not close enough to really be able to see
21 some things.

22 Q Okay.

23 A Then it also depends on the
24 camera person. Each individual camera person
25 does things a little differently. Some of

1 D. Zarda

2 them may record all of the footage. Some of
3 them may not, just to save space on their
4 cards or on their tapes, and then they edit
5 it later.

6 Q From your memory from yesterday,
7 was there anything that sticks out in your
8 mind that you disagree with that Mr. Winstock
9 testified about?

10 MR. ANTOLLINO: Objection to
11 form.

12 Q You may disregard the objection
13 and provide an answer.

14 A There were some things. I would
15 have to reflect for a moment.

16 Q Please do.

17 A Yeah, there were some things.
18 Starting at the beginning. When we discussed
19 the matter, Mr. Winstock and I, about what
20 had happened with my employment situation,
21 where that actually took place versus where
22 Mr. Winstock said it took place and some of
23 the details about that. That's one thing.

24 Q Where did that discussion take
25 place?

1 D. Zarda

2 A Where did Mr. Winstock and I
3 talk about it?

4 Q Yes.

5 A We talked about it in the
6 drop zone classroom, specifically.

7 Q When did you talk about it?

8 A It was, approximately, five
9 minutes after Mr. Maynard had suspended me.

10 Q What did you discuss?

11 A I asked Mr. Winstock outside of
12 the classroom on the way into the classroom,
13 it was dark. He was talking to another
14 instructor. I think that was where he was
15 mentioning that we had discussed it maybe
16 because he doesn't remember it as clearly,
17 you know, it being a year-and-a-half later,
18 if we could discuss the matter, and he said
19 sure, and then we moved over to the left
20 where the drop zone classroom is, and it was
21 a private area, and we went into there, and
22 we discussed it.

23 Q What exactly was discussed?

24 A Everything that Ray had just
25 told me in the video briefing room that the

1 D. Zarda

2 passengers sit in, which is also an extension
3 of his office. His office is next door to
4 the video room, and he often holds meetings
5 in that room, as well, when it's not being
6 used for video briefing, and that is where
7 Mr. Maynard and I had the suspension meeting.

8 Q What was discussed at that
9 suspension meeting?

10 A What was discussed was he was
11 asking me questions about a jump that took
12 place on June 18, 2010.

13 Q What questions?

14 A Well, there were a lot of the
15 questions. He was asking me --

16 Q I want you to take your time,
17 and relate to me all the questions that you
18 recall.

19 A He was asking me if I remembered
20 a jump with a Miss Rosanna. I don't
21 recall -- I don't think he provided the last
22 name at that time, and he asked me if I
23 remembered the jump I did on that day on
24 Friday, which was June 18, and I told him
25 that I did several jumps on June 18, so if I

1 D. Zarda

2 look back at the records, I did, I think, ten
3 jumps that day. So, no, I didn't remember a
4 specific jump at that time that he was
5 referring to, so it started with that.

6 Q Continue.

7 A Okay. And so after telling him
8 that, he asked me if I remembered the jump.
9 He said I took a girl named Rosanna, and I
10 said okay, and he asked me if I remembered
11 anything about it, and I said no, I did
12 several jumps. This was on a Monday, so this
13 was about three days later after a long
14 weekend of jumping. It was a routine land.

15 At that time, I didn't remember
16 anything specific about that jump, so then he
17 proceeded to tell me what he knew about the
18 jump, and he told me that there were some
19 customers that came out and jumped, and it
20 was a boyfriend and a girlfriend, and that I
21 had taken the girl, and they had called and
22 made a complaint.

23 Q Continue.

24 A I said okay, and so he was going
25 to ask me questions about what the

1 D. Zarda

2 complaint -- or about the complaint that was
3 made, and I didn't have any knowledge about
4 anything, because there was nothing out of
5 the ordinary that took place that I could
6 recall at that time.

7 Q What questions did he ask you?

8 A He asked me if anything about my
9 sexual orientation came up or anything about
10 being gay came up, and I said I don't know.

11 Q Continue.

12 A Okay. I remember telling him
13 that that comes up all the time around here,
14 because it was often joked about at the drop
15 zone all the time by staff. It was even by
16 some other customers which are experienced
17 skydivers that were mixed in with the jump
18 operation while the jump operation is going
19 on, and so I said that I don't know how it
20 came up or who brought it up at that time.

21 Q Did you know that it was brought
22 up?

23 A I only knew that because he said
24 it was brought up, Ray Maynard said that.

25 Q Okay, continue.

1 D. Zarda

2 A So what am I continuing on
3 again?

4 Q You were telling me all of the
5 questions that Ray Maynard asked you when he
6 was investigating this customer complaint.

7 MR. ANTOLLINO: Objection to the
8 characterization.

9 Q You may disregard the objection
10 and provide an answer.

11 A I think he was -- I don't think
12 he was investigating what I knew about it.

13 Q You don't think he was, or he
14 was?

15 A No. I said I think he was just
16 investigating what I knew about it at that
17 point.

18 Q What other questions did he ask
19 you?

20 A He had asked me, we already
21 covered it, if I remembered anything about
22 the jump, and I said no. Then he went on to
23 tell me what the complaint was, and so -- do
24 you want me to tell you what that was?

25 Q Please.

1 D. Zarda

2 A He said the subject of my sexual
3 orientation had come up in front of the
4 customers and that they were offended by it,
5 and he was forced to give them all their
6 money back, and I was off for a week, and he
7 was going to take it out of my paycheck, the
8 full price for two tandem jumps with two
9 video, which he later did take that out of my
10 check, and he was very angry.

11 Q Did he say anything else?

12 A I'm sure he did, if you just
13 give me minute to recall that. I was in a
14 bit of -- I was shocked at the time, so --

15 MR. ANTOLLINO: Just answer the
16 question.

17 A I said that you can't be
18 serious. I might have said something like
19 that. I do remember mentioning to him
20 something about my sexual orientation coming
21 up on the drop zone so frequently, and I
22 can't say whether I brought it up or not. I
23 said, you know, Ray, people bring that up
24 around here all the time, and if you don't
25 want that to come up, I think you should have

1 D. Zarda

2 a staff meeting and talk about it with the
3 other staff. And he was very angry, and he
4 said, there will be a staff meeting, all
5 right. He shouted that because he was very
6 angry, and I don't know if he was angry at me
7 or the situation, but that's what he said,
8 and I think he was saying that in reference
9 to while I was gone, having a staff meeting,
10 so that was my response to the issue about me
11 being gay coming up, so I was pretty
12 surprised, and I didn't know how to respond
13 to that.

14 At the very beginning of that
15 entire suspension conversation, for the first
16 few seconds of it, I actually thought it was
17 a gag, they were messing with me. I couldn't
18 believe this could even be real, so I
19 actually thought it was a joke, but it became
20 very clear, very soon that Ray wasn't joking.

21 Q Was that all that was discussed
22 with you --

23 A No.

24 Q -- at that meeting?

25 A No, it was not.

1 D. Zarda

2 Q Please continue.

3 A After we got through the part
4 where I said that you're going to have to
5 have a staff meeting, and he shouted what I
6 just told you, there'd be a staff meeting,
7 all right, I said, Ray, there must be video
8 of the jumps because you just said you're
9 going to take the full price of two tandems
10 and two videos out of my paycheck.

11 He was, you know -- I don't
12 know, and he was flustered and angry, and I
13 said, well, if you're going to charge me for
14 two videos, there must be video. Can I see
15 the video of the jumps? And he said, no,
16 it's irrelevant. And I paused for a moment,
17 and I said, Ray, I think it's relevant
18 because you're taking action against me right
19 now about something that you said happened on
20 a jump, and it sounds to me like there's
21 video of the jump, in fact, both jumps, and I
22 would like to take a look at it, and I think
23 I'm entitled to take a look at it, and he
24 said no.

25 I said, well, can't we just go

1 D. Zarda

2 back to the manifest records since it was
3 just on Friday and look at the records and
4 see who the cameramen were and then go to
5 them and see if we could just look at their
6 footage? And he, again, denied me being able
7 to look at the video. That was the end of
8 the discussion about the video. He wouldn't
9 let me see it, so I said, is that it? And he
10 said, no, there's something else. And I
11 said, what, and he said, she said that you
12 touched her in a way that made her feel
13 uncomfortable. So I said, really, and I
14 said, Ray, did you just tell me that I took
15 the girl or the guy in this, and he said, you
16 took the girl.

17 I said, okay, I said, so what
18 you're telling me is that me, the gay guy
19 that they complained about and they're
20 offended by, touched the girl
21 inappropriately; that's what you're going
22 with? And he said, that's right, and then he
23 was headed towards the door, and he was mad,
24 and I said, where, Ray, where, as in I was
25 wanting him to define to me where on the girl

1 D. Zarda

2 that I had touched her inappropriately, and
3 he said, flustered, like, it was at the hips.
4 I said, ah, okay, and then Ray stormed out of
5 the office, and I was left sitting in there
6 for a minute stunned, and then I sat there
7 for just -- I don't know exactly how long I
8 sat there, but Ray had left, it was dark, he
9 went out of the room, and he went out of the
10 building.

11 I got my composure. It took me
12 a few moments. Then I went out of the room,
13 and when I went out of the room and out of
14 the building, it was dark outside. That was
15 when Rich Winstock was having a conversation
16 with another instructor over to the left, and
17 that's when I said, Rich, I got to see you
18 for a second right now, and he said, okay,
19 just a minute, and I said, it's important;
20 now.

21 I started to get really upset
22 because this was just all hitting me at that
23 moment, what had just happened, it was pretty
24 amazing, if I have to say, and I was in
25 disbelief at what all had just transpired,

1 D. Zarda

2 and I'm just getting pretty angry. My anger
3 was building and I was getting really upset.
4 Rich saw that and that's when he pulled me
5 into the classroom, and that's when we began
6 discussing it.

7 Q What started then, this whole
8 line of testimony, was that you believed that
9 Rich testified that this discussion happened
10 in a different location; is that correct?

11 A It sounded to me like yesterday,
12 you know, that this is probably not as
13 important to him. This whole case was just
14 another day at work for him. It sounded like
15 he hasn't really discussed this much, or if
16 at all during this time, and maybe he just
17 doesn't remember the specifics as well, since
18 he's not so closely involved as to where we
19 had the discussion.

20 That's what I believed from what
21 Rich said yesterday, and why there might be a
22 little bit of difference.

23 Q Was there anything else about
24 Rich's testimony that you believe was
25 inaccurate?

1 D. Zarda

2 MR. ANTOLLINO: Objection.

3 Q You may disregard the objection
4 and provide an answer.

5 MR. ANTOLLINO: You may
6 disregard all my objections, unless I
7 put my hand out and tell you not to
8 answer.

9 THE WITNESS: Got it.

10 A As we go through this
11 conversation and I try to remember the five
12 hours or three hours or so yesterday, I might
13 remember some more things that come up
14 because this is relevant, so I'm just going
15 to try to go chronologically down what was
16 discussed yesterday.

17 There are some things. I've
18 known Rich for quite a long time. I think he
19 had -- some of the facts he may have
20 remembered wrong about how long we've known
21 each other, where we met, his knowledge of me
22 being gay, some of those things because we've
23 talked about some of those things in 2009,
24 2010, in social settings after work, so, you
25 know, he has more knowledge about some of

1 D. Zarda

2 that stuff than I think he let on yesterday
3 or what he was able to recall yesterday.

4 Q Okay, continue.

5 A For instance, when he was asked
6 if the subject of my sexuality came up during
7 work and if he had heard it or knew anything
8 about it, I think that was inaccurate.

9 Q What was his answer, and what
10 about that answer do you believe was
11 inaccurate?

12 MR. ANTOLLINO: Objection.

13 A I believe he said something more
14 close to the fact that it didn't come up that
15 frequently or around him or he didn't
16 remember specific examples, so that's what
17 was inaccurate. I think, if you recall, when
18 he brought up a couple of times about the
19 jokes, you know, there were so many jokes
20 that he couldn't come up with one right then,
21 do you remember that part?

22 Q I do.

23 A It's like that. It's when
24 something happens so frequently, you almost
25 can't remember a specific instance of it at

1 D. Zarda

2 that moment. It was like that because it was
3 so routine and so ordinary. It came up all
4 the time that it was just like any other
5 thing that comes up, so I think that that was
6 why he probably might have answered that way.

7 It's not one of those things
8 that somebody, I think, is going to make the
9 highlight of their day of things that they
10 remember about, the joke about Don being gay;
11 it's was just another thing, so that's why I
12 don't think he remembered. Probably if we
13 were able to go back and think about specific
14 jokes at specific times, he'd be like, oh,
15 yeah, I remember that.

16 Maybe then, but there were
17 numerous times when it came up. It came up
18 almost every day, if not every day by various
19 people at various times mixed in with
20 customers and other instructors and other fun
21 jumpers that were around. It's all very
22 close. Especially in the aircraft, it's even
23 closer.

24 Q Continue.

25 A So that characterization or that

1 D. Zarda

2 recollection, I think he just didn't remember
3 everything, so that would be another thing.

4 Let me just think for a minute
5 what else was said.

6 The issue or the matter of the
7 nickname, Gay Don and what he said about
8 that. I don't know where exactly the
9 nickname came from, so I don't know if he
10 recalled where it came from exactly or if
11 that was something that was discussed, but
12 that was a name that I heard a lot. I heard
13 it from everybody, and I think I've heard it
14 from him, and I didn't think that he meant it
15 in any kind of derogatory way.

16 I think it just became -- if you
17 were to look at the manifest computer at the
18 drop zone, you would actually see a list of
19 nicknames on the screen when they assign you
20 who your passengers are going to be. Rich
21 Winstock's nickname is Winnie. There's
22 another gentleman that's from Texas, his name
23 was Texas, so I mean, a bunch of people had
24 nicknames that they would go by at the drop
25 zone.

1 D. Zarda

2 In fact, a few people whose
3 names I can't even remember because it was
4 always their nickname, so that sort of became
5 my nickname by a lot of the people, so
6 therefore, that would come up, that would be
7 said in front of customers, it would be said
8 in front of anybody. What does somebody
9 think about that? I don't know, so --

10 Q Well, I think -- go ahead. I'm
11 sorry.

12 A Rich's recollection and
13 characterization of how often Gay Don came
14 up, where it came up, and who said it, I
15 think, was a little light. That's all.

16 Q Do you remember the interaction
17 at the deposition yesterday where I indicated
18 on the record that you were shaking your head
19 side to side?

20 A I do remember that.

21 Q What do you recall from that?

22 A Well, what I'd like for you to
23 do is, for the record, to go ahead and state
24 what it is you would like to ask me about
25 that since that was yesterday, and I want to

1 D. Zarda

2 make sure we're clear about what I was
3 shaking my head about.

4 Q Do you recall Rich testifying
5 yesterday that, yes, he knew you as Gay Don,
6 and he may have referred to you as Gay Don,
7 and he didn't know if you were offended by
8 it, and at that point, I believe you were
9 shaking your head side to side indicating
10 that you were not offended by him referring
11 to you as Gay Don?

12 Is that a fair characterization
13 of what occurred yesterday?

14 A That's pretty close. That's
15 acceptable. What I was shaking my head about
16 was to Rich because Rich is a friend that
17 I've known for a long time. I didn't want
18 him to feel like I felt that he, as a friend
19 of mine, was offending me. That's what I
20 meant.

21 Q When Rich referred to you as Gay
22 Don, you weren't offended by that?

23 A I wasn't offended by that. I
24 know he meant no malice. I know he meant no
25 derogatory meaning towards me. I know that

1 D. Zarda

2 we respect each other, and so he wasn't
3 demeaning me by saying that, and I didn't
4 want him to feel like he was being put on the
5 spot with that question to determine whether
6 or not he was saying that in a demeaning
7 manner to me. I didn't want him to feel that
8 way.

9 Q Did you ever feel that
10 Rich Winstock treated you differently because
11 of your sexuality?

12 A Could you be more specific in
13 what you mean by treated differently?

14 Q Treated differently in the
15 workplace then someone whose sexuality was
16 different than yours.

17 A No, I think Rich Winstock
18 treated me like anybody else.

19 Q You are gay; correct?

20 A I am.

21 Q What is your understanding of
22 the definition of the word gay?

23 A Well, I don't have a dictionary
24 in front of me, but one that is sexually
25 attracted to members of the same sex;

1 D. Zarda

2 homosexual, or prefers.

3 Q Well, when you say "prefers,"
4 does that mean that there are or have been
5 times of your life where you've been
6 attracted to someone of the opposite sex?

7 A When I say that, I was trying to
8 define what gay might be in the dictionary.
9 I wasn't necessarily defining what gay is to
10 me, so if you want to ask whether I'm
11 100 percent gay, then I would say that I
12 100 percent prefer males.

13 Q Has that always been the case?

14 A It has always been since my
15 youngest knowledge of an understanding of
16 sexual preferences took place whenever that
17 was back in, you know, when you're a child.
18 Whenever that cognitive or that part of
19 development in your brain takes place, it's
20 been that way since that point.

21 Q Have you, since that point, that
22 early point in your life, have you always
23 expressed to others your preference for
24 same-sex relationships?

25 A No, I have not.

1 D. Zarda

2 Q Did there come a point in time
3 where you, for lack of a better term,
4 "came out" about your sexuality?

5 A Yes, there was.

6 Q When was that?

7 A There was a transitory phase.
8 There wasn't just one day where I opened the
9 door and said, I'm gay, so that transitory
10 phase began in around 1999 into 2000, and
11 kind of through the course of that year, it
12 came out.

13 Q When were you born?

14 A I was born in 1970.

15 Q Prior to 1999 to 2000, were you
16 involved in any relationships with people of
17 the opposite sex?

18 A I was.

19 Q Do you characterize those
20 relationships as romantic in nature?

21 A I would say that they were
22 friendly in nature, but as far as romantic, I
23 would have to fall short on that because I
24 really couldn't deliver in a romantic way
25 because my heart was not able to do that

1 D. Zarda

2 because I was not heterosexual, so I was just
3 in the paradoxical situation of being a
4 closeted gay person, trying to interact in a
5 heterosexual world which just doesn't work
6 sometimes, and so, no, there was no real
7 romance that could take place in those
8 involvements.

9 Q Were any of the close
10 involvements physical relationships?

11 A There was some physical contact;
12 yes.

13 Q Where were you born?

14 A I was born in Independence,
15 Missouri.

16 Q When did you first start working
17 at Long Island Skydive?

18 A Well, it's Skydive Long Island.
19 I want to make sure we don't get these
20 centers mixed up. Skydive Long Island is
21 Ray Maynard's drop zone while Skydiving
22 Center is down in East Moriches. That was
23 Ray's competitor.

24 Q When did you start working at
25 Skydive Long Island?

1 D. Zarda

2 A The first time I came to Skydive
3 Long Island was in the summer of 2001.

4 Q I'm sorry?

5 A It was in the summer of 2001.
6 The summer of the Trade Center.

7 Q Is it safe to say that you
8 started working at Skydive Long Island
9 shortly after your transition period, and I'm
10 going to use the term "came out." Is that
11 offensive?

12 A It's not offensive; no.

13 Q So shortly after you came out in
14 the summer of 2001, you started working at
15 Skydive Long Island; is that correct?

16 A That is correct.

17 Q Who hired you at Skydive Long
18 Island in 2001?

19 A Ray Maynard makes the ultimate
20 decisions in hiring people, so he hired me.

21 Q You worked beginning in the
22 summer of 2001 through what period of time?

23 A It was about midsummer through
24 just before the Trade Center disaster.

25 Q How did your employment come to

1 D. Zarda

2 an end in or around September of 2001?

3 A As I recall, from clear back a
4 decade ago, I was terminated by the general
5 manager, then Brian Petretti, who is now one
6 of Ray's part-time employees, and he does,
7 almost exclusively, video work at the drop
8 zone on weekends.

9 Q Why were you terminated?

10 A From the best I can recall,
11 because Ray didn't discuss the matter with
12 me, it had something to do with a customer
13 being unhappy about not being able to do
14 flips out of the airplane, or something to
15 that effect. I wouldn't do something that
16 they wanted me to do out of the aircraft.

17 Q And you were terminated in or
18 around September of 2001; is that correct?

19 A Yes.

20 Q Did you think that you were
21 being discriminated against when you were
22 terminated in September of 2001?

23 A I was confused about that, why I
24 was told that I was being terminated, because
25 Brian, at the time, didn't say a whole lot

1 D. Zarda

2 about it because he was doing it on Ray's
3 orders, and again, I'm thinking back on
4 something a decade ago that I thought was old
5 business when Ray rehired me in 2009, so I
6 haven't really thought much about that, so --

7 MR. ANTOLLINO: Just answer the
8 question.

9 Q I think you are. You're doing
10 fine.

11 A Repeat that part of the
12 question, please.

13 Q My question was: On or about
14 September of 2001, did you think you were
15 being discriminated against by your
16 termination?

17 A I'm going to have to say that I
18 don't recall what I thought at that time,
19 2001, about that matter, about being
20 discriminated against or whether I was being
21 discriminated against at that time.

22 Q In your response, you mentioned
23 that you were rehired in 2009; is that
24 correct?

25 A That is correct.

1 D. Zarda

2 Q You were rehired by Skydive Long
3 Island; correct?

4 A That is correct.

5 Q Who rehired you?

6 A Ray Maynard.

7 Q Can you tell me how you came to
8 be rehired in 2009?

9 A Can you be a little more
10 specific about -- are you asking who I talked
11 to about it?

12 Q What I'm really asking you for
13 is a narrative. At what point did you say,
14 you know what, I'd like to start working
15 there? And explain to me how that all came
16 about.

17 A Okay.

18 MR. ANTOLLINO: Objection. It
19 calls for a narrative.

20 Q And you may go ahead and
21 disregard that objection and provide a
22 narrative.

23 A It wasn't just a one, pick up
24 the phone, call Ray, and ask if I could work
25 there kind of thing. It was something that

1 D. Zarda

2 had built over the course of a few months. I
3 know a lot of the people that work at Skydive
4 Long Island for a long time. Some of those
5 people are there from 2001, like Rich and
6 Curt and a friend from New Zealand, Duncan
7 Shaw, and I had spoken to Duncan in
8 late 2008, about how things were going at
9 Skydive Long Island and that I was working
10 full-time again in the summer and about
11 coming to work there.

12 We discussed it, and he thought
13 that I should go ahead and contact Ray and
14 talk to him about it, and Duncan said that at
15 that time, that he would like to have me come
16 back to work there because he knew that I'm a
17 good instructor, he knew my qualifications,
18 and he said something to the effect of that
19 he didn't know where Ray was getting some of
20 these people, and he was frustrated and tired
21 of working with, what sounded like,
22 unqualified people that were less than up to
23 par to do the job.

24 And so he was trying to prod me
25 to go ahead and talk to Ray about coming back

1 D. Zarda

2 to work there, because I think he wanted me
3 to come back and work there. I said, okay,
4 and when I came down from the end of the
5 season in May -- excuse me -- in Maine from
6 working at Jumping Route, the season ends up
7 there just a few weeks earlier because it's
8 so far north.

9 On my way back through to head
10 to Missouri, I came out to Skydive Long
11 Island and made some fun jumps, and then I
12 also talked to Ray in person about that
13 prospect.

14 Q And you spoke to Ray because you
15 thought, you know what, you like the people
16 here, and you wanted to work here; correct?

17 A That is correct.

18 Q This is all in 2009?

19 A This is in 2008.

20 Q Continue.

21 A So, it wasn't an appointment or
22 anything or a specific meeting that I had set
23 up with Ray. I just picked a day that was a
24 nice day to come out, do some fun jumps,
25 socialize a little bit with some of the

1 D. Zarda

2 jumpers I knew, and talk to Ray, if he was
3 there, about it. He just mentioned -- I
4 think I spoke to Lauren, as well, going ahead
5 and sending an e-mail over the winter or
6 something when he puts his advertisement out
7 over the winter for staff to contact.

8 Q When you spoke to Ray in 2008,
9 did the issue of your sexuality come up?

10 A I cannot recall if we spoke
11 in 2008 at that time about my sexuality. I
12 don't know why it would come up because he
13 probably, you know, remembered it, so I don't
14 know. I can't recall if it came up
15 specifically at that time.

16 Q Why would he remember your
17 sexuality?

18 A Well, it was brought up in 2001.

19 Q By whom?

20 A By everybody. It was the same
21 scenario as what we just discussed. It was
22 out and about on the drop zone and joked
23 about.

24 Q In 2001 when you were working at
25 Skydive Long Island, you had disclosed your

1 D. Zarda

2 sexuality to your coworkers; is that correct?

3 A It was out. It was known. I
4 don't know if I can -- you know, we're
5 talking about ten years ago. I can't say
6 that I came in and said, I'm gay, or people
7 just figured it out, you know, or could tell
8 because I went to these locations like Fire
9 Island, you know, for the weekend. Oh, you
10 must be gay, or are you gay, you know,
11 whether somebody might have asked me. I
12 can't tell you from a decade ago exactly how
13 the knowledge of my sexuality came out in
14 2001.

15 Q Did you tell people that you
16 went to Fire Island?

17 A People would -- again, I don't
18 know specifics about something a decade ago,
19 you know, like if somebody came up to me and
20 asked, did you go to Fire Island? I can't
21 say for sure. People would ask generally,
22 you know, what did you do this weekend? Oh,
23 we went to the game or we jumped into
24 Neptune's or, you know, I might have said --
25 this is just conjecture. This is speculation

1 D. Zarda

2 of how it could have come up. I went to
3 Fire Island, or I went to the Pines, that
4 kind of thing.

5 Q So when you discussed Fire
6 Island, you discussed certain communities at
7 Fire Island, not just Fire Island, in
8 general?

9 A More than likely. If I said I
10 went to Fire Island, I probably said I went
11 to the Pines.

12 Q And that was --

13 A I was out. I didn't have
14 anything to hide. I wasn't afraid. I
15 wouldn't have been afraid to tell anybody
16 where I went or what I did, if asked.
17 Jumpers routinely ask each other what you did
18 this weekend or where you're going this
19 weekend or what you did; did you have fun,
20 you know, whatever.

21 Q In 2001, you experienced a
22 certain amount of comradery with your
23 colleagues; is that correct?

24 A There was a lot of comradery.

25 Q That comradery lasted with some

1 D. Zarda

2 of those coworkers who actually encouraged
3 you in 2008 to speak to Ray and come back to
4 work in 2009; is that correct?

5 A It did.

6 Q That was Duncan --

7 A Duncan Shaw was the primary
8 person.

9 Q And then there was Rich Winstock?

10 A Yeah, but not so much Rich, but
11 more Curt, Curt Kellinger, who you mentioned
12 yesterday. I've known him for a long time,
13 as well, and I'm trying to think if there is
14 anybody else that -- you know, it was mostly
15 Duncan that I kept in most contact with
16 through those years between 2001 and 2008,
17 where it was pretty quiet.

18 I was involved in other things
19 and wasn't working full-time skydiving, but I
20 still contacted and had some relationship
21 with Duncan during that time.

22 Q Do you remember any of the other
23 coworkers that you worked with in 2001?

24 A I do.

25 Q Who are they?

1 D. Zarda

2 A Well, they don't work there now.

3 Q Who were they?

4 A Brandon Spadero, Orin Perry --
5 gosh, off the top of my head, there was quite
6 a few.

7 Q Just the ones you can remember.

8 A That aren't there anymore, is
9 that what you're asking?

10 Q That are either there currently
11 or aren't there. Anybody you remember
12 working with?

13 A Well, those two that I
14 mentioned, I do remember very well. Brian
15 Petretti, who was the general manager at the
16 time. I remember Curt. I remember Duncan.
17 Who else? Brandon doesn't work there
18 anymore. Don doesn't work there anymore.
19 Off the top of my head, there's so many
20 people who came through there that I can't
21 remember everybody right now.

22 Q In 2001, these were people you
23 worked with that you were looking forward to
24 working with again in 2009; is that correct?

25 A That's right.

1 D. Zarda

2 Q At some point before the 2009
3 season, Ray Maynard hired you; is that
4 correct?

5 A We discussed it, if I recall, on
6 or about November 15, 2008, which would be
7 preseason 2009.

8 Q What did you discuss with
9 Mr. Maynard?

10 A Just that he had agreed to have
11 me come back to work there.

12 Q Did he put any conditions on
13 you?

14 A Not that I can specifically
15 recall. Any conditions like -- could you be
16 more specific?

17 Q Any behavioral conditions?

18 A Any behavioral conditions, no, I
19 don't think he said anything specific. Are
20 you referring to like, did he ask --

21 MR. ANTOLLINO: Just answer the
22 question.

23 A I don't remember anything
24 specific.

25 Q Did you make any behavioral

1 D. Zarda

2 representations to Mr. Maynard in order to
3 obtain your employment in November of 2008?

4 A Behavioral representations...

5 Q Such as, if I'm hired, I will do
6 X, or if hired, I will not do Y.

7 A No, no, I --

8 MR. ANTOLLINO: That's the
9 answer.

10 MR. ZABELL: Counselor, please.
11 You're restricted to just objecting,
12 nothing more.

13 MR. ANTOLLINO: I just want to
14 take a minute break, just one minute.
15 Do you mind?

16 MR. ZABELL: I do mind, but
17 you're entitled to take a break.

18 MR. ANTOLLINO: I'd just like
19 one minute. That's it. Is that all
20 right?

21 MR. ZABELL: That's fine.

22 (Whereupon, a recess was taken
23 from 11:55 a.m. 11:56 to a.m.)

24 Q You just took a break and spoke
25 with Counsel?

1 D. Zarda

2 A We had a brief discussion, yes.

3 Q You went back to work for
4 Skydive Long Island in 2009; is that correct?

5 A Correct.

6 Q How was that?

7 A Could you be more specific?

8 Q Sure. How was the work
9 experience in 2009 at Skydive Long Island?

10 A Could you even be more specific?
11 Are you talking about how was the airplane
12 and the equipment, or how were the people, or
13 how was the weather? I mean, what --

14 Q You could start with the
15 equipment, move to people, talk to weather,
16 and then we'll get to your injury.

17 A It sounds like you want to talk
18 about my injuries, so --

19 Q No. I want to talk about
20 everything, including your injury.

21 A I just want to make sure --

22 Q Let's start with the equipment.

23 A The equipment was fine. It was
24 good equipment. I was satisfied with the
25 equipment.

1 D. Zarda

2 Q Let's talk about Rich Winstock.

3 In 2008, did you work with Rich?

4 A I did.

5 Q How was Rich in 2009?

6 A He was the same Winnie that he'd
7 always been. He was great.

8 Q Your interactions were
9 completely appropriate?

10 A Yes.

11 Q Duncan Shaw, how was Duncan?

12 A He was just like I remembered
13 him.

14 Q Your interactions were
15 completely appropriate?

16 A It was good.

17 Q Appropriate?

18 A It was -- well, what do you mean
19 by "appropriate"?

20 Q Appropriate for a workplace.

21 A It was -- I will say this. It
22 was appropriate for a drop zone. It was
23 normal as far as the way people act at the
24 drop zone. It was to be expected.

25 Q Who was the other individual

1 D. Zarda

2 that you talked about? I believe he's
3 jumping in Utah now.

4 A Oh, Curt Kellinger.

5 Q Yes. How was Curt Kellinger in
6 2009?

7 A Crazy as ever.

8 Q Inappropriate crazy?

9 A Curt has his own category. He
10 was -- inappropriate towards me, no.

11 Q Did you enjoy working with those
12 three individuals?

13 A Yes, yes.

14 Q Was there anybody that you did
15 not enjoy working with in 2009?

16 A There is personalities at all
17 drop zones. There is some people that I
18 didn't enjoy as much as others.

19 Q Who are the people that you did
20 not enjoy?

21 A Ben Lowe.

22 Q Continue.

23 A Well, let me think for just a
24 minute.

25 In general, I got along with

1 D. Zarda

2 everybody, so there were just some people
3 that required a little bit more work than
4 others to be able to get along with, and he
5 was one of those people.

6 Q I think I understand that
7 concept.

8 A Yes.

9 Q Ben Lowe required more work to
10 get along with.

11 Were you able to get along with
12 him?

13 A Yes, I was.

14 Q Who else?

15 A At the very beginning, Willie.
16 That's one of those nicknames. For the life
17 of me, I can't remember his full name right
18 now, but I'm sure we have a record of it
19 somewhere. I remember him very well, but
20 this is one of those situations where people
21 go by their nickname. He required a little
22 bit of extra work, as well, and by the end of
23 the season, it was good.

24 Q So your relationship, by the end
25 of the season, was great with everyone; is

1 D. Zarda

2 that correct?

3 A I think so.

4 Q So much so that would you
5 characterize you enjoyed working in 2009 at
6 Skydive Long Island?

7 A I enjoyed working in 2009 up
8 until I broke my ankle, so I didn't enjoy
9 that.

10 Q How did you break your ankle?

11 A It was at work, and it was on a
12 landing.

13 Q Do you recall when that was?

14 A The specific date?

15 Q Yes.

16 A Yeah, you don't forget that. It
17 was July 2, 2009 at, approximately, 2 o'clock
18 in the afternoon.

19 Q When you broke your ankle, you
20 were casted; correct?

21 A Eventually.

22 Q How soon after July 2 were you
23 casted?

24 A In a splint, in a cast, or in a
25 boot because there's -- be more specific,

1 D. Zarda

2 please.

3 Q Which started first?

4 A The very first thing was a
5 splint.

6 Q When were you splinted?

7 A That was later on that evening
8 after I had drove myself to the hospital.
9 Not sure even what the situation with my
10 ankle was at that point.

11 Q You banged it up, you weren't
12 sure if it was broken or sprained, so they
13 splinted it for you; is that correct?

14 A They confirmed later that
15 evening that, in fact, it was fractured
16 which, since I hadn't broken anything, other
17 than a thumb in my entire life, I thought
18 that just meant it was cracked, and I didn't
19 realize that it was, you know, that it was
20 broken, as in broke.

21 Q How long were you told that you
22 would be out of the jumping business?

23 A That's a good question, because
24 that answer kept changing as things with my
25 ankle changed, and there were just opinions

1 D. Zarda

2 from various people about that from six weeks
3 on up.

4 Q How long were you --

5 A I was being optimistic.

6 Q Is it safe to say that July 2 landing
7 injury took you out of jumping for the
8 remainder of 2009?

9 A It took me out of -- yeah, it
10 did.

11 Q You didn't work at Skydive Long
12 Island after --

13 A Let me --

14 Q -- you have to let me finish my
15 question, sir.

16 A Fine.

17 Q You didn't work at Skydive Long
18 Island in 2009 after July 2; is that correct?

19 A That is correct. The injury --
20 what I was going to say was that it took me
21 out of work jumping for the remainder of the
22 season, completely.

23 Q You came back in 2010?

24 A I did.

25 Q With a vengeance?

1 D. Zarda

2 MR. ANTOLLINO: Objection to
3 form.

4 A No.

5 Q You came back in 2010 looking
6 forward to jump again; correct?

7 A I did. I came back with a
8 positive, high-spirited attitude ready to go
9 to work.

10 Q When were you cleared to begin
11 jumping in 2010?

12 A By my doctor, I was cleared to
13 begin work jumping on -- now, this may be off
14 a couple of days -- on or around January 22
15 or 24. It was in that range right there.

16 That was -- let me continue so
17 that I make sure I get this straight.

18 Q Please, go ahead.

19 A That was on my doctor's initial
20 orders that I begin work jumping six months
21 following my surgery. That was six months.
22 We had been in contact on the phone, but when
23 I returned to Long Island, because I knew I
24 was coming back to work for Ray because we
25 had already established that, he still wanted

1 D. Zarda

2 to have an office visit with me for a final
3 check-up to clear me out, and that was in
4 June.

5 Q The "he" is your doctor, or the
6 "he" is Ray that you just referred to?

7 A My surgeon.

8 Q Your surgeon?

9 A Yeah, that did the work.

10 Q Did you have the surgery done
11 here on Long Island?

12 A It was.

13 Q Good surgeon?

14 A Thank goodness, yes, he was.

15 Q When were you rehired by Skydive
16 Long Island 2010?

17 A Well, Ray and I discussed me
18 coming back before I went back home in 2009
19 just after I started walking again. I asked
20 him about coming back to work in 2010, and he
21 said that would be fine; just get healthy,
22 and I said okay.

23 Q You found that response to be
24 appropriate; correct?

25 A Sure.

1 D. Zarda

2 Q When did you start working again
3 at Skydive Long Island in 2010?

4 A It was on or about May 15, 2010.
5 That was my report date, and I do believe
6 that was the first day I reported.

7 Q Now, when you started working at
8 Skydive Long Island in 2001, do you know if
9 Ray Maynard was familiar with your sexual
10 orientation when he hired you?

11 A I don't know. I can't remember
12 back that far directly if we discussed it or
13 if he knew about it via Curt or Rich or if he
14 knew about it at all. I think he knew about
15 it possibly from one of them and then if he
16 didn't know about it when he hired me, he
17 certainly didn't take long to figure it out.

18 Q And you were rehired in 2009
19 with full knowledge of your sexuality; is
20 that correct?

21 A Unless he forgot about it, then
22 I would say he would have know.

23 Q Is it possible that he may have
24 forgotten about it?

25 A It's possible.

1 D. Zarda

2 Q Then, in 2010 when you began
3 working again, was he aware of your
4 sexuality?

5 A I would say certainly he would
6 have to have been still aware.

7 Q Let's talk about how you acted
8 at work in 2009.

9 A Okay.

10 Q How did you act?

11 MR. ANTOLLINO: Objection to
12 form.

13 A Could you actually be a little
14 more specific? How did I act in -- just
15 break that down, please.

16 Q In your daily mannerisms, did
17 you act just like every other employee?

18 A I think I did.

19 Q If we were watching a video of
20 you, just a video with no volume and we saw
21 your daily interactions, would we be able to
22 distinguish your interactions from any of
23 your coworkers?

24 A I doubt it.

25 Q Was that the same in 2010?

1 D. Zarda

2 A It was.

3 Q Your work activities throughout
4 your employment at Skydive Long Island were
5 indistinguishable from any of your coworkers;
6 is that correct?

7 A I would say -- there's no way I
8 could say whether indistinguishable or not,
9 because I am the one that is performing the
10 work actions, and I would be viewed by a
11 third person, so it would be strictly up to
12 whoever was watching me and what they
13 thought, but I would say that I acted
14 normally just like everybody else. I didn't
15 do anything special that I can think of.

16 Q In your perception, you acted
17 just like everybody else?

18 A As far as I can tell.

19 Q In 2009, you testified that you
20 got along with everybody; is that correct?

21 A I believe, unless we were to
22 read back what I said, I think I said
23 something to that effect.

24 Q I think what you said is that
25 Ben Lowe and maybe Willie required a little

1 D. Zarda

2 bit of extra attention, but you won them over
3 by the end of the season; is that correct?

4 A I didn't say I won them over;
5 you just said that.

6 Q I did just say that. That was
7 my characterization.

8 A Well, I think the relationship
9 developed positively by the end of the
10 season. It required a little extra work, but
11 it got to a good place.

12 Q Would you say that in 2009, you
13 had positive working relationships with all
14 of your colleagues?

15 A I would say so, for the most
16 part.

17 Q What about 2010, did you have
18 positive working relationships with your
19 colleagues?

20 A There were some new characters
21 in 2010, so there's a high turnover rate for
22 seasonal employees at Skydive Long Island, so
23 there were some new people that were brought
24 into the mix, different attitudes and
25 different personalities, and most of the same

1 D. Zarda

2 people were there, but I would say that yes,
3 I did have a good experience. There were a
4 couple of personalities that needed a little
5 extra work.

6 Q In 2010, you had a good
7 experience, but some of the personalities
8 needed extra work; is that correct?

9 A I'd say so.

10 Q Who were those personalities?

11 A First, a guy named Monkey John.

12 Q Did his mom give him that name?

13 A I have no idea.

14 Q I'm making a joke.

15 A Oh, all right. He required a
16 little extra work.

17 Q What was Monkey John's problem?

18 A You know, it was kind of funny.
19 His problem was when I returned to my same
20 digs in the staff room, which is already
21 crowded, and I was going to take the same
22 spot that I had the previous year, he didn't
23 like it, so he made a little to-do about it,
24 and that was my first meeting with John, with
25 Monkey. His girlfriend Carmen, at the time,

1 D. Zarda

2 was in the room, and Monkey kind of actually
3 got a little bit angry and sort of went off
4 on me a little bit, and some of the other
5 staff were in the room like Sean Tierney, I
6 think Marco was in there, and they dismissed
7 and resolved it and said, don't worry, Don,
8 just put your stuff over here, and I was
9 like, okay, no problem.

10 Q So your coworkers came to your
11 defense?

12 A They did, and, in fact, Monkey's
13 girlfriend, Carmen, also came to my defense
14 in the room by telling Monkey that he was
15 being, quote, a dick and to stop it.

16 The thing about that is that
17 it's not a good way for me to start a new
18 relationship with a coworker on the first
19 day, but I didn't have anything to do with
20 it, so I was just present, so that's why that
21 relationship probably needed a little extra
22 attention as opposed to the other people I
23 was working with.

24 Q Did you have any negative
25 interactions with any of your other coworkers

1 D. Zarda

2 in 2010?

3 A No, not that I can recall.

4 Q Just Monkey Jim?

5 A Monkey John.

6 Q John, Monkey John.

7 A I think his real name is John.

8 I don't know his last name. He's the only

9 Monkey there.

10 Q From what you've told me, Monkey
11 John was acting like, and I quote, per
12 Carmen, a dick?

13 A Yes, that's what she said.

14 Q But then your coworkers and
15 Carmen came to your defense; is that correct?

16 A They did.

17 Q That must have been a good
18 feeling; right?

19 A None of it was a good feeling
20 because it was awkward for me because I was
21 coming to work, going back to the same spot
22 that I was in, and I've got somebody that I
23 don't know that's confronting me about that,
24 and so it's the first day, not something
25 anybody really wants to start out that way

1 D. Zarda

2 with a new relationship, so what -- you're
3 asking me if I felt good about it? I didn't
4 feel good about it.

5 Q Well, did you appreciate your
6 coworkers coming to your defense?

7 A I did appreciate that.

8 Q There was some discussion
9 yesterday about weight, how much people
10 weighed as it applied to jumping and certain
11 weight restrictions. Now, I can tell you as
12 I sit across this table from you, you appear
13 to be someone who is physically fit; are you?

14 A I am.

15 Q Have you always been?

16 A I have.

17 Q You started jumping for Skydive
18 Long Island in 2001; is that correct?

19 A I first worked there in 2001 for
20 Skydive Long Island.

21 Q Do you recall how much you
22 weighed then?

23 A I can't tell you, specifically,
24 but I've weighed pretty close to the same
25 weight for most of my adult life, so it was

1 D. Zarda

2 about what I weigh now. It would have been
3 between 170 and 180.

4 Q Does your weight normally
5 fluctuate between 170 and 180?

6 A It stays around 175 or 180.
7 Right now I think I'm actually 185 because I
8 did some mountain climbing this summer.

9 Q Mountain climbing increases your
10 weight?

11 A Well, it's just a form of
12 working out. I suppose I put on some extra
13 muscle.

14 Q And you view that as a good
15 thing?

16 A It is a good thing.

17 Q Has anything since 2001 to now,
18 affected your weight?

19 A Has anything?

20 Q Yes.

21 A No. I need you to be really
22 more specific about that.

23 Q Anything; holidays, workout
24 routines?

25 A Not much. I've really been in

1 D. Zarda

2 that range, I just told you, most of my adult
3 life. I've been right there. I lost a
4 little bit of weight over the broken ankle
5 because this (indicating) leg got smaller.
6 That was temporary.

7 Q You lost weight when you broke
8 your ankle?

9 A In this (indicating) leg.

10 Q You see, if someone like me was
11 to break my ankle, I'm sure I would gain
12 weight.

13 A I lost weight a little bit.
14 Probably about ten pounds, and it was
15 temporary.

16 Q Were you able to exercise when
17 you broke your ankle?

18 A I was. I was at the gym on
19 crutches.

20 Q You workout frequently?

21 A I do.

22 Q How often do you workout?

23 A Depending on whether I'm
24 traveling or what I'm doing. It could be
25 anywhere between three and five times a week.

1 D. Zarda

2 Q Was that consistent since 2001
3 to now?

4 A It's been over the last twenty
5 years. Ever since high school, so you can
6 include that timeframe.

7 Q Has anything during that
8 timeframe interfered with your consistent
9 working out of three to five times a week?

10 A Yes.

11 Q What was that?

12 A I had a back injury in 2002.

13 Q Could you explain that to me?

14 A It was an injury that I suffered
15 in the gym doing squats, and as a result of
16 that, I had to cut back my workout routine
17 for about six months or so.

18 Q When you cut it back, you cut it
19 back to how many times a week?

20 A Well, for a little bit there, I
21 don't remember exactly how long; it felt like
22 forever, but I couldn't do anything for, you
23 know, two or three weeks in a row, and I
24 wasn't supposed to be doing anything, but I
25 kind of was able to lightly do some very

1 D. Zarda

2 light weight throughout that four to six
3 months where I was really not supposed to be
4 doing anything.

5 Q So you still worked out; you
6 just used much lighter weights?

7 A I did some alternative
8 exercises, not weightlifting, you know, some
9 light weights, machines, stuff to keep me
10 moving and try to keep in shape. I'm not one
11 that does very good with just lying around,
12 so those kind of instructions don't work too
13 well for me.

14 Q That was the only thing
15 from 2001 to now, 2011, that interfered with
16 your working out; is that correct?

17 A That, and the broken ankle
18 interfered just for a little bit because,
19 obviously, I couldn't go to the gym right out
20 of surgery. I actually ran into the nurse,
21 one of the nurses that was in my surgery, at
22 the gym.

23 Q She yelled at you for being
24 there so soon?

25 A He.

1 D. Zarda

2 Q "He"? He yelled at you for
3 being there so soon?

4 A He was surprised to see me in
5 there that quickly and just told me to take
6 it easy.

7 Q Did he scold you?

8 A He just said to be careful, take
9 it easy, don't get too carried away.

10 Q Did you listen to his advice?

11 A I did listen to it. I still
12 went, but I heeded -- you know when somebody
13 tells you something like that, and you've
14 never been through what I was going through,
15 I definitely didn't want to mess anything up,
16 but I didn't want to get out of shape because
17 I sitting around on the sofa.

18 Q Do you still suffer from the
19 effects of that back injury?

20 A I do.

21 MR. ANTOLLINO: Objection. I
22 think we're getting into the medical
23 privilege. Would you agree?

24 MR. ZABELL: No.

25 MR. ANTOLLINO: I think that we

1 D. Zarda

2 are, so with the Judge's instruction, I
3 kindly ask you to move on to another
4 subject.

5 MR. ZABELL: Are you directing
6 him not to answer the question?

7 MR. ANTOLLINO: Yes, yes.

8 MR. ZABELL: You need to just
9 make that clear.

10 MR. ANTOLLINO: All right. I'm
11 just trying to make it smooth also.

12 THE WITNESS: Good to go.

13 Q Do you smoke?

14 A No.

15 Q Have you ever smoked?

16 A I've smoked a clove on occasion,
17 but I've never smoked a regular nicotine
18 cigarette.

19 Q Within the last two years, have
20 you smoked clove cigarettes? Is it
21 cigarettes, or just cloves?

22 A It's called cloves. Yeah, I
23 have.

24 Q Why have you smoked cloves?

25 A Social setting. Something along

1 D. Zarda

2 that line. Just smells good. Somebody had
3 one.

4 Q Have you smoked marijuana within
5 the last two years?

6 MR. ANTOLLINO: I don't know the
7 answer to that, but I'm going to direct
8 him not to answer that question on the
9 grounds that he has a right not to
10 incriminate himself.

11 MR. ZABELL: Well, his answer is
12 either no, I haven't, or --

13 MR. ANTOLLINO: If his answer
14 were yes, then --

15 MR. ZABELL: I tell you what.
16 We can designate it as confidential and
17 that will allay any of your concerns,
18 but I have an absolute right to ask him
19 that question.

20 MR. ANTOLLINO: Let me speak to
21 him outside. I think that his Fifth
22 Amendment Right is a basis for me to
23 direct him not to answer, and that's
24 going to be my objection at this point.

25 If you'd like, I can speak to

1 D. Zarda

2 him outside. I might reconsider it,
3 and I might not.

4 MR. ZABELL: I'll tell you what.
5 Why don't I leave you alone and this
6 way you don't have to leave.

7 MR. ANTOLLINO: All right.
8 Sounds good.

9 (Whereupon, a recess was taken
10 from 12:21 p.m. to 12:28 p.m.)

11 MR. ANTOLLINO: We're still
12 discussing this issue, you and I,
13 before you ask him any questions?

14 MR. ZABELL: I don't know if
15 we're discussing anything. Would you
16 like to discuss something?

17 MR. ANTOLLINO: Yes, I would
18 like to discuss something.

19 MR. ZABELL: What would you like
20 to discuss?

21 MR. ANTOLLINO: I would like to
22 direct the witness not to answer, and I
23 am going to ask the witness not to
24 answer on the grounds that an answer
25 could violate his right against

1 D. Zarda

2 self-incrimination.

3 MR. ZABELL: Well, you can
4 certainly advise him to say that I
5 refuse to answer that question on the
6 grounds that it may incriminate myself,
7 but he has to assert that. You can't
8 assert that for him.

9 MR. ANTOLLINO: I'm not so sure
10 about that. I'm going to direct him
11 not to answer.

12 MR. ZABELL: I understand what
13 you're saying, and we're going to get
14 to the same place, but he has to say, I
15 am refusing to answer that on the
16 grounds that I may incriminate myself.

17 MR. ANTOLLINO: It's a
18 deposition. It's different. It's
19 not --

20 MR. ZABELL: He still has to say
21 it because this is his sworn testimony,
22 and it gets cited to in the record, so
23 if that's what you're advising him,
24 that's fine. I'm going to ask him if
25 he's refusing to answer the question on

1 D. Zarda

2 the grounds that the answer may
3 incriminate him.

4 MR. ANTOLLINO: Let me speak to
5 my client outside, Saul.

6 MR. ZABELL: You may do so.

7 (Whereupon, a recess was taken
8 12:28 p.m. to 12:29 p.m.)

9 MR. ANTOLLINO: I'm asserting a
10 privilege on the grounds of his Fifth
11 Amendment Right against
12 self-incrimination. You can ask him,
13 and he's going to give you an answer.
14 I don't want to go around in circles
15 with this all day long. That's the
16 on-the-record reason for not answering
17 the question. Go ahead.

18 Q Mr. Zarda, are you refusing to
19 answer my question?

20 A I'm not going to answer any
21 questions that my attorney has advised me not
22 to answer.

23 Q Are you refusing to answer the
24 question on the grounds that your answer may
25 incriminate you criminally?

1 D. Zarda

2 A (No verbal response.)

3 Q Yes or no?

4 MR. ANTOLLINO: Objection. I've
5 instructed him not to answer the
6 question. I'm directing him not to
7 answer the question for the reason that
8 I have put on the record that he has
9 the right not to incriminate himself.
10 Let's not go around in circles on this.

11 Q Are you refusing to answer the
12 question on the grounds that you may
13 incriminate yourself?

14 A I can't answer the question,
15 because I'm not going to answer any questions
16 that my attorney has advised me not to
17 answer, and that is one of those questions.

18 Q Are you familiar with the term
19 "illegal drugs"?

20 A I've heard the term.

21 Q What is your understanding of
22 what the drugs are that are encompassed by
23 that term?

24 MR. ANTOLLINO: Objection. You
25 can answer.

1 D. Zarda

2 A There's a whole book full of
3 drugs that could be illegal. It can be drugs
4 that -- it can be prescription drugs that
5 don't have your name on it. That would be
6 illegal drugs. You could have too many
7 antiallergy pills in your backpack. That
8 would be illegal, so I mean, there's a whole
9 list of drugs that would be considered
10 illegal, I presume.

11 Q Can you identify some of the
12 those drugs?

13 A Well, I think the one you hear
14 about in the media the most would be like
15 marijuana, cocaine. Those would be a couple
16 of examples. Methamphetamine, I suppose.

17 Q Ecstasy, is that another one?

18 A I'm sure it would be considered
19 illegal.

20 Q Within the last two or three
21 years, have you taken methamphetamines?

22 MR. ANTOLLINO: I'm going to
23 direct the witness not to answer the
24 question for the reason stated before.

25 Q In the past three years, have

1 D. Zarda

2 you used cocaine?

3 MR. ANTOLLINO: I'm going to
4 direct the witness not to answer the
5 question for the reason stated before.

6 Q Have you used ecstasy in the
7 last three years?

8 MR. ANTOLLINO: I'm going to
9 direct the witness not to answer the
10 question for the reason I stated
11 before.

12 Q Have you used any item that has
13 altered your thought process within the last
14 three years that is not prescribed?

15 MR. ANTOLLINO: Wait. Hold on.
16 Okay, again, I'm going to direct the
17 witness not to answer the question for
18 the reason stated before.

19 Q Do you drink alcohol?

20 A I do on occasion.

21 Q Do you ever drink to excess?

22 A No, I do not.

23 Q Have you ever drank to excess?

24 A I have, but it was a long time
25 ago.

1 D. Zarda

2 Q About how long ago?

3 A I was done with that back in
4 around 2000.

5 Q You know, when you fill out
6 certain forms for insurance, they ask you how
7 often you drink. They'll ask you if it's one
8 drink a week or two drinks a week.

9 How many drinks a week would you
10 characterize your usage as?

11 A It just depends on where I'm at.
12 If I'm at a drop zone working and I'm hanging
13 out with a bunch of jumpers after work having
14 a couple of beers after work, or if I'm doing
15 school for a solid week and I'm doing
16 homework, I may not have any, so a per week
17 thing, I think maybe per night or something
18 might be a better way to answer the question.

19 Q Okay, please.

20 A I don't get drunk. I don't like
21 the feeling of being drunk, so I would stick
22 to the rule of no more than a drink an hour
23 or a beer an hour, not even that much. You
24 know, so a person might see me have a couple
25 of beers in a social setting, and that would

1 D. Zarda

2 be it.

3 Q Has that remained consistent
4 over the last three years?

5 A It has.

6 Q Has anything occurred within the
7 last couple of years to change that?

8 A No, I'm not a drinker.

9 Q At Skydive Long Island when you
10 worked there in 2009 and 2010, was there one
11 employee there that you knew you were
12 supposed to report complaints to?

13 A Say that one more time.

14 Q Was there one employee at
15 Skydive Long Island in 2009 and 2010, that
16 you knew you were supposed to bring your
17 complaints to?

18 A Are you asking if there was a
19 supervisor that if you have problems, you're
20 supposed to go to?

21 Q Yes.

22 A Not clearly, no. There was
23 not -- there were staff meetings in which Ray
24 held, so he would want people to bring
25 complaints to him, if you had them. There

1 D. Zarda

2 wasn't a specific chain of command that was
3 outlined to the staff or in any kind of staff
4 manual that dealt with that.

5 So Ray was the drop zone owner,
6 so if there was a problem with an employee or
7 anything, it went to Ray. Typically, if
8 there was a problem with gear, you went to
9 the rigger or Rich. If there was an issue
10 with procedures, something on a jump, like
11 that, a person would typically go to Rich and
12 talk to him about it, but it wasn't outlined,
13 specifically.

14 Q But you knew you could go to
15 Rich with your problems; correct?

16 A I felt like I could.

17 Q Did you go to Rich with any
18 problems?

19 A I did.

20 Q What problems did you go to Rich
21 about?

22 A I went to Rich about this
23 problem with Ray firing me.

24 Q Did you go to Rich with any
25 other problems?

1 D. Zarda

2 A In 2009 and 2010, are you
3 asking?

4 Q Yes.

5 A Let me think about that for just
6 a moment, if there was anything else.

7 No, I can't think of anything
8 specifically that there was a problem that I
9 went to Rich for. The only thing we really
10 discussed work-wise, I don't know if they
11 were problems, was just me getting back on
12 board with the training program at Skydive
13 Long Island, getting me up to date because
14 some things changed over the years.

15 It wasn't a problem. It was
16 just a matter of since he was the chief
17 instructor, working me back into the system.

18 Q You felt comfortable with Rich;
19 correct?

20 A I did.

21 Q You felt you could bring any of
22 your problems to Rich's attention; correct?

23 A I did.

24 Q In fact, there were times when
25 you would confide about personal issues with

1 D. Zarda

2 Rich; is that correct?

3 A Be more specific about "personal
4 issues," if you would.

5 Q There came a point in time where
6 you suffered a personal loss?

7 A Be more specific, please.

8 Q I believe a pet.

9 A Okay. Yes, there was a time
10 that that happened.

11 Q Do you recall when that
12 occurred?

13 A I do recall when that occurred.
14 That was June 22, 2009.

15 Q What occurred?

16 A My pet, my cat had a heart
17 attack in the middle of the night.

18 Q Was your cat with you on Long
19 Island at that time?

20 A She was.

21 Q How did that affect you?

22 A It was very upsetting. I think
23 anybody would be upset. It was unexpected,
24 out of the blue, in the middle of the night,
25 2 o'clock in the morning, so I was upset.

1 D. Zarda

2 Q Did you share that with Rich?

3 A I don't specifically remember
4 going to Rich or having a meeting or pulling
5 him aside and saying, hey, Rich, this
6 happened. I'm sure that I shared it with
7 people. I have no doubt that I shared it
8 with people.

9 Q And you shared it with people at
10 work; correct?

11 A I'm sure I did.

12 Q Did there come a time where
13 people at work told you that they felt that
14 you were unable to jump as a result of the
15 grief that you were experiencing?

16 A No.

17 Q Did you ever feel that the grief
18 that you were experiencing was preventing you
19 from effectively doing your job?

20 A No, it didn't. I did my job.

21 Continued on.

22 Q Did there come a time in 2009,
23 where you were crying at work?

24 A Where I was crying at work?

25 Q Yes.

1 D. Zarda

2 A I don't recall crying at work.
3 I certainly didn't -- let's see, 2009. No.
4 I didn't cry when I broke my ankle. That's
5 for sure. I don't recall. I don't recall
6 crying at work.

7 Q Did anybody at work make fun of
8 you when you lost your cat?

9 A Nobody made fun of me. Alex
10 Allen thought that he diminished it a little
11 bit. Maybe that's just his personality.
12 It's just a cat, and he didn't like cats, so
13 it's to be expected.

14 Q What was your cat's name?

15 A Little Cat.

16 Q Is that the full name?

17 A That was her full name,
18 Little Cat Moore Zarda.

19 Q Little Cat --

20 A Moore Zarda.

21 Q Moore?

22 A M-O-O-R-E, Zarda.

23 Q Is Moore a family name?

24 A It is.

25 Q As a side note, I did have a dog

1 D. Zarda

2 that my son named Little Bear.

3 A She was a little cat.

4 Q My son liked the TV show Little
5 Bear.

6 Did the loss of Little Cat
7 affect you emotionally?

8 A At the time, yes.

9 Q Does it still affect you
10 emotionally?

11 A I've since gotten over it. I
12 have another cat that we've added to the
13 family. I don't like the fact that she's
14 gone, but people die too. I'm used to that
15 all the time, so you get over that, and move
16 on.

17 Q When do you believe that you've
18 moved on for this?

19 A Well, I don't want to make
20 myself sound cold, but within two days, I had
21 gone to the cattery in New Jersey, and I
22 picked up and got a new cat, so I wouldn't
23 say I was over it the day we picked up the
24 new cat, but I felt it necessary to have
25 another cat with me.

1 D. Zarda

2 Q You believe you started to get
3 over it two days later; is that your
4 testimony?

5 A It began the healing process.
6 It helped having another cat, the same type
7 of cat. It helped out quite a bit, but yeah.

8 Q When you disclosed at Skydive
9 Long Island that you had lost your cat, were
10 your coworkers supportive?

11 A They were sympathetic and
12 empathetic. They know I'm a cat person, a
13 cat fan. They knew I had Little Cat for
14 seven years. Ray, at one time, was a cat
15 person. He even made liter boxes or cat
16 boxes. He did cat boxes at one time. He
17 knew my previous cat from 2001, and he
18 enjoyed that cat, so I think people were
19 supportive.

20 Q Was Ray supportive?

21 A I didn't directly tell Ray.
22 Lauren, I told Lauren, and Lauren said that
23 she told Ray just so Ray would know about it.

24 Q Did you require any time off
25 from work as a result of that?

1 D. Zarda

2 A I did not.

3 Q Did you take any time off from
4 work because of that?

5 A I did not.

6 Q You're sure of that?

7 A I am sure of that. There was a
8 possible two-day gap, but it was
9 weather-related, I believe. Little Cat died,
10 I believe, it was on a Tuesday. I'd have to
11 look at a calendar to verify that, and I
12 think we were back jumping again on the next
13 Thursday, so I think Wednesday was a weather
14 day because I'm pretty sure it rained all day
15 the next day, so I'd have to look back, but
16 I'm pretty sure of that. The next available
17 day to be at work jumping, I was there.

18 Q Are you in the habit of taping
19 conversations that you have with individuals?

20 A No, I'm not in the habit of
21 that; no.

22 Q Have you ever taped
23 conversations that you've had with
24 individuals?

25 A I have.

1 D. Zarda

2 Q Under what set of circumstances
3 have you taped conversations that you've had
4 with individuals?

5 A In my entire life, or --

6 Q Yes, in your entire life.

7 A You realize I'm forty-one years
8 old, so it would be difficult for me to
9 recount in this seating each and every
10 instance I've ever recorded a conversation.

11 Q As best you can.

12 A Well, the most recent would be,
13 you know, when Ray fired me, so that comes to
14 mind the most, because this is what I'm
15 focused on thinking about. I don't think
16 about some of the other things that I might
17 have recorded such as customer service calls
18 or calls to the bank or calls to Apple
19 computer regarding my computer, getting them
20 to fix it, or something like that, so I can't
21 recall every instance of recording a
22 conversation. It would be almost impossible.
23 It's pretty broad.

24 Q Why would you record a telephone
25 conversation?

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2 A Several reasons. There could be
3 legal reasons that come to mind. I did
4 record a phone call between me and Ray's
5 wife. I did record that, and again, there
6 could be legal reasons for recording a phone
7 call.

8 The best reason is just to
9 remember what was said during a phone call
10 because unless you type really fast or are a
11 court reporter or you take good notes, it's
12 just easier to record the call, and then if
13 you need to go back and listen to what was
14 said, it's right here. Sort of refresh
15 yourself, so, you know, that's the most
16 useful tool that I can think of for it.

17 Q Where were you when you tape
18 recorded your telephone conversation with
19 Ray's wife?

20 A Where in the world, or where in
21 the country?

22 Q Where, geographically?

23 A I was in the State of Missouri.

24 Q Do you know where she was?

25 A She was -- I don't know exactly

1 D. Zarda

2 where she was. I believe she was in
3 New York.

4 Q Did you tell her that you were
5 taping your phone call with her?

6 A I did not.

7 Q So you taped it surreptitiously?

8 A Define "surreptitiously." I
9 know what the word means to me, but --

10 Q Well, why don't you tell me what
11 it means to you.

12 A Well, I think what it means to
13 me is, was I taping it covertly or to be able
14 to use it against her without her approval,
15 or something to that effect. I think that's
16 what you mean.

17 Q Well, I just mean covertly.

18 A What do you mean by "covertly,"
19 exactly?

20 Q What I mean exactly by that is
21 that the fact that it was being taped was not
22 disclosed to her.

23 A Okay, then yes. It was being
24 taped. I did not disclose it to her. It was
25 for my personal use to be able to reflect

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2 back on to remember and to go over what did
3 she just tell me without me having to write
4 it all down as she's telling it to me because
5 I, obviously, could not keep up with that.
6 I'm not a court reporter. I don't type fast,
7 so to me for my own personal needs, it's no
8 different than if I was taking notes while
9 talking to her on the phone, and that was the
10 purpose.

11 Q Do you know if you violated any
12 laws --

13 A I checked.

14 Q -- by doing that?

15 A I don't believe I did. I did a
16 check with some of the statutes online to see
17 if that was legal for me to do from my state,
18 and from the research that I did online, it
19 was legal for one party to be recording the
20 conversation, so I do not believe I violated
21 any laws.

22 Q Now, there came a time where you
23 tapped a conversation that you had with Ray;
24 is that correct?

25 A That is also correct; yes.

1 D. Zarda

2 Q How many conversations with Ray
3 did you tape?

4 A That is the only conversation
5 that I can recall taping with Ray.

6 Q Why did you tape that
7 conversation?

8 A This was the termination. I
9 taped it because I knew that I had a week on
10 suspension. I knew that Ray had broke
11 several laws and made several rash decisions,
12 and I was speaking about the matter during
13 the week with some close friends and told
14 them what had happened to me. And they said
15 when you go back to work on Monday, you need
16 to document what is said when you go back to
17 work just in case something goes wrong, and
18 so I thought about that, and I heeded that
19 advice.

20 Q Who were friends that you spoke
21 to?

22 A I spoke to my partner,
23 William Moore. I spoke to another friend
24 that I've known in Massachusetts that's dealt
25 with situations complex -- complex

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2 situations.

3 Q Who was that person?

4 A His name is Ira Helfand,
5 H-E-L-F-A-N-D, and I spoke, obviously, with
6 my mom and sisters, of course. I'm sure I
7 spoke to -- well, I know I spoke to the owner
8 of the condo that I was leasing about it.
9 Told him -- I mean, he wanted to know why I
10 wasn't going to work, so we talked about it.

11 Q Who is that; what is his name?

12 A Sal, which is S-A-L. Falcone,
13 F-A-L-C-O-N-E. Sal Falcone, and they would
14 come out on, you know, periodically from
15 their condo from Westchester, so his
16 boyfriend, his name is Mike, but I can't
17 think of his last name, and they were
18 together, and Mike has his own business, and
19 I can't remember what it is, so just the fact
20 that he is a business owner in New York, we
21 talked about it some.

22 And I don't remember the details
23 of it, but they knew I was suspended, and I
24 was going back to work the following week for
25 Ray, and that I should be prepared.

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2 Q Did you tell your partner,
3 William Moore, your friend Ira Helfand, your
4 mother, sisters, and Sal Falcone why you were
5 suspended from Skydive Long Island?

6 A I'm sure I told them what I knew
7 at the time.

8 Q What did you tell them?

9 MR. ANTOLLINO: Objection. Go
10 ahead.

11 A I can't remember. I can't
12 recall each conversation I had in detail with
13 each of those individuals during that time.
14 That would be overly broad and impossible for
15 me to tell you, but I can just say I was
16 suspended and that I had spoken to those
17 people, and I told them what had happened,
18 you know.

19 Whatever it was to whatever
20 level of detail and specificity that I would
21 have told each individual, I don't know.
22 There's no way. It was a tense moment, and
23 there's no way for me to remember that.

24 Q Did you tell them that you were
25 suspended because you were gay?

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2 A I don't recall exactly the
3 reason that I told them. I would have told
4 them -- I most likely told them what I told
5 you about what Ray said, so you're asking me
6 to recall exactly what my conversation was
7 with five different individuals during a week
8 that I had, so I can't recall that.

9 Q Do you believe you were
10 suspended because you're gay?

11 A I believe that was the primary
12 reason.

13 Q Do you know what the secondary
14 reasons were?

15 A Well, I think there were some
16 gender issues in there, as well.

17 Q What gender issues were those?

18 A How I would conform to sex
19 stereotypes, how I act as a man. I think
20 that was a problem.

21 Q Did you act like a man?

22 A I think so.

23 Q Did you act like a woman?

24 A I don't think so, but other
25 people may think that. I don't know what

1 D. Zarda

2 people think.

3 Q Did you give anybody reason to
4 think that you acted like a woman?

5 A Who knows if they saw me throw a
6 softball? I don't know.

7 Q Did anybody comment on how you
8 threw a softball?

9 A I can't remember specifically
10 who and where, but people have seen me throw
11 a ball before during those times between
12 jumps when we're not jumping, we're on
13 weather hold, or whatever, and it was just
14 laughed about in the same realm as my gayness
15 being laughed about, and I just shrugged it
16 off because it does look a little funny.

17 Q So when you throw a softball,
18 you look a little funny?

19 A If I throw a softball, yes, it
20 looks a little funny.

21 Q Are you saying you throw a
22 softball like a spastic man or like a woman?

23 A I would say that if you saw me
24 throw a softball, somebody might think I was
25 gay.

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2 Q Why?

3 A Because of the way it looks.

4 Q Does it look like you're
5 spastic?

6 A No. It just looks, I mean, if
7 you've ever seen the stereotypical gay person
8 throw a ball, you know, the way it's thrown,
9 there's a certain look to it.

10 Q Could you explain to me that
11 look?

12 A I've never been asked to explain
13 the look. Maybe I should go out here and
14 throw the ball. It just kind of has a little
15 toss to it like I'm showing you right here
16 (indicating). It doesn't look like a
17 pitcher, a typical baseball pitcher or
18 softball pitchers, how you see straight guys
19 playing catch with the ball and the mitt. It
20 just looks different.

21 Q So straight guys have a
22 stereotype of how they play ball?

23 A I think you can tell the
24 difference when some gay people are throwing
25 a ball and playing ball versus some straight

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2 people; yeah, I think you can say that.

3 Q Do you know if there are any gay
4 professional baseball players?

5 A I don't follow professional
6 sports at all. Unfortunately, I cannot
7 answer that. I mean, I don't even know who
8 the major teams are. I get asked stuff like
9 that all the time, but I don't know.

10 Q Do you assume that there are?

11 MR. ANTOLLINO: Don't assume.

12 Objection.

13 Q You can assume if I asked you.

14 MR. ANTOLLINO: Objection.

15 Q You may disregard the objection.

16 A Statistically speaking, if
17 there's a group of ten people in a room, one
18 of us is gay, so I would have to say that
19 statistically speaking, probably so.

20 Q Other than maybe being teased
21 about how you threw a ball, can you think of
22 any other specifics?

23 A We're talking about specifics
24 of...

25 Q Of how you acted, I believe, in

1 D. Zarda

2 context of differently than other men at
3 work.

4 A Maybe some people enjoyed,
5 noted, commented on my pink hat, pink cap. I
6 had a pink ball cap. I don't know if it was
7 a ball cap or just a regular hat, but it was
8 pink, and it said rebel on it, and it was
9 bright pink, and I wore it. I wore it on
10 occasion at work. I have no hair. I would
11 wear it sometimes until about 1:00 or
12 2:00 p.m. when the sun would go behind the
13 building and I didn't need it anymore. It
14 was viewed as a feminine thing.

15 Q Your pink hat was viewed as a
16 feminine thing?

17 A It was.

18 Q Who commented on it?

19 A Everybody commented on it at
20 some point that they saw me wearing that hat.

21 Q I'd like for you to identify for
22 me the names of the people who commented on
23 it and what they specifically said, if you
24 remember.

25 A Rich put it best yesterday.

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2 It's so many jokes that it's almost
3 impossible to come up with one right now
4 because it was just a regular, routine thing.
5 A hat, a nice pink hat. There were various
6 comments on it. I mean, I look the way I do.
7 I don't look like a lot of gay people might
8 look. The condition that I'm in, I look more
9 athletic looking.

10 Q Are you saying that all gay men
11 don't look athletic?

12 A Not all gay men do, so I get
13 mistaken for being straight sometimes, and
14 here I was in a pink hat, so it kind of
15 didn't make sense to some people, or they
16 didn't know what to do with it.

17 Q Are you saying that outwardly,
18 you believe your appearance leads people to
19 believe that you're straight?

20 A It does oftentimes, as long as I
21 don't have any accessories on that might lead
22 people to think otherwise. People do.
23 Sometimes even when I'm out at a gay club,
24 people come up to me to ask me if I'm gay.
25 Yeah, sometimes I get mistaken for being

1 D. Zarda

2 straight just on my appearance.

3 Q Are you saying that you are of
4 the belief that your outward appearance
5 indicates to people that you are straight?

6 A I get told that a lot.

7 Q Is that offensive?

8 A I don't say that it's offensive,
9 because I can't hold somebody accountable
10 just because I might look a certain way and
11 they are mistaken about it. It surprises me
12 sometimes, and it doesn't offend me. I
13 wouldn't be offended for looking straight.
14 It's just kind of funny sometimes.

15 Q When people at work, who you
16 can't really identify by name, would say,
17 hey, nice pink hat, were you offended by
18 that?

19 A No, I wasn't offended.

20 Q Did Rich --

21 MR. ANTOLLINO: Wait, wait. He
22 hadn't finished answering yet.

23 Q -- Winstock say to you, nice
24 pink hat?

25 MR. ANTOLLINO: He had not yet

1 D. Zarda

2 finished answering the question.

3 A Let me finish answering.

4 Q Did Rich Winstock say to you,
5 nice pink hat?

6 A Again, I can't specifically
7 recall specific times and moments when the
8 pink hat was discussed. It was discussed or
9 mentioned or commented on regularly. I wore
10 it regularly in the mornings, as I said, to
11 protect my head. It drew attention. People
12 saw it. People commented on it.

13 MR. ANTOLLINO: All right. Can
14 I just say something on the record?

15 MR. ZABELL: No.

16 MR. ANTOLLINO: Not the last
17 question, but the one before that, I'm
18 going to move to strike, because
19 Mr. Zabell interrupted the witness as
20 he was finishing the question. And I
21 even tried to get Mr. Zabell to allow
22 the witness to finish answering the
23 question, but he continued to ask the
24 next question which my client fully
25 answered, and I had no objection.

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2 MR. ZABELL: Counselor, pursuant
3 to the Federal Rules of Civil
4 Procedure, what you have just done is
5 called a speaking objection. You are
6 not entitled to make a speaking
7 objection. If you'd like, I will give
8 you an opportunity to review the
9 Federal Rules of Civil Procedure so you
10 may confirm the representations I have
11 made are completely accurate, and that
12 you will learn to remain silent
13 throughout the rest of deposition and
14 only object in a manner which is
15 appropriate pursuant to the Federal
16 Rules of Civil Procedure.

17 To the extent that I am
18 empowered to, I deny your request to
19 strike the question and the answer and
20 ask that you remain silent throughout
21 the rest of this deposition.

22 MR. ANTOLLINO: I will make
23 objections that are appropriate.

24 MR. ZABELL: Thank you. You
25 have been doing so.

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2 MR. ANTOLLINO: I have.

3 MR. ZABELL: That's why I'm
4 going to request that you take me up on
5 my offer to review the Federal Rules of
6 Civil Procedure.

7 MR. ANTOLLINO: You've, once
8 again, made a derisive comment,
9 Mr. Zabell. I have made an appropriate
10 objection. I have made very few
11 objections in this deposition, and I
12 will make what I feel are appropriate
13 objections.

14 Q When in 2010, did you wear your
15 pink hat?

16 A Be more specific, if you would,
17 please. When as in, what; days of the week,
18 time of the day?

19 Q What days in 2010, while you
20 worked at Skydive Long Island, did you wear
21 your pink hat?

22 A Can't remember every specific
23 time that I took a pink cap out of my bag or
24 out of my cubbyhole in the video room and put
25 it on my head, but in general, I would wear

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2 my pink hat when the sun was shining.

3 Particularly, in the morning hours from when

4 we began work until about 1:00 or 2:00 p.m.

5 when the sun would go behind the building

6 where the gear area is and I no longer needed

7 protection from the sun.

8 I would wear it while I was

9 gearing up passengers on the ground. Any

10 time I was running around on the ground and

11 the sun was shining, I would wear the hat to

12 protect my head.

13 Q Have you ever seen a straight

14 man wear a pink hat?

15 A I can't say that I recall a

16 specific time I've seen a straight man wear a

17 pink cap, but I don't see it often.

18 Q But you have seen it; is that

19 what you're saying?

20 A I can't recall. I mean, you're

21 asking me to think back over the course of --

22 I'm forty-one years old -- to the time that I

23 could remember if I've ever seen a straight

24 man wear a pink hat. I will tell you that I

25 probably have seen a straight person wear a

1 D. Zarda

2 pink hat at some point in my life. When,
3 during this forty-one-year-old process, I
4 can't say right now at this seating.

5 Q When people would say to you the
6 one comment you were able to relay to me,
7 hey, nice pink hat, do you recall who those
8 people were that said that to you?

9 A It's a close-quarters
10 environment. The key players that I worked
11 with, the full-timers, have all said
12 something. Probably most at the beginning of
13 the season when they seen the hat and they
14 seen me we wearing it.

15 I mean, either a sleeveless
16 shirt on because it's hot, or whatever, or
17 there was this guy wearing a pink hat, you
18 know. I can't remember exactly who said
19 what/when about the pink hat.

20 Q Would Rich say anything to you?

21 A It would be in that same
22 category of questioning of me not being able
23 to say specifically if Rich said something,
24 what he said, and when. I just know that it
25 was talked about a lot.

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2 Q As you're sitting here today,
3 you can't identify who specifically said
4 anything about your hat?

5 A Not at this seating. To ask me
6 to think about the number of comments that
7 were made and who made them and exactly what
8 they said, that would be pretty broad.

9 Q Did you maintain a diary during
10 your employment at Skydive Long Island?

11 A No, I'm not graced with the time
12 to keep up with diaries.

13 Q Did you ever take written notes
14 of the occurrence of your days while you were
15 employed at Skydive Long Island?

16 A No. The only kind of
17 documentation that we have are jump logs.

18 Q Did you make any notations in
19 your personal jump logs?

20 A About pink hats, or just period?

21 Q About anything.

22 A My jump logs are really not
23 caught up, and there are printouts in Ray's
24 computer about how many jumps I did on a
25 given day, and that's my jump log right now,

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2 so there are no addendums or notes written
3 onto those. I just trust that that's the
4 number of jumps I made, and they're in a file
5 somewhere.

6 Q You made contemporaneous notes
7 of your jump logs, of your days while
8 employed at Skydive Long Island?

9 A Not that I can recall right now.

10 Q Where do you currently reside?

11 A My home of record is in
12 Missouri; Richmond, Missouri.

13 Q Can I have your actual address?

14 A Well, the actual address I
15 receive correspondence and everything at is
16 the Post Office Box that's I've had for about
17 seventeen years. That's my actual address.

18 Q Do you have an actual home where
19 you sleep when you are in Missouri?

20 A I do.

21 Q Where is that?

22 A That is located on a skydiving
23 center which is private airport called
24 Lexington Memorial Airport, and that is in
25 Henrietta, Missouri, which is just down the

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2 road from Richmond.

3 Q You actually sleep there?

4 A When I'm there, I do.

5 Q How often are you there?

6 A I haven't been home in awhile.

7 Over the course of seventeen years that that
8 place has been there, I estimate I've
9 probably been there twenty to thirty percent
10 of that entire time. It varies. It depends
11 on where I'm going to be, what I'm doing, if
12 I'm traveling, working, if I'm in Dallas for
13 an extended stay. It really varies. I have
14 no set schedule for when I'm going to be
15 there.

16 Q Beginning in July of 2010, where
17 did you reside?

18 A Beginning in July of 2010.
19 That's -- oh, beginning in July of 2010. My
20 home of record remains in Richmond, Missouri
21 at that airport.

22 Q Where were you physically
23 residing?

24 A Where I was physically in July
25 of 2010 was, I guess, in Coram, New York.

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2 Q Where in Coram, New York did you
3 live?

4 A I was leasing a condo from the
5 aforementioned Sal Falcone that we talked
6 about, and that was -- I can remember the
7 address but not the zip code. Three
8 Appomattox, A-P-P-O-M-A-T-T-O-X, Court,
9 Coram, New York, and I believe the zip code
10 might have been 11727, but you'll have to
11 look that up yourself.

12 Q You resided there until when?

13 A In 2010?

14 Q Correct.

15 A I stayed there until, I believe,
16 September 17, and if it wasn't exactly
17 September 17, it was real close to that, real
18 close. Probably within a day, which I don't
19 remember which day exactly, but it was just
20 after the time period that I was supposed to
21 leave anyway.

22 Q Where did you go after that?

23 A I have to think about it for a
24 second.

25 I believe I proceeded back

1 D. Zarda

2 towards Missouri. Yes, I did. I was in my
3 truck, and then I went back home to Missouri,
4 but along the way, I stopped at some other
5 drop zones.

6 Q Where did you stop?

7 A What drop zone I stopped at was
8 a drop zone that I sought employment at after
9 Ray fired me in July, and that was
10 Chicagoland Skydiving Center. At the time,
11 Chicagoland, they just moved this past
12 season, and you may have to look that up. I
13 can't remember exactly which city. I think
14 it was Hinckley, Illinois at the time.
15 They've moved.

16 Q When did you stop by
17 Chicagoland?

18 A It would have been in the third
19 week or so of September.

20 Q And you asked them for
21 employment; is that correct?

22 A At one time, I did; yes.

23 Q That September, did you ask them
24 for employment?

25 A I did not ask for employment in

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2 September, but rather I discussed the matter
3 of him not offering me employment in July in
4 response to Mr. Maynard terminating me in
5 June.

6 Q Why did you drive there in
7 September then?

8 A Because it is on the way home,
9 directly on the way home, and because I
10 wanted to have a face-to-face conversation
11 with the owner of the drop zone.

12 Q Did you?

13 A I did. I felt we were both
14 entitled to have a conversation about the
15 matter face-to-face.

16 Q What did your conversation with
17 him consist of?

18 A Mostly it was about the e-mail
19 exchange that we had regarding me responding
20 to his ad for help and his denying me
21 employment and the action that had taken
22 place at Skydive Long Island with Ray. We
23 discussed that and what I was going to do
24 about it, primarily.

25 Q What was discussed about what

1 D. Zarda

2 happened with you at Skydive Long Island?

3 A Well, we have the e-mails
4 between Mr. Doug Smith, he's the drop zone
5 owner, and I just told him my side of the
6 story.

7 Q What was your side of the story?

8 A I mean, what we already talked
9 about when you asked me about what Ray said
10 when he suspended me that day. I told them
11 all of that.

12 Q Did you tell Doug Smith that you
13 felt you were terminated from Skydive Long
14 Island because you were gay?

15 A I did, and I also supplemented
16 that with the ridiculous accusation that was
17 made that I inappropriately touched a female
18 passenger which he had, I think, enjoyed and
19 could appreciate my frustration with that
20 situation, based on the interaction that we
21 were having while we were having this
22 man-to-man talk.

23 Q Well, you were at the deposition
24 of Rosanna Orelana; were you not?

25 A I was.

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2 Q In her deposition, she testified
3 that she did complain about you; did she not?

4 MR. ANTOLLINO: Objection.

5 Q You may answer.

6 MR. ANTOLLINO: You can answer.

7 A Umm --

8 Q Yes or no?

9 A It's not a yes or no.

10 MR. ANTOLLINO: If this is going
11 to be a yes or no --

12 MR. ZABELL: It is a yes or no.

13 A I'd have to look back on the
14 record, but I think her boyfriend complained.

15 Q You don't remember any testimony
16 about her complaining?

17 A I do remember testimony about
18 her complaining.

19 Q Do you doubt that a complaint
20 was made to Ray Maynard about you?

21 A I doubt that the complaint came
22 from Ms. Orelana, and she was the passenger
23 that I took on the tandem. I doubt that.

24 Q Well, who do you think the
25 complaint came from?

1 D. Zarda

2 A I think it was clear that day
3 that the complaint came from Mr. Kengle,
4 which was Ms. Orelana's boyfriend.

5 Q Why do you think Mr. Kengle
6 complained about you?

7 A Well, he said during his
8 deposition what his reasons were.

9 Q What do you believe those
10 reasons to have been?

11 A Well, he said that I was getting
12 familiar with his girlfriend.

13 Q Do you think that that's what he
14 complained to Ray?

15 A Well, he said that that was one
16 of the reasons that he felt -- I'd have to
17 look back and see exactly what he said, but
18 that was one of the reasons. I mean, that's
19 what he said. He felt I was getting familiar
20 with his girlfriend.

21 Q Do you believe that he actually
22 conveyed that to Ray Maynard?

23 A Be a little bit more specific,
24 if you would, on what you're asking me to
25 answer there, if I -- how I believe he --

1 D. Zarda

2 Q Do you believe that Mr. Kengle
3 actually called up Ray Maynard and
4 complained?

5 A Oh, yes, I believe he called.

6 Q Do you believe that he
7 complained that you were getting familiar
8 with his girlfriend on the jump?

9 MR. ANTOLLINO: Objection.

10 Asked and answered.

11 A Yes, I believe he made a
12 complaint. I believe that he was testifying
13 under oath the day he said that. I wasn't
14 privy to the conversation that he had with
15 Ray, so I have to take him at his word under
16 oath that that is what he said when he called
17 Ray. To that extent, yes.

18 Q Do you believe it was that
19 complaint that Mr. Maynard was acting on when
20 he suspended you?

21 A Not entirely.

22 Q Is the complaint that Mr. Kengle
23 made about you consistent with your sexual
24 orientation?

25 MR. ANTOLLINO: Objection.

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2 A Okay, I think I understand the
3 question somewhat. Could you maybe be a
4 little more specific?

5 Q I'd like you to try and answer
6 the question, if you can.

7 A You're asking me if the
8 complaint -- let me just reword your
9 question.

10 Q Well, I'd like you to just
11 answer my question, if you can, and if we
12 need to clarify thereafter, we will.

13 MR. ANTOLLINO: I'm going to
14 object.

15 MR. ZABELL: And you may object.

16 Q You're free to disregard the
17 objection.

18 A I want to make sure that I
19 understand the question clearly so that I can
20 give you an accurate answer. I think what
21 you're asking me is if Mr. Kengle's complaint
22 was about me getting familiar with his
23 girlfriend is consistent with me being gay?

24 Q Yes.

25 A No, I don't think that it is

1 D. Zarda

2 consistent.

3 Q It doesn't sound like Mr. Kengle
4 complained about you being gay; correct?

5 MR. ANTOLLINO: Objection.

6 A In that one complaint, no, no,
7 not in that part.

8 Q You, in fact, testified that
9 Mr. Kengle complained that you were getting
10 familiar with his girlfriend; correct?

11 A That's what he said.

12 Q If he, in fact, complained, as
13 he testified he complained, then he didn't
14 complain about you being gay; correct?

15 MR. ANTOLLINO: Objection.

16 A He said that. Ray did not say
17 that. Ray said something different when Ray
18 suspended me. Ray said that they complained
19 about my sexuality coming up and that they
20 were offended by it, and that was
21 inappropriate. He said that.

22 Q Did you disclose to Rosanna Orelana
23 your sexuality?

24 A I believe I did.

25 Q Did you disclose your sexuality

1 D. Zarda

2 to Ms. Orelana because you sensed that she
3 was uncomfortable?

4 A I believe so.

5 Q Did you disclose your sexuality
6 in an effort to allay her discomfort?

7 A I believe so, yes, and to make
8 me more comfortable, as well.

9 Q Who was the customer on that
10 jump?

11 A Who was the customer?

12 Q Yes.

13 A My particular customer on that
14 particular lift, on that load, was Ms. Orelana.

15 Q Did you agree with Mr. Winstock
16 yesterday when he said your primary role is
17 to go from the airplane to the ground safely?

18 A That is correct. That is our
19 number one priority, to bring the customers
20 back safely --

21 Q Did you --

22 A -- above all else.

23 MR. ANTOLLINO: Let him finish.

24 Q Did you agree with him that your
25 secondary role is to make the jump experience

1 D. Zarda

2 enjoyable for the customer?

3 A I agree that that is another
4 goal. Whether or not it's two or three, I'd
5 have to think about a little bit, but it is
6 one of our primary goals. Our other primary
7 goal is to make sure the customer is having a
8 good time, to the best of our ability, and to
9 the extent that we can do so without breaking
10 any rules or regulations of the FAA, the
11 United States Parachute Association, our
12 licensing manufacturers that give us our
13 licenses.

14 All of those things that we have
15 to take into account when we're trying to
16 give our customers that good experience. We
17 have to think about every single one of those
18 things on every single jump, so that is a
19 goal. We want to have a good time, and
20 whatever we can do to do that, but sometimes
21 it's not necessarily the second priority. It
22 might be three or four. There could be other
23 things going on that you have to worry about
24 that's number two.

25 Q You chose to disclose your

1 D. Zarda

2 sexuality to Ms. Orelana because you sensed
3 that she was uncomfortable; is that correct?

4 A I believe so, yes.

5 Q It came back to you that it did
6 not allay her discomfort; correct?

7 A Apparently not, if they called
8 and complained about it. She -- they must
9 not have -- and when I said "they," I mean
10 Mr. Kengle called and complained, but they
11 were together in it. I think Mr. Kengle was
12 mentioned as the brains of the operation, or
13 something to that.

14 MR. ANTOLLINO: Adding insult to
15 Ms. Orelana.

16 MR. ZABELL: Counselor, remain
17 silent, please.

18 Q I believe you testified that in
19 the third week of September of 2010, you
20 stopped by the Chicagoland Skydive Center; is
21 that correct?

22 A Chicagoland Skydiving, yes.

23 Q How long did you stay at
24 Chicagoland Skydive Center?

25 A Our conversation was about one

1 D. Zarda

2 hour, so I was at the drop zone probably
3 about two hours. Mr. Smith was flying the
4 aircraft. I had to wait for him to land the
5 aircraft for me to have an opportunity to be
6 able to talk to him.

7 Then sunset came, and I
8 discussed staying the next day and making
9 another jump or making a fun jump because I
10 didn't make another jump. I said, you know,
11 I'm within eight hours of home, maybe I
12 should just go for it, and he said, you
13 probably ought to try to just get home,
14 sounds like a long trip, so I decided to
15 leave and go home.

16 Q Then you went home to Missouri?

17 A I did. I made it that far.

18 Q Is it safe to say that in the
19 third week of September, you made it back to
20 Missouri?

21 A I would say closer to the fourth
22 week, the end of the September. Looking
23 back, it was in the late 20s of the calendar.

24 Q How long did you stay in
25 Missouri for at that time?

1 D. Zarda

2 A Before I went somewhere else,
3 you mean?

4 Q Yes.

5 A Approximately -- I'm pretty
6 busy. I do a lot of traveling, so I don't
7 have my travel itinerary exactly in front of
8 me, so I can't tell you for sure if I went
9 somewhere else between the next trip, but the
10 next trip that I can remember that I went on
11 was a cruise.

12 Q A cruise?

13 A Yes.

14 Q From when to when did you go on
15 a cruise?

16 A That year -- it shifts every
17 year by a week, so the dates, I don't -- it's
18 typically the third week in October, so I
19 believe that I would have left somewhere
20 around the middle of October because I
21 usually go a little early. It's a yearly
22 event, and I come back a little after the
23 event, so I usually go out there before I go
24 on the cruise ship and make some fun jumps,
25 and then go on the cruise.

1 D. Zarda

2 Q Where do you cruise from?

3 A It's typically from L.A. to
4 Mexico and then back to L.A. Although,
5 sometimes it's from San Diego, but most of
6 the time, it's from L.A.

7 Q What kind of a cruise is this?

8 A It's a seven-day Mexican Riviera
9 cruise.

10 Q Who do you go on this cruise
11 with?

12 A Fellow passengers on the cruise.
13 Depending on the cruise ship and the size of
14 the ship, which varies from year to year, it
15 could be anywhere between 2,000 and 3,400
16 other passengers.

17 Q Do you go with a group?

18 A I do not go with a group. I go
19 by myself, but there are people that I know
20 on the cruise ship.

21 Q How do you know these people?

22 A From previous cruises and from
23 introductions from their friends to other
24 friends. It's over the years. I've gotten
25 to know a lot of people.

1 D. Zarda

2 Q How did you get from Missouri to
3 L.A. in October of 2010?

4 A I'm sure I flew. I normally
5 fly. The only time I drove was in 2009.

6 Q Where did you stay in California
7 in October of 2010?

8 A Before or after the cruise?

9 Q Before the cruise.

10 A Typically, I would stay at the
11 drop zone in Paris, California; Paris Valley
12 Skydiving Center. It's a very large
13 commercial facility, and they have bilitines
14 for visiting skydivers.

15 Q They have what?

16 A Bilitines. Bilitine is housing
17 or places to sleep. Bilitine, buildings,
18 bunkhouses, accommodations, work
19 accommodations. They have accommodations for
20 visiting jumpers.

21 Q Do you pay?

22 A You do pay a small fee. It's
23 minimal.

24 Q Did you work while you were out
25 there?

1 D. Zarda

2 A No, I did not.

3 Q Did you attempt to work while
4 you were out there?

5 A No.

6 Q You stayed there for how many
7 weeks before your cruise?

8 A It's not weeks. I would have to
9 go back and look at the itinerary
10 specifically, but typically, I'll go out
11 there a few days, so that can be four or five
12 days, so I can jump, and I like to leave
13 myself some leeway in case we have crappy
14 weather. I don't want to show up a day
15 before the cruise or two, and not get to
16 jump. Typically, it's four to five days, and
17 then we go on the cruise.

18 Q The way you talk about jumping,
19 it almost seems like you need to get your
20 jumps in in order to keep your head on
21 straight, in order to maintain your mental
22 health; is that accurate?

23 A No, I won't say that at all. I
24 won't say that that's accurate. I would say
25 that I've been jumping for almost twenty

1 D. Zarda

2 years, just like Rich Winstock yesterday.
3 We're almost the same age. We started in the
4 same year. We are dedicated to it. We are
5 passionate about it. We're professionals,
6 and we both share the same feeling in it, and
7 it's typically a comradery of a relatively
8 small group of society, the population, that
9 we all enjoy. I won't say that I need it. I
10 enjoy it.

11 Q Do you get depressed if you
12 don't get to jump for a period of time?

13 A Be more specific about do I get
14 depressed; about what?

15 Q About jumping.

16 A Do I get depressed about
17 jumping? Well, if I haven't jumped for a
18 period of time, then I seek and want to jump
19 soon.

20 Q What period of time is that?

21 A It varies. It depends on, you
22 know, if I'm really busy with school or if
23 I've had a hectic couple of weeks, or you
24 know, some people, you know, fun jumpers have
25 a hard time getting through the work week

1 D. Zarda

2 without thinking about jumping. They come
3 out during the week, in fact, after work and
4 make a jump to calm themselves down. It just
5 varies. It depends. I know I can feel when
6 I need to go make a jump.

7 Q Have you ever made a jump just
8 to calm yourself down?

9 A What do you mean by calm myself
10 down?

11 Q Exactly how you just used the
12 term.

13 A I plan on making a jump tomorrow
14 or Sunday or several jumps, so it's been a
15 little while already. I've got a lot of
16 things going on, and it's a nice, relaxing
17 thing. I think we're going to have great
18 weather, and I'm going to be with some
19 friends, and I'm going to have a good time.

20 Q Where are you jumping tomorrow?

21 A Likely, if the weather does hold
22 out, I will go to The Ranch which is in
23 Gardiner, New York. It's a large commercial
24 drop zone.

25 Q You went out to California in

1 D. Zarda

2 the third week of October for some fun dives;
3 is that what you call them; fun jumps?

4 A Just to clarify for the record.
5 Typically, jumpers that work in the industry
6 will call work jumps, work jumps, and jumps
7 when we're not working, where we are actually
8 customers of the drop zone and we're actually
9 paying for a spot on the airplane and we're
10 just jumping for fun, we call those fun
11 jumps.

12 All jumps are fun, but there's a
13 distinguishing -- we distinguish between work
14 jumps when we're actually working and getting
15 paid and jumps where we're actually just
16 playing, and those are fun jumps. Just to
17 make it easier for us to have this dialogue.

18 Q So you went to California in the
19 third week of October for some fun jumps
20 before your cruise; is that correct?

21 A Yes, that's correct.

22 Q Then you went on the cruise for
23 seven days; is that correct?

24 A That is also correct.

25 Q Then you stayed in California

1 D. Zarda

2 for another couple more fun jumps; is that
3 correct?

4 A That's correct. Some people
5 jump after the cruise, as well, about the
6 same period of time.

7 Q Where did you go after those fun
8 jumps at the conclusion of your cruise?

9 A 2010; right?

10 Q Correct.

11 A I just went through this
12 routine, so I have to think about it for a
13 second. Okay. All right. Yeah, it's coming
14 back to me here. I went back to Missouri.

15 Q What did you do in Missouri?

16 A I was taking care of things I
17 needed to do around the house before it got
18 too cold to do; maintenance outside because
19 November, and, you know, cut the grass last
20 time, do maintenance, painting, whatever, you
21 know, anything that needed to be done outside
22 before it got too cold. I was doing that and
23 getting prepared for school.

24 Q You went back to Missouri in the
25 end of October, early November to do some

1 D. Zarda

2 maintenance; is that correct?

3 A Yes, and prepare for school.

4 Q What school did you go to?

5 A I did go to, and I am currently
6 going to Embry-Riddle Aeronautical University.

7 Q Where is Embry-Riddle
8 Aeronautical University?

9 A Well, it's a worldwide school.
10 It's the largest aeronautical university, so
11 they have locations, you know, primary
12 campuses; Daytona Beach, Florida and
13 Prescott, Arizona. However, I'm a worldwide,
14 online student.

15 Q You were preparing to attend
16 Embry-Riddle via computer?

17 A That's right. These are
18 compressed terms that move very quickly, so
19 once they get started, you really do need to
20 prepare before classes start so you can be
21 seamlessly able to go through it.

22 Q When did you start going to
23 Embry-Riddle, initially?

24 A The very first class I think I
25 ever took with them was back in 2006 or 2007.

1 D. Zarda

2 Q What is the course of study that
3 you're pursuing?

4 A It's a Bachelor's of Science in
5 aviation management, logistics technical
6 specialty, and I'm also seeking a minor with
7 that in international relations.

8 Q The classes that you started
9 taking in 2010 or in and around November of
10 2010, when you did sign up for those classes?

11 A Enrollment is between the 1st of
12 November and when classes start, which is
13 always on the 15th of the month, so I would
14 have enrolled in that window, or I would have
15 e-mailed my advisor a few days prior or so.
16 I would have to look back and see, but it's
17 in that window.

18 Q And you had intended to take
19 those classes; correct?

20 A Yes, I did.

21 Q For how long did you intend to
22 take those classes?

23 A How long did I plan on going to
24 school for that term, do you mean?

25 Q Yes, in November of 2010.

1 D. Zarda

2 A Until this is done. Until my
3 degree is done. I go to school every
4 November, so it's just planned.

5 Q So since 2006, every November,
6 you're going to be attending school online?

7 A I hadn't made that commitment to
8 that level back in '06 or '07, but certainly,
9 in the last, I think, four Novembers, I've
10 been at that, yeah.

11 Q So from November of 2008 --

12 A I believe so, and I'd have to
13 look and see about that, but I think that's
14 right. Eight, nine, ten, eleven; yes.

15 Q So from November 2008, you
16 committed yourself to begin going to school
17 every November; is that correct?

18 A Definitely for that term, yes.

19 Q How long does a November term
20 last for?

21 A It's eleven weeks.

22 Q You know for that eleven-week
23 period since 2008, you're going to be going
24 to school, and you're not going to be doing
25 anything else; is that correct?

1 D. Zarda

2 A I know that -- yeah, I know that
3 it's -- I'm going to be going to school and
4 that the likelihood of being able to do much
5 of anything else was pretty slim.

6 Q Did anything in November of 2010
7 affect your ability to concentrate on your
8 classes?

9 A Yes.

10 Q What was that?

11 A This situation that I'm involved
12 in with Ray.

13 Q You mean the situation where you
14 were terminated?

15 A The whole thing; the
16 termination, the suspension, the false
17 accusations, this case, all of it.

18 Q Did Ray falsely accuse you of
19 something?

20 A Yes, he did.

21 Q What did he falsely accuse you
22 of doing?

23 A He falsely accused me of
24 inappropriately touching a tandem passenger
25 at the hip, and he knows better that that

1 D. Zarda

2 didn't happen.

3 Q Didn't Mr. Kengle accuse you of
4 that?

5 A Well, we just learned that four
6 weeks ago, so that's the first time that I've
7 heard anybody else, other than Mr. Kengle say
8 that, so up until that point, that verbatim
9 came from Ray Maynard, and so Ray accused me
10 of it, and what's even worse is that Ray is
11 also an instructor. He's been jumping around
12 forty years, tandem instructor and an owner
13 of a drop zone, and he knows better. He
14 knows better. He knows better that that
15 didn't take place.

16 Q But you know that Mr. Kengle
17 complained about it taking place; correct?

18 A I know now that Mr. Kengle
19 complained about it, but before Mr. Kengle
20 testified, the only thing I knew was what Ray
21 said, so that's all I have to go on, so Ray,
22 in effect, is the person that accused me of
23 it.

24 Q But Ray said to you that he
25 received a complaint, and he told you what

1 D. Zarda

2 the complaint was; correct?

3 A Through that line of questioning
4 that we talked about earlier where I was
5 asking if there was anything else, and Ray
6 said, yeah, and he mentioned -- if we have to
7 look back to see exactly what I said -- where
8 he mentioned the inappropriate touching,
9 well, Ray said that.

10 Q Ray said that the customer
11 complained about it; correct?

12 A He said the customer complained
13 about it, yes. I would still --

14 Q In November --

15 MR. ANTOLLINO: I'm sorry. The
16 witness hasn't finished answering the
17 question --

18 MR. ZABELL: Excuse me. You
19 have a right to object. Other than
20 that, your role is to remain silent.

21 MR. ANTOLLINO: My role is to
22 allow the record to be clear to let the
23 witness answer the question. Just like
24 you don't want him to interrupt you,
25 you need to let him finish answering

1 D. Zarda

2 the question.

3 MR. ZABELL: You, sir, are
4 interrupting the record, and you were
5 doing nothing to keep the record clear
6 and straight.

7 Again, you may object to the
8 form of a question. Beyond that, your
9 role is to remain silent --

10 MR. ANTOLLINO: No, that's not --

11 MR. ZABELL: -- please do so.

12 MR. ANTOLLINO: I'm allowed to
13 insist that you allow the witness to
14 answer the question, and I will
15 continue to do so if you continue to
16 interrupt the witness.

17 Q In November of 2010 when you
18 started taking your classes, do you know what
19 classes you took?

20 A If I could, I would like to
21 finish answering the question.

22 Q I just asked you a question, so
23 you can start by --

24 MR. ANTOLLINO: Just answer his
25 question.

1 D. Zarda

2 Q -- answering that.

3 A All right. Repeat that
4 question, please.

5 Q In November of 2010 when you
6 started taking classes, do you know what
7 classes you took?

8 A Yes.

9 Q What classes did you take?

10 A From memory, I'll have to think
11 about this a little bit. Business
12 information systems, business law -- give me
13 just a minute -- and some other management
14 class. I can't...

15 Q One other management class?

16 A Yeah. It was management
17 production operations, or something to that
18 effect. It was a management-driven aviation
19 class. The specific title of that class, I
20 can't remember, but the other two, because
21 they were hard, I remember. Business law and
22 business information systems.

23 Q Do you know what your grade was
24 in the business information systems class?

25 A Yes. I got an A in all three

1 D. Zarda

2 classes.

3 Q That's pretty good; right?

4 A I guess. I suppose it is.

5 Q Were you happy with your grades
6 in all three classes?

7 A I was happy and surprised.

8 Q You were surprised that you did
9 so well?

10 A I was surprised I made it, yes.

11 Q But you did?

12 A I did.

13 Q Do you take classes other than
14 in November of each year?

15 A Yes.

16 Q When is the next period of time
17 that you take classes?

18 A Following the eleven-week term
19 that begins on November 15, I take classes in
20 the next term.

21 Q When does the next term run
22 from?

23 A It runs from February 15 until
24 the first week of May. Terms start on the
25 15th of every month all year long, but if

1 D. Zarda

2 you're already in a term, obviously, you're
3 going to finish that term, and then start
4 another one, so that's how I do it.

5 Q If you started a class
6 November 15, you would have gone to school
7 from November through December through
8 January; correct?

9 A That's right.

10 Q Did you do anything between the
11 end of the November term and the beginning of
12 the February term?

13 A So what you're asking me is in
14 the little break there?

15 Q Yes. What did you do?

16 A I went on a cruise.

17 Q Where did you cruise to?

18 A That was a Caribbean cruise; one
19 that I had booked a year in advance.

20 Q Did you have fun on the cruise?

21 A It was very refreshing after
22 what I'd just been through, so yes, I had a
23 good time.

24 Q You know, I didn't even ask
25 before, and it was rude of me. Did you have

1 D. Zarda

2 a good time when you cruised from L.A. to
3 Mexico?

4 A It's a fun cruise, yes. I go on
5 it every year, you know, if it wasn't fun, I
6 wouldn't go on it.

7 Q You had fun when you cruised
8 from L.A. to Mexico; is that correct?

9 A I had fun on the cruise, yes.

10 Q You enjoyed the cruise?

11 A I did.

12 Q Was it refreshing, as well?

13 A It is. It takes me away from
14 these worldly problems and gives kind me of a
15 moment where I can be with some good friends
16 and good people and do some jumps and get
17 away from it.

18 Q How did you pay for the cruise
19 from L.A. to Mexico?

20 A Specifically, what payment
21 method or --

22 Q Where did you get the money to
23 pay for it?

24 A That would be an accounting
25 thing that I wouldn't be able to tell you

1 D. Zarda

2 exactly what account I paid the money from,
3 but I typically buy those cruises a year in
4 advance, so if it was 2010, I probably paid
5 for it somewhere in late 2010 or early 2011
6 on a credit card because you have to put a
7 deposit down.

8 I think for the 2010 one, I went
9 ahead and signed up on the ship before
10 getting off actually for that particular
11 year. Sometimes I do that. Sometimes I
12 don't. Sometimes they make you a deal if you
13 sign up on the ship before you disembark, so
14 it just depends on what the deal is. If it's
15 good, then I'll sign up.

16 Q Is it safe to say that one of
17 your hobbies is going on cruises?

18 A No, it isn't, because I wouldn't
19 define that as a hobby.

20 Q What would you define it as?

21 A Going on a cruise?

22 Q Yes.

23 A Social experience. Maybe a
24 short vacation. I wouldn't call it a hobby.

25 Q Is it your preferred social

1 D. Zarda

2 experience or a preferred social experience
3 for you?

4 A It's not my preferred, but it is
5 a social experience that I enjoy. I mean, I
6 have lots of social experiences I enjoy.
7 Jumping is certainly one of them, so it's one
8 of them. I enjoy it.

9 Q This cruise to the Caribbean in
10 that break between January and February,
11 where did that leave from?

12 A Fort Lauderdale, Florida.

13 Q Did you arrive early and stay
14 late again so you could jump?

15 A I didn't get that luxury on that
16 one. The terms, again, are compressed.
17 They're very difficult. They're eleven
18 weeks. I had three finals to take and a term
19 paper to write and prepare for this case, the
20 interrogatories and admissions that you
21 requested, all in that time frame, so there
22 was some -- I had a number of things going
23 on, so I wasn't able to book any previous
24 time for anything other than making it to the
25 cruise ship terminal one day in advance to

1 D. Zarda

2 get on the ship.

3 Q That February to May courses
4 that you took, how many courses did you take?

5 A I took a full-time course load
6 of two courses and two courses is full-time
7 because of the compressed nature of the
8 classes.

9 MR. ANTOLLINO: Can we take a
10 bathroom break?

11 MR. ZABELL: Once I'm finished
12 with this line of questioning.

13 MR. ANTOLLINO: Okay.

14 Q So the previous semester you
15 took three classes. This semester you took
16 two classes; correct?

17 A I took three, and that was
18 overkill, and I'd never done that before, so
19 two classes is full-time, and I'm sticking
20 with the two classes.

21 Q What two classes did you take?

22 A In the February one?

23 Q Yes.

24 A There were more aviation
25 management, 400-level courses, and again,

1 D. Zarda

2 without having it in front of me, one of them
3 was operations. They were so similar in the
4 title that particular term that I kept
5 getting them almost mixed up, but Management 420
6 and Management 424, I can tell you, if you
7 want to look up the course syllabus.

8 Q What kind of grades did you get
9 in those classes?

10 A I received an A.

11 Q In both of them?

12 A Yes.

13 MR. ZABELL: I think your
14 attorney wants to take a bathroom
15 break.

16 THE WITNESS: Sounds like a good
17 idea.

18 (Whereupon, a recess was taken
19 from 1:44 p.m. to 1:54 p.m.)

20 MR. ANTOLLINO: All right,
21 Mr. Zabell, since you've mentioned it
22 in the previous three depositions, I
23 just want to make sure that I put on
24 the record that my client would like to
25 review a copy of the transcript and

1 D. Zarda

2 have thirty days to return it to you
3 sworn and signed by the three.

4 MR. ZABELL: We'll make it
5 available for him to review.

6 Are we exchanging deposition
7 transcripts?

8 MR. ANTOLLINO: Let's talk about
9 it later. I tend not to proceed too
10 unreasonably, but I'd like to talk
11 about that later.

12 MR. ZABELL: Wait. You tend to
13 not to proceed unreasonably?

14 MR. ANTOLLINO: I tend not to
15 proceed unreasonably with most of my
16 adversaries, but I want to make a deal
17 with you, if you're asking me for
18 something.

19 This is wasting our time here
20 today, so let's finish with the
21 questions, and let's talk nicely after
22 the deposition about it; okay?

23 MR. ZABELL: I will endeavor to
24 talk nicely after the deposition with
25 you.

1 D. Zarda

2 Does that work for you, Mr. Zarda?

3 THE WITNESS: Yup, I'm good.

4 Q Before the break, we were
5 talking a little bit about why you were upset
6 with Mr. Maynard in that until you heard
7 Mr. Kengle's deposition testimony, you blamed
8 the complaint on Mr. Maynard; is that
9 correct?

10 MR. ANTOLLINO: Objection,
11 characterizes.

12 Q You many answer.

13 A I don't want to have you put
14 words in my mouth. Did I blame -- the only
15 information -- the only person I could hold
16 accountable for the accusation that was being
17 made to me at that time was Mr. Maynard,
18 because I didn't hear the customers complain
19 to me or my supervisor.

20 It wasn't written up on a piece
21 of paper for me to sign in the form of a
22 reprimand by Ray. There wasn't a statement,
23 letter, an e-mail, or anything generated by
24 the client for me to see that's tangible or a
25 recording or anything. This was just words

1 D. Zarda

2 from Ray's mouth that the customer said.
3 That's it.

4 Q Did you not believe Ray when he
5 relayed this information to you?

6 A It was hard to believe that
7 somebody could have said something like that,
8 so that led me to quite a few things. I was
9 angry myself because I thought it was so
10 ridiculous. I didn't understand it
11 completely, and so I didn't know what to make
12 of it. It was an unbelievable thing to hear,
13 so whether it was truth or not, to hear that,
14 it was an unbelievable thing to hear.

15 Whether that means Ray Maynard
16 was lying or not, that was a big question
17 mark that's been hanging over the whole
18 thing. What did the customer say; what did
19 they not say? Well, I think we found a
20 little bit of it out of what they said in
21 that deposition, so we know a little bit more
22 now about what was said, but for a long time,
23 I really wasn't sure whether Ray was flat-out
24 lying or exaggerated it or what.

25 Q Now that you heard Ms. Orelana

1 D. Zarda

2 and Mr. Kengle testify, do you think that Ray
3 made up what he relayed to you in that
4 meeting?

5 A I'm still not sure how I feel
6 about the truth of the testimony that was
7 given because so much time has passed.
8 There's been opportunities for the customer
9 and Ray to speak. There has been
10 opportunities for them to have their stories
11 corroborate, so I'm not sure that I'm
12 convinced as to the truthfulness of that
13 testimony that was given.

14 Q So now you doubt the
15 truthfulness of Ms. Orelana and Mr. Kengle?

16 A I doubt the truthfulness of the
17 whole thing. I know they made a complaint.
18 Whether it was genuine or not is probably
19 what's most in doubt.

20 Q Do you know why they would
21 fabricate a complaint against you?

22 A It could be for a number of
23 reasons. It could be -- do you want me to go
24 through some of the reasons that I think it
25 might be?

1 D. Zarda

2 Q Please.

3 A It could be just that Mr. Kengle
4 is insecure and maybe his insecurity led him
5 to say things and behave and act in a manner
6 that an otherwise normal person would not in
7 that situation. That's one reason. Another
8 reason could be, and I brought this up in the
9 termination to Mr. Maynard, maybe they were
10 just looking for a free jump, and they ended
11 up getting one, so that was stricken down
12 quite abruptly by Mr. Maynard as even a
13 possibility, so that could have been a
14 motivation. I don't know, beyond those two
15 things, what the motivations might have been.

16 Q Do you know what Mr. Maynard's
17 motivation may have been for terminating you?

18 A What his motivation may have
19 been? Be a little more specific on
20 terminating me in relation to me touching the
21 girl inappropriately, please.

22 Q Do you know what Mr. Maynard's
23 motivation was for terminating you in or
24 about July of 2010?

25 A All I know is what he said, so I

1 D. Zarda

2 can only attest to his motivations being
3 associated with what he said, so I can't
4 superimpose anything on Mr. Maynard's thought
5 processes, because they're rather abstract at
6 times, and they don't always make sense.

7 Q So you think he terminated you
8 for the reasons he told you he terminated
9 you; is that correct?

10 A Sounds like that's what I'm
11 saying.

12 Q What were those reasons again?

13 A Well, because I'm gay and that I
14 brought that up, or it was mentioned before
15 the customers and they were offended by it,
16 and that that was inappropriate and for
17 touching my female passenger in a way that
18 made her feel uncomfortable at the hips.

19 Q Both of those things actually
20 occurred on the jump; is that correct?

21 MR. ANTOLLINO: Objection.

22 A No. Let's be more specific when
23 you say this occurred.

24 Q As part of the jump, you had to
25 touch the customer in the hip area; is that

1 D. Zarda

2 correct?

3 A As part of the jump, yes, you do
4 have to touch the customer in the area of the
5 hips, but you don't have to touch them
6 inappropriately.

7 Q And you sensed that the client,
8 Ms. Orelana, was uncomfortable when you were
9 touching her in the hips; is that correct?

10 A No, that's not correct. I did
11 not sense that she was uncomfortable when she
12 was being touched around the hips. I just
13 sensed at some point, that she was
14 uncomfortable.

15 Q In an effort to allay her
16 discomfort, you revealed your sexual
17 orientation; is that correct?

18 A I believe that to be correct;
19 yes.

20 Q So those things happened during
21 the jump that you had to touch her hips, that
22 she felt discomfort, and that you revealed to
23 her your sexual orientation. Those three
24 things happened, and they may have happened
25 abstractly, but they happened over the course

1 D. Zarda

2 of her jump experience; is that correct?

3 MR. ANTOLLINO: Objection to
4 form.

5 A The way the question -- I think
6 it was a multiple question. The way it was
7 asked to me had different parts, so I broke
8 it down to make sure that they don't get
9 confused or inflated.

10 Q Let me break it down again.

11 A Okay, break it back down.

12 Q During the jump with Ms. Orelana,
13 at some point, you put your hands on her
14 hips; is that correct?

15 A I would put my hands in the
16 location around the hips that's necessary to
17 be able to perform the functions that I am
18 required to do as a tandem instructor.

19 Q And at some point, you sensed
20 that Ms. Orelana was uncomfortable; is that
21 correct?

22 A At some point, I sensed that she
23 was uncomfortable, but I can't say it was
24 because I was putting my hands anywhere near
25 her hips, so those two things are too close

1 D. Zarda

2 to each other in that question, and I'm
3 making sure that those thoughts are separate
4 so that they don't get inflated. I did not
5 sense that she was uncomfortable, because I
6 was putting my hands close to her hips.

7 Q But you don't recall when you
8 sensed that she was uncomfortable; correct?

9 A That's not correct either. We
10 haven't gotten to discuss much about what
11 happened in the airplane, so we haven't
12 talked about that. I believe that she became
13 uncomfortable around the time when I
14 mentioned something about my sexuality, and
15 so how close that was to the point when I
16 have to touch around her hips, I don't know,
17 because touching around the hips can take
18 place from the time that we sit down on the
19 benches from when we get in the airplane,
20 through the airplane ride, up to altitude,
21 through the hookup process, through sliding
22 down the benches to the door and out the
23 door, so that encompasses a time period of
24 fifteen to twenty minutes.

25 Q You know you testified before

1 D. Zarda

2 that you only disclosed your sexuality in an
3 effort to allay her discomfort; right?

4 A I think that's what I said
5 earlier.

6 Q So the discomfort came first,
7 and then the discussion about your sexuality
8 came second; correct?

9 A Sounds that way, yes.

10 Q Not the other way around?

11 A The other way around would have
12 been -- tell me what the other way around
13 would have been.

14 Q The other way around would have
15 been what you just testified; that first you
16 discussed your sexuality, and then she became
17 uncomfortable.

18 A Then she became uncomfortable.
19 That would be --

20 Q It didn't happen that way;
21 right?

22 A No, I don't think so. I'm not
23 real sure what the order of her discomfort
24 was. What I'm saying is this -- let me make
25 this clear. I don't think that her

1 D. Zarda

2 discomfort came from me touching her around
3 the hips.

4 Q Even though that's what she
5 testified to; correct?

6 A I don't think that's exactly
7 what she was saying that day in her
8 testimony. I think her boyfriend was the one
9 that was really saying that.

10 Q But the one thing that you are
11 sure about is that, first, the discomfort
12 came, and then came the conversation about
13 your sexual orientation; correct?

14 A First the discomfort came, and
15 then I brought that up to allay her
16 discomfort. Sounds like it.

17 Q That February to May group of
18 classes, aviation management and one of the
19 operations classes, you got As in those, as
20 well; correct?

21 A I did.

22 Q What was the next set of classes
23 you took?

24 A Well, that brings us to this
25 term, I believe.

1 D. Zarda

2 Q So from May --

3 A No, wait a minute. Let's see.
4 We're talking -- yeah, this term because it's
5 2011, so yeah, that brings us to this term.

6 Q What did you do from May of 2011
7 to this current term, the November 15, 2011,
8 term; what did you do?

9 A I did a lot of the things.

10 Q A couple of cruises?

11 A No, no cruises. Well, I just
12 went on a cruise, so...

13 Q Stop lying to me, sir.

14 A No, I cannot lie.

15 Q Now, you know that I said that
16 as a joke.

17 A Oh great. I'll take it as a
18 joke.

19 Q Okay. I see you're starting to
20 warm up to me. It's okay.

21 A No, I'm just --

22 MR. ANTOLLINO: I told him not
23 to, but go ahead.

24 MR. ZABELL: He clearly has. I
25 would imagine that that's the case.

1 D. Zarda

2 MR. ANTOLLINO: He warms up to
3 everyone, actually.

4 MR. ZABELL: I'm not really a
5 bad guy. Just Mr. Antollino doesn't
6 care for me all that much.

7 THE WITNESS: I don't think
8 anybody said you're a bad guy.

9 MR. ZABELL: I would hazard to
10 guess that Mr. Antollino, if he hasn't
11 said it, he certainly thought it.

12 THE WITNESS: Maybe.

13 A So when classes ended in May of
14 this year, I had plans made to go on a trip
15 overseas.

16 Q You had plans?

17 A I had made plans, and then I
18 executed those plans.

19 Q With precision?

20 A I wouldn't say it was with
21 precision, but I would say it was kind of a
22 sloppy buildup to it, but we had some
23 roadblocks along the way.

24 Q Where did you go?

25 A I went to Norway.

1 D. Zarda

2 Q Did you have fun?

3 A I had fun, yes.

4 Q Any chance you met your attorney
5 overseas?

6 A No, I did not.

7 MR. ANTOLLINO: I would have
8 liked it to have, but it didn't work
9 out that way.

10 MR. ZABELL: Well, I know you
11 had told me on several occasions that
12 you were out of the country.

13 MR. ANTOLLINO: Yes, we were in
14 different parts of Europe.

15 Q How long were you in Norway for?

16 A It ended up turning into two
17 months.

18 Q Two months. Now, I have to say
19 that the way you're saying that it turned out
20 to be a little over two months, you had a
21 very guilty look on your face, so that's
22 causing me to ask --

23 A Guilt is a relative term.

24 Q -- what's that?

25 A It's a relative term.

1 D. Zarda

2 Q Guilt is?

3 A That's a relative, relative
4 term.

5 Q Tell me what you did for the two
6 months, and why you're smiling when you're
7 talking about it.

8 A The reason I'm smiling when I
9 talk about it is because it was a very good
10 trip. I had a great time that allowed me to
11 get away from the horrible winter that I had
12 which was dealing with this case and the
13 classes and other things that were going on
14 that were difficult, and it was an
15 unbelievable breath of fresh air, a nice
16 place.

17 Q I've got to stop you. You said
18 some other things that were going on this
19 winter?

20 A Just minor stuff.

21 Q I'm going to need to know what
22 they are; you know that, right?

23 A Okay, go ahead. Ask me.

24 Q What were those some other
25 things that you just referenced?

1 D. Zarda

2 A My partner, his father died over
3 the holidays, so that was tough. That just
4 added on to all this other stuff. I was out
5 there living on an airport, going to classes,
6 and we had an unusual run of bad weather and
7 a lot of the snow, and it's very rural. I
8 literally got in a situation where I was
9 snowed in to my house, and I couldn't even go
10 get food several times, and I didn't have
11 some water for part of time because
12 everything froze up.

13 Just when you add all that
14 together with classes, trying to deal with
15 this situation --

16 Q "This situation" being the
17 lawsuit?

18 A -- the lawsuit, getting these
19 interrogatories and these demands met that
20 were needed for this, my partner needing, you
21 know, strength from me for his loss. It was
22 a lot in a short amount of time.

23 The class load alone. I took
24 nine hours. That's a very heavy load for an
25 eleven-week term. They're compressed. Six

1 D. Zarda

2 hours is considered full-time, twelve hours
3 is maximum. They don't even let you take
4 more than twelve, so that just gives you an
5 idea of what kind of class load it is with
6 this university, and it's a leading
7 university, and they don't mess around.

8 Q How did you do on your classes,
9 by the way?

10 A I did good. I struggled. It
11 was very hard. It took a lot out of me, but
12 I did okay.

13 Q You got As on them; right?

14 A I did.

15 Q Prior to 2009, how were your
16 grades?

17 A They were the same.

18 Q All As?

19 A I've been getting good grades.
20 I wouldn't say all As. I think I got a
21 couple of Bs in there somewhere, but mostly
22 As.

23 Q Is it safe to say that after
24 July of 2010, you've only gotten As in your
25 coursework?

1 D. Zarda

2 A I think so.

3 Q You finished that February to
4 May class, May, your classes end; you have a
5 scheduled trip to Norway?

6 A Yes.

7 Q Two fabulous months of Norway?

8 A They were good moments.

9 Q Any bad moments?

10 A During that time?

11 Q Yes.

12 A Couple fatalities. Some people
13 injured. I mean, you got to take the good
14 with the bad. You know, it's not good when
15 you meet people on a trip where you're having
16 a good time and they end up dead. That's
17 not, you know, a great thing.

18 Q Some of the people that you went
19 on the trip with ended up dead?

20 A People that I met.

21 Q How did they die?

22 A Within the activities I was
23 participating in.

24 Q May I inquire?

25 A Yes, BASE jumping.

1 D. Zarda

2 Q You were actually BASE jumping,
3 and on a BASE jump, somebody died?

4 A Yes.

5 Q And you were there?

6 A I was in the area.

7 Q That must have been devastating.

8 A Yeah, that sucks when that
9 happens; without a doubt. We don't like that
10 to happen, but it does happen. I've been
11 jumping for almost twenty years, so you kind
12 of get a little used to some of that stuff
13 happening, but it's never pleasant when that
14 happens.

15 Q How many fatalities were there?

16 A During my trip, there were two
17 that I knew. As far as total, I don't know.
18 For the summer, I don't know.

19 Q That must have weighed heavily
20 on you?

21 A We don't like it, but it's part
22 of the nature of the activity that people
23 accept, like it or not, and it's something
24 that happens. It's just part of the reality
25 of it, and you deal with it, and you go on.

1 D. Zarda

2 It's kind of like dealing with losing a pet.

3 Q Kind of like Disney's Circle of
4 Life?

5 A I'm not familiar with that.

6 Q No?

7 A I'm not a big Disney follower.

8 Q Any reason why?

9 A As far as mainstream sports,
10 things like that, along with ball games, I'm
11 not into that, TV programs, and the main
12 reason is that I don't have time in my life
13 for much else. Cannot connect with much
14 mainstream things. It's a time thing.

15 Q The two fatalities, were they
16 people you actually knew?

17 A They were.

18 Q People you had conversations
19 with?

20 A Yes.

21 Q People you shared a meal with?

22 A Yes.

23 Q People you shook hands with?

24 A Yes.

25 Q You were actually physically

1 D. Zarda

2 present when both of the fatalities occurred?

3 A When the first one occurred,
4 that person had gone down to another place to
5 jump and had his fatality there, and the
6 second one occurred just around the corner at
7 another exit point from the exit point that I
8 was jumping from.

9 Q And there were other injuries
10 besides the fatalities?

11 A There were.

12 Q How many other injuries?

13 A You know, I don't have a
14 specific number. Injuries, they come and go.
15 I mean, they range from minor to major, and
16 anything in between. There were some
17 injuries. Some people got hurt and had their
18 trips shortened or delayed or had to take a
19 break or had to cut short.

20 Q Over this two-month period, did
21 you see a grief counselor?

22 A No.

23 Q You came back from overseas in
24 June or July of this year?

25 A No, I did not. I came back

1 D. Zarda

2 around the end of August.

3 Q August. So you went from --

4 A June to August.

5 Q Okay. Where did you return to
6 in August?

7 A Let me think. Oh, that's easy.
8 Dallas.

9 Q How is Dallas?

10 A Then, it was freaking hot.

11 Q How were the stars at night?

12 A Well, it's pretty polluted down
13 there and lit.

14 Q Not big and bright?

15 A No, not there.

16 Q What did you do in Dallas in
17 August of 2011?

18 A Well, for one, I was very hot
19 because it was 110 degrees, and I was not
20 adjusted or accustomed to that type of
21 weather change, so it took me just a little
22 bit -- you know, a week to get myself
23 acclimated because it was really hot. It was
24 one of the hottest summers on record with
25 more than ninety days of over 100-degree days

1 D. Zarda

2 in a row.

3 Fortunately, I was overseas
4 during much of that, but having returned from
5 being in Norway where it's just the polar
6 opposite of that, it was hot, so I went back
7 to Dallas in August to be with my partner, my
8 ex-husband for a moment.

9 Q What is your ex-husband's name?

10 A William Moore, M-O-O-R-E.

11 Q Therein, is the family name
12 for --

13 A Little Cat.

14 Q -- Little Cat Moore?

15 A Right.

16 Q You said ex-husband?

17 A Yes.

18 Q When were you married to
19 William Moore?

20 A As you may be familiar, gay
21 marriage is not legally recognized in most
22 parts of the country, so the term "married"
23 and use of the word "husband" and so forth
24 are, in the gay community, sort of used
25 interchangeably, even though they don't carry

1 D. Zarda

2 the legal status.

3 Q When did you begin the period of
4 your relationship with William Moore wherein
5 you referred to each other as husbands?

6 A Well, we met in September of
7 2000, September 8, 2000, in Dallas, Texas,
8 and so we were together for quite a few
9 years, and we started a business together and
10 so forth.

11 Q Right. But my questions is --

12 A When did we consider ourselves
13 married?

14 Q Yes.

15 A I'd almost have to ask Bill.

16 Q Why; did you not consider
17 yourself married during a period of time
18 where he did?

19 A Probably within two or three
20 years of our relationship because we acquired
21 things together and had significant trips and
22 things like that together.

23 Q When was that; what year was
24 that?

25 A I'm going to say in the

1 D. Zarda

2 neighborhood of 2002, 2003. I think that
3 would probably be about the right time.

4 Q Did you live together during
5 that period of time?

6 A Yes, we did.

7 Q From when to when?

8 A I've always maintained my home
9 of record at the location I mentioned
10 earlier, and I still have, but we lived off
11 and on together from shortly after we met in
12 late 2000, off and on through 2003, and
13 then -- there's been an awful lot -- and then
14 from 2005 to 2007, and then we've been mostly
15 separated most of the time from late 2007
16 through now.

17 Q You referred to him as your
18 ex-husband.

19 At what point did you consider
20 him to be your ex-husband?

21 A I think we both technically
22 would say as of late 2007.

23 Q How is your relationship with
24 him now?

25 A Complicated.

1 D. Zarda

2 Q Is that a fancy way of saying
3 sometimes good; sometimes bad?

4 A I think the word "complicated"
5 is the best choice for describing it.

6 Q At times, does he cause you
7 aggravation?

8 A Yes.

9 Q And at times, do you cause him
10 aggravation?

11 A Yes.

12 Q But it's always his fault;
13 right?

14 A Well --

15 Q I said that as a joke. You
16 don't have to answer that.

17 A I don't want to get myself in
18 any more trouble.

19 Q You know that I'm going to show
20 him this transcript immediately, so...

21 I'm not. I'm kidding you.

22 A I hope so. It is what it is.

23 Q Not unlike how Ray Maynard's
24 relationship was with his ex-wife; correct?

25 A I've only heard hearsay and

1 D. Zarda

2 rumors about it, but it sounded pretty
3 treacherous by some of the things I heard
4 floating around.

5 Q Well, you actually had an
6 opportunity to speak to Ray about it; didn't
7 you?

8 A Well, Ray actually had an
9 opportunity to speak with me about it, or at
10 least speak about it in my presence.

11 Q And you had the chance to speak
12 to Ray Maynard's ex-wife, as well; correct?

13 A I did, yeah.

14 Q Would you characterize their
15 relationship anything other than complicated,
16 as well?

17 A I have no way to be able to
18 answer that because I don't know the nature
19 of their relationship beyond that. They had
20 been together a number of years and that they
21 were getting a divorce and that Ray had left
22 her shortly before he terminated me.

23 Q I'm sure that you'll agree that
24 when relationships are breaking up, people
25 are never at their best.

1 D. Zarda

2 A Probably is true. That's
3 probably true.

4 Q When you came back in August of
5 2011, you went and spent some time with your
6 ex-husband; correct?

7 A That's right.

8 Q How much time did you spend with
9 your ex-husband?

10 A I'm going to say -- let me just
11 think because I've been pretty busy. What
12 did I do? The next few weeks.

13 Q From August 2011 to September of
14 2011?

15 A Until towards the end of
16 September, yeah. We're looking at four to
17 five weeks.

18 Q How was his air conditioning?

19 A Good.

20 Q Helpful?

21 A Needed.

22 Q What did you do for that four or
23 five weeks?

24 A Reflected on a great trip, for
25 one.

1 D. Zarda

2 Q Did you work?

3 A I did some work for the company
4 that we are involved in together that needed
5 to be done with the computers and with our IT
6 infrastructure that we have in place, and so
7 I worked on some of that and began to prepare
8 for getting ready to enroll in some of these
9 classes that I'm in now.

10 Q Did you look for any work, other
11 than working for that company, during that
12 four or five weeks?

13 A No, I didn't look for any, so I
14 did some tandems, you know, a couple of
15 weekends at a drop center in Texas, which is
16 another drop zone that I worked at part-time.
17 I did do some of those.

18 Q From October to November 15, you
19 just cut the lawn and got yourself ready to
20 go to classes; is that correct?

21 A No, that's not correct this
22 year. That was the routine the previous two
23 years. This year, I've yet to make it back
24 to Missouri, so the grass is about two feet
25 high, and if you'd like to come cut it, fly

1 D. Zarda

2 out there, and cut it for me. I'd appreciate
3 it because I haven't been able to get anybody
4 to do that yet.

5 Q I think it's down, but okay.

6 A It's laid over, but it's pretty
7 tall.

8 Q I wouldn't be flying up to
9 Missouri; I'd be flying down, but we'll let
10 that go.

11 A Yeah, I guess you're right.
12 It's actually across, but we'll let that go.

13 So no, I haven't been back to
14 the airport yet since I left in June and here
15 we are, it's December.

16 Q How are you taking your classes?

17 A Online.

18 Q Where are you residing now?

19 A I am in Dallas.

20 Q Why did you not go from Dallas
21 to Missouri?

22 A Literally because I just could
23 not work it in timewise between doing what I
24 was doing there, getting caught up from the
25 summer, coming up here for the depositions

1 D. Zarda

2 that we had in November, which was right
3 before school just started, and all those
4 things. I mean, just simply didn't have time
5 to make it happen.

6 Q Where are you living in Texas
7 now?

8 A I'm staying at the office.

9 Q The office where you run your
10 business?

11 A There is an apartment attached
12 to it, and I'm sleeping upstairs currently.

13 Q You keep referencing how this
14 case is causing you stress.

15 A Sure.

16 Q Is that correct?

17 A Yes.

18 Q That's the stress of responding
19 to interrogatories and document demands and
20 admissions?

21 A Well, last winter when that was
22 going on, it was just a lot of administrative
23 stuff. Obviously, you requested a lot of
24 things to try to come up with in a short
25 amount of time, and simultaneously taking an

1 D. Zarda

2 extra heavy load of classes, so yeah, that
3 created quite a bit of stress, just to get
4 all that together. That was quite a bit of
5 information, a lot of things to think about.

6 At the same time, I was trying
7 to do these classes, and you can really only
8 focus on one or the other. You can't be
9 doing homework at the same time as you're
10 doing that, so that created a lot of stress.

11 Q You're doing all right with it
12 now?

13 A With the case, or with the
14 stress?

15 Q The stress.

16 A This case and this situation and
17 what happened has -- no, I'm not doing okay
18 with it.

19 Q Let's take this in a couple of
20 different directions.

21 A Okay.

22 Q Let's talk about the stress
23 involved in preparing for this case.

24 A Okay.

25 Q Are you doing okay with that

1 D. Zarda

2 now?

3 A Better, better.

4 Q The fact that now you know that
5 someone actually complained to Ray about your
6 conduct, did that add more stress or detract
7 from the stress?

8 A I think that now that I'm being
9 able to learn some of the things and get some
10 information. I think some of the truth is
11 starting to come out more and more, so it's
12 making me feel a little better about what
13 happened. For me, from my perspective,
14 there's not as much of a big question mark as
15 to who said what, when, and who's going to
16 say what, when, so I think that now that
17 things are getting documented, testimony is
18 being given, and we're finding things out,
19 I'm starting to feel a little better about
20 it.

21 Q What things did you find out
22 that you're feeling better about?

23 A Specifically about the testimony
24 or -- why don't you break that down a little
25 bit?

1 D. Zarda

2 Q You said that now that things
3 are coming out, I'm starting to feel a little
4 better about it.

5 A Right.

6 Q So what things are coming out
7 that you're now feeling better about?

8 A As I said, when Ray suspended me
9 and when he fired me, there was no
10 documentation. There were no letters of
11 reprimand that I signed or offered or any of
12 that kind of thing, so that everything that I
13 was told about the incident came from Ray, so
14 we established that.

15 So he was the only source, and
16 his motives, to me, were not pure and unclear
17 and uncertain, so I had nothing else to go
18 on, other than what Ray said and what was Ray
19 thinking, and, you know, did he lie, did he
20 exaggerate, you know, all these things.

21 So now that Ms. Orelana and
22 Mr. Kengle have testified, it's helped to
23 refresh me about the jump. I've been
24 actually able to see the videos for the first
25 time that I asked to see when Ray suspended

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2 me, and he denied me access, and he had the
3 ability to let me see those videos right then
4 and there when he suspended me. We could
5 have done it. It could have happened and he
6 refused. He said it was irrelevant, and I
7 could have looked at it right then, so I
8 finally got to see that and see that the jump
9 was routine, the customers were happy, it
10 looks in the video, and there wasn't any
11 crazy thing hanging out there that I didn't
12 know about to be hidden from me, so stuff
13 like that makes me feel a little better.

14 And then also finding out from
15 both the customers' testimony, and they're in
16 complete agreement, that somebody else in the
17 airplane cracked a joke that could be deemed
18 inappropriate, and it wasn't me, causing me
19 to react the way I reacted with what I said.
20 So I feel vindicated some. It's actually a
21 little bit of a relief.

22 Q What is it that was said that
23 caused you to say something?

24 A Well, what they said was -- if
25 you recall, the boyfriend, Mr. Kengle, was

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2 bringing Ms. Orelana out to Skydive Long
3 Island to make a tandem jump for her
4 birthday. I think we agree on that. I think
5 even Ray agrees with that. That was the
6 circumstance, and I was taking Ms. Orelana on
7 her tandem and that the joke was to the
8 boyfriend that somebody else made, which was
9 Mr. Kengle, he's the boyfriend, how do you
10 feel about your girlfriend being strapped to
11 another man or another guy? It was either
12 man or guy, same thing.

13 So that was the joke that was
14 made, and they're a young couple, so that's
15 the not first time that joke has been used.
16 It's a golden oldie. It's been used several
17 times before, you know, at many drop zones.
18 It's a pretty routine, boring joke for us.

19 Q Is that a gay joke?

20 A That, itself, is not a gay joke,
21 but if everybody is okay with it, then it's
22 not even inappropriate, but apparently in
23 this case, Mr. Kengle is not okay with it or
24 maybe Ms. Orelana, or maybe neither one of
25 them were okay with it.

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2 I think, if I recall in their
3 testimony, they were saying, well, we're
4 young, we can take a joke, and they were okay
5 with that joke, but me saying something like,
6 don't worry, I'm gay, they were okay with
7 that, and I think they said that. That has
8 to make me kind of scratch my head a little
9 bit, so I'm being put in this situation where
10 I have sort of in my possession, because I'm
11 taking this girl on a tandem jump, and I'm
12 strapping her body to my body in an intimate
13 situation.

14 I have her and I have her
15 boyfriend sitting right over here
16 (indicating) with somebody else cracking a
17 joke about me strapping his girlfriend to my
18 body, and so I was not comfortable with that.

19 Q Couldn't you have just said,
20 don't worry, they're being silly?

21 MR. ANTOLLINO: Objection. You
22 can answer.

23 A You can speculate all the
24 different things that a person could say, but
25 I could have said nothing, or I could have

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2 said anything, so I said what I felt was the
3 best thing to say, at the time, for me and
4 for her and for him.

5 Q And in hindsight, was that the
6 best thing to say?

7 MR. ANTOLLINO: Objection. Go
8 ahead.

9 A In hindsight, if it were a
10 perfect world, then I suppose nobody could
11 make any jokes about anything because
12 somebody might get offended or be upset by
13 it.

14 So your questions was, in
15 hindsight, would I say it again; is that what
16 you're asking me?

17 Q Sure. Knowing what you know
18 now.

19 A About their complaint?

20 Q Yes.

21 A If I knew -- I don't think there
22 would be any way to know that the boyfriend
23 would get upset by that or that they would be
24 anti-gay or offended by gay remarks, you
25 know. There would be no way to know that, so

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2 I can't say. I can say this about it: I've
3 used that comment before in situations just
4 like that over the years to sort of resolve
5 or calm a situation, and it's worked for me,
6 and it's taken me out of the hot seat. It's
7 made me feel more comfortable to be able to
8 say, in that situation where I got somebody
9 else's girlfriend, I'm strapping them to my
10 body and somebody says something like that,
11 don't worry about me, I'm gay, I have an
12 ex-husband for proof, don't worry, to disarm
13 the situation, so if he hears me say that, he
14 can know, okay, he's not going to hit on my
15 girlfriend. He's gay anyway. So I don't
16 think I would change it.

17 Q So, wait a minute. Are you
18 saying that Mr. Kengle didn't know you were
19 gay before that joke was made?

20 MR. ANTOLLINO: Objection.

21 A Just re-ask that. Rephrase that
22 a little bit.

23 Q Did you know if Mr. Kengle knew
24 you were gay before you told his girlfriend
25 you were gay?

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2 MR. ANTOLLINO: Objection.

3 A Definitely, I have no way to
4 know if he knew. He didn't tell me he knew,
5 so he's sitting over here (indicating). We
6 all met in an instant, in a flash. It's just
7 like normal kind of like a conveyer belt. I
8 don't know.

9 Q It seems to me like maybe you
10 were being accused of being straight as
11 opposed to being gay.

12 A Nobody accused me when that joke
13 was made. Maybe people had assumptions. The
14 staff certainly knows I'm gay, so I don't
15 know if it has anything to do with who
16 cracked that joke, you know, cracking the
17 joke and trying to get a response for fun out
18 of all of us, because, generally, when that
19 joke is made, it is to get a response from
20 the customers in a fun way and not to make
21 anybody upset, and generally, people laugh
22 that off, oh, yeah, ha, ha, ha. Don't worry,
23 she comes home to me, you know. A lot of
24 times you'll hear the customer say that. I'm
25 her only man, or just stuff like that.

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2 Q Now, did you --

3 A That's the normal response.

4 People don't normally get upset.

5 Q In July of 2010, did you ask
6 Rich to intercede on your behalf and try and
7 convince Ray not to terminate you?

8 MR. ANTOLLINO: I believe it was
9 June.

10 A It was the end of June of 2010,
11 yes.

12 Q And why?

13 A Why did I ask Rich,
14 specifically?

15 Q Yes.

16 A Well, Rich is the person that
17 just a few minutes after Ray suspended me
18 that I went to with, as I've said earlier,
19 with the problem.

20 Q Were you asking him that because
21 you enjoyed working at Skydive Long Island?

22 A No, not specifically, no. I
23 wasn't asking him for that reason. I sought
24 his counsel immediately because I was upset.
25 That's the first thing when it happened, and

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2 I thought him knowing Ray for so long, him
3 being the chief instructor there and so
4 forth, his position there, he should know
5 about it, and so I went to make him aware of
6 what just happened, and he offered to, in
7 that conversation, to advocate on my behalf,
8 to talk to Ray and reason with Ray and calm
9 Ray down, and he told me Ray was on a
10 tangent, just let him calm down.

11 This is what Rich said he didn't
12 remember yesterday. Rich didn't remember
13 that conversation very well. I remember it
14 better than he does. Rich probably hasn't
15 thought about it that much anymore. I
16 obviously have, but Rich told me to go on
17 home, let me talk to Ray, and I'll get back
18 with you.

19 Q But in 2010, you wanted to
20 continue to work at Skydive Long Island;
21 correct?

22 A After the suspension, is that
23 what you're asking?

24 Q Yes.

25 A Yes, yes. I didn't want to lose

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2 any job. I didn't even want to lose that
3 week. I didn't want to lose a day.

4 Q In 2010, did you enjoy working
5 at Skydive Long Island?

6 A Up until that point.

7 Q What was it about that job that
8 you liked working, that you liked; what was
9 about it?

10 A There was a lot of things I
11 liked about it.

12 Q Did you like the people you
13 worked with?

14 A I liked the people I worked
15 with.

16 Q Did you like the work
17 environment?

18 A The work environment could be
19 better, but it could be worse. Work
20 environments at skydiving centers vary
21 widely, so none of them are perfect, but the
22 work environment, they all have areas where
23 they are dysfunctional. The work environment
24 was okay. I liked being able to make good
25 money.

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2 As you probably can see, the
3 instructors make pretty good money in that
4 short amount of time to work there, so that's
5 a good thing. I like the fringe benefits of
6 having being able to come to New York for a
7 season and be with friends that I have up
8 here and be able to go do things with friends
9 I have in New York, friends that I've met on
10 some of these trips. That, itself, was a
11 little bit of a driver to making me want to
12 come up here, and I made some relationships
13 with some friends, so it's like, hey, I think
14 I'll be working in Long Island next year, you
15 know, great. We're going to have a great
16 time, and so, yeah.

17 Q Could you tell me where you've
18 applied for skydiving work since being
19 terminated in June of 2010?

20 A Well, the first place I applied
21 was directly or pretty soon after Ray
22 terminated me was the one we mentioned
23 earlier, Chicagoland Skydiving in Hinckley,
24 Illinois.

25 Q Do you know why you didn't get

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2 the job there?

3 A Yes.

4 Q Why didn't you get the job
5 there?

6 A I didn't get the job there,
7 because the owner found out or was told by
8 somebody that I was suing Skydive Long
9 Island, and he felt I would be too much of a
10 liability for him to take on because of that.
11 And those are not exact quotations, but
12 that's what he said in an e-mail that he sent
13 to me which, I believe, has been forwarded on
14 to you and Ray.

15 Q Do you know if he found out
16 about it because your lawyer had press
17 releases made of the lawsuit?

18 A I know --

19 MR. ANTOLLINO: Objection.

20 Q You may answer.

21 MR. ANTOLLINO: Objection to the
22 characterization.

23 A I can say that that was
24 impossible because when he denied me that
25 employment, that was like two months before

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2 any legal action was taken.

3 Q Are you sure of that?

4 A I'm sure of that, because I
5 answered an ad for work at his drop zone in
6 July of 2010, and he denied me employment
7 right then, and no legal action had been
8 taken against Skydive Long Island or Ray at
9 that point.

10 When I finally got to talk to
11 Mr. Smith face-to-face, like I think I
12 mentioned I was going to do to him on the
13 phone at some point, he corroborated part of
14 that.

15 Q Did you ask him how he found out
16 about the lawsuit?

17 A I did ask him how -- or no, he
18 didn't tell me how he found out about the
19 lawsuit. I asked him when we were talking
20 face-to-face, I said, who told you that I had
21 filed a lawsuit against Skydive Long Island?
22 And he said that he had sources that he
23 wasn't willing to reveal, and I said that the
24 reason I'm asking you is because at that time
25 that you sent me that e-mail, I hadn't taken

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2 any legal action whatsoever, so basically,
3 what I was telling him is that somebody is
4 talking shit on me, and I'm pissed off.

5 Q Did you ever find out who was
6 talking that shit on you?

7 A I did not find out. I pressed
8 Mr. Smith, as far as I felt was gentlemanly,
9 and he wasn't willing to offer the source.
10 He just said he had sources, and apparently,
11 his sources were incorrect. For one, because
12 of the timing, and I don't know, you know,
13 how they're related to Ray or Ray's drop zone
14 or anybody that knows anything about what
15 happened.

16 All I can say is that I applied
17 because of what happened at Skydive Long
18 Island. I didn't get the job, and it was a
19 major drop zone, a major skydiving center,
20 and that upset me very much.

21 Q Where else did you apply for
22 work?

23 A I didn't directly apply, but I
24 went and had a meeting with the owner of Long
25 Island Skydiving Center, which is Ray's

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2 competitor on Long Island, and that guy's
3 name was Brian Erler. Don't quote me on it.
4 He's the only owner. I can't remember the
5 guy's name. I just can't remember.

6 Q When did you speak to him?

7 A I spoke to him probably around
8 that same time.

9 Q Around July of 2010?

10 A Around the end of July.

11 Q The end of July?

12 A Yeah. Because it was around the
13 third week of July, I think, if we look in
14 the e-mail from Doug Smith where we were
15 going back and forth talking about me working
16 for him. I think it was around maybe the
17 third week of July when he said no. It was
18 after that I think I talked to Long Island
19 Skydiving Center, and I drove out there in my
20 truck and sat down and discussed the matter
21 in detail with the owner of Long Island
22 Skydiving Center.

23 Q What matter did you discuss?

24 A I told him everything that we've
25 discussed right here today. I told him about

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2 me being complained about. I told him about
3 the accusations. I told him about the gay --
4 what Ray did to me. I told him about the
5 Chicagoland thing. I mean, I just told him
6 the whole thing.

7 Q What did Ray do to you?

8 A Ray fired me for being gay. He
9 accused me of something I didn't do. He
10 stole money from me and then gave it back.
11 He humiliated me in the skydiving community.
12 I'm trying to -- maybe the list of what Ray
13 didn't do to me might actually be shorter. I
14 have to think about it. He did a lot of
15 things.

16 Q You were fired not for being
17 gay; you were fired because there were
18 customer complaints about you; correct?

19 MR. ANTOLLINO: Objection.

20 A I disagree. I said that I think
21 it's a -- it's not -- you know, people don't
22 always get fired for just one thing. It
23 could be a culmination of things. I think
24 this was a culmination of all these things
25 we've discussed.

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2 Q This wasn't the first time you
3 were fired by Ray; was it?

4 A It wasn't.

5 Q And you were fired the first
6 time because of an apparently inappropriate
7 interaction between yourself and a customer;
8 correct?

9 MR. ANTOLLINO: Objection.

10 A I won't say that was
11 inappropriate interaction. I'd say that it
12 sounds like to me that the customer wasn't
13 satisfied, for whatever reason, in that
14 incident that was ten years ago, but I'm not
15 going to say it was inappropriate. I don't
16 agree that it was inappropriate.

17 Q You had a customer that wasn't
18 satisfied then, and you had a customer that
19 wasn't satisfied now; correct?

20 A The customer then, I believe,
21 wasn't satisfied with something about the
22 jump, and then in this case, the customer,
23 she didn't say that she wasn't satisfied with
24 the jump. She looked satisfied to me,
25 sounded like she said she was satisfied. She

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2 had a good time. She smiled in the video.
3 She got a picture with me. I think she was
4 satisfied with the jump. I think she just
5 had a complaint about something that happened
6 on the jump.

7 Q Well, if you have a complaint
8 about something that happened on the jump, it
9 means you were dissatisfied with it; right?

10 MR. ANTOLLINO: Objection.

11 A I disagree.

12 Q So you think she was satisfied
13 but just had a complaint?

14 A Yes.

15 Q Okay. You say Ray stole money
16 from you?

17 A He did.

18 Q How did he steal money from you?

19 A He docked my paycheck for the
20 full price of two tandem jumps and two
21 videos, and it really sucks because that's
22 just sort of like throwing gas on the fire
23 and really just sticking it to you.

24 You know, on top of all this
25 other stuff, whether it's just a bunch of BS,

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2 now he's going to take money out of my
3 paycheck for a tandem that I didn't even do,
4 and that was Mr. Kengle's tandem. I wasn't
5 his instructor, and for work performed by two
6 other of his employees, which were the video
7 guys, that I had nothing to do with. It
8 didn't make any sense to me that he was doing
9 that.

10 Q And he immediately refunded you
11 that money; did he not?

12 MR. ANTOLLINO: Objection.

13 A Not immediately.

14 Q Did he refund that money before
15 the lawsuit was filed?

16 A He did before the lawsuit was
17 filed.

18 Q When did he refund that money to
19 you?

20 A One week later when he
21 terminated me after he spoke to his lawyer,
22 which I think is kind of the key thing about
23 that, after he spoke to his attorney, which
24 he admitted when he terminated me, that he
25 did.

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2 Q You think there's something
3 wrong with speaking to his attorney before
4 terminating you?

5 A No. I think he has a right as a
6 business owner to make business decisions,
7 and if that involves seeking Counsel and
8 getting advice from an attorney, that's his
9 right to do so. I think if it's for the
10 purpose of trying to backtrack or maybe cover
11 his tracks for mistakes he might have made,
12 it's probably still legal to speak to your
13 attorney in that matter, but I think that's
14 what he was doing.

15 Q What mistakes do you think he
16 made?

17 A Well, he stole money from my
18 paycheck. He didn't pay me for the jump that
19 I did with Ms. Orelana, and then he actually
20 took money from me for the other jump with
21 Mr. Kengle and the two video people out of my
22 paycheck. We have it documented. We have a
23 record that he actually did that, and then,
24 of course, we have it where he gave the money
25 back after he either spoke to his attorney

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2 and learned that what he did was either wrong
3 or, perhaps, it might even have been illegal
4 and it was, you know, unethical, as well.

5 Q What other mistakes did he make?

6 A What other mistakes did he make
7 in relation to --

8 Q You said he made mistakes, so
9 I'm asking you what mistakes were made.

10 A Oh, okay. I see where you're
11 going. I'm sorry. It just took me a moment
12 to focus. My opinion what the mistakes were?

13 Q I'm asking you what mistakes he
14 made because you said he made mistakes.

15 A He didn't, to my knowledge,
16 investigate these complaints made by the
17 customers. What he did was he just took
18 action against me, his employee, without
19 investigating and asking anybody else in the
20 airplane, any of the other instructors, the
21 cameraman, without reviewing the video, any
22 of those things to perform an investigation.

23 He just took adverse action in
24 an angry manner against me as soon as he
25 learned of the complaints. I think that was

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2 a mistake. And he wouldn't even let me, when
3 he was questioning me about whatever it was
4 the incident was, he wouldn't even let me
5 reflect upon the videos that were readily
6 available. He wouldn't let me see them. He
7 was asking me questions, he was angry, he
8 wasn't calm, about a jump that took place,
9 who knows, twenty to thirty jumps ago and
10 three days ago.

11 He's asking me details about
12 this, and yet, he wouldn't stop long enough
13 to let me look at the videos and say, hey,
14 okay; oh, yeah, I think I remember those
15 people. Okay, all right. You know, that's a
16 mistake.

17 If you're going to take action
18 against an employee, you should at least give
19 them the common courtesy of being able to
20 look at their records and give them an
21 opportunity to respond. He didn't give me
22 that. He just brought me in that room that
23 day to tell me what he was going to do to me,
24 and then he did it.

25 Q Any other mistakes he made?

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2 A Any other mistake he made, let
3 me think. Is this a general,
4 all-encompassing question?

5 Q Yes.

6 A Mistake about how he runs his
7 business, or just anything?

8 Q We're talking about mistakes
9 having to do with your employment.

10 A Just having to do with my
11 employment, okay.

12 I think a mistake that he made
13 was to mention at any time, either in the
14 suspension or the termination, this issue
15 about personal information in front of
16 customers. Seems to be something he's
17 concerned about. Seems to be something he's
18 passionate about, not having happened yet.

19 He has the -- what's the word
20 I'm looking for -- I'm getting tired. He had
21 the leeway to discuss his marriage in front
22 of staff, when he was leaving his wife, when
23 there was other customers standing around.
24 I'm trying to understand what this whole
25 business is about me saying something

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2 personal about myself, personal information,
3 like he said in the termination, and then him
4 talking about his personal life in earshot of
5 customers, so it seems like that's a mistake.

6 If you're going to fire somebody
7 and use that as part of the reason and then
8 you do it yourself, it seems a little
9 hypocritical.

10 Q Did you tell him that?

11 A No, I didn't have an opportunity
12 to tell him that.

13 Q What other mistakes?

14 A Well, okay. I'm thinking about
15 some more things because Ray has made a lot
16 of mistakes, in my opinion, so to come up
17 with all of them in one seating... I need to
18 take a moment.

19 I think that Ray had some
20 concerns about the issue of my ankle, and so
21 the way that he handled that he could have
22 been handled better. He had questions for me
23 about the Workers' Comp that I received, and
24 all of that. And his mistake was, instead of
25 asking me questions and calling me on the

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2 phone or sending me e-mails or when he had a
3 question, having a dialogue with me about it,
4 he saved up all this stuff until a week
5 before I came to work for him in 2010 -- he
6 calls me about six days -- I have my vehicle
7 packed, I have everything ready to go so I
8 can report to work on time on May 15, 2010,
9 and I get this blistering phone call, and
10 it's Ray Maynard, in my ear, shouting at me
11 about this Workers' Comp stuff that was over,
12 as far as I'm concerned, four months prior,
13 and so I think that was a mistake.

14 If you can imagine my surprise,
15 I'm getting this phone call from the guy I'm
16 going to work for another season, and he's
17 yelling at me, in my ear, just before going
18 up there. I conferred with my drop zone
19 owner at the airport I live about it and got
20 his opinion, and he said he thought that was
21 odd. I said, what do you think I should do,
22 and he said, well, he didn't tell you not to
23 come up to go to work, so go up there and do
24 your job and come home, so I said, okay,
25 because I don't really have a choice at this

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2 matter.

3 But what was a mistake was, he
4 just went off on a tangent, like he has a
5 history of doing, without getting the facts
6 and without asking the questions that needed
7 to be asked so he can get the facts to find
8 out what really happened. Just like in this
9 case, where he suspended and fired me. It
10 was just a prelude to that with the Workers'
11 Comp thing.

12 He didn't know what he was
13 talking about when he called and yelled at
14 me. He didn't have the information in front
15 of him. He was just reacting to either --
16 whatever it was that he was reacting to.

17 I'm not able to talk to Ray when
18 he's being irrational like that and yelling.
19 You can't talk to Ray. Both when Ray
20 suspended me, he stomped out of the room, and
21 when he fired me, he stomped out of the room.
22 I mean, it gets to a point where you can't
23 deal with him. You can't talk to him. What
24 are you supposed to do? I think that's a
25 mistake.

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2 If you're going to be a CEO, if
3 you're going to run a company, you're going
4 to have to be able to make rational
5 decisions. You're going to have to listen to
6 what your employees say. If you've got a
7 problem with an employee or something comes
8 up, you need to investigate it from all
9 angles. You need to get the information, and
10 once you get the information, then you're at
11 a position where you can discuss the
12 information with the person and then make
13 decisions. Ray didn't do that. That's a
14 mistake.

15 Q Anything else?

16 A Unfortunately, yes.

17 I believe after kind of talking
18 to some people, that Ray -- Lauren Callanan,
19 she is the manifest person and the office
20 person at Skydive Long Island, that Ray may
21 have been upset that his Workers' Comp
22 insurance went up drastically as a result of
23 the claim for my injury, and so I think Ray
24 was taking that out on me, and I don't think
25 it was fair.

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2 Q Do you think you were terminated
3 because his Workers' Comp premiums went up?

4 A No. He terminated me for the
5 reasons that we discussed.

6 Q Which you were accused of
7 inappropriately touching a woman and then
8 sharing the fact that you don't like women
9 with her?

10 MR. ANTOLLINO: Objection.

11 A I didn't say I didn't like
12 women. You said it.

13 Q Sharing with her your sexual
14 orientation --

15 A Yes.

16 Q -- which indicated that you
17 didn't like women in that respect.

18 A I don't like that wording being
19 on the record because I didn't say that. I
20 never said I didn't like women. Women in
21 that manner, I need you to break that down.
22 What do you mean by that manner?

23 Q You were accused by Ms. Orelana
24 of touching her inappropriately --

25 A Right.

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2 Q -- and then disclosing to her
3 your sexual orientation, which indicated that
4 you are not sexually attracted to women?

5 A I would say that that would
6 indicate that. By me saying, don't worry I'm
7 gay, would convey that idea.

8 Q It's somehow saying, don't
9 worry, if I'm touching you in a manner that
10 makes you feel uncomfortable, I'm not acting
11 on it; correct?

12 A No, not correct.

13 Q Can a gay man ever touch a woman
14 inappropriately?

15 A They can. They could. So no,
16 it's not to convey that idea. It's to
17 resolve the situation about the joke that was
18 made in front of the boyfriend about the
19 girlfriend being strapped to another man,
20 which was me, and to quell that situation and
21 to calm that situation down.

22 Q And you felt that that needed to
23 be calmed down?

24 A Say that once more, please.

25 Q You felt that that situation

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2 needed to be calmed down; correct?

3 A Yes.

4 Q Because at some point, you
5 sensed Ms. Orelana was uncomfortable;
6 correct?

7 A Yes.

8 Q You just don't know when --

9 A I don't.

10 Q -- you just don't know when it
11 was in relation to the joke being made?

12 A No. I mean, there's a lot of
13 things going on in the airplane. It's a
14 fifteen- to twenty-minute ride up, depending
15 on the load. It's a pretty routine process.

16 Q During that process, did you
17 ever rest your head on Ms. Orelana's shoulder
18 or neck?

19 A No. And I know what she said
20 about that. We can discuss this for a
21 second, but before we do, do you want me to
22 finish talking about Ray's mistakes?

23 Q We'll get to that.

24 MR. ANTOLLINO: Just answer the
25 question.

1 D. Zarda

2 THE WITNESS: All right. I just
3 didn't want to get --

4 MR. ANTOLLINO: Answer the
5 question.

6 THE WITNESS: -- to where I was
7 forgetting where I was going thinking
8 about all Ray's mistakes --

9 MR. ANTOLLINO: Okay, answer the
10 question.

11 THE WITNESS: -- because it
12 takes awhile.

13 A The question was about me
14 resting my head on her shoulder?

15 Q Correct.

16 A No, I didn't rest my head on her
17 shoulder, and after hearing her testimony,
18 after seeing the video, it's very easy for me
19 to see what that's about.

20 Q What's that about?

21 A Well, what that is about is me
22 leaning forward to give her instructions
23 prior to leaving the aircraft, like I've done
24 thousands and thousands of times before, in
25 her ear so that she could understand and hear

1 D. Zarda

2 them without having to shout at them or
3 without having to be yelling at them, at the
4 customer, because the airplane is noisy, and
5 all the other instructors are talking and
6 they're doing the same things, so everybody
7 is talking in the plane.

8 It gets to be really noisy in
9 there, plus the noise of the aircraft, and
10 then the door is coming open, so there is
11 even more noise. When you have a customer,
12 and you've seen the video, strapped to you
13 shoulder to shoulder, hip to hip, their head
14 is right here (indicating) in my face.

15 If you're going to talk to
16 somebody with their head right here
17 (indicating) in your face, you're talking to
18 the back of their hair or the back of their
19 neck, so if you want to talk to them where
20 they can hear you, then you're going to lean
21 over and talk to them in their ear, and it's
22 right here (indicating). So her ear, or a
23 customer's ear -- you try the harness on
24 yourself and you'll see, when you're sitting
25 on the bench -- it's right here (indicating),

1 D. Zarda

2 so this, what did he say,
3 whispering-in-your-ear thing that Mr. Kengle
4 was upset about, there was no whispering in
5 her ear. There was only me giving her
6 instructions that she needed to have to make
7 the jump, in her ear.

8 Q She might have been completely
9 wrong --

10 A She --

11 Q -- wait. You have got to let me
12 finish.

13 A Okay.

14 Q She might have been completely
15 wrong and misread all of the things that she
16 complained about; is that correct?

17 A That's very possible.

18 Q In fact, is it more than
19 possible; is it probable?

20 A It's probable. It's probable.

21 Q Everything she complained about
22 is probably wrong?

23 A Yes, it's probably wrong.

24 Q But she complained about it
25 anyway?

1 D. Zarda

2 A She did, and customers complain
3 about all kinds of things. They complain
4 about stuff that you can do nothing about
5 involved in this thing called tandem jumping.
6 It's hot in the airplane. It's too loud.
7 It's too cold. The harness is too tight.
8 The harness is too loose. It can go on and
9 on and on, and they can be wrong about it.
10 The harness can be just the way it's supposed
11 to be, or they could just not like it.

12 Q Do you think that Ray Maynard
13 took the opportunity to take Ms. Orelana and
14 Mr. Kengle's mistaken complaints about you
15 and coupled that with his being upset about
16 his Workers' Compensation premiums going up
17 and taking that opportunity to fire you?

18 MR. ANTOLLINO: Objection to
19 form.

20 Q Is it possible?

21 A I think it's possible.

22 Q Do you think it's probable?

23 A I think it's just possible. I
24 think it's possible that it's a package deal.

25 Q Okay.

1 D. Zarda

2 A If he did that, that's awful.
3 It's just as bad as if he didn't do it, and I
4 think it's even illegal, so I hope he didn't
5 do that.

6 Q But you don't know if that was
7 his motivation; do you?

8 MR. ANTOLLINO: Objection.

9 A There's no way for me to know
10 that. Beyond that, he called me on the phone
11 a week before I came up there yelling at me
12 and angry and shouting about the Workers'
13 Comp thing, and it didn't make me feel very
14 good about the situation, and so I can tell
15 you a little bit about what I remember about
16 the conversation.

17 Q I have no interest.

18 A Okay.

19 MR. ANTOLLINO: Counsel, do you
20 have some of that iced tea you
21 promised? I need a little lift.

22 MR. ZABELL: You can ask me a
23 little nicer, and yes, I will get you
24 an iced tea.

25 MR. ANTOLLINO: Thank you.

1 D. Zarda

2 MR. ZABELL: Let's get this man
3 a drink.

4 (Whereupon, a recess was taken
5 from 3:35 p.m. to 3:59 p.m.)

6 Q Before the break, I was asking
7 you questions about the possible likelihood
8 that you were terminated because Ray Maynard
9 was upset that his Workers' Comp policy went
10 up because you had filed a claim; do you
11 recall that?

12 A I recall that.

13 Q Do you recall testifying that it
14 was, in fact, possible that that was one of
15 his motives?

16 A I said that it was possible.

17 Q And another one of his motives
18 could have been that Mr. Kengle and
19 Ms. Orelana complained about their jump; is
20 that correct?

21 A Sounds like it, yeah. I mean,
22 that's what he told me.

23 Q During the break there was, what
24 I would characterize as, innocent banter
25 between your attorney and myself, and I think

1 D. Zarda

2 you were involved, as well; is that correct?

3 A Yes.

4 MR. ANTOLLINO: It was off the
5 record.

6 MR. ZABELL: Yes, absolutely.

7 Q One of the topics that were
8 discussed were gay jokes, jokes regarding
9 people who are gay, and I don't think anybody
10 was offended by them. I don't think I made
11 any of them, but do you engage in jokes about
12 being gay?

13 A Depends on the situation and
14 where and when, like -- could you be more
15 specific?

16 Q Sure. Could there be an
17 occasion where making a joke that has to do
18 with someone's sexuality would be
19 appropriate?

20 A Is this in a social setting, at
21 work, at home, family, or where?

22 Q In the setting that we were just
23 in during a break at a deposition --

24 A Yeah.

25 Q Were we not making a joke?

1 D. Zarda

2 A We were.

3 Q Was it appropriate?

4 A I thought it was okay.

5 Q Who made the joke?

6 A Greg made a joke, and I
7 corroborated the joke.

8 Q And I laughed at the joke;
9 correct?

10 A Yeah.

11 Q And I laughed completely
12 appropriately?

13 A I wasn't offended by it.

14 Q What kind of setting would you
15 call that?

16 A I'd call it casual. I mean,
17 we're in an official setting, but I would say
18 that that was casual.

19 Q Are you more comfortable with
20 gay jokes being made around me because I'm a
21 Civil Rights attorney?

22 MR. ANTOLLINO: Objection.

23 A No. I didn't even know you were
24 Civil Rights attorney, to be honest, so I
25 didn't know you were a Civil Rights attorney.

1 D. Zarda

2 Q Okay.

3 A Are you a Civil Rights attorney?

4 Q That's what we're here

5 litigating about today; correct?

6 A Oh, I know that. I didn't know
7 that was your area of specialty.

8 Q Yes, it's all I do, Civil Rights
9 and labor and employment.

10 A Oh, okay.

11 Q Have you ever had e-mail
12 correspondence with your friends where jokes
13 were made about your sexuality?

14 A I'm sure there has. I'm sure
15 there has been some. FaceBook, possibly.

16 Q Have any of your friends
17 referred to you as a homo?

18 A They have.

19 Q Have you ever referred to any of
20 them as a homo?

21 A Possibly.

22 Q Do you believe that they have
23 referred to you as a homo inappropriately?

24 A Well, technically, if they've
25 called me a homo, they're correct. I'm a

1 D. Zarda

2 homosexual.

3 Q But if I had never met you
4 before and I called you a homo, even though
5 it may be correct, it wouldn't be considered
6 appropriate; would it?

7 A That's probably on the boundary.
8 It would probably just depend on the
9 by-language, the interaction that we were
10 having, the rapport that we were having.

11 If you were walking down the
12 street and you said, hey, homo, and you
13 yelled at me and were a stranger, that would
14 probably sound derogatory. If we were just
15 hanging out with some friends, it would be
16 all right.

17 Q You're comfortable enough in
18 your sexuality that if somebody was going to
19 make jokes with you about it, it was clear
20 that their intention was just to invoke a
21 smile or some laughter, that it would be
22 fine; correct?

23 A Correct.

24 Q Did anybody at Skydive Long
25 Island bring up your sexuality in an attempt

1 D. Zarda

2 to hurt your feelings?

3 A In an attempt to hurt my
4 feelings, I can't remember specifics. I
5 don't think so. Like we just talked about,
6 some borderline stuff. I think that an
7 attempt to hurt my feelings would imply
8 malice and so that the person was wanting to
9 be malicious, and so I don't think anybody
10 there was wanting to be malicious to me, so
11 they might have done it in error or
12 ignorance, possibly, not knowing what to say
13 or how to say something; yeah, in that regard
14 possibly, but not -- I don't think anybody
15 was being malicious about it.

16 Q And if somebody had brought
17 something up to you in error, did you feel
18 comfortable addressing it with them?

19 A Again, specifics over this whole
20 time period is difficult for me to come to.
21 I'm just thinking back. There were some
22 social cues, you know, moments where somebody
23 like Willie, possibly, or Ben might have said
24 something that was a little off just because
25 they didn't know any better. I didn't feel a

1 D. Zarda

2 need to try and correct it beyond maybe --
3 no.

4 I mean, if there was an
5 opportunity to be able to correct it or
6 address it without causing a stink and making
7 an issue out of it because I don't want to
8 make an issue out of anything, then I
9 probably would say something, but it
10 certainly wouldn't be something I would go
11 tell Rich about or make a big deal about.

12 Q Did you find any of your
13 coworkers at Skydive Long Island to be
14 homophobic?

15 A Yes, I did.

16 Q Who was homophobic?

17 A Ray.

18 Q Ray was?

19 A Yes.

20 Q Ray, the man who hired you on --

21 A Yes.

22 Q -- three different occasions?

23 A Yup.

24 Q Do you think that your sexual
25 orientation affected whether or not you were

1 D. Zarda

2 hired by Ray Maynard?

3 A Which time?

4 Q All three times.

5 A I think that Ray tolerated it up
6 until a point where he could no longer deal
7 with it himself, so that would be the best
8 answer I could give for that.

9 Q Are you saying he tolerated it
10 up until a point where he received a
11 complaint about you?

12 A Up until a point where he,
13 himself, for whatever reason, couldn't deal
14 with having me be gay and be there working
15 for him. For whatever reason, whether it's
16 him being a homophobic person, or he has
17 issues with homophobia or gay people.
18 Whatever the reason is, and I don't know what
19 all the reasons are. I got a little
20 information from his wife about some possible
21 reasons.

22 Q What were those possible
23 reasons?

24 A That Ray hated my sexuality, I
25 believe, is what she said in an e-mail and

1 D. Zarda

2 spoke negatively about me often during their
3 marriage, so I thought that was intriguing.
4 Not completely surprised to hear that. Don't
5 know what Ray was thinking.

6 Q So Ray's issue with you is just
7 because you're gay; is that what you're
8 saying?

9 A Which time; when he fired me?

10 Q When he fired you in 2010.

11 A Well, when he fired me in 2010,
12 he said it was because the issue of my
13 sexuality came up in front of the customers.
14 He was firing me for that. It was
15 inappropriate, and the issue about touching
16 this girl inappropriately came up, and that's
17 what he said.

18 Q But you think it also may be
19 because you caused his Workers' Compensation
20 premiums to go up, as well; correct?

21 MR. ANTOLLINO: Objection.

22 A No. I'm not going to go down
23 that road. I didn't cause anything. I'm not
24 the Workers' Comp Board. I'm not the New
25 York State Insurance Fund. I didn't cause

1 D. Zarda

2 anything that happened. Whether Ray took
3 action on that or not, that's in his head.
4 It's a possibility. That's all I can say
5 about it.

6 Q But it's something that you
7 believe is a possibility?

8 A It is a possibility. That's it.
9 Nothing beyond.

10 Q And Ray knew you were gay each
11 of the three times he hired you; correct?

12 A I think we covered that.

13 Again, back in 2001, I don't
14 specifically recall this seating if we talked
15 about it, but it was pretty clear in 2009
16 and 2010.

17 Q Talk to me about this business
18 you share with your ex-husband in Texas.

19 A Could you be a little more
20 specific; what would you like to know?

21 Q What's the name of the business?

22 A It's Advanced Skin Fitness.

23 Q What is Advanced Skin Fitness?

24 A It's a medical spa.

25 Q What happens at the medical spa?

1 D. Zarda

2 A We do a variety of anti-aging
3 procedures. We do laser hair removal, which
4 is the primary thing, we do facials, we do
5 laser skin resurfacing, and we do cellulite
6 reduction. We do hormone therapy. We do a
7 lot of things. I don't have the whole list
8 of all we do.

9 Q Is it run by a doctor?

10 A We have medical directors that
11 oversee the legal part of that part of the
12 operation.

13 Q Is your ex-husband a medical
14 doctor?

15 A He is not a medical doctor.

16 Q Is he a doctor?

17 A He is not a doctor. He has a
18 Master of Science in Exercise Physiology and
19 Kinesiology.

20 Q Are you a doctor?

21 A I am not.

22 Q But you have doctors on your
23 board --

24 A We do.

25 Q -- to make everything kosher,

1 D. Zarda

2 for lack of a better term?

3 A To make everything legal.

4 Q Are you familiar with that term,
5 "kosher"?

6 A I am.

7 Q What's the name of this
8 business?

9 A Well, it's Advanced Skin Fitness.
10 The incorporated name is Lush, L-U-S-H,
11 Investments Incorporated.

12 Q Are you a partner in that
13 company?

14 A Silent partner.

15 Q What percentage of the business
16 do you own?

17 A We don't have that broken down
18 like that. My ex and I started that
19 together, so for various reasons and legal
20 reasons, I don't have a legal holding.

21 Q You don't have any legal
22 holding?

23 A I don't have a legal holding.

24 Q What is the reason for you not
25 having a legal holding?

1 D. Zarda

2 A It's personal, primarily, and
3 partly strategic. In the event that while we
4 were together and we had started this and we
5 didn't make it, for whatever reason, we could
6 always start up under my name.

7 Q What's the personal reason?

8 A What is the personal reason?

9 Q Yes.

10 A Those are reasons related to our
11 relationship.

12 Q I need to know for purposes of
13 this deposition. I'm not prying, but I do
14 need to know.

15 A I don't have -- I can't recall
16 every personal thing that we've discussed
17 over this many years that we've had this
18 business, and we've been together in and out
19 of the personal relationship that we've been
20 in.

21 It's just the way we started it.
22 We started the business. I wrote the first
23 check. It was in an office about this
24 (indicating) size, and then we grew and just
25 moved forward, and some of it had to do with

1 D. Zarda

2 my willingness to relocate to Dallas from
3 Kansas City, and whether we were going to be
4 together that way or not. That was a little
5 bit of it.

6 I maintained a place up in
7 Kansas City, and obviously, to be more
8 involved in that would require me to fully
9 move to Dallas and be in Dallas. That's an
10 example of one of the personal things that I
11 meant.

12 Q So you're a partner in this
13 business, you do work for this business, but
14 nowhere in the business's records are you
15 indicated to be a partner?

16 A That's right.

17 Q What percentage of the profits
18 of the business do you share in?

19 A It works like this: If there is
20 any profit left over, then we may get paid.
21 That's pretty much the long and short of it.

22 Q Is it a profitable business?

23 A It has been. It has been
24 profitable. I mean, it depends on which
25 month you want to look at. It's up and down,

1 D. Zarda

2 especially during these turbulent times.
3 People aren't as focussed on spending money
4 on how they look and getting expensive
5 treatments done, so it's up and down. It's
6 difficult.

7 Q In 2010, did the company make
8 any money?

9 A I don't have the records in
10 front of me. I don't have the books in front
11 of me. I'd have to look to see what our
12 actual profit and loss -- to what our balance
13 sheet actually reflects, but I think we did
14 make some money. I think we were somewhere
15 in the black. We certainly weren't living
16 large or anything like that, but I think that
17 we were somewhere in the black.

18 I'd have to look back at the
19 records and see what capital purchases were
20 made to be able to tell. And 2010 -- you
21 said 2010, right?

22 Q I did.

23 A I'd have to look.

24 Q Did you make any money from the
25 business in 2010?

1 D. Zarda

2 A Did I make any money? No, I
3 didn't make any money from the business. I
4 received some, I guess, reimbursements from
5 the business.

6 Q Did you get paid for the work
7 you performed for the business in 2010?

8 A No, not yet. Maybe some day.
9 We both have -- I mean, the business owes us
10 a lot of money on the books, so maybe some
11 day, if we can keep going and get through
12 everything, get to a better place, maybe then
13 it will pay us back. I hope for all of our
14 hard work and the employees and the people
15 that work for us to get their paychecks.
16 Sometimes we don't get our paychecks.

17 Q Did the business file an income
18 tax return in 2010?

19 A Yes, it did.

20 Q Did it file an income tax return
21 in 2009?

22 A It did.

23 Q And for all previous years that
24 it was in existence, did it file a tax
25 return?

1 D. Zarda

2 A It did.

3 Q Did you file an income tax
4 return for 2010?

5 A 2010, yes.

6 Q Did you file an income tax
7 return for 2009?

8 A It has not been filed yet.

9 Q Why is that?

10 A That was the year that I broke
11 my ankle, and I got behind, in part, because
12 of that. It was just a matter of logistics.
13 I had traveled, and I had a difficult time
14 with the whole situation; with my ankle being
15 broke and getting around, getting my records
16 together and school, and I just simply got
17 behind and didn't get to it.

18 Q But were able to get your 2010
19 filed --

20 A Yes.

21 Q -- just not your 2009?

22 A Right.

23 Q Did you make more in 2010 than
24 you made in 2009?

25 A I don't know, because I haven't

1 D. Zarda

2 done 2009 yet, so I'll find out. It's just a
3 matter of getting caught up on that.

4 Q Now we're at the end of the year
5 in 2011; are we not?

6 A We are.

7 Q How did you do financially in 2011?

8 A Not very good.

9 Q Is that because you spent a fair
10 amount of time out of the country and on
11 vacation?

12 A No, it's because I didn't take a
13 full-time job skydiving.

14 Q And why didn't you take a
15 full-time job skydiving?

16 A Because of this.

17 Q Because of this lawsuit?

18 A In part, because of this
19 lawsuit. Mostly because of the damages that
20 have been done to me because of what Ray did
21 when he fired me and accused me of something
22 I didn't do and how it's hurt me in the
23 industry.

24 Q Isn't it the accusations of
25 Ms. Orelana and Mr. Kengle?

1 D. Zarda

2 A We've been through this I think
3 about two or three times now, so...

4 Q Well, Ray didn't accuse you of
5 doing anything. Ray just relayed to you the
6 accusations made by the customers; correct?

7 A Ray accused me when he suspended
8 me and when he fired me.

9 Q Well, specifically, what did he
10 accuse you of?

11 A Well, we went over that. He
12 accused me of touching Ms. Orelana in a way
13 that made her feel uncomfortable at the hips.

14 Q Did he say you touched Ms. Orelana
15 in a way that made her uncomfortable at the
16 hips, or did he say, I received a complaint
17 from a customer that said you touched her in
18 a way that made her uncomfortable at the
19 hips?

20 A He said that I touched her --
21 well, let me think about that for a minute.
22 There has been more than one time that this
23 has been discussed, so I can't recall how he
24 said it right now.

25 Q Because earlier today you said,

1 D. Zarda

2 (reading), he relayed to me that a customer
3 made a complaint that I made her feel
4 uncomfortable because I had touched her in
5 the hip area, and I disclosed my sexual
6 orientation to her.

7 A Okay.

8 Q That's what you said. That's
9 different than Ray accusing you of doing it.
10 That's Ray relaying to you that somebody else
11 was accusing you of doing it; correct?

12 A I --

13 Q I need you to answer that
14 question with a yes or a no.

15 A No.

16 Q No, that's not correct?

17 A No.

18 Q Okay, go ahead. What is it you
19 wanted to say?

20 A The reason it's not correct is
21 because what I said earlier. Ray knows
22 better, so even if Ray is relaying that
23 information, and that information is
24 relatively new to this case and to us, as far
25 as I'm concerned, because I just got to hear

1 D. Zarda

2 that for the first time in November a month
3 ago, Ray knowing better, knowing that I
4 didn't do this, corroborated it and agreed
5 with it and took action against me, based
6 upon it, so that, to me, is the same thing as
7 him accusing me. It is the same thing.

8 Q How does Ray know better that
9 you didn't make this woman feel
10 uncomfortable?

11 A It's simple. Because Ray's been
12 doing tandems for three decades, jumping for
13 forty years. Ray knows me. He knows my
14 reputation. He knows my record. He knows
15 the situation that's involved in strapping
16 another passenger to you to take them on a
17 tandem. He knows what's involved with
18 strapping at the hips. He knows all of that.
19 He knows every part of that like the back of
20 his hand. He would be an expert in that, and
21 he knows that I did not do anything wrong.
22 Period.

23 Q I don't know how he would know
24 if he wasn't there --

25 MR. ANTOLLINO: That's --

1 D. Zarda

2 Q I do know that he received a
3 complaint --

4 MR. ANTOLLINO: We're not
5 arguing --

6 Q -- and you're aware of that; is
7 that correct?

8 A I'll agree with you that he
9 received a complaint.

10 Q Talk to me about Marco Marcovitch
11 (phonetic). Do you know him?

12 A I know Marco.

13 Q Friend of yours?

14 A I'm going to say he's a friend.
15 I'm not sure what our status of friendship is
16 right this second, though. He has been a
17 friend.

18 Q Have you referred to yourself as
19 a fag?

20 A I probably have.

21 Q What kind of situations would
22 you have referred to yourself as a fag?

23 A Probably would have been some
24 casual, loose situation.

25 Q Did Ray Maynard ever refer to

1 D. Zarda

2 you as a fag?

3 A You're asking me if he ever used
4 that word?

5 Q Yes.

6 A Not that I can recall at this
7 time in earshot of me.

8 Q Did Marco Marcovitch ever refer
9 to you as a fag?

10 A I think he has used the word in
11 a joking way somewhere along the line.

12 Q Did you ever discuss with Marco
13 Marcovitch what you would do to him if he
14 were a homosexual?

15 A What I would do to him?

16 Q Yes.

17 A Not that I can recall. No.
18 Could you break that question -- what do you
19 mean by what I would do to him?

20 Q Sexually.

21 A No, I don't recall ever
22 discussing it. Marco and I have never
23 discussed sexual relationships with each
24 other, so if you say something to the
25 contrary, I'd be interested to know what it

1 D. Zarda

2 is.

3 Q Do you have comments posted on
4 your FaceBook site by Marco Marcovitch?

5 A I did at one time. We have had
6 comments back and forth. They typically
7 involved joking and banter between each
8 other.

9 Q Did that joking and banter ever
10 include sexual orientation?

11 A I'm sure it did.

12 Q Were you bothered by it?

13 A Well, there was a lot of it, so
14 as a blanket statement, I can't answer to
15 that because I'd have to see the specific
16 comment as an example, but in general, no,
17 because I know Marco wouldn't have been
18 saying anything to me maliciously.

19 Q You control what you post on
20 your FaceBook page; right?

21 A You're asking me do I control
22 what I post?

23 Q Yes.

24 A Yes, I control what I post.

25 Q Nothing is posted on your

1 D. Zarda

2 FaceBook page without you approving it;
3 correct?

4 MR. ANTOLLINO: Objection.

5 A Incorrect.

6 Q What's posted on your FaceBook
7 page without your approval?

8 A FaceBook has the ability to be
9 able to allow people to post things on your
10 wall or in your forum or tag photos of you
11 without you having control over that, and
12 they still have that in place, even though
13 they've made improvements to their privacy
14 controls.

15 Sometimes those privacy controls
16 aren't pushed out to the community to make
17 you aware of them, and I'm still not even
18 aware of them today, of all of them, but you
19 are not always in control over what somebody
20 puts on your FaceBook page.

21 Q If somebody put something on
22 your FaceBook page that you're unhappy with,
23 you can take it down; correct?

24 A You could if you know about it
25 and if you saw it, if you got a notification.

1 D. Zarda

2 It's a living, breathing, electronic entity
3 and things come and go, and if you don't log
4 on to your FaceBook for a week, there could
5 be a week's worth of stuff that passed
6 through there that you don't even see.

7 Q Tell me about the incident that
8 occurred at Fire Island where you picked up
9 some Brazilian boys.

10 A Sounds like I had a good time,
11 but I don't recall it.

12 Q You don't recall speaking to
13 some of your coworkers about picking up
14 Brazilian boys at Fire Island?

15 A Brazilian boys at Fire Island.
16 No, I don't. I don't recall it.

17 Q Is that something you would have
18 discussed at work had it happened?

19 A It depends on whether somebody
20 would have asked me what I did this weekend
21 or not, or one of the times or the many times
22 Brian Petretti -- I don't why he kept
23 bringing it up -- hey, Don, did you go the
24 Grove this weekend? If he would ask me that,
25 maybe I would have responded with, no, I went

1 D. Zarda

2 to the Pines. That would be the context.
3 That would be the only context that I could
4 think of.

5 Q Did you ever discuss taking
6 Viagra with your coworkers at Skydive Long
7 Island?

8 A Did I ever discuss it?

9 Q Yes.

10 MR. ANTOLLINO: I'll object to
11 the form.

12 A I can't recall.

13 Q You can't recall?

14 A I can't recall having a
15 discussion about Viagra.

16 Q Did you have discussion about
17 Viagra and Fire Island and a sex marathon?

18 A No.

19 Q You never had the discussion
20 with Curt Kellinger?

21 A A sex marathon, no. Now that
22 you're bringing it up, it seems like that
23 Curt might have put something or made a
24 comment on a FaceBook post at some point, or
25 he might have said something like that, but

1 D. Zarda

2 not me.

3 Q You never had a discussion with
4 Curt Kellinger about Viagra at Fire Island?

5 A Not that I can recall. I mean,
6 he might have made a joke about something at
7 some point.

8 Q Talk to me about pornography on
9 your cellphone.

10 A Talk to you about pornography on
11 my cellphone?

12 Q Yes.

13 A What about it?

14 Q Do you ever look at pornography
15 on your cellphone?

16 A Define "pornography." What is
17 pornography to you?

18 Q Do you ever look at pictures of
19 naked people on your cellphone?

20 A I've had pictures of naked
21 people on my cellphone; yes.

22 Q Did you ever look at pictures of
23 naked people on your cellphone while at
24 Skydive Long Island?

25 A I suppose it's possible that if

1 D. Zarda

2 somebody sent me a picture or over lunch or
3 something on FaceBook or something came up on
4 my cellphone, that it's possible that
5 somebody saw it.

6 Q Did John Campbell tell you to
7 stop looking at naked pictures on your
8 cellphone?

9 A You know, I think he might have
10 made a joke at one point about something like
11 that, and that's Monkey, John Campbell. I
12 think he made a joke one time or something
13 like that, and I don't even know if I was
14 looking at naked pictures on my cellphone. I
15 think he might have been assuming that.

16 Q Do you remember a time when a
17 coworker brought their child to work at
18 Skydive Long Island?

19 A There's been several people that
20 have brought children to work.

21 Q Do you remember complaining
22 about it?

23 A I don't.

24 Q Did you ever discuss at work at
25 Long Island Skydive oral sex?

1 D. Zarda

2 A Did I ever discuss it?

3 Q Yes.

4 A No, I didn't discuss it.

5 People -- other employees they discussed
6 sexual things quite a bit, so I steered away
7 from making too many comments like that, so
8 when the conversation would turn in that
9 direction among my peers, I steered away from
10 it.

11 Those kind of things came up a
12 lot, and a lot of times, it could have been
13 straight related, or it could have been gay
14 related. Those things came up just among
15 peers, among staff in the video room.

16 I mean, if there was a girl with
17 big boobs on a jump that were bulging out of
18 her halter top, there'd be a rush, an influx
19 into the video room to hurry up and see the
20 video so they could look at the girl's boobs
21 spread apart in free fall. Ray participated
22 in that. In that setting, there would be
23 people that would make comments and jokes.
24 Who knows what was said?

25 Q Did Marco Marcovitch ever lie to

1 D. Zarda

2 you?

3 A Did Marco ever lie to me
4 about...

5 Q Anything.

6 A Well -- I can't think of
7 anything he lied to me about directly.

8 Q Do you have any reason to
9 believe that Marco Marcovitch is not a
10 truthful person?

11 MR. ANTOLLINO: Objection.

12 Answer.

13 A No, I don't think that I have
14 any reason to believe that he's a liar.

15 Q Do you have any reason to --

16 A I think that he's vulnerable.

17 Q Do you have any reason to doubt
18 his propensity for truthfulness?

19 A Yes.

20 Q What is your reason for doubting
21 his propensity for truthfulness?

22 A I just think that he's
23 vulnerable, because he's a young kid and he's
24 not experienced in a lot of areas with life,
25 and he's working in a very unique adult

1 D. Zarda

2 environment like it is at Skydive Long
3 Island. The kind of job that we're doing
4 there, the kind of responsibilities that we
5 have, and all those things that are going on
6 there. I just think he's vulnerable.

7 Q Do you have any reason to doubt
8 Mr. Winstock's propensity for truthfulness?

9 A I was concerned about it.

10 Q What is your reason for doubting it?

11 A Well, I was concerned about the
12 conflict of interest with his position at
13 Skydive Long Island and his position, which
14 is newly acquired with United States
15 Parachute Association, and his relationship
16 with Ray. I was concerned.

17 Q Well, you heard him testify
18 yesterday. Do you think he testified
19 untruthful about anything?

20 MR. ANTOLLINO: Objection.

21 A I feel better after hearing him
22 testify yesterday.

23 Q That's a wonderful answer. It's
24 just not the answer to the question I asked
25 you.

1 D. Zarda

2 Do you believe that he testified
3 about anything untruthfully yesterday?

4 MR. ANTOLLINO: Objection.

5 A Let me just think and recall for
6 a moment.

7 Q Please.

8 A I think that he may have been
9 factually incorrect on some of the things
10 that he said.

11 Q And those things were?

12 A Which would be different than
13 testifying --

14 MR. ANTOLLINO: Objection.

15 A -- and that would be different
16 than testifying untruthfully.

17 Q What were the things that you
18 thought he was factually incorrect about?

19 A Just some --

20 MR. ANTOLLINO: Objection.

21 Asked and answered.

22 A -- of the questions.

23 Q I'm going to ask you to be as
24 specific as you can.

25 A This was just yesterday, so it's

1 D. Zarda

2 a lot of information that was covered
3 yesterday.

4 Q But you were taking notes, so
5 I'm sure you recall --

6 MR. ANTOLLINO: Objection.

7 Asked and answered.

8 A What I was taking notes about
9 were questions to ask --

10 MR. ANTOLLINO: Don't discuss
11 what you were going to discuss with me.

12 A That's what I was taking notes
13 about.

14 Q Tell me what you think he was
15 factually inaccurate about.

16 MR. ANTOLLINO: Objection.

17 Calls for a narrative. Asked and
18 answered.

19 Q You may disregard the comments
20 from your attorney.

21 MR. ANTOLLINO: Like all other
22 objections, unless I tell you not to
23 answer, go ahead.

24 Q Feel free to disregard and
25 continue.

1 D. Zarda

2 A Okay. Just some things that he
3 may not have remembered because through the
4 passage of time, such as, gay jokes, you
5 know, me being called Gay Don, things about
6 safety, the handle touches. Just some of
7 those kinds of things.

8 I don't think that he
9 maliciously said anything that was untrue or
10 that he lied. I just think that he may have
11 not remembered some of the facts at all or
12 maybe not remembered some of them 100 percent
13 clearly.

14 Q How about Duncan Shaw; have you
15 ever had a reason to doubt Duncan Shaw's
16 propensity for truthfulness?

17 A I have.

18 Q What was that?

19 A Same thing. Similar problem,
20 conflict of interest. And Duncan Shaw's
21 position is different than Rich's. He's not
22 a chief instructor, but he is a longtime
23 employee of Ray's. He's worked there for
24 awhile. He's had run-ins with Ray. In and
25 out. He's been in and out of employment with

1 D. Zarda

2 Ray, and like many of the people that work
3 there, they're under Ray's thumb, so they all
4 work for him, and so I feel that -- and
5 they're all participants, they all
6 participated in this joking, this gay banter,
7 this gay fun. They all participated, so
8 they're all culpable to some extent in this,
9 and yet we're in a situation where they all
10 still work for Ray and they're under Ray's
11 thumb, and Ray can hang their jobs over them.

12 Q Right. But I asked you to
13 identify this gay banter, and you were unable
14 to identify it.

15 A When was I unable -- I don't
16 remember being unable --

17 Q I asked you to tell me about any
18 of the gay banter that was made, and you were
19 unable to state what was said and when it was
20 said. If you've thought of something, please
21 enlighten me now.

22 What was this gay banter?

23 A Well, I think Rich just nailed
24 it right on the head; easy with Gay Don. I
25 mean, that's my name, Gay Don. Everybody

1 D. Zarda

2 said it all the time. I mean, it's pretty
3 clear. You start there with that and that
4 just leads into other things.

5 Q What other things?

6 A Well, even Rich couldn't
7 remember all the jokes. It's just so much.

8 Q I know. I'm not asking Rich.
9 I'm asking you. What were the jokes?

10 A I can't remember all the jokes
11 at this seating.

12 Q Can you remember some of them?

13 A Well, let me just sit here and
14 think about it for a moment.

15 Without remembering specifically
16 who said things like this, there were times
17 when there might be guys that were muscular
18 or attractive or gay looking that were
19 customers that were around, and some of the
20 other employees would say, how about him,
21 Don? He looks like your type. What do you
22 think about him? Stuff like that.

23 Q Do you recall who said that to
24 you?

25 A It happened frequently. I do

1 D. Zarda

2 recall, and I won't be able to tell you the
3 dates and times because that would just be
4 impossible for me to recall, but one of the
5 persons that did that all the time was
6 Brian Petretti.

7 Q Do you remember the year in
8 which it occurred?

9 A That occurred in 2001, '09, and '10.

10 Q When in 2010 did it occur?

11 A During the time I was working
12 there, so before I was fired.

13 Q Do you remember the day?

14 A No.

15 Q Do you remember the month?

16 A It would have been in June or
17 July; possibly May. I guess it would have
18 been June and May in 2010, because those are
19 the only two months I worked there.

20 Q That happened in 2010 --

21 A Yes.

22 Q -- with Brian Petretti?

23 A Yes.

24 Q Did he say it maliciously?

25 A Brian --

1 D. Zarda

2 Q Yes or no?

3 MR. ANTOLLINO: Let him answer
4 the question.

5 Q Yes or no, Don?

6 A No, I don't think it was
7 malicious.

8 Q Do you have any reason to doubt
9 Curt Kellinger's propensity for truthfulness?

10 A Curt is a straight-shooter. I
11 think of everybody, I would feel most
12 comfortable with him.

13 Q What about Michael Goki (phonetic)?

14 A I don't really know him that
15 well.

16 Q Did Michael Goki ever lie to you
17 while you were employed at Skydive Long
18 Island?

19 A I can't recall Mike lying to me
20 about anything. I don't even really know him
21 that well. He was the rigger, and he was
22 there part-time. Technically, a full-timer
23 there, but he wasn't out there full-time.

24 Q Did Curt Kellinger ever lie to
25 you while you were employed at Skydive Long

1 D. Zarda

2 Island?

3 A Not that I recall.

4 Q Did John Campbell ever lie to
5 you while you were employed at Skydive Long
6 Island?

7 A Not that I can recall at this
8 moment.

9 Q Did Duncan Shaw ever lie to you
10 while you were working at Skydive Long
11 Island?

12 A Not that I can recall at this
13 time.

14 Q Did Rich Winstock ever lie to
15 you while you were working at Skydive Long
16 Island?

17 A Not that I can recall at this
18 time. I don't have any evidence or proof.

19 Q Did Ray Maynard ever lie to you
20 while you were working at Skydive Long
21 Island?

22 A Yes.

23 Q What did he lie to you about?

24 A He lied about me touching this
25 passenger inappropriately at the hips.

1 D. Zarda

2 Q Is that the only thing he lied
3 about?

4 A He lied about there being video
5 of the jump. There was video of the jump.

6 Q Did he ever tell you there was
7 no video of the jump?

8 A At one point -- at one point, he
9 cast doubt on whether there was video.

10 Q So he never told you there was
11 no video of the jump; is that correct?

12 A I can't remember him directly
13 saying there was no video. I'm trying to
14 remember around the time, a week later when
15 he terminated me, or not if it came up after
16 the termination, because I still wanted to
17 see those videos, so that's why I'm trying to
18 remember if it came up then or not, again,
19 because I asked about the videos after the
20 termination.

21 Q In fact, he never accused you of
22 touching this woman inappropriately. He
23 relayed to you her complaint or her
24 boyfriend's complaint that you touched her
25 inappropriately; correct?

1 D. Zarda

2 A We've been through this --

3 Q Right.

4 A -- so I'm going to state it
5 again.

6 Q Please do.

7 A Okay, so I think we'll have this
8 on the record four or five times now.

9 MR. ANTOLLINO: Yes. Objection
10 to the fact that it's been asked many
11 times.

12 Q Thank you for reminding him.

13 A Good, so --

14 Q I know it probably bothers him
15 more than --

16 MR. ANTOLLINO: Actually, we
17 were doing fine, but if you want to use
18 your seven hours asking things again,
19 you can do that.

20 MR. ZABELL: I'm aware of what I
21 can and can't do, Counselor. Thank
22 you, though.

23 A Since I've answered this so many
24 times, I'm going to try to make it even a
25 little bit more condensed, in that Ray's

1 D. Zarda

2 corroboration of that ridiculous complaint is
3 accusing me of it because he knows better.
4 Simple as that. It's just that simple.

5 Q How did Ray corroborate that
6 event?

7 A The accusation?

8 Q Yes.

9 A Because he went along with it.
10 He didn't investigate it. He didn't let me
11 see the video. He didn't ask anybody else in
12 the plane. He didn't check this out. He
13 just acted on the customer's complaint
14 immediately, didn't check anything out, so he
15 just owned it.

16 Q And that's how he lied to you?

17 A It's a lie because he knows that
18 Don Zarda did not touch the customer in a way
19 that was inappropriate whatsoever. He knows
20 that.

21 Q How does he know that?

22 A Because he has the experience in
23 the industry, in the sport, as an instructor,
24 and he knows me for ten years now. He knows
25 my record, he knows my reputation, and he

1 D. Zarda

2 knows better. Simple.

3 Q And you think he just fired you
4 because you were gay and because you drove
5 his Workers' Comp premiums up?

6 MR. ANTOLLINO: Objection.

7 A No, no. I said earlier when you
8 asked me that if that was a possibility that the
9 Workers' Comp. was an issue, and I said that
10 it's a possibility.

11 Q Is it also a possibility that it
12 was because you were gay?

13 A Yes, absolutely.

14 Q Which do you think is more
15 probable?

16 A That I'm gay.

17 Q You think so?

18 A I think that's bigger.

19 Q Do you have an opinion one way
20 or the other as to the reason why you were
21 terminated; is it because you were gay, or is
22 it because of the Workers' Comp premium --

23 MR. ANTOLLINO: Objection.

24 Q -- in your mind?

25 A It's clearly going to be the gay

1 D. Zarda

2 issue.

3 Q As you sit here today, you
4 believe you were terminated 100 percent
5 because you are gay?

6 A I didn't say 100 percent. You
7 said 100 percent.

8 Q What percentage would you say --
9 MR. ANTOLLINO: Objection.

10 Q -- the likelihood is that you
11 were terminated because you're gay?

12 MR. ANTOLLINO: Objection.

13 A Statistically speaking, I
14 suppose if you were to crunch the numbers, if
15 there's a possibility of another reason, then
16 this reason over here can't be 100 percent,
17 so where in there is it; one percent, two
18 percent, three percent? I don't know. I'm
19 not in Ray's head, so I can't answer that.

20 The question was: Is it
21 possible that Ray could have fired me, in
22 part, for the Workers' Comp situation? Yes,
23 it's possible. How much of that weighed on
24 him when he made the decision to fire me for
25 being gay, I don't know. I wasn't in Ray's

1 D. Zarda

2 head, so I can't answer that.

3 Q Do you believe that it could
4 have only been one of those two reasons?

5 MR. ANTOLLINO: Objection.

6 Q You may answer.

7 A Do I believe -- can you repeat
8 that?

9 Q Do you believe, as you sit here
10 today, that your termination was either the
11 result of you being gay or the result of you
12 driving up his Workers' Comp policy?

13 MR. ANTOLLINO: Objection.

14 A I'm going to say this once more.
15 I didn't do anything to drive up his Workers'
16 Comp policy.

17 Q Well, his belief that you drove
18 up his Workers' Comp policy.

19 A I still don't think that I can
20 say that is even his belief because that's
21 something that is not in my control, nor his
22 control, so I can't state to what his belief
23 is about me driving up his Workers' Comp
24 that as being a factor in whether or not he
25 wanted to let me go or not, could have been a

1 D. Zarda

2 little part of it, but I think the bigger
3 piece, the much bigger piece, the
4 dramatically larger piece of it had to do
5 with me being gay.

6 MR. ANTOLLINO: Off the record
7 for one moment, if you don't mind.

8 MR. ZABELL: Are we talking
9 about scheduling?

10 MR. ANTOLLINO: Yes.

11 MR. ZABELL: Sure.

12 (Whereupon, a discussion was
13 held off the record.)

14 Q The dramatically large piece of
15 your termination had to do with your being
16 gay.

17 What, if any, do you believe
18 could have been the other factors?

19 MR. ANTOLLINO: Objection.

20 Asked and answered.

21 A Well, we've been down this path,
22 but to go briefly again, the accusation of
23 the inappropriate touching was in the mix and
24 the issue of me being gay.

25 Q And?

1 D. Zarda

2 A The slight possibility that it
3 had to do with the Workers' Comp situation,
4 for which neither Ray nor me has any control
5 over because Ray doesn't work for the New
6 York State Insurance Fund or the Workers'
7 Comp Board and neither do I.

8 Q Are you finished with your
9 answer?

10 A I am.

11 Q Anything else you want to add?

12 MR. ANTOLLINO: Objection.

13 A To that question?

14 Q Yes.

15 A No, I think I answered it a lot.

16 Q Okay. Talk to me about
17 Lauren Callanan; what do you know about her?

18 A She is the manifester, the
19 primary manifester for the office, and I
20 don't know if she has an official title as an
21 office manager, but she certainly takes on
22 that role.

23 Q Nice person?

24 A She appears to be.

25 Q She ever lie to you?

1 D. Zarda

2 A Let me think about that for a
3 minute.

4 Q You do that.

5 A I can't think of a specific time
6 where she would have just flat out said an
7 untruth to me directly. Given that she was
8 participating, however, in my termination, to
9 me, might make her culpable in that, in the
10 act of possibly committing an untruth in that
11 situation.

12 Q But as you sit here right now,
13 do you have any reason to believe that she
14 lied?

15 A I do have reason to believe -- I
16 do have a little bit of reason to believe. I
17 just can't prove that.

18 Q We all need a reason to believe.

19 A Yeah, well.

20 Q What is your reason to believe
21 that she lied?

22 A My reason would be because she
23 was sitting there with Ray and me when I was
24 terminated, for whatever reason, whether it
25 was for Ray to have a witness or whatnot, and

1 D. Zarda

2 for her to be there, I can't imagine her
3 believing this to be true, the reason I was
4 being fired, so that would make me feel like
5 that she could be culpable of lying by
6 corroborating with Ray, the reason Ray was
7 firing me for.

8 I guess it would be like this:
9 Lauren, do you really believe that this
10 happened? That would be my question if I had
11 to ask her, and she would have to say yes or
12 no, and depending on that would, I guess,
13 determine whether or not she was lying. I
14 can't imagine --

15 MR. ANTOLLINO: All right.
16 That's the answer.

17 MR. ZABELL: Counselor, if your
18 client is speaking and he's halfway
19 through his answer, you do not get to
20 say, all right, that's enough.

21 MR. ANTOLLINO: Yes, I
22 apologize.

23 Q You said "I can't imagine."
24 Please tell me what you can't
25 imagine with regard to that question, and

1 D. Zarda

2 disregard your attorney telling you, okay,
3 that's enough.

4 A I can't imagine her believing
5 that.

6 Q Can't believe that a customer
7 complained about you or believing that the
8 actual complaint was accurate?

9 A Believing that I did anything
10 wrong like that.

11 Q What months in the year 2001 did
12 you work for Skydive Long Island?

13 A I'll just have to give you an
14 approximate on that. It could have been the
15 months in June, July, August, and very early
16 September.

17 Q Would that have been the same
18 for 2009?

19 A No. 2009 would have been the
20 months of May, June, and the first part of
21 July.

22 Q What about 2010?

23 A Those would have been the months
24 of May and June.

25 Q And typically, if you were given

1 D. Zarda

2 the opportunity, would you have worked for
3 Mr. Maynard year round?

4 A It was a seasonal arrangement.
5 It was a seasonal engagement to come to work
6 there.

7 Q What makes it seasonal?

8 A In part, the weather and the
9 nature of the activity, and the location of
10 Mr. Maynard's drop zone is in that place
11 mentioned. I think Rich told you, the season
12 was from March to November, and that's for
13 the locals. So what I mean by that is, Rich
14 lives in this area and so do some of the
15 other employees, so they stay all year, and
16 they're able to work a little bit longer
17 outside in the busy season where instructors
18 like me come from other parts -- they're able
19 to work a little bit longer on either end of
20 the season because they live here versus
21 instructors get hired in from other parts of
22 the country. We come for the busy part.

23 Q And you understand that
24 skydiving on Long Island is a seasonal
25 business; correct?

1 D. Zarda

2 A It can be a seasonal business.

3 Technically speaking, skydiving can take
4 place 365 days a year, seven days a week, if
5 you have the weather. If the planets
6 rearrange themselves and it got to be nice
7 weather in December, they -- I wouldn't be
8 surprised if in the coming weekends, even
9 this month, if they aren't doing tandems at
10 Skydive Long Island on the weekend.

11 Q Would you work on rainy days?

12 A Would I work on a -- you're
13 asking me --

14 Q On a rainy day, yes.

15 A If I would or did?

16 Q If you would.

17 A If I would work on a rainy day?

18 Q Yes.

19 A Could you be more specific; in
20 what way would I work?

21 Q Would you actually jump out of
22 planes in the rain?

23 A We're not allowed to do that.

24 Q So on rainy days, you can't jump
25 from planes?

1 D. Zarda

2 A You can't jump from planes while
3 it's raining, during the part of the day that
4 it's raining.

5 Q What other restrictions are
6 there on when you can jump from a plane?

7 A Legally, as far as conditions?

8 Q Yes.

9 A Legally, the sky must be clear,
10 you must have visibility of three statute
11 miles, you must be 500 feet below clouds,
12 there must be 1,000 feet above the clouds,
13 and 2,000 feet separation from the clouds to
14 be able to jump. If you don't have that kind
15 of visibility -- that's off the top of my
16 head. The FARs, but it's relatively close.

17 Q And that was enforced at Skydive
18 Long Island; correct?

19 A Not all the time.

20 Q No; there were times where you
21 would break the law and dive?

22 A Yes.

23 Q Why would you do that?

24 A Because the pilot was willing to
25 fly the aircraft, and Ray was willing to have

1 D. Zarda

2 us do jumps in those conditions.

3 Q And you were willing to jump in
4 those conditions?

5 A Willing or -- I was willing to
6 jump. Pressured to jump, I think, would
7 probably be a better way to put it.

8 Q You had the right to refuse a
9 jump; did you not?

10 A You could. If you did and you
11 were the only one, then that would possibly
12 raise concern or draw attention to why you
13 would not be jumping when these other people
14 who have a vested interest in making as much
15 money as they possibly can are jumping, so
16 there's that paradox.

17 Q What's the paradox?

18 A Everybody else must think it's
19 okay to jump, so therefore, I should jump
20 too, even if it's illegal. That's the
21 paradox.

22 Q Did you ever complain about
23 being forced to jump illegally?

24 A In this industry, if you
25 complain about things too much, illegal or

1 D. Zarda

2 not, then you may lose your job.

3 Q That's a wonderful answer. It's
4 just not the answer to the question I asked
5 you.

6 A Okay.

7 Q Did you complain about being
8 forced to jump illegally?

9 A No.

10 Q If you wanted to complain, who
11 would you complain to?

12 A The only person I would have
13 felt comfortable with making a complaint
14 about conditions and not jumping would have
15 been Rich, himself, and if Rich wasn't there,
16 I would probably conferred next with Duncan,
17 Duncan Shaw.

18 Generally, either one of those
19 two people would be there. Collectively how
20 it would work is, if it's really crappy
21 conditions and we're talking borderline
22 dangerous, it would get to a point where the
23 herd of staff would collectively stand down.
24 Sometimes that call had to be made by
25 somebody. Oftentimes, it was not Ray. Many

1 D. Zarda

2 times it was Rich. Sometimes it would be the
3 pilot. Everybody has a different role in
4 this.

5 The pilot could refuse not to
6 fly if the conditions aren't good enough, so
7 then if the pilot doesn't fly, then,
8 obviously, the jumpers can't make the
9 decision not to jump.

10 Q Did you maintain a schedule of
11 your hours worked in 2009?

12 A A written schedule, no.

13 Q Did you maintain a schedule of
14 your hours worked in 2010?

15 A No. We were expected to show up
16 at work at a specific time, and that time was
17 given to us either the prior day, we'd look
18 at the schedule, see what tandems were coming
19 in, and we were expected to stay until the
20 work was complete, no matter how long that
21 was or until we were dismissed, if we were
22 ever dismissed.

23 Q Sometimes you would never be
24 dismissed; right?

25 A Sometimes you wouldn't.

1 D. Zarda

2 Q And you would sleep there when
3 you weren't dismissed; correct?

4 A You're just waiting. You could
5 be using the computer or you could do
6 nothing, or if there was something -- there
7 was various things you could do. If you
8 needed to pack your parachute or something, I
9 suppose you could do that.

10 Q You could also drive off site
11 and just when they call you back, return;
12 correct?

13 A Sometimes they would let you do
14 that, but not all the time.

15 Q You had a cellphone when you
16 worked in 2009 and 2010; correct?

17 A Yes.

18 Q What was your cellphone number?

19 A Same as it is now.

20 Q Which is?

21 A (901)569-5860.

22 Q And that was known to Skydive
23 Long Island; correct?

24 A Yes, of course.

25 Q And they could always call you

1 D. Zarda

2 on your cellphone; correct?

3 A Yes, they could.

4 Q And, you know, there were times
5 during bad weather where you'd leave and go
6 run some errands and maybe stop back, but if
7 the skies opened up and it got more rainy,
8 you would just go home; correct?

9 A No. Typically, for me, once I
10 made the trip out there, I would stay from
11 where I had come from, so I can't think of
12 specifics, but there were not very many times
13 that I would go run errands, because there's
14 not too many things that you can do out
15 there, where you could run errands, other
16 than go get something to eat and come back.
17 So for me, that doesn't work.

18 For some of the other people
19 that live out there, have full-time homes and
20 stuff, they could kind of come and go and do
21 stuff like that, but it didn't really work
22 out for me that way.

23 Q That's just because you lived a
24 little bit of a distance away?

25 A It was a little bit of a

1 D. Zarda

2 distance; yeah.

3 Q It was just less convenient for
4 you; correct?

5 A Yeah. It would have been kind
6 of ridiculous to drive all the back to Coram
7 and then come all the way back to that area.

8 Q Did you ever meet any of the
9 customers of Skydive Long Island afterwards,
10 after a jump?

11 A Did I ever meet -- be more
12 specific about "after a jump." Are we
13 talking the same day, like after they just
14 made their jump and they were hanging out?

15 Q No. Did you ever make an
16 acquaintance with a customer and then meet up
17 with them at some later date?

18 A I made some acquaintances, but I
19 haven't met up with them. I made a couple of
20 acquaintances on FaceBook, one that I could
21 think of. I haven't seen him since. I mean,
22 we're still FaceBook friends.

23 Q Did you ever date any of the
24 customers you met at Skydive Long Island?

25 A No, I never have.

1 D. Zarda

2 Q Did you ever try?

3 A Nope.

4 Q Now, what was your expected work
5 schedule in 2009 at Skydive Long Island?

6 A Are you asking me what dates I
7 was expected to be there?

8 Q What days of the week were you
9 expected to work?

10 A It's a seven-day-a-week operation.

11 Q I know it's a seven-day-a-week
12 operation --

13 A You're expected to work seven
14 days a week if the weather is good.

15 Q How did you happen to spend
16 weekends over at Fire Island if you were
17 working seven days a week?

18 A I didn't spend any full weekends
19 over at Fire Island, unless it was completely
20 crappy weather and we were dismissed from
21 jumping and we were not jumping, period, or
22 we were allowed to go home or any of those
23 scenarios, if they occurred. I didn't spend
24 weekends over at Fire Island.

25 Q Really? Because you testified

1 D. Zarda

2 before that in response to questions of, hey,
3 Don, what did you do this weekend, you would
4 share with people that you went to Fire
5 Island or you went to the Pines, or something
6 else.

7 A Yup. You can very easily get a
8 ride on down to Sayville, get on the ferry,
9 and come right back. Coram is fifteen
10 minutes from Sayville. I did it several
11 times. Come back and go to work, so I didn't
12 spend weekends on Fire Island.

13 Q Did you spend evenings there?

14 A If there was time to make it
15 over there. It just depends on the schedule.
16 If there was a way to go over there and come
17 back, then, yeah.

18 Q So some days your schedule would
19 permit it and some days your schedule
20 wouldn't; is that correct?

21 A The schedule never permitted to
22 go spend a weekend on Fire Island. It did
23 not permit that, and I did not spend any
24 weekends on Fire Island because of that. If
25 the situation warranted or the conditions

1 D. Zarda

2 permitted you to be able to go to Fire Island
3 for any amount of time, then I may have gone,
4 and I did go on some occasions.

5 Q In 2009?

6 A Yes.

7 Q And in 2010?

8 A Yes.

9 Q How many occasions in 2010 did
10 you go to Fire Island?

11 A I can't recall a specific number
12 of occasions. There's no way of me to tell
13 you that.

14 Q More than one?

15 A Oh, yes, more than one.

16 Q More than two?

17 A I'm pretty sure it was more than
18 two.

19 Q More than three?

20 A I would say so.

21 Q More than four?

22 A Would say that it was -- we're
23 talking about 2010?

24 Q Yes.

25 A I'd say it was less than ten

1 D. Zarda

2 times total.

3 Q Some amount between six and ten?

4 A Somewhere around there, yeah. I
5 think that's fair to say.

6 Q What about 2009?

7 A 2009, less. I'd probably say it
8 could be four to five times.

9 Q Four to five times?

10 A I managed to make it over there,
11 despite the injury, a couple of times, so
12 yeah, probably about that.

13 Q Fire Island wasn't the only
14 place you socialized on Long Island; is it?

15 A Well, there was the drop zone,
16 and then -- 2009?

17 Q 2009 or 2010.

18 A 2009, I can't think of going
19 anywhere else to socialize. 2010 on Long
20 Island, I can't think of anywhere else I went
21 to socialize.

22 Q Did you ever go to any clubs in
23 Sayville?

24 A No, never been to any clubs in
25 Sayville.

1 D. Zarda

2 Q Did you ever enjoy any of Long
3 Island's fine restaurants, fine dining
4 establishments?

5 A I mean, I eat out a lot, so
6 can't say as to what all restaurants I went
7 to. I think in 2010, I might have gone to a
8 restaurant -- I did go to a restaurant. I
9 just can't remember which one it was, in
10 Port Jeff Station right around the corner
11 from the condo. That was nice. I don't
12 remember which one it was.

13 Q Did you ever have occasion to go
14 into New York City --

15 A Yes.

16 Q -- when you worked in 2009
17 and 2010?

18 A Yes.

19 Q When would you go into the City?

20 A Whenever time permitted.

21 Q How much time would you need to
22 get into the City?

23 A That was always a toughy. If we
24 were busy working and we had to be at work
25 the next morning, depending on what time we

1 D. Zarda

2 got released from work or the last jump was
3 would dictate on whether or not we could get
4 down to Ronkonkoma, hop the train, get to the
5 City and come back, so I did that a few
6 times.

7 Q In 2009, how many times did you
8 do that?

9 A Did I ever go to New York from
10 Coram; is that what you're asking?

11 Q Did you ever go to New York City
12 while you were working in 2009?

13 A A couple of times.

14 Q Three or four?

15 A I don't know if it was three or
16 four, because I got hurt pretty early on, so
17 we were busy, and that was during the long
18 daylight hours, but I know I went at least
19 once, probably twice.

20 Q How about 2010?

21 A Same thing, because the only
22 thing different is that I was hurt in a
23 different way in 2010. I was fired, but it
24 was about the same amount of time.

25 Q If it was a long daylight day,

1 D. Zarda

2 as I believe you said --

3 A Yes.

4 Q -- what does that mean?

5 A Well, in the summer solstice,
6 the days are the longest. Skydiving goes on
7 typically all way until one half hour before
8 sunset. As the sunset gets longer and longer
9 in the summer, then so does the workday.

10 Q What is the longest day in the
11 summer?

12 A June 20.

13 Q From that point, it gets --

14 A It starts getting slowly
15 shorter.

16 Q If there's more sunlight, does
17 that mean you can perform more jumps in a
18 day?

19 A It does.

20 Q What was the most amount of
21 jumps that you had done in a day?

22 A Eighteen.

23 Q How much do you get, roughly,
24 for each jump?

25 A \$40.

1 D. Zarda

2 Q And that's the amount that you
3 agreed upon; correct?

4 A Right.

5 Q On a piecemeal basis, once your
6 jump is completed, that's what you get paid;
7 is that correct?

8 A Right.

9 Q Sometimes you get paid more than
10 \$40; right?

11 A As Rich was kind of explaining,
12 because the breakdown is kind of complicated
13 and depending on the kind of jump, so if it
14 was a training jump, training tandem versus
15 just a joyride, then there was a slightly
16 different schedule for that, and I don't
17 recall right off the top of my head how much
18 it was, because the majority of the jumps
19 that take place at Skydive Long Island are
20 passenger joyrides. They're not training
21 jumps, so I don't have it off the top of my
22 head.

23 There were times that if you
24 were doing a different kind of jump, you got
25 paid a different amount.

1 D. Zarda

2 Q Did you keep track of how many
3 jumps you did in 2009?

4 A The computer kept track of it.
5 My altimeter has it. I'm not sure if we
6 provided that to you or not. It's in my
7 altimeter. It's on my computer.

8 Q What does that mean, it's in
9 your altimeter, it's on your computer?

10 A Well, the old standard way of
11 logging jumps, and some people still use it,
12 some people half-and-half it, is an actual
13 logbook, like this (indicating) spiral bound.
14 You write down the jump number and what you
15 do. Many professional jumpers don't do that
16 anymore because we're just doing so many
17 jumps, and they're all just the same thing,
18 and we have altimeters that electronically
19 record the jump.

20 Q Would that electronically record
21 a fun jump for you?

22 A Yes, it would.

23 Q Would it distinguish it as a fun
24 jump?

25 A It doesn't, but when you

1 D. Zarda

2 download the jumps into your software program
3 on your computer, then you can go in and say,
4 dive type or type of jump it is, and also
5 typically, if you just forgot and you wanted
6 to look, you can tell what kind of jump it is
7 because you could look at the free fall time,
8 free fall speeds and opening altitudes that
9 the altimeter records, so it would really be
10 obvious that a tandem wasn't a fun jump and
11 you opened at 2,000 feet. That's really a
12 no-brainer.

13 Q Now, Mr. Winstock said yesterday
14 when he was critiquing one of your jumps that
15 he thought you were waiting too long to throw
16 your drogue out.

17 A Just his opinion.

18 Q Well, it's his opinion that
19 counts; isn't it?

20 A It counts for what?

21 Q He gets to review your jumps to
22 determine that you're jumping appropriately;
23 correct?

24 A No. There wasn't a review
25 process. I think that was just some

1 D. Zarda

2 skydiving comradery. No. So no, there was
3 not performance reviews. There was not
4 performance evaluations.

5 Q In a tandem jump, how long are
6 you supposed to wait before throwing out your
7 drogue?

8 A Three to five seconds, or until
9 stability is achieved and when the instructor
10 deems it appropriate to be able to safely
11 deploy the drogue chute.

12 Q Why do you not want to wait too
13 long to deploy your drogue chute?

14 A Well, because it could get
15 entangled with the tail of the aircraft. It
16 could get entangled with you. It can get
17 entangled with the passenger; any of the
18 those things. So you need to deploy the
19 drogue whenever the time is correct that you
20 have achieved stability and that you have
21 control and that it's safe to do so.

22 Q Right. And you don't want to
23 throw your drogue out after -- the whole
24 purpose of your drogue is to slow you down so
25 you're not hitting terminal velocity;

1 D. Zarda

2 correct?

3 A It's just to keep the tandem
4 pair falling at the same speed, roughly, that
5 a solo jumper would fall.

6 Q And isn't it also to lessen the
7 impact of the initial shoot opening, as well?

8 A It is also for that.

9 Q Because that would put a lot of
10 stress on you; wouldn't it?

11 A It does, yes. It does also
12 serve that purpose.

13 Q So that's why you want to open
14 it in that three to five seconds?

15 A Three to five seconds is very
16 arbitrary. It could be seven.

17 Q Really? Because I thought at
18 twelve seconds, you hit terminal velocity.

19 A Actually, at nine seconds you
20 do.

21 Q Oh, you do? Then it makes sense
22 you're going to want to do it at three to
23 five as opposed to eight because you don't
24 want to hit terminal velocity; right?

25 A No, no. It's okay to wait, you

1 D. Zarda

2 know, up to seven seconds. It's fine.

3 Q Did Rich indicate that you did
4 it in about twelve seconds?

5 A We didn't look at the video
6 again, because I don't think there was
7 twelve seconds there.

8 Q Because there was time for you
9 wave before you did it; correct?

10 A Oh, there's time to give the
11 peace sign. There's time to do a couple of
12 flips. There's time to wave. There's time
13 to do all of that.

14 Q Do you flip while there is
15 somebody strapped to you?

16 A I have.

17 Q Is it recommended?

18 A Technically, it is not allowed.

19 And that reminds me of the
20 initial complaint in 2001 of that passenger
21 where I mentioned that there was something
22 that that passenger wanted me to do that I
23 wouldn't do, that just happens to be exactly
24 what it was. It was flips out of the
25 airplane.

1 D. Zarda

2 Q Which you've done before?

3 A Every instructor has done it.

4 Q But you're not allowed to do it?

5 A Technically, you're not allowed
6 to do it.

7 Q But you've done it.

8 A And everybody does.

9 Q So if everybody does it, then it
10 makes it all right; correct?

11 A It depends. It depends on if
12 the manufacturers are wanting to enforce that
13 or not, and during the period of time in 2001
14 when that came up, it was under very extreme
15 scrutiny at that point, and it was being
16 enforced, and there were consequences if you
17 were caught doing it.

18 Q What were the consequences?

19 A You could have your license
20 revoked.

21 Q And that's actually any time if
22 you're caught doing it, you could have your
23 license revoked; correct?

24 A It is, but I've not heard of
25 that happening in years.

1 D. Zarda

2 Q So you've escaped detection in
3 years?

4 A Everybody has escaped detection
5 in years, even though it's broadcast on
6 YouTube thousands of times. Instructors
7 doing flips and barrel rolls with tandem
8 passengers, and somehow there still manages
9 to be licensed instructors in the country
10 doing tandems. It's a great thing.

11 Q You agreed specifically to get
12 paid on the per jump basis; did you not?

13 A That is correct.

14 Q And you were paid on a per jump
15 basis; correct?

16 A Yes.

17 Q And you were paid what you had
18 agreed to be paid; correct?

19 A Except for the jumps that Ray
20 withheld from my paycheck.

21 Q But then he gave them back to
22 you; right?

23 A (No verbal response.)

24 Q You testified that he did.

25 A He stole the TV, and then he

1 D. Zarda

2 returned it.

3 Q You got paid everything that you
4 were agreed to be paid; correct?

5 A Yup.

6 Q Did you ever collect any Social
7 Services payments in 2009 or 2010?

8 MR. ANTOLLINO: Objection to
9 form.

10 A Define "Social Services" to me.

11 Q Anything from welfare to
12 unemployment benefits to Workers' Compensation
13 Benefits.

14 A I received Workers' Compensation
15 benefits.

16 Q When?

17 A That was in 2009.

18 Q Did you ever receive
19 unemployment benefits?

20 A Not in 2009.

21 Q Did you receive unemployment
22 benefits in 2010?

23 A Yes.

24 Q From what state did you receive
25 unemployment benefits?

1 D. Zarda

2 A New York.

3 Q I assume you applied for
4 unemployment benefits; correct?

5 A I did.

6 Q Did you indicate on your
7 application for unemployment benefits that
8 you were a partner in a business?

9 A I would have to see the form. I
10 doubt it, because I'm a silent partner, and I
11 don't have any legal standing with the
12 business whatsoever, and I don't have
13 anything there, so I doubt it.

14 Q But you do receive income from
15 the business when the business has income;
16 correct?

17 A When the business is able to pay
18 for what it owes me for work that's been done
19 years ago, then we get some money.

20 Q And in 2010, you actually did
21 work for the business; correct?

22 A I haven't been paid for that
23 work.

24 Q But you did work; right?

25 A In 2010, I did some things here

1 D. Zarda

2 and there.

3 Q What did you do for the company
4 in 2010?

5 A In 2010, I was gone a lot, so
6 just IT stuff.

7 Q Do you recall what period of
8 time to what period of time you did IT stuff?

9 A It would have been before I
10 went.

11 Q It would have been what?

12 A It would have been before I went
13 to leave for the season to go to Skydive Long
14 Island.

15 Q Well, didn't you testify before
16 that you also worked there after you left
17 Skydive Long Island?

18 A You're talking about '10; right?

19 Q Yes.

20 A I think that -- I think that you
21 were talking about '11 when I came back and
22 doing the work that you just asked me about
23 recently.

24 Q So you're saying you didn't do
25 any work for the company in 2010, or you did

1 D. Zarda

2 do work in 2010?

3 A Before I went to Skydive Long
4 Island.

5 Q From what period of time to what
6 period of time did you collect unemployment
7 benefits?

8 A I don't have a -- that's a good
9 question because it took so long to get any
10 response in that broken system, that awful
11 system --

12 MR. ANTOLLINO: Just answer the
13 question.

14 Q It's an awful broken system. I
15 got you.

16 A It is. It's awful. I think
17 actually by the time I actually got any
18 benefits, it was the end of November of 2010.
19 It took that long.

20 Q How long did you receive those
21 benefits for?

22 A I think it was just until
23 January, the end of January. Maybe early
24 February.

25 Q Why did you stop receiving

1 D. Zarda

2 benefits?

3 A Because we got into a dispute
4 over a program that I applied for,
5 599 Program, and they suspended my benefits.

6 Q What is a "599 Program"?

7 A It has to do with training. If
8 you are in school or in an approved training,
9 and I'm not going to speak as if I'm an
10 expert on this, because I don't have the rule
11 in front of me because it's all very
12 complicated, you can receive benefits for
13 unemployment while you are actually in school
14 full-time, as long as you meet these specific
15 criteria that was listed in their handbook,
16 and I met that criteria, so we actually still
17 have an open case to this day, and I intend
18 to win that to get the remaining benefits
19 with unemployment.

20 Q You do?

21 A I do.

22 Q How do you intend to do that?

23 A When the Judge -- when I finally
24 get a hearing and I get to talk to the Judge,
25 I think, just as in the case with the

1 D. Zarda

2 Workers' Comp, I think the Judge will see it
3 my way.

4 Q You do?

5 A I do.

6 Q Has anybody advised you on it?

7 A Like an attorney, you mean?

8 Q Yes.

9 A Not specifically.

10 Q Generally?

11 A No. They have not specifically
12 advised me on that. I'm kind of handling
13 that on my own. I think -- it's a
14 bureaucracy. I think the facts speak for
15 themselves, and then when it gets to a point
16 where a Judge can look at it, it will be
17 easy.

18 Q Do you know what the earnings
19 are of Altitude Express or Skydive Long Island?

20 A What they make as a corporation?

21 Q Yes.

22 A I don't.

23 Q Do you know the periods of time
24 in which they make their money?

25 A I don't know, specifically, but

1 D. Zarda

2 I think they are capable of making money year
3 round. They can sell gift certificates over
4 the winter, even though they're not jumping.
5 They can actually do jumps in January. I've
6 seen posts for jumps in the winter, so it's
7 just not the up, main season.

8 Q Do you agree that skydiving is a
9 seasonal sport?

10 A In some areas, it is, and in
11 some areas, it is not.

12 Q Would you say that Skydive Long
13 Island is a seasonal sport, dependent to
14 operate mostly in the warmer weather?

15 A Typically so for Skydive Long
16 Island; yeah, yes.

17 Q So if you actually swore to the
18 accuracy of that statement, that would be
19 correct?

20 A I think I did say that.

21 Q I think so too.

22 A Yeah.

23 Q I believe you said the last jump
24 of each day occurred a half hour before
25 sunset; is that correct?

1 D. Zarda

2 A Well, if everybody is following
3 FAA rules and United States Parachute
4 Association rules and all the rules that
5 you're supposed to follow, then technically
6 speaking, the last jump is supposed to be
7 wheels up, which means takeoff, thirty
8 minutes before sunset; whatever the official
9 posted sunset is.

10 Q How long does a jump actually
11 take?

12 A That depends on the type of
13 jump, the type of aircraft that's being used
14 to take the jumpers to altitude, and the
15 altitude of the jump.

16 Q When you were at Skydive Long
17 Island, how long did your jumps take?

18 A Well --

19 Q Generally? You can give me the range.

20 A That's better because there is
21 two different aircrafts, and they operate at
22 two very different speeds and they were
23 different altitudes, so a jump could go
24 anywhere from, I would say, ten to twenty,
25 twenty-two minutes or so, somewhere in that

1 D. Zarda

2 neighborhood.

3 Q In a ten to twenty-minute
4 period, you would earn somewhere around \$40;
5 is that correct?

6 A That's correct. You could do
7 pretty well, depending on which plane you're
8 in. If you're lucky and in the KingAir all
9 day, you did better because it was a faster
10 plane. You could get up and down quicker and
11 do more jumps.

12 Q That was the ten-minute jumps;
13 right?

14 A Well, the reason I said ten is
15 because that's if you are doing some kind of
16 jump mastering with a student that's not a
17 tandem and they're getting out at a low
18 altitude on the way up to a higher altitude,
19 so that's why I included that. That's not
20 the typical tandem jump. A typical tandem
21 jump is going to be fifteen to twenty
22 minutes.

23 Q Okay.

24 A Tandems were, you know, were the
25 main staple. There's all kinds of other

1 D. Zarda

2 variables.

3 Q Most of the jumps took between
4 fifteen and twenty minutes for which you
5 would earn the \$40; correct?

6 A Yeah. Sometimes a little less
7 if it was in the KingAir and you didn't get
8 full altitude, for whatever reason, and
9 sometimes that happened because of traffic or
10 clouds.

11 Q And again, if it was a cloudy
12 day or a rainy day, you ended up hanging out
13 around there, but you could go run errands or
14 whatever, but you didn't go home because it
15 just didn't work out for you; correct?

16 A I typically didn't go home
17 because it was too far, but it depends on the
18 kind of clouds. I know that maybe sounds a
19 little hard to understand, and the kind of
20 weather.

21 Q No, I understand. You got your
22 nimbus, your cumulonimbus, your thunder.

23 A If it was, you know, stuff is
24 moving in, it's definitely not going
25 anywhere, then you know probably we're done

1 D. Zarda

2 for the day. If it was hit-and-miss stuff
3 coming and going, you know, you could maybe
4 get a few loads off in between the stuff, and
5 then more rain would come, so it would just
6 depend, and then it depends on the altitude
7 of the clouds.

8 Sometimes the ceiling might be
9 10,000 feet. We could still do jumps below
10 10,000 feet without breaking the law. It
11 depends.

12 Q You would judge from the weather
13 whether or not you would hang around or not;
14 correct?

15 A We wouldn't judge. The decision
16 had to come down from Lauren. Lauren, a lot
17 of times, made the call, and I think when she
18 made the call, it was probably with Ray's
19 approval. It would come down from Ray or
20 Lauren and possibly Rich on whether we're
21 done or the pilot.

22 Keep in mind, it's a little bit
23 complicated. I want everybody to be able to
24 understand this. Ray runs the drop zone, he
25 owns the drop zone, he controls most things.

1 D. Zarda

2 However, the drop zone cannot operate if the
3 pilot does not or cannot fly the aircraft,
4 and the pilot has the absolute final say on
5 whether anybody goes anywhere, bar none.

6 Q What was the least amount of
7 jumps that you had performed on a day?

8 A That would be easy. It would be
9 zero.

10 Q And that's if you showed up and
11 the weather just didn't permit a jump;
12 correct?

13 A That's right.

14 Q In which case, you'd --

15 A You'd just have to see what the
16 situation was going to be. It was an
17 on-the-fly thing.

18 Q But while you're waiting around
19 for the weather to clear, you can go --

20 MR. ANTOLLINO: Objection.

21 Q -- get a sandwich, order a
22 pizza, or something?

23 A It depends. I'm not going to
24 make a general statement about that because
25 it just simply depends.

1 D. Zarda

2 Q Just some days you could, and
3 some days you couldn't?

4 A Some days you could, and some
5 days you couldn't.

6 Q Some days you could go home; and
7 some days you couldn't?

8 A Yeah.

9 Q You just wouldn't go home
10 because it was pretty far; right?

11 A Well, yup. If I had to go home
12 and come back, it would have been too far, so
13 really that wasn't an option for me, because
14 what if I'm on the way home and almost to
15 Coram, and then a hole opens up and we got
16 twenty or thirty --

17 Q Jumpers?

18 A -- customers standing there that
19 we can get in the air and I'm not there to do
20 it, that wouldn't be good.

21 Q Some people live pretty close to
22 the --

23 A They do.

24 Q -- jump zone; right?

25 A Yes, they do.

1 D. Zarda

2 Q Who lived the closest to the
3 jump zone?

4 A I think Duncan and Willie at the
5 time and Alex Allen.

6 Q Now, you and Willie weren't that
7 close, but Duncan was a good guy, right,
8 Duncan liked you?

9 A Everybody was a good guy.

10 Q Everybody; all of the workers
11 were good guys, even Willie?

12 A Even Willie. Willie was one of
13 those people that we talked about earlier
14 that needed a little bit of work.

15 Q Did Duncan or Willie ever invite
16 you to their house to get something to eat
17 during the down times?

18 A Not during those times; no.

19 Q During any other time?

20 A Yes. I've been over to their
21 house, but not during, you know, workdays.

22 Q After work, you'd go over and
23 socialize; right?

24 A Actually, no. Believe it or
25 not, social as we are with those long days,

1 D. Zarda

2 the people that work there, the professional
3 jumpers, were the ones who didn't socialize a
4 whole lot because we were worn out. You went
5 home. You had very little time to do what
6 you needed to do for your person, in my case,
7 my errands, workouts, whatever, and then you
8 had to be back the next day, so those of us
9 that worked full-time, we didn't really,
10 during the heavy part, we didn't socialize a
11 whole lot.

12 Q Did you ever get to workout at
13 the drop Zone?

14 A No.

15 Q Do pushups, sit-ups, or
16 pull-ups?

17 A No.

18 Q Never did that?

19 A No.

20 Q Were there shower facilities at
21 the drop zone?

22 A Crude, but I never used it, but
23 out behind the electrical transformer, there
24 was a stall and I think a water hose.

25 Q Well, it's always good to keep

1 D. Zarda

2 water hoses by electrical transformers;
3 right?

4 A Right.

5 Q But that was available for you
6 to use; right?

7 A If you felt like you could get
8 cleaner in that place, then I guess you could
9 shower there.

10 Q Were there ever beverages
11 provided in the drop zone?

12 A For sale, or -- Ray had a
13 hamburger shack that you could get soft
14 drinks from and some Coke machines.

15 Q Anybody ever bring beer to the
16 drop zone?

17 A All the time.

18 Q Who would bring beer?

19 A That could be staff, fun
20 jumpers, customers. Beer is encouraged.

21 Q But you can't jump while you're
22 drunk; can you?

23 A No, you cannot.

24 Q And you would never jump while
25 you were drunk; right?

1 D. Zarda

2 A Absolutely not.

3 Q Did you ever drink a beer at the
4 drop zone?

5 A Yes.

6 Q On occasion; right?

7 A On occasion.

8 Q It would be like, you know, once
9 a week, maybe once or twice a week?

10 A I wouldn't call it a per-week
11 thing. It would just depend on the day and
12 if there was something going on at the drop
13 zone. Typically, in the industry, or, you
14 know, culturally-wide, skydivers ended the
15 day with beer. They have a beer light. They
16 even have an actual beer light at Skydive
17 Long Island. A lot of drop zones do. It's a
18 green light or a light, and when it's turned
19 on, you're allowed to drink beer.

20 Q Your attorney had mentioned
21 something about getting laid yesterday.

22 Do you know what he was talking
23 about?

24 MR. ANTOLLINO: Objection. May
25 I clarify for the record?

1 D. Zarda

2 MR. ZABELL: No.

3 MR. ANTOLLINO: When you say,
4 "laid," are were you spelling it
5 L-E-I-D or L-A-I-D?

6 MR. ZABELL: I'm just saying
7 that you were talking about getting
8 laid yesterday, and I'm asking your
9 client if he knows what you were
10 talking about.

11 A I think that he was making
12 reference to a posting that he may have seen
13 on Skydive Long Island's website about a
14 summertime party, a luau, where it mentioned
15 something about getting laid.

16 Q Do you recall how it was spelled
17 because your attorney seems to want to know?

18 A I don't recall how it was
19 spelled. I may have seen it in passing.
20 Drop zones routinely have newsletters and
21 publicize on Dropzone.com and other websites,
22 boogie-type events for things like that, not
23 every single one of them, but it sounds like
24 something that a drop zone would have.

25 Q Were you ever at a getting-laid

1 D. Zarda

2 party at the drop zone --

3 A No.

4 Q -- on Long Island?

5 A No. I didn't stick around much
6 for parties at the drop zone, because I had
7 to be at work the next day, or if I didn't
8 have to be at work the next day, then I had
9 other stuff to go do (indicating).

10 Q You're pointing to your lawyer.
11 I don't know --

12 A I'm pointing as "in a way." I
13 had other stuff to go do.

14 Once you've been at the drop
15 zone for twelve hours or more and you're
16 working there, at least for me and I think
17 for Duncan sometimes and the other full-time
18 staff, we would pretty much just end up
19 leaving. Maybe have a beer and then leave.

20 Q You're unfamiliar with this
21 getting-laid party that your lawyer was
22 referring to?

23 A I think I've seen, you know, in
24 passing, this luau that they have. They have
25 all kind of quirky parties out there. They

1 D. Zarda

2 have some quirky parties at Skydive Long
3 Island that take place.

4 Q Did they in 2009?

5 A Yes.

6 Q What quirky parties did they
7 have?

8 A Same ones. They have the same
9 parties. The party themes tend to be similar
10 in nature or the same one regurgitated and
11 redone year after year.

12 Q What parties had occurred at
13 Skydive Long Island in 2009 when you were
14 working?

15 A Well, they have some kind of
16 disco, '80s, something-or-other party during
17 the time when the casa was supposed to be
18 there, which is a boogie that Rich mentioned,
19 and then boogie is just another word for a
20 skydiving event that involves more people and
21 typically, a specialty aircraft that doesn't
22 usually reside at the drop zone being brought
23 in for a special occasion. For those kind of
24 occasions. I think they had that luau, as
25 well. I think that was a separate occasion,

1 D. Zarda

2 but I'm not sure.

3 In 2009, I wasn't available to
4 be able to go to too many of the parties
5 because I was on crutches.

6 Q When you were on crutches, you
7 weren't working; correct?

8 MR. ANTOLLINO: Objection.

9 A I was not.

10 Q During the period of time before
11 you busted up your ankle --

12 A It was a short period because --
13 not terribly short, a couple of months, I
14 guess.

15 Q Well, there was May and June;
16 correct?

17 A May, June, and the first day of
18 July; yeah, so -- what were you asking about?

19 Q Did you go to any of those
20 parties in 2009?

21 A Not that I recall.

22 Q Were you invited to any of those
23 parties?

24 A You're all invited; yes.

25 Q And you choose not to go?

1 D. Zarda

2 A If I didn't go, then I'm sure I
3 made the choice.

4 Q Was there anything occurring at
5 the parties that made you uncomfortable?

6 A I can't say because I wasn't
7 there, but things do go on at some of those
8 parties at some drop zones that I don't
9 really feel it's part of my liking.

10 Q Does that have anything to do
11 with the disco music?

12 A No.

13 Q You're okay with the disco
14 music?

15 A I'm okay with it, but, you know,
16 I got other stuff to go do and other ways to
17 entertain myself than to hang around the drop
18 zone.

19 Q Well, what things go on at those
20 parties, at Skydive Long Island parties, that
21 you don't like?

22 A People get drunk.

23 Q You don't like people getting
24 drunk?

25 A I prefer not to be around drunk

1 D. Zarda

2 people, so I don't get drunk myself. It's
3 just that I don't like drunkenness. It
4 doesn't mean that you can't drink, but if
5 you're drunk and slobbering and falling all
6 over the place and being loud and whatever
7 people get like when they get drunk, I don't
8 like that.

9 Q You gave that all up in 1999 and
10 2000; right?

11 A I did.

12 Q What else goes on at the parties
13 that you don't like to participate in?

14 A Well, I can't say exactly
15 everything that goes on at some of these
16 things. I mean, you know, jumpers tend to
17 hook up with other jumpers at events like
18 that when people get drunk and start doing
19 stupid things, and so, you know, there's not
20 too many gay jumpers around, and I just got
21 other things to go do.

22 Q Slim pickings and --

23 A If you want to call it that,
24 then yeah.

25 Q I'm trying to get a handle on

1 D. Zarda

2 your position here.

3 A My position is that if I have an
4 opportunity to hangout at the drop zone at a
5 party and listen to disco music or to go to
6 Fire Island or something during that same
7 time period and be around some of my gay
8 friends and listen to that kind of music, I'm
9 probably going to go do that.

10 Q Is there a difference between
11 straight disco and non-straight disco?

12 A Well, disco is different than
13 some of the kind of music that we listen to.
14 The kind of music that I prefer is better
15 than the music at the parties.

16 Q Okay.

17 A I guess you could say so.

18 Q So it wasn't so much the people;
19 it was --

20 A No.

21 Q -- the music and the drinking?

22 A No, it's not so much the people.
23 If you're there all the time already, you've
24 been there all day, it's time to go do
25 something else. It's just that simple.

1 D. Zarda

2 Q So you weren't excluded?

3 A No, I wasn't excluded.

4 Q You have in front of you

5 Defendants' Exhibit B; do you not?

6 A Right here (indicating).

7 Q And you reviewed that?

8 A I looked it over last night.

9 Q Do you know what that document
10 is?

11 A Yes. It's says, (reading),
12 Amended Response to Demand for
13 Interrogatories.

14 Q And you swore to its accuracy;
15 did you not?

16 A I would say I did, according to
17 page 13. Yeah, I think that says -- to the
18 best of my knowledge, yes.

19 Q Is there anything you want to
20 change in there?

21 A I'd have to look it over again
22 to answer that question right now, but while
23 I was reviewing it last night, I didn't see
24 anything that -- I didn't grab a pen or go
25 for anything to cross out, so no, I think

1 D. Zarda

2 it's probably okay.

3 Q Okay. Tell me when you made any
4 complaints about alleged gender or sexual
5 orientation discrimination while you were
6 employed at Skydive Long Island.

7 A I think we covered that -- I
8 think I covered that in here, in this
9 document, and I didn't make any complaints to
10 the owner, Ray, or Rich about that or any
11 supervisory personnel directly.

12 Q Did you make any complaints
13 indirectly?

14 A What would be an indirect
15 complaint?

16 Q I don't know. But when you
17 said, I didn't make any complaints directly,
18 you're qualifying --

19 A Oh, okay --

20 Q -- and I'm obligated to follow
21 up on your qualifier, so if your answer is, I
22 didn't make any complaints at all, then I
23 won't have to follow up on that question.

24 A Yeah, I see what you're saying.
25 Then I didn't make any complaints to anybody

1 D. Zarda

2 at Skydive Long Island about it.

3 Q Did you complain to anybody
4 else?

5 A In the world?

6 Q Yes.

7 A Yes.

8 Q Who did you complain to?

9 MR. ANTOLLINO: Don't say
10 anything you said to your attorney.
11 Other than that, you can answer the
12 question.

13 Can I take a bathroom break?

14 MR. ZABELL: I think you can.

15 COURT REPORTER: Mr. Zabell,
16 there is a question pending without an
17 answer.

18 MR. ZABELL: Yes, thank you.

19 Answer the question before we
20 break please.

21 Read back that question, please.

22 (Whereupon, the requested
23 portion of the record was read by the
24 court reporter.)

25 A I made an EEOC complaint.

1 D. Zarda

2 Q This was after your employment
3 ended?

4 A Oh, okay.

5 Q Right?

6 A Yes.

7 Q You made no complaints while you
8 were actually employed at Skydive Long Island
9 to anybody?

10 A No.

11 Q Okay.

12 MR. ZABELL: Go to the lavatory.

13 MR. ANTOLLINO: Okay, great.

14 Thank you.

15 (Whereupon, a recess was taken
16 from 5:38 p.m. to 5:58 p.m.)

17 Q Do you recall ever signing a
18 release when you began your employment at
19 Skydive Long Island?

20 A I signed the standard waiver
21 release document that's required for anybody
22 to make a skydive at any skydiving center in
23 the United States and for most places to
24 qualify.

25 Q Did you understand that that

1 D. Zarda

2 release releases Skydive Long Island from any
3 and all claims that you may make against it?

4 MR. ANTOLLINO: Objection.

5 A No.

6 Q Doesn't it, in fact, say that?

7 A If I could be provided with a
8 copy of it, it says something to that context
9 in regard to anything related to the jump,
10 not employment. It doesn't mention anything
11 about anything regarding employment in there
12 whatsoever, so no.

13 And having familiarity of jump
14 operations over almost a period of twenty
15 years, I've come to know that the standard
16 indemnification and waiver in release of
17 liability for skydiving doesn't include
18 employment matters whatsoever, and I've never
19 seen one include an employment issue
20 whatsoever.

21 Q You haven't even discussed the
22 possibility as to whether or not you've
23 waived your right to bring any claims against
24 Skydive Long Island?

25 MR. ANTOLLINO: Objection.

1 D. Zarda

2 With anyone other than with your
3 attorney.

4 A I've discussed it with my
5 attorney.

6 Q Just so you know, that's exactly
7 what he just told you not to say, but okay, I
8 got you. I'm fine.

9 MR. ZABELL: You tried. You
10 gave it the old college try.

11 Q When you worked at Skydive Long
12 Island --

13 MR. ZABELL: Are you okay?

14 MR. ANTOLLINO: Yes, sure.

15 MR. ZABELL: Because if you need
16 a break, I'll --

17 MR. ANTOLLINO: No, we don't
18 need a break. Keep going.

19 A I stated what I said about the
20 waiver. I know what the waiver means, what
21 its intended purpose is for, and I said what
22 that was.

23 Q And its intended purpose is to
24 release claims against Skydive Long Island;
25 correct?

1 D. Zarda

2 A And indemnify the drop zone and
3 the instructors for any claims made in
4 relation to getting hurt or killed. It is
5 not intended for anything related to
6 employment.

7 Q And you're a lawyer?

8 MR. ANTOLLINO: Objection.

9 A I am not a lawyer. I am an
10 instructor that's been in the industry for
11 almost twenty years now and have seen this
12 paperwork a lot of times, and I know what it
13 means.

14 Q Have you actually seen any
15 decisions of courts interpreting that
16 document?

17 A Yes. Over the years, I have
18 when customers or skydivers got hurt and
19 actually went and sued a drop zone because
20 they got hurt or a family has sued because
21 somebody got killed. I have, over the years,
22 seen it put to the test in those regards.

23 Q Were there coworkers that you
24 were more senior to at Skydive Long Island?

25 A Yes.

1 D. Zarda

2 Q What is --

3 A That's using one of those
4 definitions that was mentioned yesterday, and
5 it can be number of jumps, number of years,
6 or number of years at a drop zone.

7 Q Were you treated better or worse
8 than those people that you were more senior
9 to?

10 A I don't think seniority has made
11 any difference.

12 Q You were all treated the same?

13 A Mostly. A newbie gets treated a
14 little differently than someone that's senior
15 in years.

16 Q You guys picked on the newbies a
17 little bit?

18 A What's that?

19 Q You guys picked on the newbies a
20 little bit?

21 A I don't.

22 Q The others do?

23 A It's just a pecking order.

24 Q Were you picked on when you were
25 a newbie?

1 D. Zarda

2 A Everybody gets picked on a
3 little bit; yeah.

4 Q But it kind of stopped after you
5 were a newbie?

6 A No. It's skydivers.

7 Q Skydivers, they just pick on
8 everybody?

9 A They do.

10 Q So all your coworkers got picked
11 on at one point or another?

12 A Skydivers -- yeah, they had...

13 Q Sometimes the bottle would point
14 to you, and sometimes the bottle would point
15 to somebody else?

16 A That's a good way to put it.

17 Q Right?

18 A That's a good way to put it, so
19 yes.

20 Q You were treated just like
21 everybody else there; right?

22 A For the most part.

23 Q So if you swore under oath that
24 you weren't, would you be lying; correct?

25 A No. I said for the most part.

1 D. Zarda

2 Q Yes. For the most part, you
3 were treated just like everybody else,
4 correct; yes or no? That's a yes-or-no
5 question, and I get to ask yes-or-no
6 questions.

7 A You do, but that's --

8 Q You said that for the most part,
9 you were treated like everybody else;
10 correct?

11 A For the most part.

12 Q So that's a yes; correct?

13 A Yes, for the most part --

14 Q Thank you.

15 A -- I was treated like everyone
16 else.

17 Q Now, could you tell me what
18 comments John made?

19 A What comments he made?

20 Q Yes.

21 A I don't know that I specified
22 John's comments in here (indicating).

23 Are you talking about when he
24 got upset with me where my stuff was located?

25 Q Any comments that he made to you

1 D. Zarda

2 about your sexuality.

3 A Any comments -- he could have
4 said anything.

5 Q I'm not asking what he could
6 have said.

7 What did he say?

8 A I don't recall at this moment.

9 Q What comments did Ray Maynard
10 make to you about your sexuality?

11 A Well, he said that my pink cast
12 looked gay.

13 Q Good thing you weren't at work
14 when you had your cast on; right?

15 A No, I didn't say that; you said
16 that. I was at work.

17 Q Right. But you weren't working
18 when you had your cast because you couldn't
19 work when you had your cast; correct?

20 A I was not working doing jumps,
21 and I wasn't working doing any other
22 functions, but I did attend a mandatory staff
23 meeting right after I got my pink cast that I
24 got an e-mail to attend while I was on
25 crutches, and I was at that.

1 D. Zarda

2 Q Do you have that e-mail?

3 A For the mandatory staff meeting?

4 Q Yes.

5 A I think I would have provided
6 that, but yes.

7 Q And it was directed to all
8 staff; correct?

9 A It was directed to all staff.

10 Q But you weren't a staff member
11 because you couldn't work at that time;
12 right?

13 A That's not correct. I'm still
14 on the staff. Just because you get hurt
15 doesn't mean you no longer are on the staff.

16 Q Well, you're no longer working
17 and on payroll; correct?

18 MR. ANTOLLINO: Objection.

19 There is no payroll.

20 A No, you're not not on staff
21 anymore because you get hurt. Instructors
22 get hurt all the time. They're still on
23 staff.

24 Q Who heard Ray make that comment
25 to you?

1 D. Zarda

2 A Which one?

3 Q Your pink cast looks gay.

4 A I heard him make that to me when
5 I was coming through the door to the office
6 as he was going the other way when he first
7 saw the pink cast with the pink toenails.

8 Q Who else heard him say that?

9 MR. ANTOLLINO: Objection.

10 A I don't know who else. I don't
11 know.

12 Q So nobody else; right?

13 MR. ANTOLLINO: Objection.

14 A No. I'm not saying nobody else.
15 Somebody else could have heard him.

16 Q Well, I'm asking you to identify
17 who else heard him.

18 A I can't identify who else heard
19 it. I mean, God could have heard it. I
20 mean, Lauren could have heard it. Anybody
21 that was within earshot could have.

22 Q Who was physically within
23 earshot at that time?

24 A Well, it depends on how good
25 your hearing is, so is that from here to a

1 D. Zarda

2 mile away, or here to ten feet, twenty feet?

3 Is there walls in the middle, is there doors

4 closed? I don't know, so I can't say who

5 else could have heard that.

6 Q What else did Ray say to you?

7 A At that time?

8 Q At any time, regarding your

9 sexuality.

10 A I can't possibly recall every

11 incident at this seating.

12 He mentioned at another later

13 time when I was out at the drop zone on

14 crutches with the pink cast and I was sitting

15 on the bench by the Coke machines outside the

16 office with the pink toenails, in regard to

17 that, that I was going to have to put a sock

18 over my toe, over my foot.

19 Q Why were you at the drop zone

20 that day?

21 A Because I just came out to see

22 what was going on and to visit.

23 Q So you came out to hangout?

24 A A little bit, yeah.

25 Q And he didn't say you couldn't

1 D. Zarda

2 hangout there; he just said you had to put a
3 sock on your foot; right?

4 A He wanted me to cover up the
5 pink toenails.

6 Q Could it possibly be that he
7 didn't want any customers to see somebody
8 hobbling along with a broken foot?

9 A I think the characterization
10 that you might be drawing that from Rich's
11 testimony is flawed. It's not uncommon for
12 injured jumpers to come out and hangout at
13 the drop zone. It happens all the time at
14 drop zones all over the country. Jumpers
15 hobbling around on crutches, canes, walkers.
16 There are even some in wheelchairs. They
17 come to the parties. They come hangout at
18 the drop zone.

19 Q Great. Who else at Skydive Long
20 Island in 2009 was walking around with
21 crutches and a broken foot?

22 A I'd have to stop and think.
23 There --

24 Q I'd like you to stop and think.

25 A -- were some.

1 D. Zarda

2 MR. ANTOLLINO: You don't need
3 to interrupt him, and don't badger him;
4 okay? Let him answer the question --

5 MR. ZABELL: Remember you said
6 that you were going to remain silent?

7 MR. ANTOLLINO: No, I don't
8 remember that I said that.

9 MR. ZABELL: You do. That's why
10 you're giggling to yourself.

11 Does everybody else remember him
12 saying he was going to remain silent?

13 Madam reporter, did you remember
14 him saying that?

15 MR. ANTOLLINO: I did not say
16 that.

17 MR. ZABELL: You did say that,
18 sir.

19 Q Just tell me the names of the
20 people who were hobbling around with broken
21 legs or feet or casts, or even crutches
22 without any of that in 2009.

23 A I don't know the names of all
24 the people. There are a lot of people that
25 jump there.

1 D. Zarda

2 Q Give me the names of just one of
3 them.

4 A I don't recall.

5 Q Okay.

6 A I'm very bad with names and it's
7 not uncommon. I mean, people know that
8 sometimes when I would meet a person if they
9 just told me their name and I get distracted
10 for a minute, I might forget their name.

11 MR. ANTOLLINO: All right.

12 We're going to take a break now.

13 (Whereupon, a recess was taken
14 from 6:09 p.m. to 6:11 p.m.)

15 Q You're crappy with names, even
16 though you have a good memory because your
17 sister told you so; right?

18 MR. ANTOLLINO: Objection.

19 Argumentative.

20 Q You can answer.

21 A I don't remember names very
22 well. I do remember events pretty well, as I
23 said before.

24 Q Do you remember somebody walking
25 around the drop site in 2009 with a cast on

1 D. Zarda

2 their foot?

3 A There were more than one. I
4 just don't remember who. It's so common.
5 It's like asking me if you remember people
6 walking around on the drop zone in 2009 or
7 2010; who were they? It's not an uncommon
8 thing if you're jumping out of airplanes.
9 People get hurt. It's not unusual to see
10 hurt people hanging out at the drop zone
11 telling their story or whatever about their
12 injury or just to be there to socialize,
13 because it's a social group of people.

14 Q So you weren't there to work;
15 you were there to socialize; correct?

16 A I came out infrequently just to
17 say hi, let people know how I'm doing, see
18 what's going on, but I didn't spend very much
19 time there. I didn't stay long. I was on
20 crutches. It's not a friendly place to get
21 around when you are on crutches and people
22 are busy working.

23 Q And customers who were there who
24 are about to jump out of a plane; correct?

25 A That is also true.

1 D. Zarda

2 Q You can imagine how it might be
3 off-putting for a customer to see a bunch of
4 people bobbling around with broken feet
5 around the drop zone; correct?

6 A No, I can't, and I can tell you
7 why, very simply.

8 Q Go ahead. Please do.

9 A Because it's not any different
10 than somebody hobbling around on a crutch
11 that slipped and fell on the bathtub and
12 broke their ankle in exactly the same manner,
13 like I talked to people while I was on
14 crutches with my broken ankle that had that
15 happen to them.

16 Unless the customer knows that
17 you got hurt skydiving, it's no different
18 than anybody else walking around that got
19 injured in a car accident or any other way
20 that people can get injured to include
21 getting out of bed.

22 Q You don't think they just
23 assumed it?

24 A They would have had to have
25 known that I was on staff. I didn't have a

1 D. Zarda

2 staff shirt on.

3 Q They can't infer that just from
4 you hanging around talking to people there;
5 is that what you're saying?

6 A I supposed -- I would suppose
7 that if they listened in and cued in on just
8 what I was saying and watched my interactions
9 with the other staff, they might be able to
10 surmise that maybe I'm on staff, I have
11 something to do with the jump operation and
12 also on crutches, maybe.

13 But from what I witnessed,
14 people are more talking on their cellphones
15 and thinking about -- watching other people
16 jumping and getting ready to do their jump,
17 so they're not watching me.

18 Q Are you Catholic?

19 A I'm agnostic, but I was brought
20 up Catholic.

21 Q Are you Scottish?

22 A German.

23 Q Are you Hispanic?

24 A No.

25 Q Did you ever mention to anyone

1 D. Zarda

2 at Skydive that you were Catholic, Scottish
3 or Hispanic?

4 A No, I never mentioned Scottish
5 or Hispanic. People may have asked me over
6 the years what my religion was. Rainy day
7 conversation possibly, so I may have
8 mentioned that I was Catholic. That could
9 have come up, and -- what was the first one?

10 Q Catholic.

11 A Okay, so I may have mentioned
12 that somewhere along the way.

13 Q Were you offended by that?

14 A No, no. I've not been offended
15 by someone calling me a Catholic.

16 Q I'm a bit confused. It seems
17 like you were terminated because somebody
18 complained that you were acting like someone
19 whose sexual orientation was that of the
20 opposite sex as opposed to the same sex; is
21 that correct?

22 MR. ANTOLLINO: Objection.

23 A That's a little bit worded
24 confusing, so maybe you could express that a
25 little bit.

1 D. Zarda

2 Q Wasn't the complaint that you
3 were kind of hitting on Rosanna Orelana?

4 MR. ANTOLLINO: Objection.

5 A Mr. Kengle made that complaint
6 that he thought that I was trying to get
7 familiar with his girlfriend. That's what he
8 thought.

9 Q And she testified that the way
10 you were touching her made her uncomfortable;
11 correct?

12 A I think we talked about that
13 earlier. I'd have to review that testimony.
14 I'm still not sure that she thought that.

15 Q Did your lawyer give you the
16 deposition transcript yet?

17 A I haven't reviewed it, and I
18 haven't seen it yet.

19 Q Me neither. He hasn't given it
20 to me yet.

21 A It was just a few weeks ago, so
22 that's not very long.

23 MR. ANTOLLINO: Yes, we'll talk
24 about that later. Do you want to split
25 the cost?

1 D. Zarda

2 MR. ZABELL: No.

3 MR. ANTOLLINO: All right, then
4 why don't you get it? It's a
5 non-party.

6 MR. ZABELL: We have the option
7 of sharing, of exchanging transcripts
8 with each other or not.

9 MR. ANTOLLINO: Okay, we'll talk
10 about it later. How about that?

11 MR. ZABELL: Okay.

12 Q It seems to me like her
13 complaint was not that you were gay, it's
14 that she thought you were straight.

15 MR. ANTOLLINO: Objection.

16 Q Is that correct?

17 MR. ANTOLLINO: Objection to
18 characterization.

19 A No, no. She was --

20 Q Well, he thought you were
21 straight because you were trying to get
22 familiar with her --

23 MR. ANTOLLINO: Wait, wait.
24 You're not letting him answer the
25 question --

1 D. Zarda

2 Q -- correct?

3 MR. ANTOLLINO: Let him answer
4 the question.

5 Q Correct? He thought you were
6 straight, because he thought you were trying
7 to get familiar with his girlfriend; correct?

8 MR. ANTOLLINO: Objection.

9 A No. And that's an if-then-us
10 question. That's an if because --

11 Q No, it's not. It's a direct
12 question to which you're required to answer.

13 A All right. Okay.

14 Q He thought you were straight,
15 because you were trying to get familiar with
16 his girlfriend; correct?

17 MR. ANTOLLINO: Objection.

18 A No.

19 Q So he thought you were gay and
20 trying to get familiar with his girlfriend.

21 A That's what he said, and he
22 said, in his testimony, that those gay guys
23 think they can get away with it because
24 they're gay. If you recall, that's what he
25 said.

1 D. Zarda

2 Q I don't recall him saying that.

3 A Well, when you get the
4 transcripts, you'll be able to see that
5 that's what he said. I thought that that was
6 really strange, and I still think it's
7 strange.

8 Q Well, did you think you could
9 get away with being familiar with his
10 girlfriend?

11 A I don't get familiar with women
12 in the sense that he was saying that, so
13 there is nothing for me to think that I can
14 get away with. And I had no reason to be
15 trying to get away with anything, and I
16 wasn't getting away with anything. I was
17 just simply doing my job.

18 Q But he thought you were trying
19 to get familiar with her?

20 MR. ANTOLLINO: Objection.

21 A That's what he said.

22 Q And that's what he complained
23 about; correct?

24 MR. ANTOLLINO: Objection.

25 A No, that's not what -- it sounds

1 D. Zarda

2 like he called and said that the complaint
3 was to Ray. That's what he said when he was
4 deposed. He said that when he was deposed.

5 Q Is it your impression that he
6 was complaining that you were gay or that you
7 were acting straight with regard to his
8 girlfriend?

9 A After listening to his
10 deposition, I'm not exactly sure what.

11 Q It could have been either one of
12 those; right?

13 A It could have been because I'm
14 gay. It could have been because he thought I
15 was hitting on his girlfriend. It could have
16 been he's just so insecure that he didn't
17 even know what he was thinking himself. I
18 don't know what was going on in that guy's
19 head.

20 Q Could it have been that he
21 thought you were straight and trying to use
22 the excuse that you're gay, so therefore, you
23 couldn't have done what he's accusing you of
24 doing?

25 MR. ANTOLLINO: You know what;

1 D. Zarda

2 objection.

3 A It could have been that he was
4 so shaken by the joke made because of his
5 insecurity that he may have. He was so
6 shaken by the joke made by another staff
7 member that, hey, how do you feel about your
8 girlfriend -- that he talked about getting
9 hit on so much in his deposition because
10 she's so pretty -- being strapped to another
11 guy. Maybe it was that.

12 Q Maybe it was.

13 A Maybe.

14 Q But that's not a complaint about
15 your sexuality; is it?

16 MR. ANTOLLINO: Objection.

17 A That specifically is not.

18 Q I believe you testified at the
19 beginning of this deposition that Ray Maynard
20 asked you about your specific jump with
21 Rosanna Orelana; correct?

22 A I think we talked about that;
23 yes.

24 Q And he asked you what happened
25 there; correct?

1 D. Zarda

2 A He was asking me questions about
3 it, about the jump.

4 Q About the jump, okay, so he was
5 asking you in order to find out what occurred
6 during the jump; correct?

7 A He briefly asked me if I
8 remembered, or he asked me about it.

9 Q And you said you don't remember;
10 correct?

11 A I did say something to that
12 effect, because it was three days ago and
13 twenty-or-thirty-jumps-plus ago.

14 Q So he kind of did ask you to
15 respond to allegations of alleged
16 inappropriate touching; correct?

17 MR. ANTOLLINO: Objection.

18 Asked and answered.

19 A No. He just asked me if you
20 took a girl named so-and-so on a jump on
21 Friday; did you, you know, or did you not.
22 He just asked me about the jump, if I took
23 the girl on the jump, and I said I don't
24 understand.

25 Q So he just asked you about the

1 D. Zarda

2 jump and if you took the girl on the jump?

3 A Right, yes.

4 He didn't go into detail asking
5 me questions about the jump and the manner
6 like he was investigating to find out what
7 happened. That discussion, like I mentioned
8 before, was about bringing me in there to
9 take adverse action against me, and that was
10 very clear. Ray was angry, he was irrational
11 and emotional, and he wasn't in there to find
12 out what Don Zarda did on the jump. He was
13 in there to tell Don Zarda what Ray Maynard
14 is going to do to Don Zarda.

15 Q Except that you had no
16 recollection of the jump, so you could not
17 give him any information on it; correct?

18 A At the time, I could not
19 remember specifics about the jump.

20 Q So even if he was just trying to
21 investigate, you had no information to assist
22 in the investigation; correct?

23 MR. ANTOLLINO: Objection to the
24 characterization.

25 Q Correct?

1 D. Zarda

2 A Say that once more.

3 Q Correct?

4 A Say that once more, please.

5 Q Correct?

6 A Just repeat the question.

7 Q Oh. Even if he was trying to
8 investigate --

9 A Okay.

10 Q -- you couldn't assist with the
11 investigation because you had no recollection
12 of the jump, correct; yes or no?

13 A Correct. I --

14 Q Thank you.

15 A -- did not recall the jump and
16 requested to see the videos to help assist me
17 in recalling anything about the jump at the
18 time, and I was denied.

19 Q Do you view women as helpless
20 and the fact that they need to be protected?

21 A No, I don't view women and
22 needing help being protected.

23 Q Do you think your attorney does?

24 A We haven't discussed that, so I
25 don't know what he thinks.

1 D. Zarda

2 Q Do you consider yourself to be
3 wussy?

4 A I don't.

5 Q Do you think you ever act like a
6 wussy?

7 A Nope, I don't.

8 Q What do you understand a wussy
9 to be?

10 A Depends on the connotation and
11 in the context that that word is being used
12 in saying it. Sometimes it might not mean
13 anything. It just depends on who is saying
14 it. If it's an adversary and they're calling
15 you a wussy, most guys can agree that is
16 derogatory to possibly your manliness, so I
17 think it could take on that connotation. It
18 depends on the context, the connotation, and
19 the circumstance in which someone is calling
20 you that.

21 Q Do you think you act less than
22 manly?

23 A I don't; no.

24 Q I mean, I look at you and I see
25 someone who looks particularly manly.

1 D. Zarda

2 A Okay, that's good.

3 Q Do you agree that that's the
4 vibe you give off?

5 A I hear that.

6 Q So if someone looks at you, you
7 believe you appear manly; is that correct?

8 A For the most part.

9 Q And that you act manly?

10 A For the most part. I have, you
11 know, moments. If they see me in different
12 social settings, they might think a different
13 thing.

14 Q Well, did people you worked with
15 at Skydive Long Island see you in different
16 social settings?

17 A Yes.

18 Q What were those different social
19 settings?

20 A Well, they didn't go to Fire
21 Island with me and they didn't go to gay
22 events with me, but they knew about some of
23 those. They knew I went to Fire Island.
24 They know I'm gay. They don't understand how
25 we enjoy ourself socially and so forth.

1 D. Zarda

2 Q By "we," are you referring to
3 you and myself?

4 A Gay people.

5 Q Oh, okay.

6 A Most of them don't understand
7 that, but when we jumped into Neptune's
8 bar -- you might be familiar with it. It's
9 in the Hamptons.

10 Q No.

11 A Neptune's is a bar --

12 Q Why are you assuming I'd be any
13 more familiar with Neptune's bar or
14 Jumping Jack's over at Cherry Grove?

15 MR. ANTOLLINO: He's not your
16 friend, Don.

17 A Well, you live there, so I just
18 thought that you might know of Neptune's bar.
19 It's a bar that's on the beach out by the
20 Hamptons. It's a favorite for Skydive Long
21 Island to be able to jump into that beach bar
22 sometimes at the end of the day on Friday,
23 Saturday, or Sunday.

24 Q When you say jump in, do you
25 mean jump from the sky and land at the beach

1 D. Zarda

2 bar?

3 A Right, that's what I mean.

4 Q That's kind of a cool thing to
5 do; right?

6 A Yeah.

7 Q A good way to get attention?

8 A Good for Ray possibly and
9 advertising, I suppose. They have beer there
10 laying on the beach, and so things could be
11 worse.

12 But when we did that once, and
13 it was just twice that I did that, and that
14 was in 2010, I heard all the hype about it
15 previously from the employees about how great
16 it is and this, that, and the other thing. A
17 lot of the employees kept telling me how
18 great Neptune's is, and, Don, you're really
19 going to like Neptune's, and there's all
20 kinds of guys over at Neptune's that are just
21 your type, and on and on and on and on that I
22 heard this kind of talk in 2009 and even
23 in 2010.

24 So I finally went over there and
25 got to see it for myself, because there's a

1 D. Zarda

2 bunch of shirtless guys running around over
3 there all with their tanning lotion on,
4 there's a bunch of muscle bods, and they just
5 would go on and on about that.

6 Q And is that not your type?

7 A I didn't say that.

8 Q Do you tan?

9 A No, I don't.

10 Q Are you a muscle guy?

11 A I am in good shape.

12 Q I look at you, and I'd say
13 you're pretty muscular.

14 A Okay. Well, good. I don't tan.
15 My partner and I are in the medical spa
16 business, and we encourage people to stay out
17 of the sun, hence my white skin.

18 Q SPF what?

19 A One million, if you can get it.

20 Q Okay. So you were encouraged to
21 go there because they thought there were guys
22 there that were your style; correct?

23 A They did.

24 Q Was that offensive?

25 A A little bit. It was a little

1 D. Zarda

2 bit offensive, but it's just part of me
3 understanding that I know they don't
4 understand my lifestyle.

5 Q What kind of guys do you like?

6 MR. ANTOLLINO: Objection. This
7 is getting --

8 A Well, I have different
9 preferences. I don't like guys that look
10 like they're on steroids, which is what a lot
11 of people looked like they were on over
12 there. I don't like that. I'm not into
13 that. I think maybe because of the way I
14 appear that maybe they draw some kind of
15 correlation there, and they think that I'd be
16 interested in that.

17 Q You got a little muscle-head
18 look to you.

19 A Maybe, yeah, but not like what I
20 saw over there.

21 Knowing that they don't probably
22 understand my lifestyle, because they're not
23 gay and there's not a lot of gay skydivers,
24 there aren't, you know.

25 Q Well, there's a whole group of

1 D. Zarda

2 them.

3 A Yeah. It's small when you look
4 at the numbers compared to skydivers, it's
5 small, so there's not a lot. They don't
6 interact with gay people a lot. They don't
7 know our social norms and so forth like that.

8 Q But your coworkers tried to
9 interact with you in a social setting; right?

10 A Yes, yes, they did.

11 Q And they tried to include you in
12 their socialization; correct?

13 A Yes. And the reason I'm saying
14 I wasn't offended about that so much was
15 because I know they just don't understand,
16 but I didn't like that they were trying to
17 sort of force upon me the idea that I was
18 going to be into all these greased up,
19 steroid-like, shirtless guys over at
20 Neptune's bar on the beach. I kind of didn't
21 like that. That bothered me some, but I
22 dealt with it.

23 Q Did it bother you because they
24 were wrong about the assumption of the type
25 of person you like?

1 D. Zarda

2 A No. I had a pretty clear mental
3 image of what was going to be over there.
4 They described it well, and it turned out to
5 be exactly what was over there. It's just
6 simply not my crowd, so a lot of them
7 thought, wow, this will be great for Don.
8 This is his crowd. No, it's not my crowd.

9 Q But they were trying to make you
10 comfortable; is that correct?

11 A I don't think they were trying
12 to make me uncomfortable by pushing that
13 agenda, of jumping in over there, because
14 that would be malicious, and as I said
15 before, I don't think that there were people
16 there that were maliciously trying to make me
17 feel uncomfortable. They just couldn't
18 bridge that gap of understanding, so I think
19 that's the best way to describe it.

20 Q Okay, so --

21 A When we got over there, there
22 was a transvestite at the bar that was
23 dressed up, and they -- you know, several of
24 the staff, and I think some of them are in
25 the pictures that we submitted to you about

1 D. Zarda

2 that night at Neptune's bar when Ray and much
3 of the staff was there on FaceBook, and so a
4 lot of people were in there. It would be
5 easy to identify who was there -- wanted me
6 to get pictures with the transvestite, like
7 it was a little bit of a spectacle. It
8 didn't offend me. It made me feel a little
9 uncomfortable. It made me feel a little
10 uncomfortable that it was taking place in the
11 setting that this is after work, but it's
12 with all my colleagues that I work with, and
13 it was also still in front of my boss, Ray
14 Maynard. That made me feel a little bit
15 uncomfortable.

16 Q But you were free to excuse
17 yourself from the situation; were you not?

18 A Not unless I wanted to figure
19 out how I was going to get back to the drop
20 zone by myself.

21 Q You mean like take a cab?

22 A I would have had to have done
23 that, but when you jump into -- we already
24 had prearranged rides. You don't typically
25 jump with your credit card, billfolds, and

1 D. Zarda

2 cellphones when you're jumping over the water
3 in the beach, because there is a good chance
4 that you'll lose that stuff, so I didn't
5 have -- it was free beer. You didn't need
6 any money. You jumped in, stashed your gear
7 in the bag, and had some beer.

8 Then when everybody was done, go
9 back to the drop zone and either stay there
10 and drink some more beer or go home.

11 Q And that's kind of what you did;
12 jumped in, stashed your stuff in a bag, and
13 had some beer; right?

14 A That's exactly what I did, and
15 saw Neptune's bar.

16 Q You just went there that once;
17 correct?

18 A I went there twice.

19 Q Oh, you went there again after
20 that?

21 A Yes.

22 Q Because it was so horrible?

23 A No. Because getting to do a
24 beach jump at the end of the day at sunset,
25 skydiving can be kind of like a spiritual

1 D. Zarda

2 thing for some people. I like sunsets, I
3 like the outdoors, and it's just pretty. So
4 being able to jump in, make a skydive at
5 sunset over the water, it's gorgeous, so why
6 not?

7 Q So it was so horrible the first
8 time that you decided to try it again?

9 MR. ANTOLLINO: Objection.

10 A It had nothing to do with the
11 bar. Getting a free beer after a jump,
12 that's nice. It's about the jump.

13 MR. ZABELL: Mark this, please.

14 (Multi-page document consisting
15 of copies of various screen shots from
16 Mr. Zarda's FaceBook page was marked as
17 Defendants' Exhibit C, for
18 identification, as of this date.)

19 Q I'm going to show you Exhibit C.

20 A Okay.

21 Q Take a look at it.

22 A (Witness complies.)

23 Q Do you know what that is?

24 A Without going through each and
25 every single page just flipping through them,

1 D. Zarda

2 it looks like a bunch of screen shots of
3 FaceBook.

4 Q Whose FaceBook is this?

5 A It looks like most of them --
6 well, there's some e-mails in here too from
7 FaceBook. It's mostly FaceBook stuff, and
8 it's my profile and e-mails from a FaceBook
9 account that I have.

10 Q Who's the bare-chested guy on
11 page 1?

12 A That's me.

13 Q In all your splendid glory?

14 A I don't know what that means.

15 Q Is that kind of like a cape that
16 you're wearing?

17 A No, that's a wingsuit.

18 Q It looks like a little flying
19 squirrel suit.

20 A For lack of a better word, since
21 the public sees that a lot, that's what they
22 think it is, but that's the slang version.
23 It's -- again, it's a wingsuit.

24 Q And you like wearing that;
25 right?

1 D. Zarda

2 A I like jumping in it.

3 Q You like more than jumping in
4 it; you like taking your picture in it;
5 right?

6 A It was a unique prop for that
7 picture.

8 Q Who was taking your picture that
9 day?

10 A A photographer.

11 Q Oh, so you had your picture
12 professionally taken in that outfit?

13 A I did.

14 Q Was that just to post on your
15 FaceBook page?

16 A No. It was actually in trade
17 for me getting a nice photo of pictures and
18 for the photographer to be able to have a
19 subject to take photos of for his personal
20 portfolio.

21 Q So he said that if you take
22 pictures, if you allow me to take pictures of
23 you for free, all you'll have to do is strip
24 your top down and wear this, for lack of a
25 better term, squirrel suit?

1 D. Zarda

2 A No, it wasn't like that. It was
3 just a matter of I wanted to be able to have
4 a photo shoot, and he wanted to be able to
5 have a subject for his portfolio.

6 Q Are you aware of that picture
7 showing up on any websites?

8 A Yes, you know I am.

9 Q What websites have they shown up
10 on?

11 A I think it would probably be an
12 easier question to say what websites they, at
13 this point, haven't shown up on.

14 Q Are you happy with all of the
15 websites that that picture has shown up on?

16 A I think, you know, I'm not happy
17 that the media went to my FaceBook profile
18 and got that picture and put it on the
19 websites, but there certainly could have been
20 worse pictures, like a mug shot that people
21 would get, so I'm glad that it's not that
22 kind of picture.

23 Q Are there any mug shot pictures
24 of you out there?

25 A Who knows what kind of pictures

1 D. Zarda

2 there are in this digital world where
3 everybody's got in iPhone and takes a picture
4 and puts it on FaceBook or e-mails it to
5 somebody. I have no idea what's out there.

6 Q Well, have you ever been
7 arrested?

8 A No, I haven't been arrested.

9 MR. ANTOLLINO: Well, hold on a
10 second. I think the question, have you
11 ever been arrested, is improper. You
12 can ask him --

13 MR. ZABELL: Counselor --

14 MR. ANTOLLINO: No, no, no. I'm
15 directing --

16 MR. ZABELL: Counselor,
17 objection to form, and nothing else.

18 MR. ANTOLLINO: I'm going to
19 direct him not to answer, but I will
20 allow the question: Have you ever been
21 convicted?

22 MR. ZABELL: You're smiling as
23 if you're saying something that is
24 absolutely intelligent, and it's not.

25 MR. ANTOLLINO: Okay, I've be

1 D. Zarda

2 through this before.

3 MR. ZABELL: I don't care what
4 you think you've been through before,
5 and you're oh so successful at them,
6 I'm sure. I get to ask him this
7 question.

8 MR. ANTOLLINO: You do not.

9 Q Have you been arrested, sir?

10 MR. ANTOLLINO: Don't answer the
11 question.

12 MR. ZABELL: On what basis?

13 MR. ANTOLLINO: On the basis
14 that if an arrest was later resulted in
15 a termination in favor of the accused,
16 it's confidential; okay?

17 MR. ZABELL: No, it's not
18 confidential --

19 MR. ANTOLLINO: It is.

20 MR. ZABELL: -- and if he has
21 been arrested and it has added to his
22 stress, I am absolutely entitled to ask
23 that question.

24 MR. ANTOLLINO: No --

25 Q So sir, have you been arrested --

1 D. Zarda

2 MR. ANTOLLINO: I'm not going to
3 let him answer --

4 Q -- within the last three years?

5 MR. ANTOLLINO: I'm not going to --

6 A No.

7 MR. ANTOLLINO: -- answer.

8 Q Thank you.

9 Have you been accused of any
10 crimes in the last three years?

11 MR. ANTOLLINO: Objection to
12 form.

13 A A speeding ticket or a seatbelt
14 violation?

15 Q No, no, no, no. You can even
16 have spoken in your car on your cellphone
17 while texting. That's not what I'm
18 interested in.

19 A I just want to be clear.

20 Q Okay.

21 A So, no.

22 Q Anybody on your website talk to
23 you about molesting people?

24 A On my website?

25 Q Yes.

1 D. Zarda

2 A My website is DonZarda.com, so --

3 Q Oh, I'm sorry. On your FaceBook
4 page.

5 A Okay, I got you. Well, my
6 FaceBook page, that's open game for years,
7 for like two or three years now, and who
8 knows what people put on there, so --

9 Q What does "trick fuck," mean?

10 A It's a good question. Oh, okay.
11 I don't see it in here, but now I could think
12 of what it could mean. Let me think of a
13 good way to define that.

14 I think that's just a different
15 way of saying fuck somebody over.

16 Q Trick fuck means to fuck
17 somebody over?

18 A If I was going to use that and
19 maybe I have, that's probably what it would
20 have meant. Is there a place --

21 MR. ANTOLLINO: Do you want to
22 refer to something?

23 A -- that I could look and see --

24 MR. ZABELL: No. Do you want to
25 remain silent?

1 D. Zarda

2 MR. ANTOLLINO: No.

3 MR. ZABELL: You should. That's
4 your role here today.

5 A Is there a place where I could
6 see the context of where I might have used
7 that?

8 Q It's a question based on this
9 exhibit.

10 A Okay, could I see it?

11 Q No, I mean, we'll be here a lot
12 later --

13 MR. ANTOLLINO: All right. Let
14 it go.

15 THE WITNESS: Okay.

16 Q Are there things on your
17 FaceBook page that you turned over to us that
18 you're unhappy with?

19 A Now, when you say FaceBook
20 pages, which pages?

21 Q All of this stuff, Exhibit C.

22 A Exhibit C?

23 Q Yes, C.

24 A Well, I haven't had a chance to
25 look through 185 pages.

1 D. Zarda

2 Q This is all stuff you turned
3 over to us?

4 A Oh, did I turn this over to you?

5 Q Yes, you did. Your lawyer may
6 not have informed you of it, but yes, you
7 have.

8 A I haven't had a chance to
9 refresh myself on 185 pages of FaceBook
10 material that dates back to 2009.

11 Q Do you talk about your cat on
12 your FaceBook page or pages?

13 A I probably have something about
14 my cat.

15 Q Do you talk about how sad you
16 are on the anniversary of her death?

17 A I may have said something about
18 that. I guess while I'm sitting here, I
19 might as well just go ahead and --

20 MR. ANTOLLINO: No, no. You
21 might as well just sit, and wait for
22 the question.

23 THE WITNESS: Okay.

24 MR. ANTOLLINO: You'll wait for
25 the question.

1 D. Zarda

2 THE WITNESS: All right.

3 Q You don't have to let him yell
4 at you like that.

5 A It's okay. He's not yelling.

6 Q He kind of is.

7 Now, there are people who
8 responded to your FaceBook page indicating
9 that they thought you were wrong when you
10 filed your lawsuit; did they not?

11 A I don't know. That was awhile
12 ago, and I can't recall.

13 MR. ZABELL: Counsel, please
14 stop hitting your client.

15 MR. ANTOLLINO: I'm not hitting
16 my client.

17 MR. ZABELL: It appears as if
18 you might be.

19 MR. ANTOLLINO: I'm not hitting
20 my client. I put his hand -- I put the
21 paper down that he was picking up.

22 You're referring to an exhibit,
23 and you're reading --

24 MR. ZABELL: Counselor, there is
25 not a set of circumstances where it is

1 D. Zarda

2 professionally appropriate for you to
3 hit your client or talk during this
4 deposition, so please remain silent.

5 MR. ANTOLLINO: I did not hit my
6 client.

7 MR. ZABELL: I'm trying to get
8 you guys out of here at a normal time.

9 MR. ANTOLLINO: All right.
10 Okay, fine. Continue.

11 A Anyway, so there is so much
12 information that can be put on FaceBook, that
13 goes through FaceBook. To have immediate
14 recollection and knowledge of it is virtually
15 impossible.

16 MR. ZABELL: Let's take a quick
17 break and see if I can get you guys out
18 of here.

19 (Whereupon, a recess was taken
20 from 6:44 p.m. to 6:45 p.m.)

21 MR. ZABELL: I reserve the right
22 to call you back for a deposition on
23 behalf of Mr. Maynard.

24 In addition, I expect to be able
25 to, in the future, call you back for

1 D. Zarda

2 purposes of questioning you about the
3 various lines of questions that your
4 attorney has directed you not to
5 answer. Barring that, I am shutting
6 the deposition down.

7 MR. ANTOLLINO: I would just
8 like to mark this as Plaintiff's
9 Exhibit A, this would be the Notice of
10 Deposition in which you have noticed,
11 on behalf of Altitude Express and
12 Mr. Maynard, this deposition. I would
13 like the court reporter, if I could --

14 MR. ZABELL: You can't.

15 MR. ANTOLLINO: I'm going to
16 object to your recalling on the grounds
17 that I have your signed Notice of
18 Deposition.

19 MR. ZABELL: What's the date on
20 that deposition notice?

21 MR. ANTOLLINO: December 16,
22 2010, and it hasn't been amended.

23 MR. ZABELL: Okay, December 16,
24 2010, and what's today's date?

25 MR. ANTOLLINO: It might be a

1 D. Zarda

2 year later, for all I know. It is
3 almost; right?

4 MR. ZABELL: Off the record.

5 (Whereupon, a discussion was
6 held off the record.)

7 MR. ZABELL: This record is now
8 closed.

9 (Time noted: 6:46 p.m.)

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A C K N O W L E D G E M E N T

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4 STATE OF NEW YORK)

5 : ss

6 COUNTY OF)

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8 I, DONALD ZARDA, hereby certify that I

9 have read the transcript of my testimony

10 taken under oath in my deposition of

11 December 9, 2011; that the transcript is a

12 true, complete and correct record of my

13 testimony; and that the answers on the record

14 as given by me are true and correct.

15

16

-----DONALD ZARDA-----

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18

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20 Signed and subscribed to

21 before me, this day

22 of _____, 20__

23

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25 Notary Public, State of New York

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C	Multi-page document consisting of copies of various screen shots from Mr. Zarda's FaceBook page	374

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C E R T I F I C A T E

I, KAREN M. LaMENDOLA, a Notary Public
in and for the State of New York, do hereby certify:

THAT the witness whose testimony is
hereinbefore set forth, was duly sworn by me;
and

THAT the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related, either by blood or marriage, to any
of the parties in this action; and

THAT I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of December, 2011.

KAREN M. LaMENDOLA

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ERRATA SHEET

I wish to make the following changes for
the following reasons:

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EXHIBIT C

ORIGINAL

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1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----x
DONALD ZARDA,

4 Plaintiff,

5 -against-

6 ALTITUDE EXPRESS, ET ANO.,

7 Defendant,

8 Civil Action No.: 10-9334
-----x

9

10 90 John Street
11 New York, New York

12 December 14, 2011
10:15 a.m.

13

14 Videotaped Deposition of RAYMOND

15 MAYNARD, pursuant to Notice, before Sophie

16 Nolan, a Notary Public of the State of New

17 York.

18

19

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21

22

23 ELLEN GRAUER COURT REPORTING CO. LLC

24 126 East 56th Street, Fifth Floor

25 New York, New York 10022

212-750-6434

REF: 99061

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is tape
3 one. We are now on the record at 10:15
4 a.m. on Wednesday December 14, 2011.
5 This is the deposition of Raymond Maynard
6 in the matter of Donald Zarda versus
7 Altitude Express, et ano.

8 This deposition is being held at
9 the offices of Reporters Ink located at
10 90 John Street, New York, New York. The
11 court reporter is Sophie Nolan with Ellen
12 Grauer Court Reporting. I am the legal
13 videographer, Vincenzo Petula, also with
14 Ellen Grauer Court Reporting.

15 Would counsel please introduce
16 themselves.

17 MR. ANTOLLINO: I'm Gregory
18 Antollino for Mr. Zarda and with me is
19 John Sanchez who's also an attorney
20 that's loosely affiliated with my office.

21 MR. ZABELL: Saul Zabell, the law
22 firm of Zabell & Associates for the
23 Defendant.

24 THE VIDEOGRAPHER: Will the court
25 reporter please swear in the witness.

1 R A Y M O N D M A Y N A R D, called as a
2 witness, having been first duly sworn,
3 was examined and testified as follows:

4 5 EXAMINATION BY

6 MR. ANTOLLINO:

7 Q. Good morning, Mr. Maynard.

8 A. Good morning.

9 Q. I'm Greg Antollino. We haven't had
10 a chance to meet before.

11 MR. ZABELL: Prior to beginning
12 questioning, I'm reserving my client's
13 rights to review this transcript at the
14 conclusion of the deposition.

15 MR. ANTOLLINO: Certainly.

16 Q. Have you ever had a deposition
17 taken before?

18 MR. ZABELL: Objection to the form.
19 You may answer.

20 A. I was in one deposition many years
21 ago.

22 Q. What kind of case?

23 MR. ZABELL: Objection to the form.
24 You may answer.

25 A. It was an air show at the airport

1 MAYNARD

2 that I worked closely with the organizer.

3 Q. And what happened?

4 A. There was a gentleman suing the
5 organizer because he wanted to be part of it
6 and I was at a lot of meetings so they wanted
7 to hear what I had to say.

8 Q. You were not a subject of the
9 lawsuit?

10 A. No.

11 Q. Just a witness?

12 A. Just a witness.

13 Q. Other than that, never any
14 depositions?

15 A. No.

16 Q. How about testimony in court?

17 MR. ZABELL: Objection to the form.
18 You may answer.

19 A. No.

20 Q. Do you understand that you're under
21 oath?

22 A. Yes.

23 Q. All right. And that means you're
24 sworn to tell the truth?

25 A. Yes.

MAYNARD

Q. Even though we're in an informal setting here in this office, your answers, you understand, have the same force and effect as if we were in a courtroom with a judge and a jury; correct?

A. Yes.

Q. Are you prepared to answer my questions today?

A. Yes.

Q. And there's nothing that will prevent you from giving me your full attention?

A. No.

Q. Are you taking any medications or suffering from any illness that will prevent you from understanding my questions and answering them fully?

A. No.

Q. If you don't understand one of my questions, will you let me know?

A. Yes.

Q. If you need a break at any time, will you tell me and we'll take a break?

A. Yes.

Q. Okay. And your current employment

MAYNARD

is what?

MR. ZABELL: Objection to the form.

You may answer.

A. My current employment?

Q. Yes.

A. Business owner.

Q. And the business you own is?

A. Altitude Express.

Q. And that does business as Skydive
Long Island; is that correct?

A. That's correct.

Q. What is your highest level of
education?

A. I graduated high school.

Q. When was that?

A. 1965.

Q. How long have you been flying?

MR. ZABELL: Objection to the form.

Q. I mean, not flying, sky diving.

MR. ZABELL: Objection to the form
of the question. Are you withdrawing the
previous question?

MR. ANTOLLINO: Yes.

Q. You can answer the second one. How

1 MAYNARD

2 long have you been been skydiving?

3 MR. ZABELL: Wait, wait. Are you
4 withdrawing the two previous questions
5 and now asking that question?

6 Q. The second question, the question
7 I'm asking, is how long have you been
8 skydiving?

9 A. Over 40 years.

10 Q. How many jumps have you taken?

11 MR. ZABELL: Objection to the form.
12 You may answer.

13 A. Just under 4,000.

14 Q. Do you have any certifications?

15 MR. ZABELL: Objection to the form.
16 You may answer.

17 A. Yes.

18 Q. What are they?

19 A. A tandem instructor. I'm a coach.

20 Q. Anything else?

21 A. I'm a FAA rigger.

22 Q. Anything else?

23 A. I think that's it.

24 Q. Skydiving is not for everyone,
25 would you agree with that statement?

1 MAYNARD

2 MR. ZABELL: Objection to the form
3 of the question.

4 You may answer.

5 A. Yes.

6 Q. And, in fact, you once told a
7 newspaper that; right?

8 A. Yes.

9 Q. That's some Hamptons.com newspaper,
10 you had an interview with them in 2008 or
11 thereabouts; is that correct?

12 MR. ZABELL: Objection to the form
13 of the multiple questions.

14 You may pick a question and provide
15 an answer to it.

16 Q. You can answer.

17 A. Well --

18 Q. Why don't I withdraw the question
19 and just mark an exhibit, all right?

20 MR. ZABELL: Are you asking him if
21 that's okay?

22 MR. ANTOLLINO: I don't want to
23 engage in any colloquy, Counsel.

24 I'd like to mark this -- I've
25 premarked it as R-1. I don't know if we

1 MAYNARD

2 need to remark it -- remark it R-1 or is
3 my little stamp enough, Counsel?

4 MR. ZABELL: How ever you prefer.
5 This is your deposition. As long as you
6 give me copies.

7 (Exhibit R-1, article from
8 Hamptons.com, marked for Identification.)

9 Q. I'm going to hand this to you. Do
10 you recognize what I've handed to you?

11 A. Yes.

12 Q. And this is an article about you
13 that was written by a journalist on
14 Hamptons.com; is that correct?

15 A. Yes.

16 Q. And in it you describe at the very
17 end that "Skydiving is not for everyone";
18 correct?

19 A. Yes.

20 Q. And you describe to the reporter
21 that you -- even your wife at the time never
22 went up on a skydive; is that correct?

23 A. That's correct.

24 Q. And your wife at the time was
25 Joanne Maynard?

1 MAYNARD

2 A. That's correct.

3 Q. And your marriage to her has ended
4 now; is that correct?

5 A. No.

6 Q. It's not? Okay. I had looked
7 online and it says that the case was disposed.
8 You're not legally divorced yet?

9 A. No.

10 MR. ZABELL: Mr. Maynard, I'm
11 advising you that just because
12 Mr. Antollino makes a statement, he is
13 not under oath and you are no obligation
14 to believe the words that he is saying
15 are accurate.

16 Q. All right. Why did you tell the
17 Hamptons.com that skydiving is not for
18 everyone?

19 MR. ZABELL: Objection to the form.
20 You may answer.

21 A. Because skydiving is not for
22 everyone. People who don't want to go
23 skydiving should not go skydiving because
24 people might be trying to talk them into it.

25 Skydiving is for people who have

1 MAYNARD

2 that feeling inside of them and they want to
3 experience that.

4 Q. What about people who are
5 claustrophobic, are they good candidates for
6 tandem skydiving?

7 A. I'm not an expert on
8 claustrophobia. I don't know if that would be
9 a problem or not. It's going to be an
10 individual feeling and choice.

11 Q. Well, what is your understanding of
12 what a claustrophobic is?

13 A. When I think being claustrophobic,
14 I would think of being in a closet, a confined
15 area.

16 Q. Claustrophobic, would it be fair to
17 say, is someone who's afraid of being in a
18 confined area; correct?

19 MR. ZABELL: Objection to the form.

20 You may answer if you can.

21 A. I'm not sure.

22 Q. Are passengers in a tandem skydive
23 situation placed in a confined area?

24 A. The cab of the aircraft is a fairly
25 small area.

1 MAYNARD

2 Q. And it's often filled with many
3 people; correct?

4 A. Correct.

5 Q. And they're also very closely
6 strapped to another person; correct?

7 A. That's correct.

8 Q. What about someone who doesn't want
9 to be touched, is that a good candidate for
10 someone -- withdrawn.

11 What about someone who wants to be
12 touched? Is someone who wants to be touched a
13 good -- who doesn't want to be touched a good
14 candidate for skydiving?

15 MR. ZABELL: I'm going to object to
16 the three questions you just asked.

17 MR. ANTOLLINO: I'll be draw the
18 question and ask it again.

19 MR. ZABELL: Are you going to
20 withdraw the last question?

21 MR. ANTOLLINO: I'll withdraw what
22 I said and ask it again.

23 MR. ZABELL: Okay.

24 Q. Is someone who does not want to be
25 touched a good candidate for skydiving?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 If you can, you may answer.

4 A. I don't know that. I don't know
5 that.

6 Q. You don't know one way or the
7 other?

8 A. No.

9 Q. So if someone said to you, I'm
10 afraid of being touched, I don't like to be
11 touched, do you think I should go up on a
12 skydive, what would you say to that person?

13 A. If someone said that to me like
14 that, I would say, then maybe you should not
15 skydive.

16 Q. Why not?

17 A. Because they just expressed
18 something that they're going to be
19 uncomfortable with.

20 Q. What did they express they'd be
21 uncomfortable with?

22 A. What you just said.

23 Q. Being touched?

24 A. Yeah.

25 MR. ZABELL: When he makes a

1 MAYNARD

2 statement like that, that's a statement
3 to which no response is required.

4 Q. Why is someone who does not want to
5 be touched not a candidate for skydiving, for
6 tandem skydiving?

7 MR. ZABELL: Objection to the form.
8 If you can, you may.

9 A. You're asking me to answer a
10 question of someone else's feeling. I can't
11 give you that answer.

12 Q. Well, I'm asking you as a tandem
13 instructor if someone came to you and said, I
14 don't like to be touched, do you think I should
15 go up in a tandem skydive, what would be your
16 answer?

17 A. I would tell that in order to do a
18 tandem skydive, you will be touched and hooked
19 up in a harness. And that's all explained to
20 them. There will be close contact with another
21 person.

22 Q. Therefore, what would be your
23 recommendation to that person?

24 A. I would tell him those are the
25 facts and you have to make a choice.

1 MAYNARD

2 Q. What if that person went up in a
3 skydive and then afterwards made a complaint to
4 you and said, I was touched, I went up in the
5 skydive and I was touched, is that a legitimate
6 complaint?

7 MR. ZABELL: Objection to the form
8 of the question.

9 You may answer.

10 A. I would ask them to give me more
11 detail.

12 Q. Okay. Well, the person was
13 adjusting straps around my body and I felt
14 uncomfortable, what would -- would that be a
15 legitimate complaint?

16 MR. ZABELL: Objection to the form.

17 You may answer.

18 A. No.

19 Q. Okay. At how many points does the
20 and instructor have to be attached to the
21 passenger?

22 MR. ZABELL: Objection to the form.

23 You may answer.

24 A. At how many points?

25 Q. Yeah.

1 MAYNARD

2 A. There's four points of attachment.

3 Q. Are there any other points of
4 attachment other than the four points?

5 A. No.

6 Q. Where are the four points of
7 attachment?

8 A. There's two -- there's one on each
9 shoulder and one on each hip.

10 Q. This article in Drop Zone -- I'm
11 sorry, not Drop Zone, Hamptons.com
12 indicates there's about one injury per year at
13 Skydive Long Island. Is that a true statement?

14 A. For a while we average about one a
15 year.

16 Q. And are those injuries of
17 passengers, of skydivers or both?

18 MR. ZABELL: Objection to the form.

19 A. Both.

20 Q. When you say one injury per year,
21 it's one injury and it's either a passenger or
22 a skydiver?

23 A. Yes.

24 Q. Okay. And there was one death in
25 1989; correct?

1 MAYNARD

2 A. That's correct.

3 Q. All right. It says here that this
4 death was an apparent suicide; is that correct?

5 A. Yes.

6 Q. Why was it believed to be an
7 apparent suicide?

8 A. Because the student himself
9 released himself from the parachute 200 feet
10 off the ground.

11 Q. And was there any indication that
12 he was suicidal?

13 A. No.

14 Q. So it's possible that he just made
15 a mistake?

16 A. It's possible.

17 Q. But it was his fault?

18 A. Absolutely.

19 MR. ZABELL: Objection to the form.

20 Q. Did the family complain?

21 MR. ZABELL: Objection to the form.

22 Q. About his death?

23 MR. ZABELL: Objection to the form.

24 A. Did they complain?

25 Q. Yeah.

1 MAYNARD

2 A. Well, they started a lawsuit.

3 Q. They did? And what happened?

4 A. It was dismissed.

5 Q. Okay. Did you give them their
6 money back?

7 A. No.

8 Q. Why not?

9 MR. ZABELL: Objection to the form.

10 A. Because I didn't.

11 Q. Well, did they ask for it back?

12 A. No.

13 Q. And you thought that their
14 complaint was illegitimate?

15 MR. ZABELL: Objection to the form.

16 Did you say "illegitimate"?

17 Q. You felt that their claim was
18 illegitimate; correct?

19 MR. ZABELL: Objection to the form.

20 A. Yes.

21 Q. And this particular lawsuit was
22 dismissed without you being deposed?

23 A. I believe.

24 MR. ZABELL: Objection to the form.

25 A. I don't really remember, to tell

1 MAYNARD

2 you the truth.

3 Q. Was there any testimony taken in
4 that case?

5 A. No. It didn't get that far.

6 Q. And it was dismissed that she
7 had -- that the jumper had signed a waiver;
8 correct?

9 A. I don't really remember.

10 Q. And that was in Suffolk County in
11 1989, around there?

12 A. Yes.

13 Q. Was it Suffolk Supreme Court, if
14 you can recall?

15 A. I don't recall.

16 Q. I want to show you -- I premarked
17 as Exhibit 3 and these are all R-3 -- is my
18 memory for Ray. And I'm going to ask you if
19 you recognize this document?

20 MR. ZABELL: I'm going to object to
21 the statements of counsel.

22 MR. ANTOLLINO: Okay. You can take
23 a look --

24 (Exhibit R-3, four-page document
25 starting with 43:121, marked for

1 MAYNARD

2 Identification.)

3 Q. Take a look at R-3 and I'm going to
4 ask you if you recognize any of these
5 documents.

6 A. Yes.

7 Q. What is this?

8 A. It's showing you the attachment
9 points of the tandem passenger harness
10 attaching to a tandem master.

11 Q. Does it fairly and accurate
12 represent how a tandem master is strapped to a
13 passenger?

14 A. Yes.

15 MR. ZABELL: Counselor, before your
16 question, I notice that these pages -- is
17 there an order to these pages because
18 they appear to be numbered but it looks
19 like the second -- the third page is the
20 page that's identified as R-3.

21 MR. ANTOLLINO: I think they're out
22 of order.

23 MR. ZABELL: And what is the order
24 that you'd like them in?

25 MR. ANTOLLINO: The order they're

1 MAYNARD

2 in. There are four pages and they start
3 with 43:121, 44:121 and then after that
4 41:121, and then after that 42:121. So
5 they're slightly out of order, but that's
6 the order I'd like them in.

7 A. I have three pages.

8 Q. You have three pages. So I'll give
9 you my fourth page. Let's show what you have.
10 You have that one.

11 MR. ZABELL: So the record should
12 reflect that you just gave him a
13 duplicate copy of 42:121.

14 MR. ANTOLLINO: You know, it's a
15 three-page document. I'm sorry, maybe
16 you were missing --

17 MR. ZABELL: Really? Because you
18 gave me four pages. You gave me 43:121,
19 44:121, 41:121 and then 42:121.

20 MR. ANTOLLINO: All right. Let me
21 look at what Ray has.

22 MR. ZABELL: It appears he might be
23 missing --

24 MR. ANTOLLINO: Yes, he is and
25 that's the one he said was the duplicate

1 MAYNARD

2 that I handed him, but no it's not.

3 MR. ZABELL: No, it was, because
4 you now have -- you've taken all the
5 papers back and you've got multiple
6 copies in front of you that you're
7 pulling from.

8 MR. ANTOLLINO: I have -- I'm
9 giving the witness now what was the
10 four-page intended exhibit.

11 MR. ZABELL: It was a four-page
12 exhibit not a three-page as you just
13 articulated.

14 MR. ANTOLLINO: That's correct.

15 MR. ZABELL: Okay.

16 Q. What is the Tandem Vector owner's
17 manual?

18 A. Excuse me?

19 Q. What is the Tandem Vector II?

20 MR. ZABELL: Objection to form.

21 Of the multiple questions before
22 you, you may pick a question and then
23 answer it.

24 A. Tandem Vector II is what we call a
25 rig. It's a harness and container, a harness

1 MAYNARD

2 container, and parachutes.

3 Q. And do you own that at your drop
4 zone?

5 A. Yes.

6 Q. Do you own more than one?

7 A. Yes.

8 Q. And do you recognize this to be the
9 manual that comes with this particular rig?

10 A. It appears to be an old one
11 because -- it appears to be an old one.

12 Q. Is there anything in this portion
13 of the manual that I've handed marked as an
14 exhibit that needs to -- that is incorrect?
15 Why don't you take a minute and look through
16 it.

17 A. (Reviewing.)

18 No, they seem to be correct.

19 Q. So the document on the first page
20 points out several straps and points of
21 attachment, do you see that, on page 43:121?

22 A. Yes.

23 Q. All right. And all of those straps
24 need to be adjusted; correct?

25 A. Correct.

1 MAYNARD

2 Q. And they need to be adjusted for
3 the safety and comfort of the passenger;
4 correct?

5 A. That's correct.

6 Q. And would you agree that safety is
7 more important than comfort?

8 A. Safety is number one.

9 Q. And comfort is number two?

10 MR. ZABELL: You need to answer
11 verbally.

12 A. Yes.

13 Q. And I see that two of those
14 attachments are approximately at the hips; is
15 that correct?

16 A. Correct.

17 Q. What about someone who's afraid of
18 heights? If someone went to you and said, I'm
19 afraid of heights do you think I should go up
20 on a skydive?

21 MR. ZABELL: Objection to the form
22 of the questions.

23 Q. What would you say -- what would
24 you recommend to that person?

25 MR. ZABELL: Counsel, are you

1 MAYNARD

2 withdrawing the previous question and
3 just asking that last question?

4 Q. You can answer.

5 MR. ZABELL: You can pick one of
6 the questions and provide an answer to
7 it.

8 A. Which question do you want me to
9 answer?

10 MR. ANTOLLINO: Would you read it
11 back, please? Colloquy doesn't count in
12 my seven hours. If you want to come
13 back, that's fine with me.

14 MR. ZABELL: Counselor, just ask
15 one question at a time.

16 MR. ANTOLLINO: No, no. We'll read
17 it back.

18 MR. ZABELL: Which question are you
19 having read back?

20 MR. ANTOLLINO: The last question.

21 (Record read.)

22 MR. ANTOLLINO: Read the first part
23 of that, before that.

24 (Record read.)

25 A. If someone comes to us and tells us

1 MAYNARD

2 that they are afraid of heights, the first
3 thing we tell them is that this is not like you
4 standing on the side of a building and being in
5 a tree or on a ladder. It's a totally
6 different feeling and, in my opinion, it's not
7 the same -- it's not the same sensation and
8 they would probably be okay.

9 Q. And what if that person went up
10 into the airplane and experienced a skydive and
11 later complained that the plane went up to
12 12,000 feet?

13 A. They're told that we're going up to
14 13,500 feet most of the time.

15 Q. Okay. So if someone told you that
16 they were afraid of heights and you told them
17 that it would be -- you thought it would be
18 okay and he went up to 12,000 feet and later
19 complained that they went up to 12,000 feet,
20 that would be an illegitimate complaint;
21 correct?

22 MR. ZABELL: Objection to the form.

23 You may answer.

24 A. No one is forced to get in the
25 airplane and jump from any altitude. It was

1 MAYNARD

2 their choice. We're not telling them that it's
3 going to be okay and you can do this. It's
4 their choice to get in the plane or not get in
5 the airplane knowing they're going to go to at
6 least 10,000 feet.

7 Q. And, therefore, a complaint that
8 the plane went up to 12,000 feet would be an
9 illegitimate complaint; correct?

10 MR. ZABELL: Objection to the form
11 of the question.

12 A. Yes.

13 Q. Would you agree or disagree, people
14 think skydivers are just a bunch of crazies,
15 you don't have to be crazy, though it helps?

16 MR. ZABELL: Objection to the form.
17 You can answer.

18 A. That's something I've said.

19 Q. In fact, let's mark what I've
20 premarked as R-2, you told this to the
21 Independent which is a newspaper on the east
22 end of Long Island; correct?

23 A. Yes.

24 (Exhibit R-2, article from the
25 Independent, marked for Identification.)

1 MAYNARD

2 Q. That's exactly what you said to
3 this reporter, Mariah Quinn, in or around 2006;
4 correct?

5 A. According to this, yes.

6 Q. And you recognize this article?

7 A. Yes.

8 Q. And when you spoke to that
9 reporter, you weren't saying anything that was
10 untrue; is that correct?

11 A. That was my opinion.

12 Q. Okay. Would you agree that --
13 okay, I'm finished with that exhibit.

14 Would you agree that the behavior
15 at the drop zone can get a little bawdy at
16 times?

17 MR. ZABELL: Objection to the form.
18 You may answer.

19 A. Could you explain what you mean
20 "bawdy"?

21 Q. Have you heard the word "bawdy"
22 before?

23 A. No.

24 Q. Okay. A little racy?

25 MR. ZABELL: Same objection.

1 MAYNARD

2 A. I don't know what you mean by being
3 racy.

4 Q. Suggestive?

5 MR. ZABELL: Same objection.

6 A. Suggestive in what way?

7 Q. Sexually suggestive.

8 MR. ZABELL: If you can answer, you
9 may.

10 A. I don't remember.

11 Q. All right. Well, you don't
12 remember? You don't remember any times when
13 behavior has gotten sexually suggestive at the
14 drop zone?

15 A. Not any more than anything else.

16 Q. Well, what does that mean, not any
17 more than anything else?

18 MR. ZABELL: Objection to the form.

19 You may answer.

20 A. It's not a major topic. We're
21 there to skydive.

22 Q. Well, you have read the lawsuit
23 that Don has filed in this case; correct?

24 A. Yes.

25 Q. You were sent a copy in the mail;

1 MAYNARD

2 correct?

3 A. Yes.

4 Q. And you read it before you sought
5 counsel; correct?

6 A. I guess. I don't remember.

7 Q. Well, did you read the lawsuit at
8 any time?

9 A. Yes.

10 MR. ZABELL: Objection, asked and
11 answered.

12 You may answer.

13 A. Yes.

14 Q. There's an allegation in that
15 lawsuit that it's very common at the drop zone
16 for people to make sexually suggestive jokes
17 when men are being strapped to women.

18 Do you remember that allegation
19 being made?

20 A. Yes.

21 Q. And isn't it -- isn't it true that
22 those types of jokes are often made in the rig
23 as men are being strapped to women?

24 MR. ZABELL: Objection to the form.

25 You may answer.

1 MAYNARD

2 A. There are remarks that are made to
3 keep people calm and let them know -- you know,
4 keep them calm that we're going to make a
5 skydive.

6 + MR. ANTOLLINO: Motion to strike
7 as nonresponsive.

8 MR. ZABELL: Motion is denied to
9 the extent that I'm permitted to deny
10 your motion, Counsel.

11 Q. I'm asking, of those jokes, do they
12 include jokes about men being strapped to
13 women?

14 A. Yes.

15 MR. ZABELL: Objection to the form.
16 You may answer.

17 Q. Are there jokes when men are being
18 strapped to men?

19 MR. ZABELL: Objection to the form.
20 You may answer.

21 A. Yes.

22 Q. And the tenor of those jokes is, "I
23 bet you didn't think you were going to be
24 strapped to a man today, did you?"

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. That's been said.

4 Q. All right. That's been said many
5 times; correct?

6 A. It's been said.

7 Q. It's been said how many times?

8 A. I don't know.

9 Q. Probably more times that you can
10 remember; correct?

11 A. Not physically at that place where
12 people are being dressed all the time. I'm
13 running the place so I'm not right in that
14 dressing area all the time and hear what
15 everybody says to everybody.

16 Q. But you have been up in the plane
17 and you've heard that before?

18 A. Yes.

19 Q. Okay. So many times that you
20 cannot remember; correct?

21 MR. ZABELL: Objection to the form.

22 Objection, asked and answered.

23 You may answer it if you can.

24 A. Yes.

25 Q. Do you know that Rich of

1 MAYNARD

2 was deposed in this case?

3 A. Yes.

4 Q. Did you speak to Rich about his
5 testimony?

6 A. He just called me and told me it
7 was a long --

8 Q. It was a what?

9 A. It was a long deposition.

10 Q. It was a long deposition. It was
11 only two hours. Did he say anything else about
12 it?

13 A. No.

14 Q. Did you learn anything else about
15 his testimony?

16 MR. ZABELL: Objection to the form
17 of the question.

18 You may answer.

19 A. He said that it was long and that
20 you covered everything.

21 Q. Okay. Do you know that both Rosana
22 Orelana and David Kengle were deposed in this
23 case?

24 A. Yes.

25 Q. Did you know that they both

1 MAYNARD

2 testified that an instructor other than Don
3 attempted to joke with them to the effect that,
4 I bet you didn't know that your girlfriend was
5 going to be strapped to another guy?

6 A. I didn't know that.

7 Q. Do you doubt that that occurred?

8 A. No.

9 Q. And you heard that type of joke
10 before; correct?

11 A. That statement. I don't know if it
12 was a joke.

13 Q. Well, does joking occur in the rig
14 to loosen the tension?

15 MR. ZABELL: Objection to the form
16 of the multiple questions.

17 You may answer.

18 A. Yes.

19 Q. All right. Have you ever had a
20 situation -- first of all, do you have any
21 female instructors?

22 A. Female tandem instructors?

23 Q. Yes.

24 A. Yes.

25 Q. How many?

1 MAYNARD

2 A. One.

3 Q. And the rest are -- how many do you
4 have --

5 MR. ZABELL: Objection to the
6 form --

7 Q. -- total?

8 MR. ZABELL: -- of the multiple
9 questions.

10 MR. ANTOLLINO: Just put an
11 objection. Just make an objection.
12 We're going to be here longer if you have
13 to make speaking objections.

14 MR. ZABELL: You have my objection.
15 You may pick a question and answer it.

16 A. I believe we have 17 instructors.

17 Q. All right. So most of the time,
18 just statistically, you're going to have male
19 instructors with passengers in a skydive;
20 correct?

21 A. That's correct.

22 Q. And many times couples will come to
23 the sky -- to a skydive at your drop zone;
24 correct?

25 A. Correct.

1 MAYNARD

2 Q. Okay. Boyfriend and girlfriend or
3 married couples; correct?

4 A. Correct.

5 Q. And have you ever had a
6 situation -- and, in that case, one -- it is
7 more than likely that there will be one male
8 instructor strapped to the male and one male
9 instructor strapped to the female; correct?

10 A. Correct.

11 Q. And it will be known to the
12 instructor, both instructors, that these two
13 people are in a relationship; correct?

14 A. Correct.

15 Q. All right. And a joke will be made
16 suggesting that the boyfriend didn't know that
17 the girlfriend was going to be strapped up to
18 another guy; correct?

19 MR. ZABELL: Objection to the form.

20 A. That statement is not made all the
21 time, no.

22 Q. It's made sometimes though;
23 correct?

24 A. Correct.

25 Q. Have you ever fired someone for

1 MAYNARD

2 making a statement like that?

3 A. No.

4 Q. If someone complained about that
5 statement, would you fire the instructor that
6 made -- made the joke?

7 A. There's never been a complaint.

8 Q. But if someone did make a
9 complaint, would you?

10 MR. ZABELL: Are you asking him a
11 hypothetical question?

12 Q. You can answer.

13 A. I'd have to deal with that at the
14 time.

15 Q. I'm asking, do you think that
16 that's grounds for termination?

17 MR. ZABELL: Objection to the form.
18 You may answer.

19 A. That you can be strapped to a man,
20 no.

21 Q. Have you ever fired an instructor
22 where a passenger had an injury?

23 A. No.

24 Q. You make each passenger sign a
25 waiver; is that correct?

1 MAYNARD

2 A. That's correct.

3 Q. And I'm going to show you what I
4 premarked as Exhibit 4.

5 (Exhibit R-4, waiver, marked for
6 Identification.)

7 Q. What I believe to be the waiver you
8 have every skydiver sign.

9 A. That's correct.

10 Q. This is, is it not, the release
11 that you have everyone at the skydive sign?

12 A. Yes, it is.

13 Q. All right. And you make them not
14 only sign it, but initial each paragraph;
15 correct?

16 A. That's correct.

17 Q. And the reason you want everyone to
18 initial each paragraph is that you don't want
19 someone to come back and say, oh, that wasn't
20 included in the waiver that I signed even
21 though my signature is on the last page, the
22 first three are a forgery; correct?

23 MR. ZABELL: I'm going to object to
24 the form of the question and advise you
25 that if your answer requires you to

1 MAYNARD

2 provide information that was given to you
3 by your attorney, you need not answer the
4 question.

5 A. My attorney prepared this, so --

6 Q. Well, let me ask you, why do you
7 have the person -- why do you think it's
8 necessary to have the person initial each
9 paragraph?

10 MR. ZABELL: Same objection. If
11 your attorney advised you why you need to
12 have each paragraph initialed, then you
13 need not answer the question. You need
14 simply state that that is covered by the
15 attorney/client confidentiality
16 privilege.

17 A. It's covered by the attorney/client
18 confidentiality.

19 Q. And you don't want to waive that
20 attorney/client confidentiality privilege;
21 correct?

22 MR. ZABELL: No, he does not.

23 A. No.

24 Q. All right. I would like you to
25 read paragraph 13. Turn to the third page of

1 MAYNARD

2 the waiver and read that aloud for the record.

3 A. "If I am making a student jump, I
4 understand that I will wearing a harness that
5 will need to be adjusted by the jump master.
6 If my jump is a tandem jump, I understand the
7 tandem master will attach my harness to his and
8 this will be put on my body in close proximity
9 of the tandem master. I specifically agree to
10 the physical contact between the tandem master
11 and myself."

12 Q. Okay. You have seen many waivers
13 at many drop zones, have you not, including
14 this one?

15 A. Yes.

16 Q. And they all have a paragraph like
17 that in there, isn't that true?

18 A. Yes, they do.

19 Q. Okay. And why is -- in general,
20 why is that an industry standard paragraph to
21 have in a waiver for someone who's going to go
22 up on a tandem skydive?

23 MR. ZABELL: I object to the form
24 of the question and advise you that if
25 your answer requires you to divulge

1 MAYNARD

2 information that was provided to you by
3 your attorney, you simply need state that
4 the information is covered by the
5 attorney/client confidentiality
6 provision.

7 Q. And I'm asking you as your -- in
8 your experience, in your 40 years experience,
9 why is it your personal understanding that that
10 is there? I don't want to know what your
11 attorney told you.

12 MR. ZABELL: If your personal
13 understanding was derived because your
14 attorney explained to you why that needs
15 to be there, then you simply need state
16 that that information is covered by the
17 attorney/client confidentiality
18 privilege.

19 Q. You can answer.

20 A. It's covered by the attorney
21 confidentiality.

22 Q. All right. When was the first time
23 you spoke to an attorney about this particular
24 clause?

25 A. I don't remember what year it was.

1 MAYNARD

2 Q. Well, was it before you started
3 Skydive Long Island?

4 A. No.

5 Q. Okay. And was it in -- was it
6 before 2000?

7 A. I'm not sure.

8 Q. Was it before 1995?

9 A. I'm not sure.

10 Q. Okay. When did you start Skydive
11 Long Island?

12 A. 1986.

13 Q. Okay. So, in 1986 you had been
14 jumping for 17 years approximately?

15 A. Yes.

16 Q. Okay. And between 1969 and 1986
17 you had seen many releases similar to this one;
18 correct?

19 A. Yes.

20 Q. And you had seen many clauses
21 similar to clause 13; correct?

22 A. I'm not sure between 1969 and 1986
23 when that clause was put in.

24 Q. Well, is this a industry-wide
25 clause --

1 MAYNARD

2 MR. ZABELL: Objection.

3 Q. I mean, is this an industry-wide --
4 well, you have -- let's see, in between 1986 --

5 MR. ZABELL: Counselor, are you
6 withdrawing the previous question?

7 Q. Well, let me ask you this. You
8 said you don't know if it was put in before
9 1986, but this is a Skydive Long Island waiver;
10 correct?

11 A. Yes, this is. It's the current
12 Skydive Long Island waiver.

13 Q. Right, okay. Now, you had seen
14 waivers like this before 1986; correct?

15 A. Yes.

16 Q. All right. And you signed many of
17 them as a fun jumper; correct?

18 A. Yes.

19 Q. Okay. What is a fun jumper?

20 A. It's an experienced jumper that's
21 no longer on student status who normally owns
22 their own gear.

23 Q. But you signed -- you signed these
24 waivers and you initialed paragraphs saying
25 that you're making a student jump; correct?

1 MAYNARD

2 MR. ZABELL: Objection to the form
3 of the question.

4 Q. That you know that you're going to
5 be in close contact to --

6 MR. ANTOLLINO: Let me finish my
7 question before you make an objection.

8 Q. You signed waivers saying that if
9 you're making a student jump you know you're
10 going to be in close proximity to the
11 instructor; correct?

12 MR. ZABELL: Objection to the form
13 of the multiple questions posed before
14 you. You may pick any one of those
15 questions and provide an answer to it.

16 A. Okay. When I was a student jumper,
17 there were no tandem jumps. It evolved after
18 my student status. So there was no gigantic
19 waiver like this back then. The waivers have
20 evolved over the years.

21 Q. When was the first time you saw a
22 waiver that included clause 13?

23 A. I don't remember.

24 Q. But it was before 1986; correct?

25 A. No.

1 MAYNARD

2 Q. It was not? This was the first --
3 your waiver that you developed for Skydive Long
4 Island was the first time that you ever saw a
5 clause like that?

6 A. I didn't say that.

7 Q. Okay. When was the first time you
8 saw the clause?

9 A. I don't remember the first time I
10 saw that clause in a waiver.

11 Q. And you don't know if it was before
12 1986?

13 A. It was not before 1986. It was
14 sometime after 1986. I do not remember the
15 year.

16 Q. Okay. So your first waiver at
17 Skydive Long Island did not have this clause in
18 it?

19 A. No, it did not.

20 Q. And when did you put this clause
21 into your waiver at Skydive Long Island?

22 A. I don't remember the year.

23 Q. Do you have copies of these old
24 waivers?

25 A. Probably not.

1 MAYNARD

2 Q. Why did you think that it would be
3 appropriate for you to put this in a waiver?

4 MR. ZABELL: I'm going to object to
5 the form. To the extent that the answer
6 requires you to reveal communications had
7 between your counsel and yourself, you
8 may assert the attorney/client
9 confidentiality privilege.

10 A. And I assert the attorney/client
11 confidentiality.

12 Q. Well, do you remember the attorney?

13 MR. ZABELL: Objection to the form.

14 You can answer.

15 A. I'm not -- I don't remember what
16 attorney I had at the time.

17 Q. Are you certain that an attorney
18 told you to put that clause in there?

19 A. Am I certain that an attorney told
20 me to do that?

21 Q. Yes.

22 A. Any waiver that I've given to
23 anybody at the place was reviewed by an
24 attorney.

25 Q. Okay. That's not my question. My

1 MAYNARD

2 question is, are you certain that an attorney
3 advised you to put that clause in there?

4 MR. ZABELL: Objection, asked and
5 answered. You may answer it again.

6 A. My attorney advised me that that
7 should be in there.

8 MR. ZABELL: Objection. Do not
9 disclose what your attorney advised you.

10 THE WITNESS: Okay.

11 Q. Do you think that this clause
12 should continue to be in the waiver?

13 A. Yes.

14 MR. ZABELL: Objection to the form.

15 Q. Do you think that someone who is
16 going up in a jump should know that they're
17 going to be in close proximity to an
18 instructor?

19 A. Yes.

20 Q. And would you agree that the tandem
21 instructor, when strapping himself in to a
22 passenger, is essentially violating the
23 passenger's personal space?

24 MR. ZABELL: Objection to the form.

25 A. No.

1 MAYNARD

2 Q. Were you aware that that's what
3 Rich Winstock testified to?

4 A. No.

5 Q. So you would disagree with Rich if
6 he did say that?

7 A. I disagree with the statement that
8 you're violating the personal space, just out
9 of that statement.

10 Q. Well, let me ask you this, would
11 you agree that if I came over and asked you to
12 stand up and strapped myself to you in the way
13 that is represented in Exhibit 2, that I would
14 be invading your personal space?

15 MR. ZABELL: Objection to the form
16 of the question.

17 You may answer.

18 A. What you're saying, yes.

19 Q. Okay. Were you aware that when
20 Ms. Orelana testified she said she didn't even
21 read this waiver?

22 MR. ZABELL: Objection to the form
23 of the question. To the extent it is a
24 question and you understand it, you may
25 answer.

1 MAYNARD

2 A. No.

3 Q. Are you aware that she testified
4 that she was asked to read the waiver at the
5 same time that she watched the video?

6 MR. ZABELL: Same objection.

7 A. No.

8 Q. All right. Do you believe that if
9 she said that that she was inaccurate?

10 A. I'm not going to give an opinion
11 about what she's saying is inaccurate.

12 Q. I'm saying, is it your practice at
13 the drop zone to give people the waiver and to
14 read the waiver at the same time they watched
15 the videotape?

16 A. No.

17 Q. That would be a bad practice, would
18 you agree?

19 A. Yes.

20 Q. Because if that happens, the person
21 is not going to be paying full attention to the
22 videotape and is not going to be paying full
23 attention to reading the waiver; correct?

24 A. Correct.

25 Q. You believe that every customer

1 MAYNARD

2 should read this waiver very carefully;
3 correct?

4 A. That's my opinion, yes, they
5 should.

6 Q. And what is in the video?

7 MR. ZABELL: Objection to the form.
8 You may answer.

9 A. The video is a short videotape that
10 an attorney is explaining the waiver to a point
11 and the other part of it is basically how to
12 help your tandem master get out of the airplane
13 together; what to do to make it easier for both
14 of you and the correct body position you should
15 have in free fall.

16 Q. It's an attorney explaining this or
17 is it you?

18 A. It was an attorney and now this
19 past two years it's been me.

20 Q. So you've got two tapes -- you
21 still have two tapes at the drop zone, one that
22 you used to use with an attorney and one of
23 you; correct?

24 A. Correct.

25 Q. Okay.

1 MAYNARD

2 + MR. ANTOLLINO: Just mark that.

3 I'll call for the production and I'll
4 follow up with something in paper. Just
5 for my memory.

6 Q. You never talked to Rosana Orelana,
7 did you?

8 A. No.

9 Q. Have there been any complaints
10 about SDLI?

11 A. Have there been complaints about
12 SDLI?

13 Q. Yes, over the years.

14 MR. ZABELL: Objection to the form.
15 You can answer. If you know what
16 it is. If you know what he's asking you.

17 THE WITNESS: I have an idea.

18 MR. ZABELL: You may follow up on
19 that idea and provide the best answer you
20 can.

21 A. There's been no direct complaint to
22 me personally. I know there's something out
23 there on the internet that there's responses to
24 it that I don't even believe that it's a true
25 customer. It's probably a competitor that

1 MAYNARD

2 wants to make us look bad.

3 Q. Well, what website is that on?

4 A. There's -- I don't know the name of
5 the website. It's not a very nice one.

6 Q. Yelp, is that the website?

7 A. I'm not sure.

8 Q. What does the complaint say?

9 A. The complaint probably mentions
10 everything that could possibly be bad that can
11 be said about a drop zone.

12 Q. Like what?

13 A. Anything that would be derogatory,
14 from A to Z.

15 Q. Well, I'm going to show you what
16 I've premarked as Exhibits 5 and 6.

17 (Exhibit R-5, review, marked for
18 Identification.)

19 (Exhibit R-6, review, marked for
20 Identification.)

21 Q. And ask you if either of these are
22 the complaints you're talking about?

23 MR. ZABELL: Counsel? Thank you.
24 Counselor, when you get to a logical
25 conclusion in your questioning, I just

1 MAYNARD

2 need to take a two-minute bathroom break.

3 A. (Reviewing.)

4 And what's your question?

5 Q. Okay, the question is, is one of
6 these complaints the complaints you were
7 talking about?

8 A. No.

9 Q. So there's a third complaint out
10 there on another website we're not aware of?

11 MR. ZABELL: Objection.

12 You may answer.

13 A. Yes.

14 Q. You don't remember the name of the
15 website?

16 A. No.

17 Q. Is it wegoplaces.com?

18 A. I don't know.

19 MR. ZABELL: Objection.

20 MR. ANTOLLINO: Why don't we take
21 your break now, Counsel. We're still
22 going to talk about complaints but --

23 MR. ZABELL: That's fine. I just
24 didn't want to interrupt your flow.

25 THE VIDEOGRAPHER: We are now off

1 MAYNARD

2 the record at 11:03 a.m.

3 (Recess taken.)

4 THE VIDEOGRAPHER: This is tape two
5 of the deposition of Raymond Maynard. We
6 are now on the record at 11:16 a.m.

7 Q. In addition to the Tandem Vector
8 II, there was also a rig called the Vector
9 Sigma; is that correct?

10 A. Correct.

11 Q. And that has additional attachment
12 points on it; isn't that correct?

13 A. Between the passenger and the
14 tandem master?

15 Q. Yes.

16 A. No.

17 Q. No. All right. I guess the
18 instruction manual would say for sure where all
19 the attachments were on the Vector Sigma;
20 correct?

21 A. Correct.

22 Q. All right. In September you
23 attended a social media summit; is that
24 correct?

25 A. In September?

1 MAYNARD

2 Q. Yeah.

3 A. A social media summit?

4 Q. Yeah.

5 A. I did?

6 Q. Did you?

7 MR. ZABELL: If you remember, you
8 can answer.

9 A. I don't remember.

10 Q. You have Facebook pages, various
11 Facebook pages, that you make comments on for
12 Skydive Long Island; is that correct?

13 A. Correct.

14 Q. You have your own personal Facebook
15 page Ray Maynard; correct?

16 A. Correct.

17 Q. That's not open to the public?

18 A. I'm not sure. I very rarely go
19 there.

20 Q. There's also two other Skydive Long
21 Island Facebook pages; correct?

22 A. Correct.

23 Q. And recently you asked people to
24 put good reviews on wegoplaces.com; is that
25 correct?

1 MAYNARD

2 A. Correct.

3 Q. Does anyone put any reviews?

4 A. I don't know.

5 Q. So this is the type of review that
6 can affect your reputation; correct?

7 MR. ZABELL: Objection to the form.

8 A. I would imagine.

9 Q. I'd like you to look at Exhibits 5
10 and 6 and the first, Exhibit 5, refers to
11 Anthony F. and his review of Skydive Long
12 Island?

13 A. Okay.

14 Q. And he has -- he basically says he
15 enjoyed it but he had some problems with it;
16 correct?

17 A. According to this, yes.

18 Q. Okay. Do you believe what he said
19 there, his criticisms?

20 A. Some of this might have validity.
21 I think a lot of it is his opinion.

22 Q. Okay, but nevertheless he did
23 complain; right?

24 A. In this publication, yes.

25 Q. The first complaint is -- although

1 MAYNARD

2 he said he enjoyed the jump, the first
3 complaint he said is that the website is
4 misleading on prices; correct?

5 A. That's what he says.

6 Q. All right. Do you know if he's
7 right about that?

8 A. There were times that they had to
9 be fixed.

10 Q. Did you fire the webmaster?

11 A. No.

12 Q. He also said the photography is
13 average because they're just constant shots
14 rather than particularized shots; correct?

15 A. That's what he's saying.

16 Q. Yes, he said that.

17 A. Okay.

18 Q. Do you believe that?

19 A. No.

20 Q. Are you going to fire the
21 photographer?

22 A. No.

23 Q. Do you think -- who is your
24 photographer?

25 A. We have several.

1 MAYNARD

2 Q. All right. And how do you
3 photograph the dive?

4 A. There's a camera attached to the
5 helmet and they have a switch that they bite on
6 to shoot individual shots.

7 Q. All right. And he also said that
8 "the wait was interminable." Do you think that
9 that was an inaccurate complaint?

10 A. Everybody is told to plan on being
11 there a half a day.

12 Q. Where -- go ahead.

13 A. Because there can be delays of
14 weather. There's a lot of variables out there.
15 There's no way there can be a guarantee that
16 you're going to come there at 9 o'clock and
17 jump at 9:30 and everyone is told that.

18 Q. At what point?

19 A. When they're making the
20 reservation.

21 Q. Okay. So that was basically an
22 unfair complaint that the wait was
23 interminable?

24 A. Yes.

25 MR. ZABELL: Objection.

1 MAYNARD

2 You may answer.

3 Q. So the answer is yes?

4 A. Yes.

5 Q. The last complaint he has is that
6 the ladies in the office are rude?

7 A. Are what?

8 Q. It says basically -- the last check
9 that I have on there that I put in, he says
10 that the ladies in the office are rude.

11 MR. ZABELL: That's not a question.

12 That's a statement to which no response
13 is required.

14 Q. Is that correct?

15 A. No.

16 Q. What does he say, the last check
17 point, if you could just read it for the
18 record?

19 A. "The ladies in the office, I know
20 you're busy, but please don't get frustrated
21 with me when after two hours I'm checking in to
22 see how much longer my wait is and when you
23 tell me 30 minutes and another hour goes by,
24 don't be surprised when I'm back asking you
25 again."

1 MAYNARD

2 Q. Do you not think that that's a
3 characterization of rudeness?

4 A. A characterization --

5 Q. Of the ladies in the office
6 treating him rudely?

7 A. No. This is one side of what he's
8 telling you. You don't know the story.

9 Q. Okay. Are you going -- are you
10 going to fire any of the ladies in the office?

11 A. No.

12 Q. Who are the ladies in the office?

13 A. Lauren, Megan and Jesse.

14 Q. Take a look at Exhibit 6. Have you
15 read Exhibit 6 the Kevin W. complaint?

16 A. (Reviewing.)

17 MR. ANTOLLINO: What was the
18 question?

19 (Record read.)

20 A. Yes.

21 Q. Do you remember that incident?

22 A. No.

23 Q. All right. Do you think that Kevin
24 W. had a legitimate complaint?

25 A. If what he said is true. I don't

1 MAYNARD

2 know that to be a fact.

3 Q. So it might not be true?

4 A. Correct.

5 Q. If it was true, would you take any
6 corrective action?

7 A. If I was convinced of everything he
8 was saying is here, I would probably give him
9 back his money for the video and probably give
10 him a deal on another jump if he wanted to do
11 it.

12 Q. Okay. But you would investigate if
13 what he is saying is true?

14 A. Like I said, if he convinced me
15 that what he's saying is true, I would look
16 into it.

17 Q. Okay. What other -- what verbal
18 complaints -- well, let me ask you this.

19 Withdrawn.

20 You've been in business since 1986;
21 correct?

22 A. Yes.

23 Q. All right. And you've hired over
24 that course of time approximately how many
25 tandem skydive instructors?

1 MAYNARD

2 A. I don't know the number offhand, a
3 lot.

4 Q. More than 100?

5 A. Probably.

6 Q. All right. More than 200?

7 A. I don't know.

8 Q. In all of that time, have there
9 been any times other than Don's -- other than
10 Don's -- withdrawn.

11 During all of that time with all of
12 those tandem jumps that have taken place since
13 1986, has anyone ever complained about an
14 instructor other than Don?

15 A. No one has complained to me. I
16 never heard of any other thing.

17 Q. So Don was the only instructor that
18 anyone ever complained about in your 20 --
19 approximately 26-year history at Skydive Long
20 Island?

21 A. Yes.

22 Q. How many jumps do you do in a
23 season approximately?

24 MR. ZABELL: Objection to the form.

25 You may answer.

1 MAYNARD

2 A. We do several thousand.

3 Q. Okay. And I'm talking about just
4 tandem jumps.

5 A. Yes.

6 Q. Several thousand?

7 A. Yes.

8 Q. When you say "several," is several
9 more than 3,000 less than 10,000?

10 A. What year?

11 Q. Let's start with 1986.

12 A. It was probably a couple of
13 hundred, if we did that.

14 Q. All right, a couple of hundred.
15 And then when did it start getting into the
16 thousands?

17 MR. ZABELL: Objection to the form.

18 You may answer.

19 A. Probably 2001 maybe, 2002.

20 Q. Okay, 2001, 2002 you started
21 getting into the thousands. About how many
22 thousands in 2001, 2002?

23 A. Probably 1,000 or 2.

24 Q. And in 2005, were you doing more?

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. Yes, it increased most years a
4 little bit.

5 Q. Okay. So what was it last year,
6 how many jumps or I guess you're still in the
7 season, maybe someone is even jumping now?

8 MR. ZABELL: Objection to the form.
9 Objection to the multiple questions,
10 Counsel --

11 MR. ANTOLLINO: Withdrawn. Don't
12 argue with me.

13 Q. How many jumps in 2011?

14 A. Tandem jumps?

15 Q. Yeah.

16 A. We did just under 8,000.

17 Q. And in 2010?

18 A. It was right around 8,000.

19 Q. And do you remember 2009?

20 A. It was I'm going to take a guess --

21 Q. Guesstimate.

22 A. Guesstimate maybe 6,500.

23 Q. Okay. So it appears that
24 approximately you could say that since 2001
25 there have been between 30 and 50,000 jumps at

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MAYNARD

Skydive Long Island, would that be roughly fair?

MR. ZABELL: Objection to the form.

A. I don't know. I'd have to look back.

Q. Many thousands?

A. Yes.

Q. And your testimony is that the only two complaints about any tandem instructor were about Don in those many thousand jumps?

MR. ZABELL: Objection to the form.

You may answer.

A. Yes.

Q. There are parties that occur at the drop zone one or two times a summer; is that correct?

A. We have an annual event.

Q. And who is invited to the annual event?

A. It's open to the public. When I say "annual event" we bring in specialty aircraft. It's an annual skydiving event.

Q. Was it a party?

A. They call it a boogie.

1 MAYNARD

2 Q. In 2006 you had a luau; is that
3 correct?

4 A. Yes.

5 Q. And what was the name of that luau?

6 A. I don't think it had a name.

7 Q. And are you familiar with
8 dropzone.com?

9 A. Yes, I am.

10 Q. Do you have a handle on
11 dropzone.com?

12 A. Do I have a handle on it?

13 Q. Are you a member of dropzone.com?

14 MR. ZABELL: Objection to the form
15 of the multiple questions that are posed
16 before this witness.

17 MR. ANTOLLINO: Withdrawn.

18 Q. Are you a member of dropzone.com?

19 A. Skydive Long Island is, yes.

20 Q. And what Skydive Long Island's
21 handle?

22 MR. ZABELL: Objection to the form.
23 You may answer.

24 A. I don't know.

25 Q. When you log on to dropzone.com you

1 MAYNARD

2 have to input a user name and a password;
3 correct?

4 MR. ZABELL: Again, I'm going to
5 advise you that counsel for Mr. Zarda is
6 not under oath. You are under no
7 obligation to believe that the words that
8 come out of his mouth are accurate. You
9 may answer, keeping that in mind.

10 A. What was the question?

11 MR. ANTOLLINO: Could you read it
12 back?

13 MR. ZABELL: Please.

14 (Record read.)

15 A. Yes.

16 Q. All right. What is your user name?

17 A. I personally don't do that so I
18 don't know what it is.

19 Q. So you have your employees --

20 A. Yes.

21 Q. -- who are authorized to go on to
22 dropzone.com?

23 A. Yes.

24 Q. And make announcements?

25 A. Not all of them, but yes.

MAYNARD

Q. Who is authorized to make an announcement?

A. It's normally Lauren.

Q. Anyone else?

A. Not that I can recall.

Q. Has there ever been a time that you have authorized a skydive instructor to make a post on dropzone.com about the Skydive Long Island?

A. I don't believe I gave any authorization, but they might have gone on there.

Q. All right. I'm going to show you what I've premarked as Exhibit 7 and I'd ask you to read that.

(Exhibit R-7, website post, marked for Identification.)

A. I don't know who posted this.

Q. Does this refresh your recollection about what the name of the luau was at Skydive Long Island?

A. No.

Q. All right. Well, the title of the post is "Skydive Long Island, Get Laid Luau,"

1 MAYNARD

2 do you see that?

3 A. Uh-huh.

4 Q. Was that the name of the party?

5 A. I did not give the party a name and
6 they are referring to a lei that you wear
7 around your neck.

8 Q. Well, it appears that he hasn't
9 spelled --

10 A. I see that.

11 Q. He hasn't spelled it right. It's
12 referring to -- he's referring to a lei but he
13 didn't spell it right; correct?

14 MR. ZABELL: I'm going to advise
15 you that you need not make the assumption
16 that counselor made that there was a man
17 that wrote this e-mail and you may answer
18 the question.

19 A. Okay.

20 Q. The person who wrote this -- well,
21 withdrawn.

22 Do you know Jordan Miles?

23 A. Jordan is one of my employees.

24 Q. Is he a good employee?

25 A. Yes.

1 MAYNARD

2 Q. All right. If he wrote, "You
3 pulled your pork with us now come and get laid
4 at Skydive Long Island luau on dropzone.com,"
5 are you going to fire him?

6 A. Am I going to fire him now?

7 Q. Yeah.

8 A. I'm not sure. I'm going to go talk
9 to him.

10 Q. Why would you fire him for posting
11 that?

12 MR. ZABELL: Objection.

13 Q. Why might you fire him? You said
14 you're not sure.

15 MR. ZABELL: Objection to the
16 multiple questions. If you'd like to
17 withdraw any of them, you may.

18 If you like, you may pick one of
19 them and provide an answer to it.

20 A. I will talk to him.

21 Q. And what are you going to say when
22 you talk to him?

23 A. I will find out if he actually said
24 this or posted this.

25 Q. And if he says yes, are you going

1 MAYNARD

2 to fire him?

3 A. I don't know.

4 MR. ZABELL: Objection, asked and
5 answered.

6 Q. Why might you fire him?

7 MR. ZABELL: Objection.

8 You may answer.

9 A. I would have to think about it.

10 Q. He's a good -- he's a good
11 employee, isn't it?

12 MR. ZABELL: Objection, asked and
13 answered. You can answer it again.

14 A. Yes.

15 Q. Does it seem like something that
16 you would fire someone for?

17 MR. ZABELL: Objection to the form
18 of the question.

19 You may answer.

20 A. I'm not sure.

21 Q. Have you fired people in the past
22 other than Don?

23 A. I have let some ground crew people
24 go.

25 Q. Who?

1 MAYNARD

2 A. I don't remember the names. It was
3 a while ago.

4 Q. Any other instructors?

5 MR. ZABELL: Objection to the form
6 of the question.

7 You may answer.

8 A. I don't remember.

9 Q. You don't remember anyone that you
10 fired over how many years? You can't remember
11 a single instructor that you fired?

12 MR. ANTOLLINO: Objection to the
13 multiple questions posed.

14 You may pick a question and answer
15 it.

16 A. No.

17 Q. What about Willie?

18 A. What about Willie?

19 Q. Did you fire Willie?

20 A. No.

21 Q. What about Ben Lowe?

22 A. No.

23 Q. You didn't fire Ben Lowe?

24 A. No.

25 Q. What about Alex Allen?

1 MAYNARD

2 A. Yes.

3 Q. Okay. He was an instructor?

4 A. Yes.

5 Q. Why did you fire Alex Allen?

6 A. Because Alex Allen put his nose in
7 the business where it was not -- it did not
8 belong, questioning me about what I was doing
9 with another video guy and then he went on
10 videotape and gave me the finger and he was
11 fired.

12 Q. What do you mean he was questioning
13 you with what you were doing with another video
14 guy. Did he need that video guy on a jump or
15 something?

16 A. No.

17 Q. Explain it -- explain what his
18 problem was.

19 A. His problem was that he was trying
20 to tell me how to run my business. He was -- I
21 was on my way home and he called me up and
22 wanted to know why this guy was doing a video
23 and somebody else wasn't.

24 Q. When was that?

25 A. I think it was two years ago.

1 MAYNARD

2 Q. Why did he want the other guy in
3 the video?

4 A. It was none of his business, so it
5 didn't matter why he wanted the other guy in
6 the video.

7 MR. ZABELL: Just answer the
8 question that's asked of you if you know
9 the answer.

10 Q. Can you answer?

11 A. He wanted the other guy in the
12 video because the person that I was putting in
13 the video was somebody new that needed some
14 more experience. Everybody had equal number of
15 jumps across the day and the only way someone
16 is going to get experience is to give them the
17 chance to get to jump.

18 Q. And that's why you decided to
19 assign the video guy where you assigned him?

20 A. Yes.

21 Q. And would you say Alex's giving you
22 the finger is what you made fire him?

23 A. No, that was the icing on the cake.

24 Q. Okay. So what -- so the real
25 reason was his questioning you?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 You may answer.

4 A. He was fired for putting himself in
5 the place of the business where he had no place
6 being.

7 Q. Did you ever fire Jerry Hannon?

8 A. Yes, I did.

9 Q. And Jerry Hannon was an instructor?

10 A. Yes.

11 Q. Was he a good instructor?

12 MR. ZABELL: Objection to the form.

13 You may answer.

14 A. He was -- I believe he was a
15 videographer when he was fired.

16 Q. And why was he fired?

17 A. He got into an altercation with
18 another employee.

19 Q. What altercation?

20 A. They had words and they went in the
21 back and he punched him.

22 Q. Who was the employee he punched?

23 A. Duncan Shaw.

24 Q. Did Duncan Shaw require any medical
25 treatment?

MAYNARD

A. No.

Q. Was Duncan Shaw hurt?

A. Jerry hit him once.

Q. It was inappropriate at the workplace?

A. Yes.

Q. But you eventually rehired Jerry Hannon, didn't you?

A. Yes, I did.

Q. Why did you rehire him?

A. I rehired Jerry because he is a good man. It was over a year that went by. He was egged on, as I would put it, by Duncan. Duncan called him out to come in the back and Jerry loss his temperature -- I mean, his temper.

Q. Okay. How did Duncan egg him on?

A. Duncan didn't like Jerry so there was always a little pushing going on, saying things and they didn't see eye-to-eye.

Q. Did you ever fire Duncan Shaw?

A. Duncan was suspended.

Q. Why was Duncan suspended?

A. Because he was the victim of

1 MAYNARD

2 getting hit.

3 Q. So there are lots of level of
4 discipline that you can use at the workplace;
5 correct?

6 MR. ZABELL: Objection to the form.

7 You may answer.

8 A. Yes.

9 Q. All right. Short of termination,
10 you can suspend someone; correct?

11 A. Right.

12 MR. ZABELL: Objection to the form.

13 You may answer.

14 A. Yes.

15 Q. And you can reprimand them?

16 A. Yeah.

17 MR. ZABELL: That's a statement to
18 which no response is required.

19 Q. Correct? Correct?

20 A. Yes.

21 Q. You can counsel them; correct?

22 A. I don't know if "counsel" is the
23 correct word.

24 Q. Well, you can retrain them;
25 correct?

1 MAYNARD

2 A. Yes.

3 Q. When these parties that occur at
4 the drop zone there is alcohol involved;
5 correct?

6 A. Correct.

7 Q. And some people use recreational
8 drugs?

9 A. No.

10 Q. Are you aware of any of your sky
11 divers who, over the course of 26 years, have
12 used recreational drugs at the drop zone?

13 A. I've seen it.

14 Q. Okay. Who have you seen use
15 recreational drugs at the drop zone?

16 A. I'm talking years ago. I don't
17 even remember. I don't condone any of that.

18 Q. So you don't allow it to take place
19 in the drop zone?

20 A. No.

21 Q. Do you know anything about Don
22 Zarda using any illegal drugs?

23 A. No.

24 Q. Do these parties at the drop zone
25 get a little lewd --

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 Q. -- as the night goes on?

4 MR. ZABELL: Objection to the
5 multiple questions.

6 A. I don't know what you mean by
7 "lewd."

8 Q. Well, do women take their shirts
9 off?

10 A. I never saw that.

11 Q. All right. So you post -- you make
12 postings on your Facebook pages, your two
13 Skydive Long Island Facebook pages, yourself;
14 correct?

15 A. No, very rarely.

16 Q. Very rarely, mostly it's Lauren?

17 A. Yes.

18 Q. But you do make some postings
19 sometimes?

20 A. I can't remember the last time I
21 made a post.

22 Q. Well, I have a few here. Did you
23 make a posting about -- did you ever make a
24 joke, what's grass -- what's green and has
25 wheels?

MAYNARD

1
2 A. Not that I remember.

3 Q. And the answer being, grass, I lied
4 about the wheels? Does that ring a bell?

5 A. No.

6 Q. Are there videos of these parties
7 that you have at the drop zone?

8 A. A video of the party itself?

9 Q. Yeah.

10 A. You're talking about nighttime?

11 Q. Yeah.

12 A. Not that I know of.

13 Q. What the practice of keeping videos
14 of the tandem jumps? Who keeps them?

15 A. I believe they're kept on a file
16 server now or I know they used to be videotapes
17 we keep.

18 Q. When did you change from tape to
19 file server?

20 A. With the technology.

21 Q. When was that?

22 A. Just started last year at some
23 point in time.

24 Q. All right. And you keep the tapes
25 as well, the ones from before the new

1 MAYNARD

2 technology?

3 A. That's how we did it before, yes.

4 Q. All right. And are there out takes
5 of video jumps that remain at the drop site?

6 A. What's kept at the drop zone is the
7 raw footage.

8 Q. So the raw footage is edited and
9 put into, like, a five-minute presentation for
10 the customer; correct?

11 A. Correct.

12 Q. And how long is the raw footage
13 itself?

14 A. I'm not a videographer. I would
15 guess maybe ten minutes. I'm not sure.

16 Q. Would it be fair to say there was
17 raw footage in the jumps that were recorded by
18 David Kengle and Rosana Orelana?

19 MR. ZABELL: Objection to the form.

20 A. Yes. Every video is done the same
21 so there's always -- there's raw footage and
22 then they convert it to a CD.

23 + MR. ANTOLLINO: Just make a note
24 I'll call for production and I'll follow
25 it up with a demand.

1 MAYNARD

2 MR. ZABELL: Please.

3 Q. Have you ever flown to video a jump
4 yourself?

5 MR. ZABELL: Objection to the form.

6 A. You mean as a videographer?

7 Q. Uh-huh.

8 A. No.

9 Q. There are lots of pictures of Don
10 on your -- one of your business Facebook pages;
11 is that right?

12 A. I don't know.

13 Q. Well, I'll show you what I've
14 marked as Exhibit 8?

15 (Exhibit R-8, photographs from
16 Facebook page, marked for
17 Identification.)

18 Q. I'm handing a one, two, three,
19 four, five, six, seven page document and I'd
20 like you to look at those and see if you
21 recognize Don on every single one of those
22 pages.

23 MR. ZABELL: Just wait until he
24 provides me with a copy.

25 A. (Reviewing.)

1 MAYNARD

2 MR. ZABELL: How many pages?

3 MR. ANTOLLINO: What did I say?

4 (Record read.)

5 MR. ANTOLLINO: Could you read the
6 question back?

7 MR. ZABELL: Please.

8 (Record read.)

9 A. Yes.

10 Q. All right. And those are currently
11 on the Facebook page for Skydive Long Island;
12 correct?

13 A. I don't know that.

14 Q. I see we have wifi, but we'll do it
15 later, but you have no reason to believe that
16 they're not there, do you?

17 MR. ZABELL: Objection to the form.

18 A. No, I don't. I know there's two
19 different Facebook pages and I think one is not
20 being maintained and I'm not sure.

21 Q. Well, if they are there, are you
22 going to take them down?

23 A. Yes.

24 Q. Why?

25 A. It's a practice that we try to keep

1 MAYNARD

2 anything that's out there from Skydive Long
3 Island to its current employees and I know
4 there's probably others.

5 Q. I'm going to show you what I've
6 marked as Exhibit 9. What is that?

7 A. That's a picture of Richie
8 Winstock.

9 Q. And what is he wearing?

10 A. A towel.

11 Q. Is he on his way to the shower?

12 A. Yes, or on the way back.

13 Q. Why did you think that it would be
14 appropriate to put a picture of Rich Winstock
15 with a towel around him on your business
16 Facebook page?

17 A. I did not do that.

18 Q. Do you think it's appropriate?

19 A. I'm not sure.

20 Q. It's a little personal, isn't it?

21 MR. ZABELL: Objection to the form.

22 A. That's an opinion.

23 Q. Well, what is your opinion? Is it
24 your opinion that it's a little personal or
25 not?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 You may answer.

4 A. It's not showing anything.

5 Q. Well, he has his shirt off;
6 correct?

7 A. Yes.

8 Q. All right. Do you like your
9 instructors to walk around the drop zone in
10 front of the customers with towels around them?

11 A. No, and this was at the end of the
12 day or very early in the morning when there was
13 nobody around.

14 Q. Okay. But it's on your Facebook
15 page; correct?

16 A. I guess so.

17 Q. All right. So would it be
18 appropriate -- I'm just asking you, would it be
19 appropriate for Rich to be walking around with
20 a towel around him in front of the customers?

21 A. No.

22 Q. Okay.

23 (Exhibit R-11, photograph, marked
24 for Identification.)

25 Q. I'm going to show you what I have

1 MAYNARD

2 marked as Exhibit 12 and ask if you recognize
3 this. I'm sorry, is that Exhibit 12 or 11?

4 A. 11.

5 Q. Do you recognize this?

6 A. Yes.

7 Q. And that is a picture of you and
8 your current girlfriend; correct?

9 A. Yes.

10 Q. What is her name?

11 A. Barbara.

12 Q. What's her last name?

13 A. Schiano.

14 Q. So would you agree that you're
15 sharing to your Facebook followers your
16 relationship with Barbara Schiano?

17 A. I guess so.

18 Q. That's personal information, isn't
19 it?

20 A. It's my girlfriend.

21 Q. Okay. And that's personal
22 information; correct?

23 A. It depends on how one interprets
24 it.

25 Q. Well, what would you define as

1 MAYNARD

2 "personal information"?

3 A. Certainly not that I'm dating
4 somebody. I mean, it's common -- it's common
5 knowledge.

6 Q. Okay. It also conveys the
7 impression that you're heterosexual; correct?

8 MR. ZABELL: Objection to the form.

9 A. Yes.

10 Q. Okay. And that's personal
11 information; correct?

12 A. Yes.

13 Q. Are there any escapades going on in
14 this picture?

15 MR. ZABELL: Objection to the form.

16 A. Escapades?

17 Q. Yeah, any escapades?

18 A. I had my picture taken. I don't
19 understand.

20 Q. I'm wondering if you believe that
21 there are any escapades going on in that
22 picture?

23 MR. ZABELL: Objection to the form.

24 You may answer.

25 A. No.

1 MAYNARD

2 (Exhibit R-12, photograph, marked
3 for Identification.)

4 Q. Let me show you what I've marked as
5 Exhibit 12. And I'd ask you if you could
6 identify that.

7 A. That's a picture of myself and
8 Barbara after she made a jump and obviously I
9 did too.

10 Q. And you put that there; right?

11 A. Yes.

12 Q. Okay. And there are some comments
13 under the photo; isn't that correct?

14 A. Yes.

15 Q. And when did this occur?

16 A. Well, I would say in June.

17 Q. And this is on your business
18 Facebook page; correct?

19 A. Yes.

20 Q. All right. The very last comment
21 is a comment made by you; correct?

22 A. Yes.

23 Q. Can you read it for the record?

24 A. "Skydive Long Island: Thanks
25 everyone. Unfortunately my pathetic ex will

1 MAYNARD

2 not leave us alone and continues to try to
3 disrupt our lives by dancing as close as she
4 can to get to me at Dockers last Tuesday night.
5 It did not work. Barbara and I could not be
6 happier. As a matter of fact, this Wednesday,
7 June 29, 2011, will be the first of many
8 anniversaries we will share. That's the first
9 night we met and I have never been happier."

10 Q. All right. And in that post you
11 were talking about Joanne Maynard; correct?

12 A. Yes.

13 Q. And you referred to her as
14 pathetic; correct?

15 A. Yes.

16 Q. Because you believe she's pathetic?

17 A. Yes.

18 Q. And you said that she was trying to
19 make your life miserable; correct?

20 A. Correct.

21 Q. And one of the ways she was trying
22 to make your life miserable was by dancing too
23 close to you at Boxers?

24 A. Yes.

25 Q. What is Boxers?

MAYNARD

A. Dockers is a bar.

Q. Dockers is a bar?

A. It's a restaurant.

Q. And did you just happen to show up there coincidentally, both of you, or do you think she was following you?

A. I think -- I know that that is where Barbara and I would hang out and all of a sudden Joanne started coming down there.

Q. Is it close to where Joanne lives?

A. It's probably ten miles away.

Q. And how far is it from where you live?

A. Maybe seven.

Q. So it's relatively close to both of you?

A. Yeah.

Q. And they have dancing?

A. Yes.

Q. And was Joanne with someone else?

A. She was with some friends.

Q. All right. And you believe that she purposefully tried dancing too close to you?

1 MAYNARD

2 A. Absolutely.

3 Q. Why do you believe that?

4 A. Because Barbara and I were the only
5 two people out on the dance floor and she came
6 out by herself and got about two inches away
7 from me.

8 Q. She was dancing right next to you?

9 A. Right next to me, trying to evoke
10 whatever.

11 Q. Why did you feel a need to mention
12 this on your business Facebook page?

13 A. I just did.

14 Q. It's personal information, isn't
15 it?

16 A. Yes.

17 Q. All right. You put some of those
18 words in capitals, didn't you?

19 A. Yes.

20 Q. Why did you put some of those words
21 in capitals? Were you trying to emphasize
22 them?

23 A. Yes.

24 Q. All right. I believe you made a
25 mistake about the date there?

1 MAYNARD

2 A. Oh, right.

3 Q. You put 2001. It was really 2011
4 you should have put there; right?

5 A. It was actually 2010.

6 Q. So you met Barbara when? You met
7 her in 2010?

8 A. Correct.

9 Q. Did you meet her the same day you
10 fired Ray?

11 A. What?

12 Q. Did you meet her the same day you
13 fired Ray?

14 A. That I fired who?

15 Q. I'm sorry, withdrawn.
16 Did you meet her the same day you
17 fired Don?

18 A. No.

19 Q. There was a document I received --
20 you don't have to take this as truth, but do
21 you know of any reason why Barbara Schiano, is
22 that how you pronounce the name?

23 A. Yes.

24 Q. Was list -- would be listed as a
25 witness with information about this case?

1 MAYNARD

2 A. No.

3 Q. Did you ever learn that Barbara
4 Schiano was listed by your attorney on a
5 document as a person with discoverable
6 information in this case?

7 A. I might have heard something like
8 that.

9 Q. And did you discuss this with
10 Barbara?

11 A. Discussed what?

12 Q. Discussed her being listed as a
13 witness, with Barbara?

14 A. Yes, I might have.

15 Q. And what did you discuss with
16 Barbara about her being listed as a witness?

17 A. That I don't understand why she
18 would be because she doesn't know anything
19 about this.

20 Q. And so did she ask to be taken off
21 the list?

22 A. I don't remember.

23 Q. Do you have any -- do you know any
24 reason why she would have been listed as a
25 witness in this case?

1 MAYNARD

2 A. No, I do not.

3 Q. What have you discussed --
4 withdrawn.

5 What is an escapade?

6 A. What is a what?

7 Q. What is an escapade?

8 A. You go out somewhere and you have a
9 drink, if you have go out and have dinner, if
10 you have go to an event, if you go to a
11 football game.

12 Q. All of those are escapades?

13 A. Sure.

14 Q. It seems like --

15 A. It's a general term.

16 Q. -- it seems like there were some
17 escapades going on at Dockers then; correct?

18 A. Yeah.

19 Q. And it seems like in that earlier
20 exhibit where you're posing with Barbara,
21 you've got a drink in your hand, that there's
22 some escapades going on there; correct?

23 A. Well, I looked at that as a picture
24 being taken of us, so, yes.

25 Q. Okay. When you said in that post

1 MAYNARD

2 about Mrs. Maynard, that that did not work or
3 her dancing close to you at the -- at the
4 Docker -- is it Dockers?

5 A. Dockers.

6 Q. At Dockers. When you said that --

7 MR. ZABELL: How many questions are
8 you asking at once?

9 MR. ANTOLLINO: Please, please.

10 MR. ZABELL: Please what? I will
11 be more than happy to help you when you
12 say "please," but you have to identify
13 what question you need help with.

14 MR. ANTOLLINO: Be quiet. Remain
15 silent like you told me last week.

16 MR. ZABELL: Counselor, you will
17 keep a civil tongue in your mouth at this
18 deposition do you understand?

19 MR. ANTOLLINO: I am keeping a
20 civil tongue and I told you to remain
21 silent just like you told me last week.

22 MR. ZABELL: Okay. Form
23 appropriate questions and I will not
24 object to them and if you ask please,
25 tell me what you're asking please about.

1 MAYNARD

2 MR. ANTOLLINO: To remain silent.

3 Remember, the colloquy doesn't count to
4 the seven hours that I have for your
5 client. If you want to keep talking,
6 it's just stopping the clock.

7 MR. ZABELL: Counsel, ask
8 appropriate questions and I will not make
9 objections to your questions, if you're
10 capable.

11 Q. In the post -- there's no question
12 pending. I will withdraw whatever question or
13 questions were asked.

14 MR. ZABELL: Thank you.

15 Q. In your post you mentioned that
16 something did not work by Joanne getting close
17 to you on the dance floor at Dockers; correct?

18 A. Correct.

19 Q. What was it that did not work?

20 A. I didn't get upset and Barbara
21 didn't get upset and there was no scene.

22 Q. Has she tried -- has she --
23 withdrawn.

24 What other things has Joanne done
25 to make your life miserable?

1 MAYNARD

2 + MR. ZABELL: Objection to the
3 form. Counsel, I'm not going to allow
4 this question because I believe you are
5 attempting to harass my client.

6 You need not answer that question.

7 MR. ANTOLLINO: Well, I will say
8 that I think that Mrs. Maynard's
9 relationship to this case is relevant and
10 I'm trying to explore what the judge
11 suggested I do at the conference before
12 we litigate your motion to strike the
13 subpoena of Mrs. Maynard.

14 I'm trying to explore that and if
15 you're not going to allow me, that will
16 give me additional grounds to depose
17 Mrs. Maynard. So if you'd like to direct
18 him not to answer, that's fine. I'll
19 just point it out to the judge when I my
20 application or we actually litigate your
21 motion.

22 Q. Were you on a reality show? Did
23 you ever sign you up for a reality show?

24 A. It never got there, no.

25 Q. The name of the reality show that

1 MAYNARD

2 you agreed to participate in was The Marriage
3 Ref; is that correct?

4 A. Correct.

5 Q. And in that agreement that you made
6 with the company that produces The Marriage Ref
7 you invited videographers and other people into
8 your home; correct?

9 A. They were the producers, yes.

10 Q. Okay. You invited them into your
11 home to -- you just met with the producers?

12 A. No.

13 MR. ZABELL: Objection to the form.

14 You may answer.

15 A. It was the whole -- the workings of
16 what those people do, the video guys, the sound
17 guys, the crew.

18 Q. Okay. How long were they there
19 for, how many days?

20 A. They came to the house twice for an
21 hour or two.

22 Q. Okay. And they recorded you having
23 discussions with Mrs. Maynard?

24 A. Yes.

25 Q. And this is while you were still

1 MAYNARD

2 married?

3 A. Yes.

4 Q. Why did you agree to allow them
5 into your home?

6 A. Joanne wanted to be on TV.

7 Q. And you went along with it?

8 A. Yes.

9 Q. And there were things discussed
10 between you and Joanne while they were filming
11 you?

12 A. Yes.

13 Q. And they were only there for two
14 hours?

15 A. Yes.

16 MR. ZABELL: Objection. That was a
17 statement to which no response is
18 required. And I'm reminding you,
19 Mr. Antollino is not under oath. You,
20 therefore, may treat everything that
21 comes out of his mouth as suspect and you
22 are under no obligation to believe it is
23 accurate.

24 Q. Why did you not get put on the
25 show, do you know?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 You may answer.

4 A. They said we didn't make the final
5 cut.

6 Q. Did they say why?

7 A. No.

8 Q. So The Marriage Ref is a reality
9 show. If you had made the final -- let me
10 withdraw that question, let me withdraw that
11 question and --

12 MR. ZABELL: The one question or
13 the three questions?

14 MR. ANTOLLINO: Counsel, your
15 comments and your derisive, insulting
16 behavior is taking away from the time of
17 the deposition. If you're going to
18 complain about me having two questions,
19 I'm going to withdraw the question. I
20 don't want you laughing if I change
21 questions and I am videotaping this
22 because of you, because I want to get all
23 of your comments and improper objections
24 on the record.

25 MR. ZABELL: Counsel, you asked

1 MAYNARD

2 three questions and withdrew one of them.

3 MR. ANTOLLINO: All right, but I
4 withdraw -- I withdrew everything. All
5 right.

6 MR. ZABELL: Okay. As long as you
7 clarify that you're withdrawing
8 everything then I won't have to ask you
9 to clarify that.

10 Q. Did you see the show?

11 MR. ZABELL: Objection to the form.
12 You may answer.

13 A. I have seen the show.

14 Q. All right. And the show is
15 essentially a husband and wife that have some
16 issues; correct?

17 MR. ZABELL: Objection to the form.

18 A. Correct.

19 MR. ZABELL: You may answer.

20 Q. And they present their issues to a
21 panel of celebrities; correct?

22 MR. ZABELL: Objection to the form.

23 You may answer.

24 A. Correct.

25 Q. And were you told who the

1 MAYNARD

2 celebrities might be?

3 A. No.

4 Q. And the celebrities come up with a
5 decision as to who's right; correct?

6 A. Correct.

7 Q. And you were willing to submit
8 yourself to that circumstance?

9 MR. ZABELL: Objection to the form.

10 You may answer.

11 A. Yes.

12 Q. Have you ever used the word
13 "gay" -- withdrawn.

14 Do you know what the word
15 "pejorative" means?

16 A. The word what?

17 Q. "Pejorative."

18 A. No.

19 Q. Have you ever used the word "gay"
20 in a nasty sense?

21 MR. ZABELL: Objection to the form.

22 You may answer.

23 A. No.

24 Q. So have you ever heard anyone say,
25 oh, that's really gay, to signify that that's

1 MAYNARD

2 really -- that really stinks?

3 MR. ZABELL: Objection to the form.

4 You may answer.

5 A. I've heard people say that.

6 Q. Okay. Have you yourself ever said
7 it?

8 A. No.

9 Q. Have you ever used the word
10 "faggot"?

11 A. No.

12 Q. In your entire life you've never
13 used the word "faggot"?

14 A. Maybe I have when I was younger.

15 Q. What age?

16 A. I don't remember.

17 Q. When did you stop using the word
18 "faggot"?

19 A. I don't remember.

20 Q. Have you ever used the word
21 "queen"?

22 A. What?

23 MR. ZABELL: Objection to the form.

24 Q. "Queen"?

25 A. No.

MAYNARD

Q. You've never used the word "queen" at all, even when referring to the Queen of England?

A. Yes.

Q. But you've never used the word Queen in referring to a gay person?

A. No.

Q. Have you ever said anything derogatory about gay people?

A. No.

Q. Do you have any gay friends?

A. Yes.

Q. Who?

A. Well, my sister was gay. She passed away.

Q. She passed away. Who else?

A. I don't remember names, you know. Not personally, I've known other people that were gay.

Q. So really you don't have any friends that are gay right now?

A. Not that I know of.

Q. Tell me about your sister. When did she -- do you know what the phrase "coming

MAYNARD

out" means?

A. Yes.

Q. What does it mean?

A. I interpret that as when they decided to go the other way, in the open, I guess.

Q. So, did there come a point where -- what was your sister's name?

A. Mary Lou.

Q. When did she pass?

A. Last Mother's Day.

Q. I'm sorry. When did she come out of the closet?

A. She was about 19 years old.

Q. So that was several years -- that was many years ago. Was it the '60s?

A. Yes.

Q. And did that surprise you in any way when she came out?

A. Yes.

Q. Did you ever tell her that you wished she wasn't gay?

A. No.

Q. What was your parents' reaction to

1 MAYNARD

2 it?

3 A. They were surprised.

4 Q. Did they like it?

5 MR. ZABELL: Objection to the form.

6 You may answer.

7 A. I didn't ask them.

8 Q. Did they ever express an opinion?

9 A. Not to me.

10 Q. Did your sister ever tell you that
11 they had expressed an opinion about her being
12 gay?

13 A. No.

14 Q. Did she live openly as a gay woman
15 from the '60s to the date of her passing?

16 A. Yes.

17 Q. She had a partner?

18 A. One partner her whole life.

19 Q. She had one partner her whole life?

20 A. Yeah.

21 Q. And how did she introduce herself
22 to this partner? I'm sorry, how did she
23 introduce this partner? What was the partner's
24 name?

25 A. Santine.

MAYNARD

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Q. Santine?

A. Yes.

Q. Is she deceased also?

A. Excuse me?

Q. Is she also deceased?

A. No.

Q. What's her last name?

A. Megneco.

Q. And where did they live?

A. They lived last in Holbrook, New York.

Q. Holbrook?

A. Yes.

Q. Have you kept in contact with Santine?

A. Yes.

Q. And have you talked to her about this lawsuit?

A. No.

Q. Does she know about it, if you know?

A. I don't think so.

Q. So, does Santine still live in Holbrook?

1 MAYNARD

2 A. I believe she does, yes.

3 Q. Do you know -- do you remember her
4 address?

5 A. I should know this.

6 MR. ZABELL: You're under no
7 obligation to provide it and, in fact,
8 I'm going to advise you not to provide
9 it. If counsel wants it, he'll have to
10 make an application to the court to get
11 it.

12 MR. ANTOLLINO: I think she has
13 discoverable information.

14 Q. Are you unwilling to provide it?

15 MR. ZABELL: I've advised you not
16 to provide it.

17 Q. And, therefore, you're not going to
18 provide it; correct?

19 MR. ZABELL: I've advised him not
20 to provide it.

21 MR. ANTOLLINO: I just want --

22 MR. ZABELL: You need not ask him
23 anything further.

24 Q. Did your sister marry Santine?

25 A. No.

1 MAYNARD

2 Q. When Don was fired gay marriage
3 wasn't legal; is that correct?

4 A. I believe.

5 Q. Okay. You agree that gay
6 marriage --

7 MR. ZABELL: I'm going to object to
8 the form of that question. Are you
9 specifying a locale?

10 Q. In New York, in New York.

11 MR. ZABELL: Why don't you ask your
12 question again.

13 MR. ANTOLLINO: Fair enough.

14 Q. When Don was fired gay marriage was
15 not legal in New York; correct?

16 A. I guess.

17 Q. Okay. Do you know where it was
18 legal?

19 A. I know there were several states
20 that legalized it. I didn't follow it.

21 Q. Did you ever discuss it with your
22 sister?

23 A. No.

24 Q. Did you ever socialize with your
25 sister and her partner?

1 MAYNARD

2 A. Yes.

3 Q. Have you ever been to a gay
4 establishment?

5 MR. ZABELL: Objection.

6 A. No.

7 MR. ZABELL: Objection to the form.

8 Q. Do you know what I mean by a gay
9 establishment, a gay bar, a gay restaurant?

10 A. Yes.

11 Q. It's probably pretty certain that
12 you've had gay customers; correct?

13 A. I would assume.

14 Q. Have you had any gay skydivers
15 other than Don?

16 MR. ZABELL: Objection to the form.

17 A. I don't ask anybody what their
18 preferences are in that. I'm not -- I don't
19 know.

20 Q. Do you think that it's a preference
21 or an orientation --

22 MR. ZABELL: Objection to the form.

23 Q. -- being gay?

24 MR. ZABELL: Objection to the form.

25 A. I don't know -- I don't ask people

1 MAYNARD

2 what they do outside of my workplace. So if
3 someone else is gay and they haven't expressed
4 it, I don't know that. I don't ask that
5 question.

6 Q. Okay. I'm just asking you whether
7 you think being gay is an orientation or a
8 preference?

9 MR. ZABELL: Objection to the form.
10 You may answer, if you can.

11 A. I don't know.

12 Q. Do you think that gay people are
13 born that way?

14 MR. ZABELL: Objection to the form.

15 A. I don't have an opinion on that.

16 Q. Did your sister ever say that she
17 was born that way?

18 A. No.

19 Q. Did Santine ever say that she was
20 born that way?

21 A. No.

22 Q. So you believe that homosexuality
23 is a choice?

24 MR. ZABELL: Objection to the form.

25 If you can, you can answer.

1 MAYNARD

2 A. I don't know if somebody is born
3 one way or they choose something else. I know
4 how I am and what someone else does, that's
5 in -- I don't know how they think or how
6 anybody does anything else.

7 Q. Did you choose -- you're
8 heterosexual, correct?

9 A. Yes, I am.

10 Q. Did you choose to be heterosexual
11 or were you just born that way?

12 A. I've always been heterosexual.

13 Q. So, therefore, it would be fair to
14 assume that you were born that way?

15 A. That's your assumption, I guess. I
16 don't know.

17 Q. Did you ever make a choice in your
18 life and say, you know what, I'm going to --
19 I'm going to date women rather than men?

20 A. I only dated women. I never
21 thought about dating a man.

22 Q. But it doesn't sound like it was a
23 choice, it was just natural; correct?

24 MR. ZABELL: Objection to the form
25 of that question.

1 MAYNARD

2 If you can answer it, you may.

3 A. It's my choice, yes.

4 MR. ANTOLLINO: Could you read back
5 the question and the answer?

6 (Record read.)

7 Q. So you believe it's a choice?

8 MR. ZABELL: Objection.

9 Q. Or that it's natural, it just
10 happened naturally?

11 MR. ZABELL: Objection, asked and
12 answered.

13 You may answer it again if you can.

14 A. I don't know if I can answer that
15 question. There's probably some people that
16 it's a -- that's what -- I don't know. I don't
17 know.

18 Q. Okay. I want to show you what I
19 have marked as Exhibit 18.

20 (Exhibit R-17, e-mail, marked for
21 Identification.)

22 MR. ZABELL: 18 or 17?

23 MR. ANTOLLINO: I'm sorry, 17.

24 Q. I'd like you to read that to
25 yourself and let me know when you're done.

1 MAYNARD

2 MR. ZABELL: Please.

3 A. (Reviewing.)

4 You want me to read this and what?

5 Q. Just let me know when you're done
6 reading it.

7 A. Yeah.

8 Q. All right. This appears to be --
9 have you seen this before?

10 A. No.

11 MR. ZABELL: Objection to the form
12 of the multiple questions.

13 Q. Do you know Kevin Beisler?

14 MR. ZABELL: Objection to the form
15 of the multiple questions.

16 A. I do not know Kevin.

17 Q. Do you recognize him as someone
18 who's been to Skydive Long Island?

19 A. No.

20 Q. It says in the e-mail that he's
21 been there five times; correct?

22 A. Yes.

23 Q. And how much does he pay for each
24 jump if he goes on a student jump?

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. I don't know if he's a student or
4 if he's up -- a fun jumper.

5 Q. What are the different prices?

6 A. If you're a fun jumper and you have
7 your own gear, it's \$25 a jump at 13,5.
8 Student jumps are, I believe -- I think -- I'm
9 not sure of the price structure, 70, 75, 80.

10 Q. And video?

11 A. Most video is for tandems. If the
12 video is for tandem, it's 125. If you're
13 getting video as a student, I believe it's
14 about \$80.

15 Q. And if you're going on a tandem
16 jump, how much is that?

17 MR. ZABELL: Objection.

18 A. That's 125.

19 Q. But without the video, how much is
20 it?

21 MR. ZABELL: Objection.

22 A. A tandem jump?

23 Q. Yeah.

24 MR. ZABELL: Objection.

25 A. If you come out there by yourself

1 MAYNARD

2 on a weekend it's 125, but there's also group
3 rates, weekday rates. There's many different
4 price structures.

5 Q. All right. So it looks like you've
6 lost a customer in Kevin Beisler, according to
7 this e-mail if it's true; is that correct?

8 MR. ZABELL: Objection to the
9 multiple questions.

10 You can pick one and answer.

11 Q. You can answer.

12 A. According to this, I guess we have.

13 Q. I'd like you to take a look at
14 Exhibit 18.

15 (Exhibit R-18, letter, marked for
16 Identification.)

17 Q. And read that and tell me when
18 you're done.

19 A. (Reviewing.)

20 I'm done.

21 Q. Have you read it?

22 A. I'm done.

23 Q. Have you seen this before?

24 A. No.

25 Q. Do you remember a time in 2010 when

1 MAYNARD

2 a group of gay sky divers went to Skydive Long
3 Island?

4 A. No, I don't.

5 Q. All right. If there were a group
6 of 24 people, how much would you charge them if
7 they were going up in tandem instruction and
8 video, what would be the group rate for that?
9 And if you need a second to calculate that,
10 take as much time as you want.

11 A. We don't discount the video. The
12 group rate for 24 people -- it's over 20 people
13 they get, I believe, \$20 off each and either
14 two or three other people go for free. And if
15 they choose to take that amount and split it
16 between the whole group, they can also do that.

17 Q. All right, so let me just get my
18 numbers straight. The tandem price itself, I
19 just want to get this clear in my mind --

20 MR. ZABELL: So you've moved on to
21 a different question?

22 MR. ANTOLLINO: There's no question
23 pending before the witness. Is there a
24 question pending before the witness? You
25 want to continue colloquy, it's just

1 MAYNARD

2 adding to the seven hours.

3 MR. ZABELL: Are you asking madam
4 reporter if there was a question pending
5 before the witness before you asked the
6 other question? If you were, then you
7 should give her an opportunity to answer
8 you before you start yelling at me,
9 Counselor.

10 (Record read.)

11 MR. ANTOLLINO: So there was no
12 question pending, Counselor.

13 MR. ZABELL: If you read the
14 answer, you did ask him to follow-up on
15 his answer.

16 MR. ANTOLLINO: And that's what I'm
17 doing now. You want to continue to do
18 this, Counsel? It's just increasing the
19 time your client has to sit here.

20 Q. All right. Now, let me take it
21 step-by-step for my own clarification. Is it
22 true that a tandem price in itself without
23 video is between 199 and 225?

24 A. We never charged 199. 225 is a
25 person goes out by themselves on a weekend, the

1 MAYNARD

2 weekend price is 225.

3 Q. Okay.

4 A. Do you want the whole breakdown?

5 Q. No. I want to take it
6 step-by-step. And the video would be an
7 additional 125?

8 A. Correct.

9 Q. Okay. And that's on a weekend or
10 is that the price for any time?

11 A. That's the price for video.

12 Q. Okay. So if 24 gay guys came out
13 or a group of 24 guys, whether they're gay or
14 not, came out, how much would you reduce the
15 225 to?

16 A. It would be reduced to -- if it's
17 over 20, I think it's either 20 or 25 dollars
18 off per person, so it's either 205 or 200.

19 Q. All right. So let's say it's 200.

20 A. And, in addition to that, they
21 would give two people for free.

22 Q. So if there were 24, two people
23 would go for free?

24 A. Right. A lot of times, the group
25 would take that amount of money and then the

1 MAYNARD

2 whole group would whack it up and decide how
3 much it would be.

4 Q. But that's between them?

5 A. Correct.

6 Q. Okay. So if there are 24 gay guys
7 that are out there and just getting tandems, no
8 video, that's \$4,000 coming in to the drop
9 zone; correct?

10 A. If that's what you computed.

11 Q. All right. If you'd like to do the
12 computation yourself, but it sounds about
13 right; correct?

14 A. Uh-huh.

15 Q. All right. And if they also all --
16 all 24 gay guys got video, that would be -- I
17 can't do hand calculations anymore.

18 MR. ZABELL: I don't doubt that.

19 Q. That would be another \$3,000; is
20 that fair to say?

21 A. Yes.

22 Q. So if 24 gay guys go there and go
23 on tandems with video, that's bringing \$7,000
24 into your business; correct?

25 A. Correct.

1 MAYNARD

2 Q. And, according to this e-mail,
3 Scott Ryan is not going to bring his gay group
4 there anymore; correct?

5 A. According to the e-mail, you're
6 right.

7 Q. All right.

8 MR. ANTOLLINO: Do you want to take
9 the break now?

10 THE VIDEOGRAPHER: Whenever you
11 want. We have four minutes left.

12 Q. It says in this e-mail that the
13 instructors who went up in the tandems were
14 telling the gay guys about the gay skydiver.
15 Do you see that?

16 A. Yes.

17 Q. Was that inappropriate for them to
18 do?

19 A. I can't answer that. I don't know
20 who started what or who said what. I don't
21 even know -- I don't even know that --

22 Q. Well what --

23 A. -- if this is even true.

24 Q. We're just assuming that it's true.

25 A. Hypothetically.

1 MAYNARD

2 MR. ZABELL: You're under no
3 obligation to assume it's true,
4 Mr. Maynard.

5 Q. We're assuming it's true and if
6 your skydivers mentioned Don's sexuality, was
7 that inappropriate?

8 MR. ZABELL: Objection to the form.

9 A. It would depend on what's being
10 said.

11 Q. It's personal information, isn't
12 it?

13 A. I guess so.

14 MR. ZABELL: Objection to the form.
15 You may answer.

16 MR. ANTOLLINO: You got the answer?

17 Q. If someone told these jumpers that
18 Don was gay, are you going to fire any of them?

19 A. No.

20 MR. ANTOLLINO: All right. Good
21 break.

22 THE VIDEOGRAPHER: We are now off
23 the record at 12:27 p.m.

24 (Luncheon recess taken at 12:27 p.m.)
25

1 MAYNARD

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:03 p.m.)

4 R A Y M O N D M A Y N A R D, resumed and
5 testified as follows:

6 CONTINUED EXAMINATION

7 BY MR. ANTOLLINO:

8 THE VIDEOGRAPHER: This is tape
9 three of the deposition of Raymond
10 Maynard, we are now on the record at 1:03
11 p.m.

12 Q. So, that we were looking earlier at
13 Exhibits 17 and 18 and it appears on its face
14 that there are some gay people who will not go
15 back to Skydive Long Island because of what
16 happened to Don?

17 MR. ZABELL: Objection.

18 Q. It appears on its face; correct?

19 MR. ZABELL: Objection.

20 Q. Is that correct? That's what these
21 e-mails say basically.

22 MR. ZABELL: No, they don't.

23 A. They say they won't be going back
24 there any time soon.

25 Q. And the other one says --

1 MAYNARD

2 A. "Sorry to hear about this."

3 Q. Well, what does it say about
4 returning?

5 A. It doesn't say anything.

6 Q. You're right. How do you feel
7 about the guy who won't return?

8 MR. ZABELL: Objection to the form.

9 Q. How do you feel about that? How to
10 you feel that he won't come back soon? Do you
11 want him to come back soon?

12 MR. ZABELL: Objection to the form
13 of the multiple questions asked.

14 You may pick any one of those
15 questions asked and provide an answer to
16 one of them.

17 A. I'm in business and I have
18 thousands of people come through my place every
19 year. You can't have everybody happy and you
20 can't have everybody return. For whatever
21 reason it is, I don't know -- I don't know if
22 any of this is true. So how do I feel about
23 somebody not coming back? We'd like everybody
24 to come back if possible.

25 Q. He's a paying customer, this guy.

1 MAYNARD

2 A. Yup.

3 Q. You didn't give him a free jump?

4 A. No.

5 MR. ZABELL: Objection to the form
6 of the multiple questions.

7 MR. ANTOLLINO: He answered the
8 first question and I'm asking the second
9 one.

10 Q. You didn't give him a free jump,
11 did you?

12 MR. ZABELL: You may pick a
13 question and respond to it.

14 A. The question is?

15 Q. You never gave him a free jump, did
16 you?

17 A. No.

18 Q. Is Jordan Miles a good tandem
19 instructor?

20 A. Yes, he is.

21 Q. And he has a military background, I
22 understand?

23 A. Yes, he does.

24 Q. All right. Has he ever revealed to
25 any customers that he is a veteran?

1 MAYNARD

2 A. That what?

3 Q. Has he ever revealed to any
4 customers that he is a veteran?

5 A. I don't know.

6 Q. Would you think it inappropriate
7 for him to do so?

8 A. No.

9 Q. What if he was, say, diving with
10 someone and someone complained that this guy
11 Jordan Miles told me that he was a vet and I
12 didn't want to hear that information.

13 What if somebody called you and
14 complained about that? Would you consider that
15 a legitimate complaint?

16 A. I'm an American and I would not
17 take that very well at all. Without the vets
18 we wouldn't be having freedom.

19 Q. But his military service is
20 personal information, isn't it?

21 MR. ZABELL: Objection to the form.

22 A. It's personal information that's
23 not upsetting people and ruining the day.

24 Q. But it's personal information;
25 correct?

1 MAYNARD

2 A. It's personal information.

3 Q. What if it did ruin someone's day?

4 A. It would depend on what it is.

5 Q. Well, if he said -- if you got a
6 complaint, someone said, I don't want to hear
7 about war when I'm on a jump. I want to enjoy
8 the scenery. That ruined my jump. Does Jordan
9 get fired for saying that?

10 MR. ZABELL: That's an
11 objectionable question, but you can go
12 ahead and answer his objectionable
13 question.

14 A. No, he would not.

15 Q. Have you ever chatted about this
16 lawsuit on your personal Facebook page?

17 MR. ZABELL: Objection.

18 You may answer.

19 A. I don't remember if I have or not.

20 + MR. ANTOLLINO: All right. I'm
21 going to call for production of any
22 comments made about this lawsuit on his
23 Facebook page.

24 And I remind you of the --

25 MR. ZABELL: You may remind me of

1 MAYNARD

2 absolutely nothing. Remain silent.

3 MR. ANTOLLINO: Remain silent? I
4 remain silent at the deposition where I'm
5 taking questions?

6 MR. ZABELL: One can only hope.

7 Q. Did you ever complain about Joanne
8 at the drop zone in front of other employees?

9 A. I probably had.

10 Q. Pretty often?

11 A. Yes.

12 Q. Did you ever complain about Joanne
13 within the earshot of other customers?

14 A. I don't think so.

15 Q. So you're not certain one way or
16 the other?

17 A. Probably not.

18 Q. But you're not certain?

19 A. No.

20 Q. But if you had, it would be sharing
21 personal information with customers; correct?

22 MR. ZABELL: Objection to form.

23 A. If they heard me, I wasn't speaking
24 with them, so I would not be sharing something
25 with them.

1 MAYNARD

2 Q. Did you ever hear any situation
3 where a big busted woman is caught on videotape
4 in free fall and instructors rushing to the
5 video room to watch what it looks like?

6 MR. ZABELL: Objection to the form.

7 You may answer.

8 A. Yes.

9 Q. And have you participated in that?

10 A. I have been informed that they had
11 a videotape similar to that.

12 Q. And what was your reaction to that?

13 A. I don't remember.

14 Q. Did you fire anyone as a result of
15 looking at someone in a lewd manner on a video?

16 MR. ZABELL: Objection to the form
17 of the question.

18 You may answer.

19 A. I wasn't looking at anybody in a
20 lewd manner.

21 Q. Did you fire anyone else for
22 looking at this particular passenger in a lewd
23 manner to see her big breasts in free fall?

24 MR. ZABELL: Objection to the form
25 of the multiple questions.

1 MAYNARD

2 You may pick any one of those
3 questions and provide an answer to it.

4 A. No.

5 Q. Did you get any complaints about
6 Don from any other employees at Skydive Long
7 Island?

8 MR. ZABELL: During any particular
9 time period?

10 MR. ANTOLLINO: At any time.

11 A. There were no formal complaints,
12 no.

13 Q. Were there any informal complaints?

14 A. No.

15 Q. Don was well liked at the drop
16 zone, is that a fair statement?

17 A. Yeah.

18 MR. ZABELL: Objection to the form.
19 You may answer.

20 A. Yes, he was.

21 Q. When did you meet Don?

22 A. When did I what?

23 Q. When did you first meet Don?

24 A. In 2001.

25 Q. Under what circumstances?

1 MAYNARD

2 A. I believe my friend Kurt. I'm not
3 sure if he was working with us at the time or
4 not. He probably was. I met Don at another
5 drop zone. I believe he was working in Vermont
6 or New Hampshire and Kurt told Don about our
7 busy drop zone and we could use some help and I
8 encouraged him to come down and work for us.

9 Q. And what happened then?

10 MR. ZABELL: Objection to the form.

11 A. Don came to work for us.

12 Q. So you met Don in 2001 and what did
13 you know about Don at that time?

14 A. I knew he was an experienced
15 skydiver, an experienced tandem master.

16 Q. Anything else?

17 A. He told me he was gay.

18 Q. He told you he was gay. When did
19 he tell you he was gay?

20 A. When I first met him.

21 Q. What did he say to you?

22 A. I don't remember the exact words.
23 It came up in conversation just to let me know.

24 Q. What did you say in response?

25 A. "It doesn't matter to me."

1 MAYNARD

2 Q. Did you tell him not to reveal his
3 sexual orientation to anyone else?

4 A. No.

5 Q. Did you tell him not to reveal his
6 sexual orientation to any passengers?

7 A. All of my employees are told to
8 just report to their job. One is to make sure
9 that they are totally save from the time that
10 they get into the airplane and back to the
11 ground; that they be safe and the only
12 responsibility of the tandem master is to make
13 sure they have a good time and not do or say
14 anything that's going to upset them.

15 + MR. ANTOLLINO: Motion to strike
16 as nonresponsive.

17 MR. ZABELL: Your motion is denied,
18 Counsel, to the extent that I'm permitted
19 to do so.

20 Q. Did you specifically ask Don not to
21 reveal his sexual orientation to any customers,
22 yes or no?

23 A. No.

24 Q. How long did Don work for you in
25 2001?

1 MAYNARD

2 A. It was several months, I believe.

3 Q. And was it discussed during those
4 several months that Don was gay among the
5 students at -- among the instructors at Skydive
6 Long Island?

7 A. Did you say was it discussed?

8 Q. Yeah.

9 A. It might have been.

10 Q. You don't remember one way or the
11 other?

12 A. It probably was.

13 Q. Was Don referred to as gay Don?

14 A. He referred to himself as gay Don.

15 Q. When you say "he referred to
16 himself as gay Don," when was that? When did
17 he refer to himself as gay Don?

18 A. In 2001.

19 Q. He said, I'm gay Don?

20 A. He would make jokes about it. He
21 was not always called gay Don. He was not
22 referred to as gay Don.

23 Q. Rich Winstock testified that, and
24 you don't have to accept this as true, that he
25 was introduced to Don by another person as gay

MAYNARD

Don. Do you believe that to be true?

A. It could be true. I don't know who the person is.

Q. It could be true that other people at the drop zone referred to Don as gay Don?

A. Very possible.

Q. You don't know where the phrase gay Don originated, do you?

A. No.

Q. So you don't know if it originated with Don or with someone else; correct?

A. Correct.

Q. Did there come a time in 2001 that a passenger complained about Don?

A. There were several instances when Don would be upset that he was taking the women and the other guys were taking the guys and there was more than one person that came down upset about being told things by Don and there was -- actually, I know of two women that were almost in tears after their jump with Don. I don't know their names. I don't know the date.

Q. And can you describe the circumstance, why they were in tears?

1 MAYNARD

2 A. Because he was carrying on about
3 his after-hours activities and they didn't want
4 to hear it.

5 Q. In 2001?

6 A. Yes.

7 Q. And there was some women who were
8 crying because of this?

9 A. Yes.

10 Q. And what did they look like?

11 A. I don't remember.

12 Q. Did it happen more than once?

13 MR. ZABELL: He testified there
14 were two women.

15 A. There were two incidents that I
16 remember.

17 Q. Okay. Did they happen on the same
18 day?

19 A. It wasn't the same day. It was
20 close proximity. I would say within a month,
21 maybe two weeks.

22 Q. And what was it that Don said that
23 made these women cry?

24 A. Him talking about being gay.

25 Q. Anything else?

1 MAYNARD

2 A. No.

3 Q. All right. But, yet, even then you
4 didn't tell him not to tell customers that he's
5 gay; correct?

6 A. Say that one more time.

7 MR. ANTOLLINO: Could you read it
8 back?

9 MR. ZABELL: Please.

10 (Record read.)

11 A. I didn't tell him not to tell them.

12 Q. And you don't remember -- you don't
13 have any documentation whatsoever about these
14 complaints?

15 A. No, I don't.

16 Q. Do you have any record of any of
17 the passengers Don took on a flight in 2001?

18 A. No.

19 Q. Have you ever heard other
20 instructors ask to get women instead of men?

21 A. No.

22 Q. Have you ever heard instructors
23 or -- well, have you heard of instructors
24 agreeing to trade passengers?

25 A. I've heard of instructors agreeing

1 MAYNARD

2 to trade passengers?

3 Q. Yes.

4 A. No.

5 Q. So, is the assignment of the
6 instructor to the passenger something that is
7 made by you and it's not something that can be
8 changed by the instructors?

9 A. The assignment is made through
10 manifest. So as people come in and sign up,
11 that's how it's supposed to go, 1 through 10,
12 and then you get a list of instructors. And
13 unless there's a circumstance of somebody
14 being -- that has special needs, it should go
15 down the list and it's just a random of who
16 goes with who.

17 Q. And, so, the randomness is never
18 varied?

19 A. If there's a special need there
20 might be.

21 Q. But for no other reason?

22 A. There should not be.

23 Q. There should not be, but does it
24 ever happen?

25 A. Not that I know of.

1 MAYNARD

2 Q. Why would Don complain about having
3 to take women?

4 A. You'd have to ask him.

5 Q. What did he say exactly about
6 complaining about taking women?

7 MR. ZABELL: Objection to the form.
8 You may answer, if you can.

9 A. He would outwardly say to the other
10 people that the guys are always getting all the
11 guys and I'm getting the women.

12 Q. Did anyone else tell you this?

13 A. No.

14 Q. Do you remember anyone else who
15 might have heard this?

16 A. Not offhand.

17 Q. Are there any people working at
18 Skydive Long Island now that are currently
19 working -- that -- now that were working in
20 2001?

21 A. Yes, I believe there are.

22 Q. Who?

23 A. I believe Brian Petretti was with
24 us in 2001, Duncan Shaw. I'm not sure if
25 Winstock was there or not. He worked for me

1 MAYNARD

2 for a while and then he left and came back.

3 I'd have to look back.

4 + MR. ANTOLLINO: Okay. I call for
5 a production of the list of names of
6 employees -- I'm putting this on the
7 record.

8 MR. ZABELL: It's denied.

9 MR. ANTOLLINO: -- who were working
10 in 2001.

11 MR. ZABELL: Your request is
12 denied.

13 MR. ANTOLLINO: Well, we'll deal
14 with it. I'll send you the letter and
15 you'll put in your objection and we'll go
16 to the judge.

17 MR. ZABELL: But, just so you know,
18 your request is denied.

19 Q. Isn't it true that the only
20 customer complaint in 2001 was a male who
21 complained because Don did not do something
22 that he considered unsafe and that the
23 manufacturer of the rig considered unsafe?

24 A. No.

25 Q. If a passenger asks a customer to

1 MAYNARD

2 do something that the manufacturer considers
3 unsafe, is the instructor obligated to follow
4 the customer's request or obligated to follow
5 the manufacturer's request?

6 MR. ZABELL: Objection to the form
7 of the multiple questions.

8 You may pick one and respond.

9 A. No tandem instructor should do what
10 a customer asked him to do if it's unsafe.

11 Q. And so if a customer complains --
12 what is a head down student tandem?

13 A. A head down tandem is when you're
14 in free fall and your head is falling first.

15 Q. Would you agree with the statement
16 that a head down student tandem is unnecessary
17 and not in the best interest of giving the
18 student an educational experience?

19 A. Yes.

20 Q. Okay. So if a passenger asked Don
21 to do a head down student tandem and Don would
22 not do it, and then later complained, that
23 would not be a legitimate customer complaint,
24 would it?

25 MR. ZABELL: Objection to the form

1 MAYNARD

2 of the question. You may answer.

3 A. It would not be a legitimate
4 complaint because he should not do that.

5 Q. What about a flip out of a plane?

6 A. Back flip, front flip?

7 Q. Start with front. Is that allowed?

8 A. Yes.

9 Q. How about a front flip?

10 MR. ZABELL: Objection, asked and
11 answered. You said "front" twice.

12 MR. ANTOLLINO: I'm sorry.

13 MR. ZABELL: I accept your apology.

14 Q. How about a back flip?

15 A. Yes.

16 Q. Do you know of any manuals or
17 safety regulations that suggest that back flips
18 and front flips are unsafe?

19 A. No, I do not.

20 Q. If Don was asking to do something
21 that would result in his license suspension by
22 a passenger, he was permitted to deny that
23 request; correct?

24 A. Correct.

25 Q. So these two girls allegedly

1 MAYNARD

2 complained in tears and they happened shortly
3 one after another?

4 MR. ZABELL: Objection to the form
5 of the question and to the
6 characterization of the testimony.

7 You may answer.

8 Q. You can answer.

9 A. It was within a few weeks of each
10 other, yes.

11 Q. And so you fired Don after the
12 second one?

13 A. Yes.

14 Q. What did you say to Don when you
15 fired him?

16 A. I don't remember exactly what I
17 said to him.

18 Q. Did you think that Don was doing
19 anything unsafe as an instructor?

20 A. No.

21 Q. Can you think of any reason that
22 Don would prefer the male passengers rather
23 than the female passengers?

24 A. No.

25 Q. What is the USPA?

MAYNARD

A. It's the United States Parachute Association.

Q. Do they have a manual?

A. Yes, they do.

Q. Is it the standard manual followed by the most reputable drop zones in the country?

A. Yes.

Q. In between 2001 and 2009, did you have any dealings with Don whatsoever?

A. Don had made several phone calls during that time. He asked about coming back and initially I told him no. He did visit the drop zone, I think more than one time.

Q. And when was that?

A. I believe he was there in 2008 and he might have been there one time before that. I don't remember the date.

Q. And when were these several phone calls?

A. I don't remember exactly when they were.

Q. Were they before 2005?

A. I don't remember.

1 MAYNARD

2 Q. So you would not be able to tell me
3 anywhere in between 2001 and 2009 when these
4 phone calls took place?

5 A. I don't remember the dates we had
6 the phone calls.

7 Q. You don't remember how many of them
8 there were?

9 A. There weren't many.

10 Q. What?

11 A. There were not many.

12 Q. Was it more than three?

13 A. I do not think so.

14 Q. Okay. And when -- it was 2008 that
15 Don visited the drop zone?

16 A. I believe that's when it was.

17 Q. All right. And when he visited the
18 drop zone, what did you say to him?

19 A. We talked. He made some jumps.

20 Q. So he was a paying customer --

21 A. Yes.

22 Q. -- at the time? And what did you
23 talk about?

24 A. We talked about him coming back to
25 work.

MAYNARD

Q. And that was in 2008?

A. I believe so.

Q. Who brought it up?

A. Don did.

Q. And what did you say?

A. What did I say?

Q. Yeah.

A. I said that I believed that he was a good instructor, he was a safe instructor. He was a good guy and I would give him a chance.

Q. Earlier you testified that you initially said no. When was it that you said no?

A. In one of the earlier phone calls.

Q. Why did you say no?

A. Because I just said no.

Q. But there must have been a reason for it.

A. No reason.

Q. Did you need people at the time?

A. Excuse me?

Q. Did you need people at the time?

MR. ZABELL: Objection. During

1 MAYNARD

2 what time?

3 Q. During the time you said no.

4 A. I don't even remember what time of
5 the year it was that we talked.

6 Q. So you don't remember why you said
7 no?

8 A. No.

9 Q. It might have been because you
10 didn't have any openings?

11 A. Very possible.

12 Q. So you rehired Don in 2009 and
13 there came a time that he had an injury and
14 could not work for the rest of the season; is
15 that correct?

16 A. That's correct.

17 Q. Did you see the video of the jump
18 in which he suffered an injury?

19 A. I probably did, but I don't
20 remember it.

21 Q. Do you remember if he did anything
22 improper in that jump that caused his injury?

23 A. No.

24 Q. Did it, in fact, just look like a
25 regular old jump?

1 MAYNARD

2 MR. ZABELL: Objection to the form
3 "regular old jump."

4 Q. All right, that would not have
5 resulted in an injury?

6 MR. ZABELL: Are you withdrawing
7 the previous question or are you adding
8 on to the previous question? In either
9 event, I object to both.

10 Q. You can answer.

11 MR. ZABELL: If you know what he's
12 asking you.

13 A. Yeah, I'm not sure.

14 MR. ANTOLLINO: Could the court
15 reporter read it back without the
16 objection. If you want to stay here
17 forever and play this game, we will.

18 MR. ZABELL: No, we won't.

19 MR. ANTOLLINO: I've got seven
20 hours and your colloquy doesn't count
21 towards that.

22 MR. ZABELL: What about your
23 colloquy, Counsel?

24 (Record read.)

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. It looked like a normal skydive.

4 Q. It did not look like Don did
5 anything negligent; correct?

6 A. No.

7 Q. He was carrying an overweight
8 passenger on that flight; is that correct?

9 MR. ZABELL: Objection to the form.

10 A. I don't know that.

11 Q. Do you pay your instructors extra
12 when they agree to exceed stated weight limits?

13 A. The posted weight, yes.

14 Q. What is the posted weight?

15 A. 225.

16 Q. And that includes what, that
17 includes just the passenger; right?

18 A. Right.

19 Q. So if the passenger weighs more
20 than 225, is the skydiver allowed to decline to
21 take the passenger?

22 A. Yes, absolutely.

23 Q. Was there an older instructor that
24 you used to have by the name of Willie?

25 A. Yes.

MAYNARD

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Q. What's Willie's last name?

A. Tomares.

Q. And you fired Willie?

A. No.

Q. He's still working for you?

A. No. At the end of one season he didn't come back.

Q. Do you know where Willie lives?

A. I believe Montana.

Q. Would you want him to come back?

A. I wouldn't say absolutely no. We'd have to have a conversation about it.

Q. What problems did you have with Willie Tomares?

A. Willie was just very unhappy a lot of times.

Q. About what?

A. I never found that out.

Q. Did you pressure him to take the overweight passengers?

A. No.

Q. If an instructor agrees to take an overweight passenger, you pay the instructor more; correct?

1 MAYNARD

2 A. Yes.

3 Q. Why is that?

4 A. To tell you the truth, I don't know
5 how that policy started, but the policy is in
6 place.

7 Q. Well, isn't it true that taking an
8 overweight passenger increases the risk for the
9 instructor?

10 A. No.

11 Q. Isn't it a harder job?

12 A. No.

13 Q. When Don was injured at work, he
14 did not -- the passenger was not injured in the
15 same tandem; correct?

16 A. Correct.

17 Q. Do you remember when that jump when
18 Don got injured was?

19 A. No.

20 Q. It was -- would it be fair to say
21 it was in either late June or early July in
22 2009?

23 A. Probably.

24 Q. Okay. Don didn't know how badly he
25 was injured when he hurt himself on that jump;

1 MAYNARD

2 is that correct?

3 A. I don't remember.

4 Q. He wasn't certain if he would be
5 returning that summer or not, correct, when he
6 went out on injury; correct?

7 A. Correct.

8 Q. In fact, you received an e-mail
9 from Don --

10 (Exhibit R-19, e-mail, marked for
11 Identification.)

12 Q. -- I hand you what I premarked as
13 Exhibit 19 -- shortly after the injury;
14 correct?

15 A. You want me to read it?

16 Q. That appears to be an e-mail that
17 Don sent to you after the injury?

18 A. Yes.

19 Q. And it indicates that he wants to
20 continue could have his job, he wants to get
21 better and get back to work; correct?

22 A. Yes.

23 Q. And there was no reason why he
24 could not return to work if his doctors cleared
25 him to work that summer; correct?

1 MAYNARD

2 A. Correct.

3 Q. And if his doctors had cleared him
4 to work that summer, you would have allowed him
5 to continue to do jumps; correct?

6 A. Correct.

7 Q. All right. Now, you have mandatory
8 staff meetings at the drop zone; is that
9 correct?

10 A. Not really.

11 Q. I'll hand you what I've marked
12 collectively as Exhibit 25 -- I'm sorry,
13 Exhibit 20 and ask you if you recognize these.

14 (Exhibit R-20, three e-mails,
15 marked for Identification.)

16 Q. There's three e-mails here.

17 A. Okay.

18 Q. These are all e-mails about staff
19 meetings; correct?

20 A. Okay. Yes, they are.

21 Q. Okay. And it's sent from Skydive
22 Long Island with the e-mail address
23 funjumps@skydivelongisland.com; correct?

24 A. Correct.

25 Q. And that is your e-mail address;

1 MAYNARD

2 correct?

3 A. Correct.

4 Q. All right. And it's sent to a
5 group, SDLI. It says "To SDLI"; correct?

6 A. Correct.

7 Q. And that is a shorthand name for a
8 bunch of e-mail addresses; correct?

9 A. Correct.

10 MR. ZABELL: Objection to form.

11 Q. And if Don was working in 2009 he,
12 was included among this SDLI group; correct?

13 A. Correct.

14 Q. And all of these e-mails refer to
15 staff meetings; correct?

16 A. Yes.

17 Q. And did you expect the instructors
18 to attend the staff meetings?

19 A. Yes.

20 Q. What types of things are discussed
21 at staff meetings?

22 A. The business of the upcoming day --

23 THE VIDEOGRAPHER: We are now off
24 the record. At 1:38 p.m.

25 (Recess taken.)

1 MAYNARD

2 THE VIDEOGRAPHER: We are now on
3 the record at 1:39 p.m.

4 MR. ANTOLLINO: Could you read it
5 back?

6 (Record read.)

7 A. The business of the upcoming day,
8 the amount of tandems we have. The amount of
9 videos we have. Just in general everything and
10 just try to lay the day out. If we hadn't been
11 busy for a while, we wanted to get people in
12 there early to make sure we can get everything
13 taken care of.

14 Q. Do the instructors or other people
15 that go to these staff meetings get paid to
16 attend the staff meeting?

17 A. No.

18 (Exhibit R-21, e-mail, marked for
19 Identification.)

20 Q. I'm going to show you what I've
21 marked as Exhibit 21 and there's a copy for you
22 and this appears to be an e-mail from you to
23 SDLI; correct?

24 A. Yes.

25 Q. And could you read that for the

1 MAYNARD

2 record?

3 A. "Just want to let you know we have
4 a busy weekend lined up with 120 on the books
5 for Saturday and almost 100 so far for Sunday.
6 Let's hope the weather cooperates. Also, we're
7 going to have a mandatory staff meeting this
8 Saturday at 7:30 a.m. See you then."

9 Q. And "mandatory staff meeting" is in
10 bold; correct?

11 A. Yes.

12 Q. So you wanted to make it clear that
13 it was mandatory; correct?

14 A. Yes.

15 Q. Don went to that meeting, did not?

16 A. I imagine so. I don't remember.

17 Q. Okay. Was that the first time you
18 saw Don after his injury?

19 A. I don't remember.

20 Q. Did Don show up -- well, when is --
21 do you remember the first time you saw Don
22 after his injury?

23 A. No, I don't.

24 Q. When you saw Don for the first time
25 after his injury he was wearing a pink cast;

1 MAYNARD

2 correct?

3 A. If you say so.

4 Q. Well, I'm asking you.

5 A. Well, I don't remember.

6 Q. Did -- is it not true that Don
7 showed up to this staff meeting with a pink
8 cast and you looked at the cast and derisively
9 said, "That's gay"?

10 A. I don't remember that.

11 Q. So are you denying that it happened
12 or you just don't remember whether it happened
13 or not?

14 A. I don't remember that.

15 Q. So you don't -- okay. Do you
16 remember Don appearing at the jump zone, the
17 drop zone, I should say, with his cast --

18 A. Yes, sir.

19 Q. -- after that meeting?

20 A. Yes, I do.

21 Q. You say anything to him about that?

22 A. Yes, yes, I did.

23 Q. What did you say?

24 A. That I didn't appreciate anybody
25 being at the drop zone in a cast and on

1 MAYNARD

2 crutches. The students are nervous enough and
3 if they see someone on crutches with a cast on,
4 it's not going to be very good for the
5 customers.

6 Q. Did you comment about the color of
7 his cast at that -- in that discussion?

8 A. I don't believe I did. It had
9 nothing to do with the color of the cast.

10 Q. Did you tell him to cover up his
11 foot so his pink toenails would not show?

12 A. No.

13 Q. Isn't it true that seeing skydivers
14 on crutches is very common at a drop zone?

15 A. No.

16 Q. Have you been to any drop zone
17 where -- other than yours where you've seen
18 someone on crutches?

19 A. Yes.

20 Q. Where?

21 A. I don't remember.

22 Q. You have employees who don't do
23 jumps who might break their legs; correct?

24 MR. ZABELL: Objection.

25 A. If I have employees that don't do

1 MAYNARD

2 jumps that might break legs?

3 Q. Yeah.

4 A. Yes.

5 Q. Okay.

6 A. Like, anybody could break their
7 leg.

8 Q. So Lauren Doesn't do any jumps,
9 does she?

10 A. She jumps.

11 Q. Okay. Well, what about the ladies
12 in the office, Lauren, Megan and Jesse?

13 A. Lauren is the only current jumper.

14 Q. All right. So the other two, if
15 they broke their legs, you wouldn't tell them
16 not to come in to work, with you?

17 A. I wouldn't want anybody, if
18 possible, to be there on crutches in a cast.

19 Q. So if those people -- if one of
20 Megan or Jesse broke her leg and was on
21 crutches, you would ask them to leave work?

22 A. Yes.

23 Q. Would you pay them?

24 MR. ZABELL: Objection.

25 A. She'd probably be on Workmen's

1 MAYNARD

2 Comp.

3 Q. Well, Workmen's Comp.

4 A. That's not true --

5 Q. They would only be on Workman's
6 Comp. --

7 A. If it happened on the job.

8 Q. If it happened to the job. Do you
9 know something with the Workers' Comp. System?

10 A. Do I know something about it?

11 Q. Yeah.

12 MR. ZABELL: Objection to the form.

13 A. Yes.

14 Q. All right. Don did not return to
15 work that summer; correct?

16 A. Correct.

17 Q. Eventually he applied for Workers'
18 Compensation; correct?

19 A. Yes.

20 Q. He received his Workers'
21 Compensation; correct?

22 A. Correct.

23 Q. Would you agree that Workers'
24 Compensation is the right of a worker who has
25 been injured on the job?

1 MAYNARD

2 A. Yes.

3 Q. What is Workers' Compensation?

4 A. What is Workmans' compensation?

5 Q. Yeah, what is it is?

6 A. It's a benefit if someone gets
7 injured on a job that they get paid while
8 they're out of work.

9 Q. You also know that workers are
10 protected against discrimination for filing
11 Workers' Compensation claims; correct?

12 A. Correct.

13 Q. And were you aware that if someone
14 who is fired is discriminated against for
15 filing a Workers' Compensation claim, they can
16 get reinstated back pay and attorneys' fees and
17 all sorts of things?

18 A. I guess so.

19 Q. All right. So you didn't
20 discriminate against Don in any way because he
21 filed a Workers' Compensation claim, did you?

22 A. No.

23 Q. People get injured on the drop zone
24 pretty regularly, would that be fair to say?

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 A. No.

3 Q. Well, it happens at your drop zone
4 at least once a year; correct?

5 A. Yes.

6 Q. It's part of the hazard of
7 skydiving; correct?

8 A. Correct.

9 Q. It is an inherently dangerous
10 activity; correct?

11 A. Correct.

12 Q. And it's not grounds for discipline
13 if you get injured; correct?

14 A. Correct.

15 Q. Now, you rehired Don for the 2007
16 season, right? I'm sorry, 2010 season;
17 correct?

18 A. Correct.

19 Q. Did you have any discussions with
20 him in between the end of the 2009 season and
21 the beginning of the 2010 season?

22 MR. ZABELL: Objection, you may
23 answer.

24 A. Yes.

25 Q. What was that?

1 MAYNARD

2 A. One conversation I remember having
3 with him is that he was working other places,
4 he had his own business. He was making money
5 while he collected Workman's Comp. and
6 disability when he shouldn't have been.

7 Q. Do you know how much he was making?

8 A. Nope.

9 Q. How did you find this out?

10 A. He told me.

11 Q. Is it your belief that a person
12 who's getting Workers' Compensation is not
13 allowed to do any clerical job or something
14 that he's able to do to supplement the Workers'
15 Compensation funds?

16 A. My belief is that if you're out on
17 Workmen's Comp. you're not allowed to work
18 anywhere else and collect benefits. I may be
19 wrong, but that's my belief.

20 MR. ZABELL: You're not.

21 Q. So, when you called Don, Don told
22 you he was working?

23 A. Yes, he did, and he owns a
24 business.

25 Q. What did you say about -- how did

1 MAYNARD

2 you verify this?

3 A. Don verified it to me.

4 Q. What did he say exactly? Well,
5 let's back up.

6 Who initiated this phone call in
7 which you learned that Don was doing work?

8 A. I imagine I did.

9 Q. Okay. And why did you make the
10 call?

11 A. I felt that if you're -- you got
12 injured in my place, you're collecting
13 Workmen's Comp. from the company that I am
14 paying into and you are now fraudulently
15 working somewhere else and making money, that
16 it's not right.

17 Q. All right. My question is,
18 however, who initiated the phone call in which
19 Don told you that he was working and making
20 money?

21 A. I don't remember who called who on
22 that one.

23 Q. So you said that Don told you that
24 he was making money at his own business?

25 A. Correct.

1 MAYNARD

2 Q. And you don't know who initiated
3 that conversation?

4 A. I imagine I initiated that part of
5 the conversation.

6 Q. Okay. Well, I'm talking about the
7 phone call. This was over the phone; correct?

8 A. Correct.

9 Q. You don't know --

10 MR. ANTOLLINO: Counsel, could you
11 not send e-mails or turn off the sound of
12 your computer. It's distracting.

13 Q. What was the purpose of the call?
14 Was the purpose of the call the Workers'
15 Compensation issue or something else?

16 A. I believe the purpose of the call
17 was talking about him coming back to work.

18 Q. And in this conversation he told
19 you that he was working?

20 A. It came up in conversation.

21 MR. ANTOLLINO: Counsel, I'm going
22 to ask you again to turn off the sound.

23 Q. And what did you say to Don about
24 that?

25 A. I told him I think it's wrong that

MAYNARD

you're collecting Workmen's Comp. from my company or from my insurance company while you're making money and he asked me not to do anything about it because he said it was just a little bit to make sure his rent was paid and this and that, and I still expressed to him that I thought it was wrong.

Q. Did you make any notation about this allegedly illegal activity?

A. Notation to who? No.

Q. Did you make any writings?

A. No.

Q. Did you mention it to anyone?

A. No, I don't think I did.

Q. Did you file a complaint with the Workers' Compensation Board?

A. I'm not sure if I complained there or not.

Q. Did you initiate a complaint?

A. I don't remember.

Q. Did you accuse Don of fraud?

A. I probably said that.

Q. Were you aware that the final administrative judge law decision was in Don's

1 MAYNARD

2 favor against the assertion about him working
3 while collecting benefits?

4 MR. ZABELL: Objection to the form
5 of the question.

6 A. No.

7 MR. ZABELL: You may answer.

8 Q. Did you read the final decision of
9 the Workers' Compensation judge?

10 A. I don't think so.

11 Q. All right. You would have to
12 respect the final word from the Workers'
13 Compensation judge as to whether or not Don was
14 committing fraud; correct?

15 MR. ZABELL: Objection to the form
16 of the question to the misrepresentations
17 made by counsel and to the attitude in
18 which he's asking the questions.

19 To the extent that you can answer
20 the questions, you may.

21 A. I'm not sure what the question was.

22 MR. ANTOLLINO: Could you read it
23 back?

24 (Record read.)

25 A. Yes.

1 MAYNARD

2 Q. And, in fact, the final decision of
3 the Workers' Compensation board was in January
4 2011?

5 MR. ZABELL: Objection.

6 Q. Correct? I'm sorry, January 2010;
7 correct?

8 MR. ZABELL: Same objection.

9 A. I don't remember.

10 MR. ANTOLLINO: Counsel, I'm asking
11 you now for the fourth time to turn off
12 the sound. It is distracting. It's bad
13 enough that you're clicking away, but the
14 sound of sending and the dings is
15 distracting.

16 Do we need to call the court on
17 this?

18 MR. ZABELL: Counsel, remain silent
19 on the issue.

20 MR. ANTOLLINO: Are you going to
21 stop that or do we need to call the court
22 on this?

23 MR. ZABELL: You may do whatever it
24 is you feel the need to do. If you are
25 distracted by your own inability to

1 MAYNARD

2 perform this deposition, then you and
3 your client will have to suffer with your
4 distractions.

5 MR. ANTOLLINO: If it happens one
6 more time, I'm going to call the judge.
7 Okay. All right, let's call the judge.
8 Unless you're going to agree right now to
9 turn off the sound.

10 MR. ZABELL: I thought I did,
11 actually.

12 MR. ANTOLLINO: All right. Would
13 you try again? Why don't we take a
14 five-minute break. You decide -- you
15 figure out how to turn off the sound.

16 MR. ZABELL: If you would like to
17 take a five-minute break, then we can
18 take a five-minute break.

19 MR. ANTOLLINO: I would like you to
20 turn off the sound of your computer. It
21 is distracting and I have a right to have
22 you turn it off. There's a way for you
23 to do what you're doing without me having
24 to hear the dings and whistles of your
25 computer.

1 MAYNARD

2 Do you want to turn it off or
3 should we call the court to get a ruling
4 on this?

5 MR. ZABELL: Counsel, I thought I
6 shut it off. You can do whatever it is
7 you like and if you want to have a
8 tantrum and misrepresent facts, you are
9 free to do so.

10 In fact, if you want to take that
11 five minutes that you just suggested for
12 the sole purpose of having a tantrum and
13 showboating for your client, you may do
14 so, but do not expect my consent when you
15 do so.

16 MR. ANTOLLINO: I'm asking you to
17 turn off the sound on your computer. Are
18 you willing to do so or not?

19 MR. ZABELL: Counsel, as I've said
20 to you three times now, I believe I have.

21 MR. ANTOLLINO: All right. I have
22 heard several e-mails since -- or several
23 dings and whistles since you said you
24 thought you had. Would you do me the
25 courtesy of trying again because

1 MAYNARD

2 obviously, you have not.

3 MR. ZABELL: You have heard no
4 whistles. You may have heard a ding and,
5 again, I believe I have turned it off. I
6 will endeavor again to turn off any sound
7 from the computer, but if you want to
8 showboat, grandstand and be petulant, you
9 may do so.

10 I strongly suggest you do it off
11 the record because all I'm doing now is
12 responding to your comments.

13 MR. ANTOLLINO: I don't want to
14 continue until you --

15 MR. ZABELL: So would you like to
16 go off the record for a moment?

17 MR. ANTOLLINO: Okay, let's go off
18 the record.

19 MR. ZABELL: There you go. Was
20 that so hard? Was that really so hard?

21 THE VIDEOGRAPHER: We're off the
22 record at 1:56 p.m.

23 (Recess taken.)

24 THE VIDEOGRAPHER: This is tape
25 four of the deposition of Raymond

1 MAYNARD

2 Maynard. We are now on the record at
3 2:02 p.m.

4 MR. ANTOLLINO: I'm sorry, I don't
5 have copies.

6 Q. But I'm going to show you what I've
7 marked as R-25.

8 (Exhibit R-25, page from the Sigma
9 tandem system owner's manual, marked for
10 Identification.)

11 MR. ANTOLLINO: Would you like to
12 take a look at it first, Counsel.

13 MR. ZABELL: I would. Do you want
14 to see if we can get copies made here?

15 MR. ANTOLLINO: I'm sure we can,
16 but we're just back on the record and
17 this is pretty simple so let's just
18 continue, if you don't mind.

19 MR. ZABELL: I do.

20 MR. ANTOLLINO: I'll get you copies
21 after we're off the record.

22 MR. ZABELL: When?

23 MR. ANTOLLINO: Because, I'd just
24 like to get --

25 MR. ZABELL: Not why. When?

1 MAYNARD

2 MR. ANTOLLINO: After. Remind me
3 before you go.

4 MR. ZABELL: Why can't you -- I can
5 have this one? So your client said I can
6 have this one. Thank you.

7 MR. ANTOLLINO: I want a copy
8 before we go.

9 MR. ZABELL: Okay. Give me an
10 opportunity to read it. I have had an
11 opportunity to read it.

12 MR. ANTOLLINO: Thank you.

13 Q. The exhibit is now being handed to
14 the witness and I'm asking you, do you
15 recognize this?

16 A. Yes.

17 Q. It appears to be the page from the
18 Sigma tandem system owner's manual. Could you
19 read how many points of adjustment is on the
20 Sigma tandem rig?

21 A. Points of adjustment?

22 Q. Yeah.

23 A. You've got the shoulder-top
24 adjustment, the chest strap, the belt strap,
25 the main lift webs, diagonals, leg straps.

1 MAYNARD

2 Q. Does it say how many there are in
3 total in this document? Maybe I can just show
4 you, point to you. If you look at the
5 paragraph that says, "The student harness was
6 designed," does it say how many points of
7 adjustment?

8 A. Twelve.

9 Q. Okay. So does this change your
10 testimony about how many points of adjustment
11 are on the Sigma tandem?

12 A. When you asked me that, I thought
13 you asked me points of attachment.

14 Q. Okay. I'm glad you made that
15 clarification. So, there are twelve points of
16 attachment --

17 A. No, there's four points of
18 attachment.

19 Q. Four points of attachment.

20 A. Right.

21 Q. Twelve points of adjustment.

22 A. Yes, correct.

23 Q. What is the difference between an
24 attachment and an adjustment?

25 A. An attachment is where the hardware

1 MAYNARD

2 attaches to the rings on the tandem master and
3 on the -- on the side hooks and that's all
4 hardware, 5,000 pound test each.

5 Adjustments, obviously, are all the
6 different belts and harness points that can be
7 adjusted to the person's size.

8 Q. Okay. Would you agree with the
9 statement that there is no single right way to
10 fit every size or shape of the human body when
11 putting a passenger in that rig?

12 A. That there's no single way to do
13 it?

14 Q. Yeah, there's no single right way
15 to fit every size or shape of the human body
16 with that particular rig?

17 A. That's probably a fair statement.

18 Q. All right. The points of
19 adjustment have to totally surround and contain
20 the student's body comfortably; correct?

21 A. Correct.

22 Q. And safely?

23 A. Correct.

24 Q. So how did this discussion you had
25 with Don on the telephone end?

1 MAYNARD

2 A. He was coming back to work for the
3 2010 season.

4 Q. Okay. And he worked between when
5 and when?

6 A. I don't remember the exact dates;
7 the beginning of the season until he got
8 hurt -- I mean, until he got fired.

9 Q. So before June 18, 2010, were there
10 any complaints about Don or his work?

11 A. What's June 18th?

12 Q. What?

13 A. What is June 18th?

14 Q. Well, did there come a time that
15 David Kengle -- when David Tenge (phonetic)
16 called you to make a complaint?

17 MR. ZABELL: Tenge or Kengle?

18 Q. Tenge --

19 A. Yes.

20 Q. -- called you to make a complaint
21 about Don? Yes?

22 A. Yes.

23 Q. Okay. And that was when, do you
24 remember?

25 A. I don't remember the exact time.

1 MAYNARD

2 Q. All right. Was it on or about June
3 21st or something like that, 2010?

4 A. I know it was on a Monday.

5 Q. Okay. Did it concern a jump that
6 happened on or about June 18, 2010?

7 A. Yes.

8 Q. All right. It was -- when you got
9 the call, it concerned a jump a few days
10 earlier; correct?

11 A. Correct.

12 Q. Okay. Who received the first call
13 from David Kengle?

14 A. The office.

15 Q. When you say "the office," what do
16 you mean?

17 A. He called in to Skydive Long
18 Island. One of the girls in the office
19 answered the phone.

20 Q. Who answered the phone?

21 A. It would be a guess. It could have
22 been Lauren, it could have been Megan. I was
23 not available right then at that point.

24 Q. What did Lauren or Megan tell you
25 that the call was about?

1 MAYNARD

2 A. That there was a customer complaint
3 and they gave me a name and a phone number.

4 Q. Did they say anything else, either
5 Lauren or Megan, about this customer complaint?

6 A. Not that I remember.

7 Q. Okay. And, so, how soon after you
8 got this customer complaint did you call the
9 number on the message pad?

10 A. When I was given the message pad, I
11 went into the office and called him.

12 Q. All right. And did he answer?

13 A. Yes, he did.

14 Q. Okay. And what was said in that
15 conversation?

16 A. He told me who he was, when him and
17 his girlfriend or fiancée was out on the Friday
18 before and his disappointment in the company
19 with the tandem master, who was representing
20 Skydive Long Island, did.

21 He said that his - it was either
22 his girlfriend or his fiancée, I'm not sure
23 which, it was her birthday. It was a present
24 to her for her birthday and that her birthday
25 was completely ruined and he would never

1 MAYNARD

2 recommend our company to anybody in the future.

3 And then he went on to tell me that -- what
4 transpired with Don and her.

5 Q. Well, what did he say?

6 A. He said that he had his hands on
7 her hips and made her feel very uncomfortable.
8 He put his head on her shoulder and was
9 whispering to her. And he kept reinforcing
10 that, "Don't worry that I'm so close because
11 I'm gay," and that made her feel very
12 uncomfortable.

13 And there was more -- according to
14 the gentleman, there was more of that
15 conversation when they were under canopy that
16 don't worry we're so close. You have nothing
17 to worry about, I'm gay.

18 Q. Anything else?

19 A. No.

20 Q. Okay. And what did you do in
21 response to that call?

22 A. At first I offered to give them a
23 free jump. They said they wanted nothing to do
24 with doing another skydive. I then offered to
25 give them their money back. He told me -- he

1 MAYNARD

2 said, "This call is not about me getting my
3 money back. I don't care about getting my
4 money back. I don't want my money back. I
5 just want to let you know how disappointed we
6 are in your company and what happened with my
7 girlfriend and how upset she was that she had
8 to be listening to these things from Don."

9 Q. And these things were --

10 A. Talking about -- about him being
11 gay and that subject matter.

12 Q. Well, was there -- the subject
13 matter of being gay?

14 A. Correct.

15 Q. And I believe that as -- in
16 response to this complaint, you met with Don
17 shortly thereafter; correct?

18 A. Yes, I did.

19 Q. Okay. And you asked him about the
20 jump; correct?

21 A. Yes.

22 Q. And it was three days after the
23 jump; correct?

24 A. Yes.

25 Q. All right. And he didn't remember

1 MAYNARD

2 the jump; correct?

3 A. I don't remember if he said he
4 didn't remember the jump.

5 Q. He also asked to see the video;
6 correct?

7 A. Yes, he might have.

8 Q. And you didn't allow him to see the
9 video, did you?

10 A. No, I did not.

11 Q. Wouldn't it have been easier for
12 Don to respond to the complaint if you had
13 shown him the video and refreshed his memory
14 about what happened?

15 MR. ZABELL: Objection.

16 You may answer.

17 A. No.

18 Q. Why not?

19 A. Because most of the skydive was
20 under canopy and the talk under canopy was no
21 one else is around to hear. It wouldn't be
22 there.

23 Q. Well, Don didn't remember who the
24 customer was; correct?

25 A. Well, but that's what he said.

1 MAYNARD

2 Q. Well, would it be a fair assumption
3 to make that if someone complained to you 30
4 jumps ago that he might not remember who was
5 complaining?

6 A. He might not.

7 Q. Okay. So wouldn't showing Don the
8 video have allowed him to remember who was
9 making this complaint?

10 A. It might have.

11 Q. Okay. Now, you didn't even speak
12 to Rosana Orelana, did you?

13 A. No, I did not.

14 Q. So, for all you know, David Kengle
15 could have been lying about the whole thing?

16 A. There was no reason to lie. This
17 man didn't want anything but to express his
18 disappointment of what happened to his fiancée
19 or girlfriend from things that were said that
20 made her very uncomfortable and it made my
21 customer very unhappy.

22 Q. You gave him his money back though?

23 A. Yes, I did.

24 Q. You sent him a check and he cashed
25 it?

1 MAYNARD

2 A. Yes, he did.

3 Q. He didn't have to do that, did he?

4 A. No, he didn't have to.

5 Q. Did you know that he was an
6 unemployed waiter at the time?

7 MR. ZABELL: Objection.

8 A. No.

9 Q. So you're telling me that in this
10 conversation he didn't want his money back and
11 he insisted he didn't want his money back, but
12 yet he took his money back?

13 A. When I hung up the phone with him,
14 he said he did not want his money and I decided
15 to send it to him anyway.

16 Q. Did you include a cover letter?

17 A. I don't remember.

18 + MR. ANTOLLINO: I'm going to call
19 for production of the cover letter. I'll
20 follow it up.

21 Q. And did you say before the end of
22 this conversation that you would be sending him
23 a refund?

24 A. Yes, I did.

25 Q. And what did he say?

1 MAYNARD

2 A. He said he didn't want his money.
3 He said, "This is not about the money."

4 Q. But, yet, he cashed the check
5 anyway?

6 A. Well, that's -- that has -- you
7 know, that has nothing to do with me.

8 Q. All right. Now, you met with Don
9 shortly after speaking to Mr. Kengle; correct?

10 A. Correct.

11 Q. And how soon after?

12 A. I don't remember exactly, probably
13 fairly soon.

14 Q. Within an hour?

15 A. Probably, if Don was there.

16 Q. Okay. And what did you say to Don
17 at that time?

18 A. I told him about the customer's
19 complaint. I was very upset. I reminded him
20 that when he was hired back that if there was
21 any incidents whatsoever he would have to leave
22 and I suspended him for a week.

23 Q. What do you mean by this; that you
24 reminded him when you hired him back that if
25 there were any incidents whatsoever he would

1 MAYNARD

2 have to leave, what does that mean?

3 MR. ZABELL: Objection.

4 A. If there was any complaints from
5 the customers of him talking about what he does
6 after work.

7 Q. You told Don this when?

8 A. Before he was hired back.

9 Q. When?

10 A. In 2009.

11 Q. But yet -- and so you suspended
12 him; correct?

13 A. Correct.

14 Q. And you also docked his pay;
15 correct?

16 A. Yes, I did.

17 Q. Did you feel you had the right to
18 do that?

19 A. It was an emotional moment. I
20 returned his pay to him in full.

21 Q. Were the customers complaining
22 about what Don -- what Don did after work? Don
23 was gay during work, wasn't he?

24 A. Excuse me?

25 MR. ZABELL: Objection.

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Q. Withdrawn. Don is gay during work;
correct?

A. It has nothing to do with him being
gay.

Q. But Don is gay during work;
correct?

A. I believe so. You can ask him.

Q. Do you believe that Don is gay?

A. He told me he was gay.

Q. Okay. Do you believe that he's
gay?

A. It doesn't matter what I believe.

Q. You're here and you have to answer
that question. Do you believe that Don is gay?

A. Yes.

Q. So Don is gay at work and after
work; correct?

A. I guess.

Q. All right. So you suspended Don
for a week and you took away his pay and it was
an emotional reaction that you took away his
pay?

A. Correct.

Q. So you didn't felt -- after

1 MAYNARD

2 reflection that you didn't have the right to do
3 that?

4 A. Correct.

5 Q. If you steel something from someone
6 and give it back later, does it take away the
7 fact that you've stolen something from them?

8 MR. ZABELL: Objection.

9 A. I didn't steal anything.

10 Q. Well, is that your Blackberry
11 there?

12 A. Yeah.

13 Q. Okay. If I take your Blackberry
14 and take it home and return it to you in a
15 week, is that legal?

16 MR. ZABELL: I could tell you,
17 Counselor, that I wouldn't let that
18 happen.

19 Q. If I do that, is it legal?

20 A. No.

21 Q. Okay. Had you ever docked
22 someone's pay before?

23 A. No, I do not think I did.

24 Q. The issue as to suspension, how
25 many times have you suspended other skydivers?

MAYNARD

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A. There's been one other occasion.

Q. The one you testified to?

A. Excuse me?

Q. What was the occasion when you
suspended someone?

A. This past summer I suspended
somebody.

Q. Who did you suspend?

A. Duncan Shaw.

Q. And that was the fighting incident?

A. No.

Q. What did you suspend him for?

A. He was sent home halfway through
the day for flying into a wind blade, which
everyone was told not to do, in front of TV
cameras that were rolling for something that
was going on at the airport.

Q. So, you basically did not allow him
to work for half a day?

A. Correct.

Q. And he -- you gave him a specific
direction not to do something and he defied
your instruction; correct?

A. Correct.

1 MAYNARD

2 Q. And all he got was half a day?

3 A. He just hit a wind blade.

4 Q. He just -- did he do this
5 deliberately or was it a mistake?

6 A. I believe he did it deliberately.

7 Q. Why do you think he did it
8 deliberately?

9 A. Because I saw it.

10 Q. And why did you tell him not to do
11 it?

12 A. Because they're expensive and they
13 break and it's not his property.

14 Q. And so how much did this cost?

15 MR. ZABELL: Objection to the form.

16 A. It cost between 350 and \$500.

17 Q. How much does the -- does Altitude
18 Express make in a year?

19 A. How much does Altitude Express
20 make?

21 Q. Yeah, gross and net.

22 MR. ZABELL: Objection to the
23 compound nature of the question.

24 Q. All right. We'll start with gross.

25 MR. ZABELL: Objection. It's not a

1 MAYNARD

2 question. Are you withdrawing your
3 previous questions and attempting to ask
4 a new question?

5 MR. ANTOLLINO: Yes, I am. I'll do
6 it again. We all know what we're talking
7 about here, but if you want me to be --

8 MR. ZABELL: Appropriate.

9 MR. ANTOLLINO: Perfectly correct,
10 I will.

11 MR. ZABELL: Perfect, no, just
12 appropriate.

13 Q. What is the gross that you take in
14 at Altitude Express on an annual basis?

15 A. Last year?

16 Q. Yes.

17 A. Last year was 2.4 or 2.5 million.

18 Q. And how much of that was profit?

19 A. I don't recall exactly.

20 Q. Approximately?

21 A. The profit was less than 200,000.

22 Q. Are you the sole owner of Altitude
23 Express?

24 A. Yes.

25 Q. So those were all of your profits,

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MAYNARD

yes?

A. Correct.

Q. And is that average for a year?

A. No.

THE VIDEOGRAPHER: We are now off
the record at 2:21 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We are now on
the record at 2:27 p.m.

Q. All right, your profit was less
than \$200,000 last year and you said that that
was not typical?

MR. ZABELL: Objection.

Q. Is that correct?

MR. ZABELL: Objection.

You can answer.

A. Last year was a banner year
weather-wise. Skydiving, what the business
does is really based on how much we can jump
and last year was the best year we've ever had.

Q. And what is it usually, what is
your profit usually?

MR. ZABELL: Objection to the form.

A. I don't know exactly. It was less

1 MAYNARD

2 than what that was. Like I said, last year was
3 a banner year.

4 Q. So is it usually in the range of
5 100,000, 150,000?

6 A. 140, 150.

7 Q. And what is the net worth of the
8 company?

9 MR. ZABELL: Objection.

10 A. It depends on who you talk to. I
11 really don't know.

12 Q. If you gave it a guesstimate.

13 A. Probably a million and change.

14 Q. And what is your personal net
15 worth?

16 MR. ZABELL: Objection.

17 A. I guess that would be the same.

18 Q. All right. Now, after you met with
19 Don, was there anything else that you discussed
20 with him in the first suspension meeting that
21 we haven't covered already?

22 MR. ZABELL: Objection to the form.

23 You may answer.

24 A. I don't remember.

25 Q. How long did it take?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 How long did what take?

4 MR. ANTOLLINO: The suspension
5 meeting.

6 A. Twenty minutes, a half an hour.

7 I'm not sure.

8 Q. And what did you discuss in this 20
9 minutes or 30 minutes?

10 A. We discussed the complaint from the
11 gentleman about his girlfriend and that he made
12 his girlfriend feel very uncomfortable with the
13 way he was touching her on her legs, the way he
14 was putting his head on her shoulder and just
15 the girl was very, very uncomfortable for the
16 entire jump and she even thought that maybe he
17 was hitting on her and he was covering up this
18 stuff by telling her that he was gay.

19 Q. Did you think that Don was hitting
20 on her?

21 A. It doesn't matter what I think.

22 Q. I'm asking you if you think that
23 Don was hitting on her?

24 A. I couldn't say if I thought he was
25 or not.

1 MAYNARD

2 Q. You knew Don was gay at the time;
3 correct?

4 A. He told me he was gay.

5 Q. Do you think it logical that he was
6 hitting on her?

7 A. I don't know anything about that
8 of -- of when someone is whatever, because I
9 don't know what someone does. I don't know
10 what anybody else does, whether they're
11 heterosexual, if they're gay or they're
12 bisexual other whatever. I don't know what
13 they're going to do a day-to-day basis, whether
14 they're going to change their mind about
15 something. So I can't say what I -- my thought
16 means nothing. I don't know what anybody else
17 is going to do.

18 Q. Well, didn't you have an obligation
19 to inquire as to whether or not he was hitting
20 on her?

21 MR. ZABELL: Objection, obligation
22 to what?

23 Q. You can answer.

24 MR. ZABELL: Obligation to what?

25 A. I was told.

1 MAYNARD

2 Q. Did you have an obligation to
3 inquire as to whether or not Don was hitting on
4 her?

5 MR. ZABELL: Objection, obligation
6 to what?

7 A. I have an obligation to my customer
8 to make sure that they are treated correctly
9 and they are not put in a position that they
10 were put in.

11 Q. But you didn't speak to
12 Ms. Orelana?

13 A. No, I did not.

14 Q. And you had no reason to believe
15 that she thought she was being hit on; correct?

16 A. Her boyfriend was a little nervous
17 and he thought that himself.

18 MR. ANTOLLINO: Could you read back
19 the prior question?

20 (Record read.)

21 THE WITNESS: What was that?

22 MR. ZABELL: You've answered the
23 question. If he wants to ask you a new
24 question, he can do that.

25 MR. ANTOLLINO: I will.

1 MAYNARD

2 Q. Other than Mr. Kengle's report, you
3 had no reason to believe that Ms. Orelana was
4 being hit on; correct?

5 A. Correct.

6 MR. ZABELL: Objection.

7 Q. You didn't speak to anyone who was
8 in the plane --

9 MR. ZABELL: Objection.

10 Q. -- correct?

11 MR. ZABELL: Objection. He already
12 told you he spoke to Don.

13 Q. Other than Don.

14 MR. ANTOLLINO: Thank you.

15 Q. Is that correct?

16 A. Correct.

17 Q. You didn't look at the video, did
18 you?

19 A. Yes, I did.

20 Q. You looked at the video
21 immediately?

22 A. I looked at the video that day.

23 Q. That day. Why didn't you show it
24 to Don?

25 A. I don't remember.

1 MAYNARD

2 Q. And what did you see on the video
3 that you thought was -- well, we'll look at the
4 video later, but as you sit here today, what do
5 you remember about seeing on that video that
6 was improper?

7 MR. ZABELL: Objection to the form
8 of the question.

9 You may answer.

10 A. I remember him sitting behind her
11 and looking at her and looking at the camera
12 and making kind of a weird look and there was
13 something with his hand like this (indicating)
14 and as he's doing this, he's looking back at
15 her, which I don't know what that meant at all.

16 MR. ZABELL: Let the record reflect
17 that the deponent was taking his right
18 hand and doing circles around the right
19 side of his face with his pointer finger.

20 Q. Isn't there usually a goofy
21 atmosphere that goes on in the rig --

22 MR. ZABELL: Objection.

23 Q. -- before a jump?

24 MR. ZABELL: Objection to the form
25 of the question.

1 MAYNARD

2 Q. You can answer.

3 MR. ZABELL: You may answer.

4 A. There are times -- yes, there are
5 goofy times.

6 Q. All right. Let's take a look at
7 what we have marked as Exhibit 3 to the
8 Winstock deposition, which is a 29-page
9 document of screen shots.

10 And I want you to look through
11 these and tell me if you think that there's
12 anything going on in any of these pages which
13 are numbered that is inappropriate, unsafe, or
14 improper.

15 A. (Reviewing.)

16 I'm not sure if when someone giving
17 someone else the finger on the plane is so
18 traumatic, but other than that, I don't see it.

19 Q. All right. So someone giving
20 someone the finger on the plane is not
21 something that is worthy of termination;
22 correct? You wouldn't want to terminate an
23 instructor who gave someone the finger on the
24 plane; correct?

25 A. No.

1 MAYNARD

2 Q. But if you saw it, you'd say don't
3 do that; right?

4 A. Yes.

5 Q. And you wouldn't suspend him for
6 that, would you?

7 A. No.

8 Q. All right. Giving someone the
9 finger is pretty extremely disrepsectful, don't
10 you think?

11 MR. ZABELL: Objection.

12 A. I'm just looking at a photo and
13 these two guys are probably friends. No one
14 came in and complained and this guy wasn't
15 feeling bad and said that he was -- that he
16 was, you know, upset.

17 Q. Okay. Do you know this person?

18 MR. ZABELL: Ray, calm down.

19 THE WITNESS: Okay.

20 Q. Do you know that person?

21 A. I don't know who that person is.

22 Q. Do you know anyone in this plane?

23 A. Actually, I do know. Yeah, that's
24 Joe Fresh. That's one of our regular jumpers
25 and these two guys hang out all the time and

1 MAYNARD

2 that's Super John in the background.

3 Q. All right. So among -- other than
4 this, which you thought was mild, you didn't
5 think that there was anything else in here that
6 was inappropriate, improper or unsafe; correct?

7 A. Correct.

8 Q. And that would include, for
9 example, this goofy expression at page four
10 that Rich Winstock is giving the camera;
11 correct?

12 A. Yeah.

13 Q. And that would include this goofy
14 expression that Rich Winstock is giving the
15 camera in Number 6; correct?

16 MR. ZABELL: Object to the form of
17 the question.

18 A. That's correct.

19 Q. And that would include someone
20 putting someone's hand on one's posterior in
21 picture seven; correct?

22 A. Correct.

23 Q. And that would include someone
24 sticking their tongue out, one of your
25 instructors sticking his tongue out in number

1 MAYNARD

2 nine; correct?

3 A. Correct.

4 Q. And that would include someone
5 exiting the airplane where his mouth is very
6 close to her ear; correct?

7 A. Correct.

8 Q. And that would include -- that's
9 number eleven and that would include Number 12
10 where someone is wearing a mask?

11 A. Correct.

12 Q. Could that pose any safety hazard
13 at all?

14 A. No.

15 Q. And that would include hang fives
16 signals. You know what a hang five signal is,
17 right? Well, have you ever seen this signal
18 before that that girl on page 13 is showing?

19 A. Isn't that a -- a love symbol or
20 something?

21 Q. It's called a hang five signal, I
22 think, or maybe it's something else. You tell
23 me?

24 A. I don't know.

25 Q. Have you seen it before?

1 MAYNARD

2 A. I've seen it, but I don't know what
3 it means.

4 Q. All right. It's pretty common;
5 right?

6 A. I guess.

7 Q. And that would include someone
8 trying to give someone water in number 14;
9 correct?

10 A. Correct.

11 Q. And that would include in page 16
12 someone sticking his tongue out to the camera;
13 correct?

14 A. Correct.

15 Q. And that would include on page 20
16 Rich Winstock crossing his fingers to the
17 camera?

18 A. Correct.

19 Q. He's crossing his fingers because
20 he's saying let's wish us all good luck that we
21 don't get injured or die; correct?

22 MR. ZABELL: Objection.

23 A. You'll have to ask Rich Winstock
24 why he crossed his fingers.

25 Q. Well, have you ever seen anyone

1 MAYNARD

2 cross their fingers in a plane like that on a
3 video?

4 A. I've seen it.

5 Q. Why do people do that?

6 A. Wishing them luck, wishing luck.

7 Q. You want to good jump.

8 A. Yup.

9 Q. You don't want there to be any
10 injuries; correct?

11 A. I want it to be a good jump.

12 Q. What is this that's happening in
13 number 21 with all of these people attached to
14 each other? What is that? Is that a boogie?

15 A. No, that's freestyle -- not
16 freestyle. I've got a brain fart. It's a
17 hybrid jump.

18 Q. And there's nothing unsafe about
19 that, it's allowed?

20 A. There's nothing unsafe about that.

21 Q. It's pretty extreme though; right?

22 A. It's skydiving.

23 MR. ZABELL: Objection to the form
24 of the question.

25 Q. There's nothing improper -- in page

MAYNARD

22, do you recognize the person in this picture?

A. Yeah.

Q. Who is that?

A. That's Kurt.

Q. Kurt who?

A. Kurt Gellinger (phonetic).

Q. He works for you?

A. Not anymore.

Q. Why not?

A. Because he moved.

Q. You didn't fire him, did you?

A. No.

Q. All right. And he was a good instructor?

A. Yes, he was.

Q. And he's making in this picture a face as if he's scared; correct?

A. He's got his mouth open.

Q. It looks like he's making a feigned -- a pretend scared expression. Would that be a fair characterization?

MR. ZABELL: Objection.

Q. How would you read his expression?

1 MAYNARD

2 MR. ZABELL: Objection to the
3 multiple questions. Are you intending on
4 asking three questions at once, Counsel?

5 Q. You can answer.

6 MR. ZABELL: You can pick any of
7 one of those three questions and provide
8 an answer to any one of them.

9 A. My answer is that I don't think he
10 looks scared at all.

11 Q. What does that expression mean to
12 you?

13 A. He's just having fun. He's got his
14 mouth open. He might be screaming, but he's
15 happy.

16 Q. He's goofy?

17 MR. ZABELL: Objection.

18 Q. Would you characterize it as being
19 goofy?

20 A. No.

21 Q. No?

22 A. He's having fun.

23 Q. Would you characterize it as being
24 goofy or not?

25 MR. ZABELL: He just said -- asked

1 MAYNARD

2 and answered.

3 A. No.

4 Q. Here is page 28. We have Rich
5 Winstock sticking his tongue out at the camera.
6 There's nothing inappropriate about that?

7 A. No.

8 Q. Would you characterize it as goofy?

9 A. No.

10 Q. No.

11 A. He's having fun.

12 Q. And here is Rich Winstock pictured
13 in page 29 with a first time tandem jump -- let
14 me put it this way, the album that it purports
15 to be from says, "First time tandem jumps";
16 correct?

17 A. Uh-huh.

18 Q. Do you recognize the passenger?

19 A. No.

20 Q. And Rich appears to have his hand
21 on her shoulder and their heads to be close to
22 each other; correct?

23 A. Correct.

24 Q. And there's nothing inappropriate
25 about that; correct?

1 MAYNARD

2 A. Correct.

3 Q. Did you happen to watch the video
4 made for Mr. Kengle?

5 A. No, I did not.

6 Q. At any time?

7 A. No.

8 Q. Were you aware that Ms. Orelana was
9 flirting with the camera in that video?

10 MR. ZABELL: Excuse me? Could I
11 have his question read back, please?

12 (Record read.)

13 MR. ZABELL: Objection.

14 A. No.

15 Q. Did Mr. Kengle tell you that there
16 had been a joke made before the passengers
17 exited the airplane?

18 A. I don't recall.

19 Q. Did he not, in fact, tell you that
20 one of the instructors other than Don made a
21 joke to the effect that, hey, I bet you didn't
22 think that your girlfriend was going to get
23 strapped to another guy?

24 MR. ZABELL: Objection, asked and
25 answered.

1 MAYNARD

2 A. I don't know.

3 Q. You don't know if he told you that?

4 A. No.

5 Q. If that joke was made, was it an
6 inappropriate joke?

7 A. I don't believe so.

8 Q. Why not?

9 A. Because I don't.

10 Q. Do you think it is standard
11 practice to make a joke like that?

12 A. That you're going to be strapped to
13 a guy?

14 Q. Yeah, that your girlfriend is going
15 to be strapped to another guy?

16 MR. ZABELL: Objection, asked and
17 answered. No matter how you place the
18 emphasis on the syllables, Counselor, you
19 still have asked the question at least on
20 three separate occasions.

21 Q. You can answer.

22 A. No, I don't think -- I don't think
23 that's a joke. It's a statement. They're all
24 male instructors.

25 Q. Well, what if someone complained

1 MAYNARD

2 about that joke being made, is that legitimate
3 complaint?

4 A. The statement of you didn't think
5 your girlfriend was going to be strapped to a
6 man today?

7 Q. Yeah. What if somebody complained
8 about that?

9 A. Well, they wouldn't be there to
10 skydive to begin with.

11 Q. Why?

12 A. Because, except for this year,
13 every instructor was a male. It's an
14 observation.

15 Q. But it's an observation that calls
16 attention to the fact that someone's girlfriend
17 is in close contact with another man; correct?

18 A. Correct.

19 Q. What if someone complained about
20 that joke?

21 A. No one has.

22 Q. Well, what if someone did, would
23 you instruct your instructors not to engage in
24 that type of banter?

25 A. Yes.

1 MAYNARD

2 Q. All right, now, you indicated that
3 you talked for 20 minutes to Ray in the
4 suspension meeting and what else did you talk
5 to Ray about -- I'm sorry, to Don about during
6 that suspension meeting other than what you
7 testified about to now?

8 MR. ZABELL: Object to the form of
9 the question.

10 You may answer.

11 A. The meeting was about him being
12 suspended. I said 20 minutes. I'm not sure if
13 it was 20 minutes. I don't remember the exact
14 amount of time. We were in there and we were
15 talking and I told him that I had to let him
16 go.

17 Q. No, this is the suspension meeting.

18 A. The suspension, I'm sorry.

19 Q. So it could have been five minutes
20 from what you can recall?

21 A. It might have been. I don't
22 remember.

23 Q. All right. Did there come a time
24 later that you saw Rich Winstock and Don
25 speaking about this suspension?

1 MAYNARD

2 A. Before Don left that day, you mean?

3 Q. Yes.

4 A. I think I did see them talking.

5 Q. And did you not say, oh, you're
6 talking about this and then run out of the door
7 and slam the door?

8 A. I don't remember that.

9 Q. Did you slam the door that day at
10 any time?

11 A. I don't recall.

12 Q. I understand that during the week
13 between the suspension and the termination, you
14 spoke to a lawyer; is that correct?

15 A. That's correct.

16 Q. Who was that lawyer?

17 THE WITNESS: Is that lawyer
18 confidentiality?

19 MR. ZABELL: You can identify him.

20 A. Harvey Arnoff.

21 Q. What?

22 A. Harvey Arnoff.

23 Q. Okay. Well I'm going to show you
24 what I've marked as Exhibit 23.

25 (Exhibit R-23, transcription of

1 MAYNARD

2 tape, marked for Identification.)

3 Q. And I'll just let you know that
4 this is a transcript that I've had written
5 up -- I've attempted to write up, have written
6 up, someone else wrote it up and I made some
7 changes. You don't have to believe anything
8 I'm telling you, but we're going to read the
9 transcript and listen to the tape and I'm going
10 to ask you whether it fairly and accurately
11 represents what is on the tape or if there are
12 some changes you'd like to make, we'll make
13 those changes. But before I go there --

14 MR. ZABELL: Do you have a copy for
15 me, Counselor?

16 MR. ANTOLLINO: Yes, I do.

17 Q. But before I go there you said you
18 met with Harvey Arnoff. How long has Harvey
19 Arnoff been your lawyer?

20 A. Since the early '90s.

21 Q. And what type of law does he
22 practice?

23 A. I think he practices everything.
24 He's not --

25 Q. He's a general practitioner?

1 MAYNARD

2 A. Yes.

3 Q. Did you call him or did you go in
4 and meet with him?

5 A. I drove in and met with him.

6 Q. How long was the meeting?

7 MR. ZABELL: Objection.

8 A. I don't know the exact amount of
9 time.

10 Q. Where does he work?

11 A. Excuse me?

12 Q. Where does Harvey Arnoff work?

13 A. In Riverhead.

14 Q. Do you know the exact address?

15 A. 206 Roanoke Avenue.

16 Q. Okay. Did you have a conversation
17 with Rich Winstock during this week before you
18 terminated Don? Did you have a conversation
19 with Rich Winstock about Don?

20 MR. ZABELL: Objection.

21 A. Yes.

22 Q. All right. And when did that
23 conversation take place?

24 A. I don't remember the day.

25 Q. All right. And how long did the

1 MAYNARD

2 conversation take?

3 A. I don't remember that either.

4 Q. What was said in the conversation?

5 A. We just talked in general what
6 happened.

7 Q. Okay.

8 A. And what I was told.

9 Q. Are you aware that Rich Winstock
10 testified that you didn't tell him anything
11 about the complaint that was made?

12 A. No.

13 Q. He did say that. Do you think he's
14 mistaken or -- do you recall telling him what
15 had happened?

16 MR. ZABELL: Objection to the
17 form --

18 A. No, I did not.

19 MR. ZABELL: -- for the multiple
20 questions. You have may now, and only
21 now, answer the question.

22 A. No, I really don't remember what we
23 talked about.

24 Q. All right. And what did Rich
25 recommend that you do?

1 MAYNARD

2 A. I don't remember.

3 Q. Is it not true that Rich
4 recommended that you write up a reprimand and
5 put it in Don's file and say that this has
6 nothing to do with your sexual orientation to
7 give him clear direction as to how he is to
8 behave in the future; is that not true?

9 MR. ZABELL: Objection to the form
10 of the multiple questions. You may pick
11 a question and answer it.

12 A. I don't remember that.

13 Q. Did he tell you that he thought
14 that Don was a good instructor and he didn't
15 want you to fire done Don?

16 A. No, I don't remember that at all.

17 Q. Are you aware that he testified to
18 that?

19 MR. ZABELL: Objection.

20 A. No.

21 Q. If he testified to that, would that
22 be a lie or would that be just a
23 misunderstanding?

24 MR. ZABELL: Objection. There are
25 other options as well and feel free in

1 MAYNARD

2 answering that question to utilize them.

3 A. I don't know.

4 Q. Did he tell you to fire Don?

5 A. No.

6 Q. Did he and Don have a good
7 relationship?

8 A. I guess.

9 Q. Do you respect Rich Winstock's
10 opinion in general?

11 A. In general.

12 Q. Do you think that he is -- well,
13 what is his role at Skydive Long Island?

14 MR. ZABELL: Objection to the form.

15 You may answer.

16 A. He's the chief instructor.

17 Q. And you've hired him for many
18 years; correct?

19 A. Correct.

20 Q. Were you aware that on occasion
21 he's told certain skydivers -- he's offered the
22 information that he's married and has kids?

23 A. I guess.

24 Q. Are you aware of that?

25 A. It's common knowledge that he's

1 MAYNARD

2 married and has kids.

3 Q. Well, if someone comes in to the
4 drop zone for the first time, has never met
5 Rich Winstock, it's not common knowledge to
6 that person that he's married and has kids;
7 correct?

8 A. Correct.

9 Q. Are you aware that Rich Winstock
10 has offered, without being asked, tandem
11 passengers that he is married and has kids?

12 MR. ZABELL: Objection to the form
13 of the question and the manner in which
14 it has been asked. You may, if you can,
15 answer the question now.

16 A. I don't know that for a fact.

17 Q. All right. If he did, was there
18 anything improper about that?

19 A. I wouldn't think so.

20 Q. It's personal information; correct?

21 A. Personal information.

22 Q. The answer is yes?

23 A. Yes.

24 Q. All right. So here is the proposed
25 transcript and I'm going to ask you to take a

1 MAYNARD

2 look at this and before we start reading it, I
3 want to ask you, were you aware at the time
4 that you fired Don that you were being
5 recorded?

6 A. No, I was not aware.

7 Q. Okay. Do you think there was
8 anything improper in Don recording that
9 meeting?

10 A. I don't know. I don't know.

11 Q. So you have no opinion one way or
12 the other?

13 A. I think I should have been told if
14 I was going to be recorded like everyone is
15 supposed to do, I guess.

16 Q. Why?

17 A. Because that's what people do.
18 You're told ahead of time I'm going to record
19 this conversation for whatever purposes. So if
20 there was nothing to hide, he should have said
21 I'm recording it.

22 Q. Well, if he had told you he was
23 recording it, would you have spoken as much, do
24 you think?

25 MR. ZABELL: Objection.

1 MAYNARD

2 A. We'll never know.

3 Q. You've heard the tape by now,
4 right?

5 A. Yes, I have.

6 Q. We're going to get it out and
7 listen to it and we can stop at any time.

8 MR. ZABELL: Uh, what?

9 MR. ANTOLLINO: Don't make fun of
10 me when I say "uh" or something like
11 that. You really are extremely rude when
12 you make fun of me for misspeaking. Your
13 attempt is to be a bully and I'm not
14 going to take it anymore. I'm
15 documenting every single time that you do
16 it, and at the end of the litigation the
17 judge is going to have a whole list
18 including when you said something that
19 you're -- that I heard at a deposition
20 about me.

21 MR. ZABELL: Counselor, your
22 threats are unavailing. I am simply
23 trying to get you to clear up this
24 record, which you are butchering. If you
25 are incapable of asking a question

1 MAYNARD

2 appropriately, I have a right to object
3 to it.

4 And if you are going to make a
5 false start for a question, I have a
6 right to ask you to clear the transcript
7 of your false starts.

8 Your failures to do so are not my
9 issue and do not be ashamed that I am
10 calling them to your attention.

11 MR. ANTOLLINO: I'm not ashamed.

12 MR. ZABELL: Well you're clearly
13 acting that way.

14 MR. ANTOLLINO: You're a bully.

15 Q. All right, we're going to listen to
16 the tape now.

17 (Whereupon video is played.)

18 Q. All right, hold on. Let's start
19 over.

20 MR. ZABELL: Start what over,
21 Counselor.

22 MR. ANTOLLINO: We're going to
23 start over because the court reporter
24 needs to pick up the tape?

25 MR. ZABELL: I think you should

1 MAYNARD

2 because we're not obligated to accept
3 this homemade transcript of the audio.
4 So I'm going to request that you take
5 down everything that's said on the video.

6 MR. ANTOLLINO: Try your best.

7 TRANSCRIPTION OF AUDIO:

8 "Mr. Maynard: All right, after a
9 week of me thinking about the entire
10 situation, from day one that you came
11 here years ago and everything, uh, first
12 off, I'm going to give you the refund
13 back of the people because I thought
14 about it and I shouldn't take that money
15 from you.

16 Mr. Zarda: All right.

17 Mr. Maynard: But also, I'm going
18 to let you go because this just isn't
19 working.

20 Mr. Zarda: What's not working,
21 Ray?

22 Mr. Maynard: It's not working.

23 Mr. Zarda: Well what is 'it'?

24 Mr. Maynard: That's all I have to
25 say. I went -- I went -- I went and

1 MAYNARD

2 spoke to my attorney. I explained
3 everything to him exactly the history of
4 everything and that and he said that, you
5 know, I have to let you go.

6 Mr. Zarda: Well, Ray --

7 Mr. Maynard: He's -- I'm letting
8 you go.

9 Mr. Zarda: All right. Okay, well
10 let me --

11 Mr. Maynard: I'm not going to --
12 that's all, I'm going to say.

13 Mr. Zarda: Well, Ray, you haven't
14 told me what I've been accused of.
15 What did they --

16 Mr. Maynard: It's not -- let me
17 just put it this way, it's not working
18 and that's all I'm going to say. It's
19 not working for me for you to be here
20 anymore and that's -- there's no more
21 explanation. There's nothing else I'm
22 going to say. That's all on my
23 attorney's advice.

24 Mr. Zarda: Well, you just told me
25 that a gay issue came up with these

1 MAYNARD

2 people.

3 Mr. Maynard: It wasn't a gay
4 issue. It was a personal issue. When I
5 told you the other day -- that's -- I'm
6 not going to get into it. Because if it
7 was a heterosexual thing -- if Richie
8 Winstock was telling some chick of his
9 escapades, he would be in the same
10 situation. It's not about gay. It's
11 about your personal life, talking to
12 people about it. Not -- I don't care --
13 I don't care what you do and I don't care
14 what those guys do, but what I do care
15 about is that it's not shared with my
16 customers.

17 Mr. Zarda: Okay, well --

18 Mr. Maynard: Okay? So don't take
19 this as a gay thing. It's not a gay
20 thing. It's about your personal
21 escapades and what you're telling people,
22 what you're saying. So --

23 Mr. Zarda: Okay, well, can I
24 before -- can I say something?

25 Mr. Maynard: Sure.

1 MAYNARD

2 Mr. Zarda: Okay. You said in
3 here, I know you were upset, that that
4 came up and that they were offended and
5 then you said something about this girl,
6 I took the girl, being inappropriately
7 touched. You said that.

8 Mr. Maynard: Well, she felt
9 that -- that you were holding her hips in
10 a way that she was very uncomfortable.

11 Mr. Zarda: Ray, does that make any
12 sense to you?

13 Mr. Maynard: Don --

14 Mr. Zarda: I mean, really.

15 Mr. Maynard: Don, listen, I'm not
16 going to explain anything else to you.
17 That's -- this is what is happening, this
18 is what's going to happen and I'm sorry,
19 but that's -- that's what I'm saying.

20 Mr. Zarda: Okay. What about -- I
21 mean, when you say 'personal escapades,'
22 these guys -- I mean -- I mean, Marco
23 runs around saying everything is gay.
24 Petretti still is in the 2001 mode --

25 Mr. Maynard: But this is not --

1 MAYNARD

2 Mr. Zarda: -- he jokes about it.

3 Mr. Maynard: They're not talking
4 to the customers. They're not saying
5 things to the customers that you're
6 saying to the customers.

7 Mr. Zarda: What was I -- what did
8 I say to the customer?

9 Mr. Maynard: Listen, I'm done.
10 You know, this is what -- I mean, I
11 thought about this for a very long time.
12 I went to my lawyer. I got legal advice
13 of what I should do here and I'm doing
14 what I feel I have to do. This is not
15 working anymore for me or for my company
16 to have you work here.

17 Mr. Zarda: But based on -- okay,
18 what are you letting me go for?

19 Mr. Maynard: I'm -- because it's
20 not working.

21 Mr. Zarda: Okay, you suspended me
22 for a week, okay. So, I mean, did you
23 decide a week ago that something wasn't
24 working? You made a decision a week ago.
25 So what did I get suspended for? I mean,

1 MAYNARD

2 I've been sitting in the dark at home.

3 Mr. Maynard: You were suspended
4 for completely ruining somebody's
5 birthday because of you talking about
6 your personal life to them. That is it
7 in a nutshell.

8 Mr. Zarda: I ruined somebody's
9 birthday because I got -- okay, that's
10 fine. That's not --

11 Mr. Maynard: They were very
12 sincere on the phone. There was nothing
13 about -- they weren't demanding their
14 money back or nothing like that. They
15 were just saying there's no way can I
16 ever give my fiancée her birthday back
17 because it was taken away because of you
18 putting your head on her shoulder,
19 whispering in her ear and talking about,
20 'Don't worry about me, I'm gay,' under
21 canopy and everything else.

22 Mr. Zarda: Ray, did you think at
23 all to -- that maybe these people just
24 were looking for a free jump and that
25 they --

1 MAYNARD

2 Mr. Maynard: No, because I offered
3 them a free jump. I offered them
4 everything and they didn't want it.

5 Mr. Zarda: No, no, no, I mean --

6 Mr. Maynard: They didn't want it.
7 They didn't want it.

8 Mr. Zarda: I mean, that that's
9 what they thought about that they could
10 just use this --

11 Mr. Maynard: Absolutely not.
12 Absolutely not. It doesn't even matter.
13 It doesn't matter. The decision is that
14 this is not working anymore for me for
15 you to be working here.

16 Mr. Zarda: Ray, did you
17 investigate at all? When did they call?
18 When did they call, on Friday or Monday?
19 Because you let me work all through the
20 weekend.

21 Mr. Maynard: They called on
22 Monday.

23 Mr. Zarda: Okay, on Monday.

24 Mr. Maynard: And if they had
25 called on Friday, that would have been

1 MAYNARD

2 done then.

3 Mr. Zarda: So you made this
4 decision really fast on Monday. Did you
5 investigate -- did you ask any of the
6 other people on the plane? There was a
7 bunch of people on the plane. Did
8 Don say to them --

9 Mr. Maynard: Things happened under
10 canopy, Don. Things were said under
11 canopy. There was nobody there. There's
12 nobody there to see you do what you're
13 doing.

14 Mr. Zarda: Okay.

15 Mr. Maynard: It doesn't even
16 matter. It's over.

17 Mr. Zarda: What did she say
18 happened under canopy?

19 Mr. Maynard: It's over. I -- just
20 about -- about -- about, you know, don't
21 be worried, I'm gay. Don't worry about
22 me being so close. I have to go. I have
23 to go do work. You can take care of what
24 you have to care of, get your stuff out.

25 Mr. Zarda: Ray, I came up here

1 MAYNARD

2 from a long way.

3 Mr. Maynard: It's not working
4 anymore. It's over."

5 MR. ZABELL: Counselor, I'm
6 advising you that this transcript of the
7 audio termination is inaccurate. There
8 were many things that I've noticed that
9 are missing or analysis transcribed so we
10 will not be accepting this as an accurate
11 transaction although I believe now madam
12 reporter that is taken down what has been
13 said.

14 Q. All right. Do you believe that
15 this is -- there are any mistakes in that
16 transcript, Mr. --

17 MR. ANTOLLINO: And I appreciate
18 your speaking objection, but I'm going to
19 ask the witness --

20 Q. But do you believe that there are
21 any mistakes in that transcript?

22 A. I don't know if every word is
23 tracked. I wasn't watching it that closely.

24 Q. Do you think that it's
25 substantially accurate?

1 MAYNARD

2 A. Yes.

3 MR. ZABELL: Objection. Okay.

4 Q. Do you want to listen to it again
5 and read it a little bit more closely? And I
6 see your counsel is making a speaking -- is
7 coaching you to say yes. Would you like to
8 read it again and look at it more closely?

9 MR. ZABELL: I have said nothing at
10 all on the record.

11 MR. ANTOLLINO: You've nodded your
12 head.

13 MR. ZABELL: It's not different
14 than what you're doing right now,
15 Counselor.

16 Q. Would you like to?

17 A. Sure, why not.

18 (Whereupon video is played.)

19 MR. ZABELL: The videographer
20 should be taking it down.

21 MR. ANTOLLINO: Okay, that's fine.
22 And we'll say tape being played in the
23 record and get.

24 (Whereupon, tape is played.)

25 Q. Okay. You've had an opportunity to

1 MAYNARD

2 listen again. It's not a perfect transcript
3 but would you agree that it's substantially
4 accurate?

5 A. Yes, there are a few things that I
6 couldn't understand. I marked in between where
7 I couldn't understand things.

8 Q. All right. Why don't you tell me
9 where you couldn't understand. You've marked a
10 few things.

11 A. It was in between --

12 Q. Two people speaking at once.

13 A. I guess. I don't know.

14 Q. So you put a question mark on line
15 five, and then --

16 A. Because things were being said and
17 you couldn't understand them on the tape and
18 that's what every one of these were the same
19 thing.

20 Q. Okay. So that's where two people
21 were talking?

22 A. I would guess.

23 Q. All right. And so you put a little
24 mark on 15, on line 15 and line 19 and -- so
25 you put a lot of -- we'll make another copy of

1 MAYNARD

2 this and we'll call this Exhibit 22 -- 23-A
3 because these are your corrections, all right.
4 Do you want to do that?

5 MR. ZABELL: As long as you give me
6 copies.

7 MR. ANTOLLINO: We'll make copies.

8 MR. ZABELL: Make a copy.

9 THE VIDEOGRAPHER: We are now off
10 the record at 3:13 p.m.

11 (Recess taken.)

12 THE VIDEOGRAPHER: This is tape
13 five of the deposition of Raymond
14 Maynard. We are now on the record at
15 3:20 p.m.

16 (Exhibit R-23-A, marked-up
17 transcription, marked for
18 Identification.)

19 Q. Mr. Maynard, I've marked as 23-A
20 your marked-up exhibit of my attempt at
21 transcripts and you've noted that on various
22 points that there were two people speaking at
23 once and so you weren't exactly sure there
24 were -- it was a completely accurate
25 transcript. Is that a fair statement?

1 MAYNARD

2 MR. ZABELL: Objection.

3 A. Yeah.

4 Q. But would you agree that it's
5 substantially accurate?

6 MR. ZABELL: Objection, asked and
7 answered.

8 A. Yes.

9 Q. Did you feel like I left anything
10 out, other than the discussions with Lauren
11 that I didn't transcribe, did you feel like
12 anything was left out that was important?

13 A. I don't think so.

14 Q. All right. All right, so -- at the
15 end. We didn't play the part about Lauren, but
16 you heard the tape before when Don is talking
17 to Lauren; correct?

18 MR. ZABELL: Objection to the form
19 of the question. You may answer.

20 A. Yes, I did hear the tape.

21 Q. All right. And I believe at the
22 end of the tape he asked Lauren if these people
23 got video; correct?

24 A. I don't remember if that was a
25 question to her.

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MAYNARD

Q. All right. Let me just play that part of the tape. That's not on the transcript. That's just a yes or no. So just a second:

TRANSCRIPTION OF AUDIO:

"Mr. Zarda: Okay, could you -- Lauren, could you print me just the rest of my jumps.

Lauren: Sure, not a problem.

Mr. Zarda: And, you know what, the -- the one that always gets -- it's got --

Lauren: I'll bring it. You know --

Mr. Zarda: -- jumper one.

Lauren: That's okay. I'll bring it right out to you. Not a problem. If you want to grab your stuff, I'll bring it right out to you.

Mr. Zarda: It's going to take a little bit for that.

Lauren: That's okay.

Mr. Zarda: And --

Lauren: I'll bring it right out to

1 MAYNARD

2 you, Don.

3 Mr. Zarda: Did these people get
4 video?

5 Lauren: Don, I don't know what
6 information --

7 Mr. Zarda: Would you just please
8 look and see if they got video?

9 Lauren: Don, Ray's made a
10 decision. I have to go with what Ray
11 says.

12 Q. Now after having listened to the
13 portion where Don, in talking to Lauren, it
14 appears he asked her repeatedly whether these
15 people got video; is that right?

16 A. It sounds like.

17 Q. So that would lead you to the
18 conclusion that he didn't know one way or the
19 other; correct?

20 MR. ZABELL: Objection. Didn't
21 know one way or the other with what?

22 Q. Whether or not they got video;
23 correct?

24 A. Possibly.

25 Q. Okay. And it would also lead you

1 MAYNARD

2 to the conclusion that he had never seen the
3 video; correct?

4 A. It could.

5 Q. And he wanted to see the video;
6 correct?

7 A. I think so.

8 Q. Did you know that we didn't get the
9 video until we subpoenaed it or demanded it in
10 this case?

11 MR. ZABELL: Objection to the
12 form --

13 A. I didn't know it.

14 MR. ZABELL: -- and to the
15 representations contained therein you may
16 answer.

17 Q. I was just asking if you knew that.

18 A. Excuse me?

19 Q. I was just asking if you knew that.

20 A. No, I didn't know that.

21 Q. When you say you looked at the
22 video, did you also look at the out takes?

23 A. I'm trying to think which one I
24 saw. I'm not sure if I saw the raw footage or
25 the edited version.

1 MAYNARD

2 MR. ANTOLLINO: All right. So I'm
3 going to call for production of the raw
4 footage. I think that's responsive and
5 I'll put it in a letter to you.

6 MR. ZABELL: You've already been
7 given the raw footage.

8 MR. ANTOLLINO: I have?

9 MR. ZABELL: Even your client is
10 shaking his head yeah. Off the record.

11 (Discussion off the record.)

12 Q. Let's take a look at line eight
13 from 23-A where you say, "That's all I have to
14 say. I spoke to my attorney. I explained
15 everything to him exactly the history and
16 that" -- I'm sorry, withdrawn.

17 You said, "That's all I have to
18 say. I spoke to my attorney, I explained
19 everything to him exactly the history of
20 everything and that and he said that, 'You
21 know, I have to let you go.'" Do you see that?

22 A. Yes.

23 Q. And is that what your attorney, in
24 fact, told you?

25 MR. ZABELL: Objection. You do not

1 MAYNARD

2 have to disclose communications that were
3 given to you by your attorney.

4 Q. All right. So --

5 MR. ZABELL: To the extent you can
6 answer that without revealing what your
7 attorney told you, you may, but he's
8 asking you specifically what your
9 attorney told you.

10 A. I'm not sure how to answer that.

11 + MR. ANTOLLINO: I think let's
12 mark that for a ruling because I think
13 the attorney/client privilege has been
14 waived. We don't have to call the judge
15 on this, but it will come up eventually.

16 Q. And on page two, line -- or
17 paragraph 16, do you see there where it says at
18 the last sentence, "that's all on my attorney's
19 advice." Do you see that?

20 A. Yes.

21 Q. And is that a true sentence,
22 "That's all on my attorney's advice"?

23 A. That's correct.

24 Q. And what did your attorney advise
25 you?

1 MAYNARD

2 MR. ZABELL: Objection. Same
3 objection based upon privilege.

4 MR. ANTOLLINO: So you're going
5 to -- let's just make the record clear.
6 You're not going to allow me to inquire
7 into the substance of the discussion
8 between Harry Arnoff and Ray Maynard in
9 any respect whatsoever; so no matter how
10 many times he's referred to legal advice
11 and attorneys advice in this transcript,
12 that's going to be the same direction to
13 the witness. Is that a fair statement?

14 MR. ZABELL: Correct. That is a
15 fair statement.

16 MR. ANTOLLINO: All right. We'll
17 take this up -- we'll mark those all for
18 a ruling at a later time.

19 MR. ZABELL: You can certainly
20 attempt to do it at a later time, but
21 you're allowed one shot at a deposition
22 and nothing else.

23 MR. ANTOLLINO: All right. So then
24 I think that we have to call the court
25 then. If you're saying that you're not

1 MAYNARD

2 going to reproduce your client or you're
3 going to fight reproducing your client
4 for not answering questions, I mean then
5 that -- listen -- off the record -- on
6 the record. All right.

7 Do you believe that you have --
8 you've mentioned at your deposition that
9 you had the right to recall my client if
10 the judge overrules my objections to
11 certain privileges; is that right?

12 MR. ZABELL: That's correct.

13 MR. ANTOLLINO: All right. So are
14 you saying that you believe that you can
15 recall my client if the judge overrules
16 the objections, but you can't -- I can't
17 recall Mr. Maynard if the judge overrules
18 your objections?

19 MR. ZABELL: The difference is my
20 objections were sub juris.

21 MR. ANTOLLINO: All right. Well,
22 let's call the court and I'm going to ask
23 the judge if we can brief this and you
24 can object. Let's call the court.

25 I don't think we have to reach this

1 MAYNARD

2 now, but I want to avoid a future fight
3 with Saul Zabell. So I'm going to look
4 up the court's number and call and see if
5 we can deal this because I think this
6 needs a letter brief at least.

7 THE VIDEOGRAPHER: We are now off
8 the record at 3:29 p.m.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We are now on
11 the record at 3:43 p.m.

12 MR. ANTOLLINO: I'd just like to
13 state for the record that we called the
14 court. The judge was not available to
15 rule and the clerk is going to call us
16 back to let us know if the judge wants to
17 rule now or have argument, or have
18 briefing on this.

19 Q. Okay. So what was the last
20 question and answer?

21 (Record read.)

22 Q. Let's look at paragraph 18. In the
23 third -- one, two, third, fourth sentence, you
24 stated, "Because if it was a heterosexual, if
25 Rich Winstock was telling some chick about his

MAYNARD

escapades, he would be in the same situation."

Do you see that?

A. Yes.

Q. And what is a chick?

A. Excuse me?

Q. What is a chick? What do you mean by chick?

A. A woman.

Q. Is it a -- do women like to be called chicks?

A. Some do, some don't.

Q. Okay. What -- if Rich Winstock was telling some chick about his escapades, what did you mean by that?

A. If he's out with somebody.

Q. What do you mean by that?

A. If he's out and he's talking about, I guess, intense matters.

Q. What intense matters?

A. Whatever could be going on, if he was bragging about things.

Q. If he was what?

A. If he was bragging about things.

Q. Bragging about what?

1 MAYNARD

2 A. Whatever.

3 Q. Can you give me an example of what
4 escapade Rich Winstock would tell to a woman
5 that would be grounds for termination?

6 MR. ZABELL: Objection to the form.

7 You can answer.

8 A. If any of my instructors, including
9 Richie Winstock, was telling the customers of
10 any kind of sexual activities, that would fall
11 under that.

12 Q. Well, Don wasn't talking about
13 sexual activity. He was talking about his
14 sexual identity, wasn't he?

15 A. No. I was told that he was talking
16 specifically about things he did after work.

17 Q. What things that he did after work?

18 A. The men he was with.

19 Q. The men he was with. What men was
20 he with?

21 A. I have no idea.

22 Q. What did David Kengle say that
23 Rosana told him about the men he was with?

24 MR. ZABELL: Objection to the form
25 of the question, mischaracterizes

1 MAYNARD

2 testimony.

3 A. That he was talking about him being
4 gay and going out and doing this and doing
5 that.

6 Q. Being gay and going out and doing
7 this and doing that, what was he going out --
8 what does that mean? Going out and doing what?

9 MR. ZABELL: Objection to the form
10 of the question. Objection to the
11 multiple questions. You may pick a
12 question and provide an answer, if you
13 can.

14 A. He told me that besides in the
15 airplane the way he was touching her thighs and
16 having his head on her shoulder it made her
17 feel very uncomfortable. She was very upset
18 about that and he made remarks under canopy
19 that, "Don't worry, I'm gay," and went on about
20 that.

21 Q. So he didn't say anything about
22 going out and doing this and going out and
23 doing that; correct?

24 MR. ZABELL: Objection.

25 Q. It's just what you just testified

1 MAYNARD

2 to right now; correct?

3 A. Right.

4 MR. ZABELL: Objection.

5 Q. And it wasn't her thighs that she
6 felt were uncomfortable, it was hips; correct?

7 MR. ZABELL: Objection.

8 A. Hips, thighs, you know, the same
9 thing.

10 Q. Okay. The hips, there are two
11 attachments at the hips; correct?

12 A. Uh-huh.

13 Q. If Don had to choose between safety
14 in adjusting the hips and comfort, which -- in
15 adjusting the straps of the hips, which would
16 you prefer that he choose?

17 MR. ZABELL: Objection to the form.

18 A. He would choose to do the right
19 thing for safety, but not make the customer
20 feel uncomfortable.

21 Q. Do you feel that Don ever made any
22 other employees -- I'm sorry, withdrawn.

23 Do you feel that Don made any other
24 passengers physically uncomfortable in your
25 aircrafts?

1 MAYNARD

2 A. I think it's possible, but people
3 didn't come and make a complaint.

4 Q. So you're not aware of anything;
5 correct?

6 A. Correct.

7 Q. Your opinion of Don was that he was
8 a good instructor; correct?

9 A. Correct.

10 Q. And he's had more jumps than you;
11 correct?

12 A. Correct.

13 Q. And you knew Don was gay; correct?

14 A. Correct.

15 Q. And you trusted his judgment in
16 adjusting the straps to give as much safety and
17 balance that with comfort?

18 MR. ZABELL: Objection to the form.

19 You may answer.

20 A. Correct.

21 Q. And you didn't call Ms. Orelana and
22 say what was it about the hips that made you
23 feel uncomfortable; correct?

24 A. Correct.

25 Q. And it could have been something

1 MAYNARD

2 like he was adjusting the straps down there;
3 correct?

4 MR. ZABELL: Objection to the form.

5 You may answer.

6 A. It could.

7 Q. And if it was he was adjusting the
8 straps down there, that would not be a
9 legitimate complaint; correct?

10 MR. ZABELL: Objection to the form.

11 You may answer.

12 A. Correct.

13 Q. And a tandem instructor, in fact,
14 has to not only adjust the straps, but check
15 them and make sure that they're in place
16 throughout the tandem experience; correct?

17 A. Most of it should be done before
18 they get on the airplane. The final
19 adjustments are normally taking the side straps
20 and making them tighter. The harness -- the
21 tandem passenger harness, there is -- there is
22 very little time or there's very little things
23 that I even know about anybody doing
24 adjustments in the plan about the passenger
25 harness after you get on the airplane.

1 MAYNARD

2 Q. But you want to check the
3 attachments to make sure they're in place;
4 correct?

5 A. Correct.

6 Q. And that would require him to touch
7 the attachments and see that they were in
8 place; correct?

9 A. Correct.

10 Q. What if Don -- well, do you have a
11 uniform at work?

12 MR. ZABELL: Objection to the form
13 of the --

14 MR. ANTOLLINO: Okay, withdrawn.

15 Q. Is there a uniform that skydivers
16 wear at work?

17 A. No.

18 Q. Okay. So you can show up wearing a
19 T-shirt and shorts; correct?

20 A. Correct.

21 Q. And that's a typical attire for
22 someone doing a skydive; correct?

23 MR. ZABELL: Objection to the form.

24 You may answer.

25 A. In the summer.

1 MAYNARD

2 Q. What about -- what if Don came to
3 work with a T-shirt that says "I'm gay," would
4 you allow him to wear that?

5 A. It never happened.

6 Q. Well, I'm just asking if that would
7 be allowable.

8 A. I think that would make some people
9 uncomfortable.

10 Q. And so you would ask him to change
11 the shirt?

12 A. If I had somebody come to work that
13 said "I'm heterosexual" it would be the same
14 thing.

15 Q. So the answer to the question is
16 that if he came to work way a shirt that says
17 "I'm gay," you would tell him to change the
18 shirt; correct?

19 A. Most likely.

20 Q. All right. There's a shirt that
21 I've seen, it's kind of a joke on the street
22 that says, "I'm not gay, but my boyfriend is,"
23 and it's worn by many gay men. If Don showed
24 up at work with that T-shirt that said, "I'm
25 not gay but my boyfriend is," would you ask him

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change the shirt?

MR. ZABELL: Objection to the form of the question, speculation and everything else.

You can answer.

A. Probably.

Q. Okay. There's a T-shirt out there that I've seen that says "Legalize Gay." It just says "Legalize Gay." If he showed up with that T-shirt, would you allow him to wear it?

A. My company is not a forum for any kind of statements. My workplace is not a forum for these things that you're asking me.

Q. My question is, to you, --

MR. ZABELL: Counselor, if you want a different answer, ask a different question. Asked and answered, move on, because now you're harassing the deponent.

MR. ANTOLLINO: No I'm not harassing him.

Q. Would you ask him to change a shirt that says "Legalize Gay"?

MR. ZABELL: Objection, asked and

1 MAYNARD

2 answered. Move on, Counselor.

3 Q. Can you answer the question?

4 MR. ZABELL: You've already
5 answered it. You don't need to answer it
6 again.

7 Q. All right. What about a T-shirt
8 that says "I'm proud to be an Iraq vet"?

9 A. To be a what?

10 Q. An Iraq vet.

11 MR. ZABELL: Iraq? What's the word
12 you're saying because I think you're
13 mispronouncing it. I don't understand
14 it.

15 MR. ANTOLLINO: All right. Well,
16 maybe out in Long Island they pronounce
17 it Iraq. In the city we pronounce it
18 Iraq.

19 Q. What if somebody wore a T-shirt
20 that says "I'm an Iraq vet," would you ask
21 somebody to change that T-shirt?

22 A. No.

23 Q. What about someone wearing a
24 T-shirt that says "I love my grandchildren,"
25 would you ask them to change that T-shirt?

1 MAYNARD

2 A. No.

3 Q. What if Don wore a T-shirt that
4 said "I love my husband," would you ask him to
5 change that T-shirt?

6 A. No.

7 Q. But that's personal information.

8 MR. ZABELL: That's not a question.

9 Q. Isn't it personal information? If
10 Don has a T-shirt that says "I love my
11 husband," that's personal information; correct?

12 A. Correct.

13 Q. Would that make some people
14 uncomfortable?

15 A. It would depend on the other
16 person.

17 Q. Right. And do you think that would
18 make some people uncomfortable?

19 A. Just a T-shirt?

20 Q. Yeah, a man wearing a T-shirt that
21 says "I love my husband."

22 A. Some maybe.

23 Q. Okay. But you wouldn't ask Don to
24 change that T-shirt?

25 A. No.

1 MAYNARD

2 Q. What about a T-shirt that says,
3 "I'm proud to be Cuban," would you ask someone
4 to change that T-shirt?

5 A. No.

6 Q. All right, but it's personal
7 information, correct, that he's Cuban?

8 A. Yes.

9 Q. All right. What if someone was
10 talking to a passenger and said something like,
11 "I'm Irish and the Irish are fighters," is that
12 something that's inappropriate to tell a
13 customer?

14 MR. ZABELL: Objection to the form
15 of the question.

16 You can answer it. As absurd as it
17 is, you can answer it.

18 A. No.

19 Q. That's personal information though;
20 correct?

21 A. Yes.

22 Q. All right. Were you aware that --
23 sir, do you have a jumper from New Zealand?

24 MR. ZABELL: Objection to the form
25 of the multiple questions.

1 MAYNARD

2 MR. ANTOLLINO: Not a jumper,
3 withdrawn.

4 Q. Do you have an instructor -- I need
5 some more coffee. We'll take a break after
6 this question.

7 Do you have an instructor from New
8 Zealand?

9 A. Well, yes.

10 Q. Is he still working for you?

11 A. Yes.

12 Q. Were you aware that he told
13 Mr. Kengle that he was from New Zealand?

14 A. No.

15 Q. Is there anything inappropriate
16 about that?

17 A. No.

18 Q. That's personal information, isn't
19 it, that he's from New Zealand?

20 A. Yeah.

21 MR. ANTOLLINO: Let me just get a
22 coffee. We are now off the record at
23 3:58 p.m.

24 (Recess taken.)

25 THE VIDEOGRAPHER: We are now back

1 MAYNARD

2 on the record at 4:11 p.m.

3 Q. All right. Under canopy you have
4 to loosen the straps as you land; is that
5 correct?

6 A. Correct.

7 Q. Okay. And you have to loosen the
8 straps at the hips as you land; correct?

9 A. Before you land.

10 Q. Before you land?

11 A. Correct.

12 Q. Otherwise an injury could occur?

13 A. It makes it better to have them
14 loosened up, yeah.

15 Q. Now, earlier we -- you mention also
16 in the audio tape that Don was alleged to have
17 whispered in the passenger's ear; correct?

18 A. Correct.

19 Q. Would you have preferred that he
20 shouted?

21 MR. ZABELL: Objection.

22 A. I don't know what was said.

23 Q. Well, I'm just talking about the
24 tone of voice in terms of the decibel level of
25 the voice, would you have preferred that he

1 MAYNARD

2 shouted in speaking to a customer?

3 MR. ZABELL: Objection.

4 You can answer, if you can.

5 A. Maybe.

6 Q. Isn't it true that when an
7 instructor is strapped to a passenger, the
8 instructor has to position his chin on either
9 the right or the left side of the passenger to
10 avoid hitting the passenger's head with his
11 mouth?

12 A. Sitting in the airplane?

13 Q. Either sitting in the airplane or
14 up in the air.

15 A. Yes.

16 Q. And so, therefore, would it be a
17 fair statement that the mouth is very close to
18 the ear on a tandem jump with a passenger and
19 an instructor?

20 A. Not for the entire jump.

21 Q. Okay. But --

22 A. At times.

23 Q. At times, okay. Do you think that
24 it might have been reasonable that the
25 girlfriend and the boyfriend, Mr. Kengle and

1 MAYNARD

2 Mr. and Ms. -- withdrawn.

3 Do you think it might have been
4 reasonable for Mr. Kengle or Ms. Orelana to
5 have felt uncomfortable by a comment that
6 Mr. Kengle's girlfriend was getting strapped to
7 another guy?

8 MR. ZABELL: Objection, asked and
9 answered no less than three times.

10 Q. You can answer.

11 A. No.

12 Q. Do you think that it was reasonable
13 that Don might have felt uncomfortable about
14 that?

15 A. No.

16 Q. Do you believe that Don, as a gay
17 man, has to accept such a statement and play
18 along with the suggestion that he's a
19 heterosexual?

20 MR. ZABELL: Objection to the form
21 of the question, the innuendo contained
22 in that question and the
23 mischaracterization of the intent --

24 Q. You can answer.

25 MR. ZABELL: -- of that question.

1 MAYNARD

2 If you can.

3 A. I don't know.

4 Q. Do you believe it was unreasonable
5 for Don to take him out -- take himself out of
6 the suggestion that someone else made that he's
7 being strapped to someone else's girlfriend?

8 A. Take himself out?

9 Q. Take himself out of the equation.
10 Do you think that's reasonable?

11 MR. ZABELL: Objection to the form.
12 I don't think it's a question that can be
13 answered in the manner in which it's
14 phrased, but to the extent that you
15 understand it, you may answer.

16 A. I don't know.

17 Q. But you think it was unreasonable
18 for him to mention that he was gay in order to
19 take himself out of the equation; correct?

20 MR. ZABELL: No -- objection to the
21 form.

22 Q. You can answer.

23 A. No, no.

24 Q. So it was reasonable for him to
25 tell the customer that he was gay to take

1 MAYNARD

2 himself out of the equation that he was being
3 put in as someone who was being strapped to
4 someone else's girlfriend; correct?

5 MR. ZABELL: Objection to the form.

6 A. Maybe.

7 Q. Why do you say maybe?

8 MR. ZABELL: Objection to the form.

9 You may answer.

10 Q. Why would you say "maybe"; why not
11 yes or no?

12 A. Because taking yourself out of the
13 equation, you know, that's a choice.

14 Q. Someone in the airplane, the
15 witnesses testified, made the suggestion that
16 Don was being strapped to a someone else's
17 girlfriend --

18 MR. ZABELL: Correct.

19 Q. -- in a way that was sexual --

20 MR. ZABELL: That's incorrect.

21 Q. -- correct?

22 MR. ZABELL: Objection to the form
23 of the question. Objection to the
24 mischaracterization of the prior
25 testimony.

1 MAYNARD

2 You can answer it this last time.

3 I will not allow him to harass you any
4 more after this.

5 A. I don't believe that this was being
6 in a sexual position or whatever you just said.

7 Q. You don't believe that there was
8 any sexual innuendo being made when an
9 instructor other than Don said to Mr. Kengle
10 and Ms. Orelana, I bet you didn't know that
11 your girlfriend was going to get strapped to
12 another guy?

13 A. No.

14 MR. ZABELL: Don't answer it any
15 more. You've been asked the question
16 multiple times. I told him before I
17 would not allow him to continue to harass
18 you on this issue in the manner in which
19 he has. Therefore, I will not permit any
20 additional questions repeating that same
21 question.

22 Q. If a customer came on to Don -- if
23 a woman came on to Don at the drop zone, would
24 it be appropriate for him to say, yeah, thanks
25 but I'm not interested because I'm gay?

1 MAYNARD

2 MR. ZABELL: Objection to the form
3 and the hypothetical.

4 You can answer.

5 A. I don't know.

6 Q. Why don't you know?

7 MR. ZABELL: Objection to the form.

8 A. I don't know.

9 Q. If someone tried to come on to
10 Don -- well, let me ask you this; did you ever
11 see any women express any interest in Don?

12 A. No.

13 Q. Do you believe any women ever have?

14 A. I don't know.

15 Q. All right. We've looked at
16 pictures and now we're going to watch some
17 videos. We will start with what I have
18 previously marked as the Rich folder which you
19 already have. We're starting with a folder
20 called "Rich" that I have on my computer which
21 I also have given to counsel and was also
22 viewed at the deposition of Rich Winstock and
23 there are five little movies here and I'm going
24 to play movie 1334 now and I'm going to ask you
25 to watch it and I'm going to ask if you see

1 MAYNARD

2 anything in this video that is improper,
3 inappropriate or unsafe.

4 Would you agree to answer those
5 questions after you watch the video?

6 A. Yes.

7 Q. All right.

8 MR. ZABELL: Before the play the
9 videotape -- are you all right?

10 MR. ANTOLLINO: I'm fine.

11 MR. ZABELL: Why don't you discuss
12 with me on the record how you'd like the
13 court reporter to handle --

14 MR. ANTOLLINO: There's no way
15 she's going to be able to -- there's no
16 way. It's just shouting and music.

17 MR. ZABELL: That's fine. So we
18 should discuss it so we both have a clear
19 understanding and she has clear direction
20 as to what is going to proceed and how
21 we're going to proceed.

22 MR. ANTOLLINO: Fair enough.
23 There's no way to transcribe it, but
24 we're now playing 1334.

25 (Whereupon video is played.)

1 MAYNARD

2 Q. Okay, so the question is, did you
3 see anything in that video that was
4 inappropriate, improper or unsafe?

5 A. Well, the exit -- the jump itself
6 they're experienced jumpers. It's called
7 rolling a tube out the door. People are
8 saying -- I believe they were saying, "Make
9 shit happen." They're adults in the plane. I
10 don't know what's so bad about that.

11 Q. Well, let me ask you this, do you
12 know that they were experienced jumpers?

13 A. Yes.

14 Q. Do you know all of those people?

15 A. I don't know -- do I know all of
16 those people? I didn't see all of them.
17 You're talking about everybody that's in the
18 airplane.

19 Q. The woman in the green, were you
20 aware that that was her first tandem or not?

21 MR. ZABELL: Objection to the form.

22 A. That's not a tandem that went out
23 the door.

24 Q. The woman in the green was in a
25 tandem; correct?

1 MAYNARD

2 A. Okay.

3 MR. ZABELL: Are you agreeing or
4 are you just accepting what he said as
5 accurate, Mr. Maynard?

6 THE WITNESS: To what?

7 MR. ZABELL: Are you agreeing to
8 his statement --

9 THE WITNESS: That she was a
10 first-time jumper?

11 MR. ZABELL: No, that the lady in
12 green was a tandem.

13 A. Yes, the woman in green was a
14 tandem.

15 Q. And she's not the one that did the
16 role?

17 A. Correct.

18 Q. What did you call it?

19 A. It's called a tube.

20 Q. A tube, okay. And it was just a
21 single jumper that did that?

22 A. No, there's two people.

23 Q. There's two people. So you don't
24 know the level of experience of those two
25 people, do you?

1 MAYNARD

2 A. I knew who the people were, but I
3 also know that they are very experienced
4 jumpers because only experienced jumpers would
5 do that maneuver.

6 Q. But they were tandem passengers?

7 A. They were not.

8 Q. Oh, okay. That's all I wanted to
9 know. There's a little bit of comradery with
10 the expression in the plane "Make shit happen";
11 correct?

12 MR. ZABELL: Objection to the form.

13 You may answer.

14 A. Yes.

15 Q. And the entire staff responds in
16 kind, including Rich Winstock, "Make shit
17 happen"; correct?

18 A. Correct.

19 Q. And that's basically the atmosphere
20 when you're up in the air; correct?

21 MR. ZABELL: Objection to the form.

22 A. Sometimes.

23 Q. Okay. You want to have it be
24 relaxed and loose so that people aren't
25 uncomfortable when they're about to be falling

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MAYNARD

out of an airplane; correct?

A. Correct.

Q. All right. I'm finished with this movie and we're going to go on to the next movie, 1335, and the same question applies inappropriate, improper or unsafe?

MR. ZABELL: Objection to the form.

(Whereupon video is played.)

Q. Okay, you've watched the entire video?

A. Yeah.

Q. And that's the video of the time when someone gave someone else the finger; correct?

A. Correct.

Q. And there was a -- and one part of that video someone feigned vomiting, would you agree with that characterization?

A. They what?

Q. They faked a vomit.

MR. ZABELL: Objection to the form of the question.

Q. Do you remember at one point --

MR. ZABELL: Are you withdrawing

1 MAYNARD

2 the question before allowing the --

3 MR. ANTOLLINO: The witness does
4 not seem to understand what I'm getting
5 at.

6 Q. But I'm going to describe that
7 there was someone who went "Blah" and stuck his
8 tongue out in the camera; correct?

9 MR. ZABELL: Let the record
10 reflect --

11 MR. ANTOLLINO: Let the record
12 reflect --

13 MR. ZABELL: Does the videotape
14 picture Mr. Zarda -- Mr. Antollino?

15 MR. ANTOLLINO: No.

16 MR. ZABELL: Well, let the record
17 reflect that Mr. Antollino stuck his
18 tongue out of his mouth and made a
19 gagging sound.

20 MR. ANTOLLINO: Yes.

21 Q. All right. Did you see that on the
22 video?

23 A. Yes.

24 Q. And did you think that was
25 inappropriate in any way?

1 MAYNARD

2 A. What you're asking me about this is
3 with experienced jumpers having fun with each
4 other and not a customer making a complaint
5 about something that was not right.

6 Q. I'm just asking you if you think
7 that that was improper in any way?

8 A. No.

9 Q. Did you see anything that was
10 inappropriate or unsafe in that video?

11 A. I don't think so.

12 Q. Wasn't there, in fact, a tandem in
13 that plane?

14 A. I'd have to see it again.

15 Q. All right. Let's watch it again.

16 (Whereupon video is played.)

17 A. It was a tandem?

18 Q. Were you able to see a tandem in
19 there?

20 A. No.

21 Q. What about that young lady in the
22 back?

23 A. Like I said, I didn't see it.

24 Q. You didn't see a tandem in there?
25 Well, let me ask you this, if there had been a

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MAYNARD

tandem in there, would any of that comradery of experienced divers in front of the tandem passengers have been inappropriate?

MR. ZABELL: Objection to the form of the question.

You may answer.

A. I didn't see that tandem person near these other guys. They were pretty far a about in the airplane and these were experienced jumpers again just goofing with each other.

Q. It was pretty goofy, wasn't it?

A. Yeah.

Q. And if there were a tandem passenger in there, is anything improper about that goofiness?

A. No.

Q. Okay. So let's move on to 1337.

(Whereupon video is played.)

Q. All right, did you see anything that was inappropriate, unsafe or improper?

A. No.

Q. There were portions in there where people were touching each other on the

1 MAYNARD

2 posterior; is that correct?

3 A. Yes.

4 Q. What is the reason for that?

5 A. They were getting their balance
6 because they're standing outside the aircraft
7 that has no step.

8 Q. It was necessary for them to do
9 that?

10 A. Yes.

11 Q. It was necessary for them to touch
12 each other's posterior; correct?

13 A. Yes.

14 Q. Okay. Now we're looking at 1339.

15 (Whereupon video is played.)

16 Q. Did you see anything in there that
17 was inappropriate or unsafe?

18 A. No.

19 Q. Now we're going to look at 1340.

20 (Whereupon video is played.)

21 Q. Did you see anything in there that
22 was inappropriate or unsafe?

23 A. No.

24 Q. There was some point -- did you
25 recognize the instructor in that video?

1 MAYNARD

2 A. I think it was Super John.

3 Q. Super John. What's Super John's
4 last name? Well, I'll tell you what, since you
5 have asked to review a copy of the record, I'll
6 leave a blank space in there. Would you look
7 it up and write it into the space?

8 + TO BE FURNISHED: _____

9 A. Yeah.

10 Q. There was a point in there where
11 the instructor was sticking his finger into the
12 tandem passenger's ears and making what I
13 believe was moose ears?

14 MR. ZABELL: Objection to the form
15 of the question --

16 A. I didn't see it.

17 MR. ZABELL: -- and the
18 representations made therein.

19 MR. ANTOLLINO: Counsel, you were
20 the one last week who said that that was
21 moose ears. All right, let's look at it
22 again.

23 (Whereupon video is played.)

24 Q. Did you just see that?

25 A. He was tapping her on the head.

1 MAYNARD

2 Q. He was tapping her on the head?
3 Didn't it really look like he was sticking his
4 fingers in her ears and going like this
5 (indicating)?

6 A. No.

7 Q. Okay. Was there anything
8 inappropriate about his tapping her head?

9 A. I don't think so.

10 Q. Was it just a joke, a harmless
11 trope for a skydiver?

12 MR. ZABELL: Objection to the form
13 of the question.

14 Q. You can answer.

15 MR. ZABELL: And the words you
16 used.

17 If you can. If you know what he's
18 saying.

19 THE WITNESS: I don't know what
20 he's saying. They were doing something
21 for the video.

22 Q. They were being goofy for the
23 video; correct?

24 A. They were having fun.

25 Q. And by -- and in having fun, they

1 MAYNARD

2 were being goofy; correct?

3 A. Yes.

4 Q. Okay. And if someone -- if an
5 instructor did put his fingers in a passenger's
6 ear and make a little moose ear for the video,
7 would that have been improper?

8 A. I don't know, but that's not what I
9 saw.

10 Q. Okay. But, you know, you're an
11 experienced skydiver and I just want to know
12 what your opinion is if that happened and
13 someone did make moose ears, would that have
14 been inappropriate or is that just typical?

15 A. If I saw a video of somebody
16 sticking their fingers in someone's ear that
17 would be inappropriate. That is not what I
18 saw.

19 Q. Okay. We're looking at 1341 now.

20 (Whereupon video is played.)

21 Q. Did you see anything in there that
22 was inappropriate, unsafe or improper?

23 A. No. Could I watch it one more
24 time?

25 Q. Sure.

1 MAYNARD

2 (Whereupon video is played.)

3 A. No, I believe that they did either
4 a front flip or a back flip and then they came
5 out of it.

6 Q. The instructor has his arms around
7 the passenger until the drove went up; is that
8 true?

9 A. No.

10 Q. You see the instructor having his
11 arms around the passenger at any time?

12 A. Yeah.

13 Q. Why?

14 A. Because they would have to do the
15 flip one way or the other, that's the position
16 you have to get into.

17 Q. That something if they wanted to do
18 the flip he had to put his arms around her;
19 correct?

20 A. Yes.

21 Q. And he was basically hugging her;
22 correct?

23 A. He had his arms around her. I
24 wouldn't characterize it as hugging her.

25 Q. All right. So if she complained

1 MAYNARD

2 afterwards that he put his arms around me,
3 would you fire that instructor?

4 A. No.

5 Q. How many seconds was it before he
6 drops the drogue in that, were you able to
7 catch it?

8 A. No.

9 Q. Was it an inappropriate amount of
10 time?

11 A. No. When they go out of the
12 airplane, they do a flip with the people, a
13 front flip or back flip. They go out a little
14 bit longer than the normal with the drogue.

15 Q. What are some other reasons why he
16 might -- what is the recommended amount of time
17 to pull the drogue when you leave the airplane?

18 A. It's probably between five and
19 seven seconds.

20 Q. Okay. And is it better to have a
21 light passenger to wait a little closer to
22 seven so you don't collide with the
23 photographer if there is photography?

24 A. No.

25 Q. Is it possible if you have a light

1 MAYNARD

2 passenger and you're jumping out of the plane
3 if -- are there any dangers to pulling the
4 drogue too quickly?

5 A. No.

6 Q. We're going to look now at the main
7 event, the video of Mr. Zarda and Ms. Kengle
8 and this is the video that you've provided to
9 me which has the screen name skydiveavi.avi;
10 correct?

11 (Whereupon video is played.)

12 Q. For some reason the video is
13 stopping so we're going to have to go back to a
14 point where before it stopped and play more.

15 (Whereupon video is played.)

16 MR. ANTOLLINO: Something is wrong
17 with this video.

18 MR. ZABELL: Counselor, I have a
19 copy a my computer.

20 MR. ANTOLLINO: Would you mind?
21 Thanks a lot.

22 (Whereupon video is played.)

23 Q. Okay. You've now watched the
24 entire video. You can take that counselor.

25 Okay. So you've watched that video

1 MAYNARD

2 and you've seen it before; correct?

3 A. Correct.

4 Q. About how many times have you
5 watched it?

6 A. Not much.

7 Q. More than five?

8 A. No.

9 Q. If you were to grade Don's
10 performance in that zero, what would you give
11 it?

12 A. The skydive part of it?

13 Q. Yeah.

14 A. An eight or nine except I didn't
15 see any handle checks where you touch the
16 handle which is supposed to be done at every
17 jump. I didn't see that. It wasn't apparent
18 on that jump.

19 Q. In other words it just might not
20 have been filmed when he did it; correct?

21 A. No. He was filmed -- the handle
22 checks are done under drogue.

23 Q. Right.

24 A. So he was filmed the entire time
25 under the drogue. The handle checks are before

1 MAYNARD

2 you come in and put the parachute up.

3 Q. But you'd give it an eight or nine
4 out of ten?

5 A. Yes, I would.

6 Q. Okay. And how would you rate the
7 landing?

8 A. The landing was good.

9 Q. Would you characterize it as good
10 or great?

11 A. Yes.

12 Q. Okay. Did you see at the end that
13 the passenger seemed happy?

14 A. No.

15 Q. You didn't see that she seemed
16 happy?

17 A. No.

18 Q. What did you see?

19 A. And in the beginning the looks that
20 Don had on his face looking at her and the
21 expressions were kind of creepy too.

22 Q. So you think that Don made some
23 creepy expressions on there?

24 A. Yeah.

25 Q. Do you think that those expressions

1 MAYNARD

2 are why you fired Don?

3 A. No, not at all. I got a complaint.

4 Q. Okay. So you had to fire an
5 employee because of any complaint?

6 A. Do I have to fire them?

7 Q. Yeah.

8 A. No, I do not have to fire every
9 employee because of a complaint. If it's a
10 serious complaint, yes, I do.

11 Q. You're saying that she didn't look
12 happy in that video?

13 A. I what?

14 Q. You don't believe she looked happy
15 in that video?

16 A. I don't think she did.

17 Q. At the end she said it was awesome?

18 A. I'm just looking at her facial
19 expression when she first landed.

20 Q. Well, when people land they can
21 have any number of expressions, they're just
22 coming from their teen thousand feet; correct?

23 A. You asked me -- go ahead.

24 Q. Is that right?

25 A. Yes.

1 MAYNARD

2 Q. Some people throw up; correct.

3 A. Correct.

4 Q. But they still might have had a
5 good time; correct?

6 A. Correct.

7 Q. She said "That was awesome"; is
8 that correct?

9 A. I don't know.

10 Q. All right. Let's watch the video
11 again then.

12 (Whereupon video is played.)

13 Q. Now that you've seen it again she
14 said "Yeah, that was awesome"; isn't that
15 right?

16 A. Yeah, she said it.

17 Q. And she smiled; correct?

18 A. She smiled when she kissed her
19 boyfriend.

20 Q. She smiled next to Don. She posed
21 with Don after she kissed her boyfriend;
22 correct?

23 MR. ZABELL: Objection to the
24 multiple questions.

25 Q. You may answer.

1 MAYNARD

2 MR. ZABELL: You may pick one and
3 answer.

4 A. What's your question?

5 Q. She posed with Don after she kissed
6 her boyfriend; correct?

7 A. Correct.

8 Q. She voluntarily put her face next
9 to Don's face and smiled for the camera;
10 correct?

11 A. It might have been that way.

12 Q. Okay. Do you have any reason to
13 believe that she did not think the jump was
14 awesome if it was not awesome?

15 MR. ZABELL: Objection to the form
16 of the question.

17 You may answer.

18 A. Yes, I do.

19 Q. And what's that, what Mr. 3Kengle
20 told you?

21 A. Correct.

22 Q. Anything else?

23 A. No.

24 Q. As is evident from that video there
25 is nothing in there that indicates that she did

1 MAYNARD

2 not have an awesome time on that jump; correct?

3 MR. ZABELL: Objection to the form
4 of the question and he's already told you
5 what he believes is on the video that
6 does not indicate that she had an awesome
7 jump.

8 Q. You can answer the question.

9 A. I don't believe that videotape
10 backs up that she had a great jump, no, I do
11 not.

12 Q. Why? Let's list all the reasons.

13 A. When she landed?

14 Q. Uh-huh.

15 A. She didn't look happy. She might
16 have said "Awesome," but that wasn't like "Oh,
17 that was awesome." It was like, "It was
18 awesome."

19 Q. Anything else? So she wasn't
20 evocative enough?

21 MR. ZABELL: Objection to the form
22 of the question. If you understand the
23 words that he's using, you may answer.
24 If you don't understand them, you can
25 tell him you don't understand them.

1 MAYNARD

2 A. I don't understand them.

3 Q. She wasn't expressive enough?

4 MR. ZABELL: The same objection.

5 A. No.

6 Q. And any other evidences that she
7 didn't have an awesome time?

8 A. No.

9 Q. So it's simply when she landed that
10 she wasn't smiling immediately and her -- and
11 when her statement of awesomeness was not
12 expressive enough; correct?

13 MR. ZABELL: Objection.

14 Q. Just those two things are the
15 evidences that she didn't have an awesome time;
16 correct?

17 MR. ZABELL: Objection to the
18 multiple questions posed before you. You
19 may choose any one of them and provide an
20 answer to it.

21 A. No.

22 Q. Now, what were the creepy looks
23 that Don gave?

24 A. You can see it on the tape.

25 Q. So it's -- when he's being filmed

1 MAYNARD

2 on the tape. When he was being filmed when the
3 camera is directly on him?

4 A. Correct.

5 Q. You thought that those expressions
6 were creepy?

7 A. The way that he was looking at her,
8 looking at her and then looking back and doing
9 whatever else he was, at some point like that,
10 I thought that was a little creepy and that's
11 my opinion.

12 Q. You didn't fire him for that, did
13 you?

14 A. No.

15 Q. Do you instruct your instructors
16 how to act when they're on camera?

17 A. Excuse me?

18 Q. Do you instruct your instructors
19 how to act when they're on camera when someone
20 is buying video?

21 A. Professionally.

22 Q. Isn't it true that you don't want
23 hem to sit there with a poker face?

24 A. No.

25 Q. Okay. You want them to contribute

1 MAYNARD

2 to the fun of the jump; correct?

3 A. Correct.

4 Q. And, so, when this particular
5 vision of Mr. Zarda was shown, only his face
6 and his hands were available; correct?

7 A. Correct.

8 Q. So he was making expressive
9 gestures with his face and his hands; correct?

10 A. Correct.

11 Q. And those gestures were very
12 similar to many of the gestures we've seen in
13 the other videos and in the screen shots I
14 showed you; correct?

15 MR. ZABELL: Objection to the form
16 of the question.

17 You may answer.

18 A. No.

19 Q. Okay. Were his extra creepy?

20 MR. ZABELL: Objection to the form
21 of the question.

22 You may answer.

23 A. They were different.

24 Q. They were different. And what made
25 them different?

1 MAYNARD

2 A. The way he was looking at her and
3 the motions that he made were different than
4 any other thing you showed me today.

5 Q. When Mr. Kengle called, he didn't
6 mention anything about looking at her or making
7 any -- looking at her in an improper way, did
8 he?

9 MR. ZABELL: Objection to the form
10 of the question. You may answer.

11 A. He called to make a complaint about
12 how his girlfriend was unhappy the way she felt
13 on the jump; that she felt totally
14 uncomfortable. That is what the phone call was
15 about. It was a complaint.

16 Q. And she felt uncomfortable in part
17 because Don told her that he is gay?

18 A. Correct.

19 Q. All right. We're going to -- now
20 Mr. Kengle was on the same plane. You saw him
21 in the video we just saw; correct?

22 A. I don't know if I saw him.

23 Q. Well, he had his own video; is that
24 correct?

25 A. That's correct.

1 MAYNARD

2 The guy's last name is Sherman.

3 John Sherman. It just came to me.

4 Q. All right. I'm going to show you
5 my computer and ask you if you recognize
6 this -- well, you never met with Mr. Kengle
7 with -- in respect to this complaint did you?

8 MR. ZABELL: Wait, wait. Objection
9 to the form of the multiple questions.

10 MR. ANTOLLINO: Okay, withdrawn,
11 and I'll ask it again.

12 Q. You never met with Mr. Kengle after
13 his complaint, did you?

14 A. No, I did not.

15 Q. So you wouldn't necessarily be able
16 to pick him out of a lineup, would you?

17 A. No.

18 Q. All right. Well, let's just play
19 the video.

20 (Whereupon video is played.)

21 Q. Did you see anything in there that
22 was inappropriate or unsafe?

23 A. No.

24 Q. All right. And I believe that
25 Mr. Kengle said twice after he landed that it

1 MAYNARD

2 was fucking awesome; is that right?

3 A. I didn't hear it. Maybe he did.

4 Q. You didn't hear him say it once or
5 at all?

6 A. No.

7 Q. He looked happy at the end of the
8 jump; correct? Did you see -- withdrawn.

9 Have you ever seen that video
10 before?

11 A. No, I don't think so.

12 Q. There was one point in there where,
13 you know, Ms. Orelana gave a little kiss to the
14 camera. Did you see that?

15 A. Yes.

16 Q. Did you think that was
17 inappropriate?

18 A. No.

19 Q. She was flirting with the camera;
20 correct?

21 MR. ZABELL: Objection to the form.

22 A. I don't know.

23 Q. How did they exit the -- how did
24 they exit the airplane? Was that the
25 appropriate way to exit the airplane in that

1 MAYNARD

2 video?

3 A. Yes.

4 Q. Hold on a second.

5 Do you believe that homosexuality
6 is wrong?

7 A. I don't have an opinion on it. If
8 people want to do it, people can do as long as
9 it doesn't affect me or affect my customers
10 it's a free world.

11 Q. So, therefore, you would say it's
12 not wrong?

13 A. No.

14 Q. It's not wrong?

15 A. No.

16 MR. ZABELL: No, it's not wrong or,
17 no, it is wrong.

18 A. No, it's not wrong.

19 Q. It took you a while to get there,
20 though, you didn't --

21 MR. ZABELL: Objection.

22 Q. You paused. I mean, we've got it
23 on tape. You paused a while before you gave an
24 answer on that. Why did you have to think
25 about that?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 You can answer.

4 A. Because I did, that's all.

5 Q. Do you think it's a disorder being
6 gay?

7 MR. ZABELL: Objection.

8 A. No.

9 Q. Do you think that gay people can
10 become heterosexual if they want to?

11 A. I'm not a doctor or a psychologist
12 or anybody to make any kind of opinion on that.

13 Q. Do you think gay marriage is wrong?

14 A. No.

15 MR. ANTOLLINO: All right. Do you
16 want to change the tape?

17 THE VIDEOGRAPHER: We are now off
18 the record at 5 p.m.

19 (Recess taken.)

20 THE VIDEOGRAPHER: This is tape six
21 of the deposition of Raymond Maynard.

22 We're now on the record at 5:06 p.m.

23 Q. Do you know anyone by the name of
24 Doug Smith?

25 A. Doug Smith?

1 MAYNARD

2 Q. Yes.

3 A. It doesn't ring a bell.

4 Q. Did anyone ever contact you about
5 Don after you fired him in relation to Don's
6 applying for another job?

7 A. No.

8 Q. Now, after the lawsuit was filed,
9 there was a little bit of press attention in
10 October of 2010. Do you recall that?

11 A. Yes, I do.

12 Q. Are you under the impression that
13 either Don or I sent out a press release
14 announcing the lawsuit?

15 A. I don't know who contacted the
16 press, but somebody had to.

17 Q. Well, are you aware that the court
18 docket is a public docket?

19 A. No.

20 Q. Are you aware that reporters often
21 look in the docket for juicy and interesting
22 cases?

23 A. No.

24 Q. Were you aware that a reporter from
25 the New York Post called me the day after I

1 MAYNARD

2 filed this case? Are you aware of that?

3 A. No.

4 Q. So it could be true?

5 A. It could be.

6 Q. You don't have any press release
7 that was sent out to the press; correct?

8 A. No.

9 Q. Was there anything wrong -- do you
10 think there was anything wrong with Don
11 cooperating and speaking to the reporter who
12 was interested in the case?

13 A. No.

14 Q. Now after Don was fired he applied
15 for unemployment insurance; correct?

16 A. I believe he did.

17 Q. How did you find out about it?

18 A. Because I get a notice from
19 Unemployment.

20 Q. All right. And one of the
21 grounds -- well, you contested his claim for
22 unemployment; correct?

23 A. Yes, we did.

24 Q. And one of the grounds you can
25 contest unemployment is that the employee was

1 MAYNARD

2 fired for misconduct; correct?

3 A. I believe -- I don't remember
4 exactly, I thought that it was about that he
5 was working, had another job somewhere.

6 Q. Well, I'll show you what I've
7 premarked as 26.

8 (Exhibit R-26, letter, marked for
9 Identification.)

10 Q. And I'll ask you if you recognize
11 this.

12 A. (Reviewing.)

13 Yes.

14 Q. You recognize it?

15 A. Yeah.

16 Q. That's a letter that Lauren
17 Callanan wrote on your behalf to the
18 unemployment insurance division; correct?

19 A. Correct.

20 Q. And, so, one of the points that she
21 makes is that "Mr. Zarda resumed working for
22 Altitude Express on May 15, 2010 through June
23 21, 2010 and was terminated for believed
24 misconduct as we received complaints from
25 customers stating Mr. Zarda shared

1 MAYNARD

2 inappropriate information with them regarding
3 his personal life"; correct?

4 A. Correct.

5 Q. It doesn't mention anything there
6 about improper touching; correct?

7 A. With what?

8 Q. It doesn't mention anything there
9 about improper touching; correct?

10 A. No.

11 Q. And the complaints from customers,
12 that was just from one customer; correct?

13 A. Correct.

14 Q. And Mr. Kengle; correct?

15 A. Correct.

16 Q. And Lauren said, "This is not the
17 first time we had received complaints from
18 paying customers regarding Mr. Zarda," and when
19 you say that, you're referring to the
20 complaints from 2001; correct?

21 A. Correct.

22 Q. All right. And those complaints
23 were also about Don sharing personal
24 information at the workplace; correct?

25 A. Yes.

1 MAYNARD

2 Q. You also speculated that Don was
3 working at Advance in Fitness; correct?

4 MR. ZABELL: Objection. This
5 document does not indicate that Mr.
6 Maynard speculated about anything.

7 MR. ANTOLLINO: All right.

8 Q. The document does say, and you can
9 refer to it since I have taken it from you, "It
10 is speculated that during this time through
11 present day, Mr. Zarda has also owned, co-owned
12 and maintained his own business."

13 MR. ZABELL: Correct, but
14 Mr. Maynard didn't write this letter,
15 Counsel.

16 Q. It says that "It is speculated,"
17 correct? Do you want to look at the letter?

18 A. (Reviewing.)

19 Okay.

20 Q. Do you know who -- you know, Lauren
21 uses what we call in the law the passive voice.
22 It is speculated, but it doesn't say who did
23 the speculation. Do you know who did the
24 speculation?

25 A. That he owned a company?

1 MAYNARD

2 Q. Yeah.

3 A. He told us he owned a company. He
4 gave us that information, Don gave us that
5 information.

6 Q. But why did she used the word
7 "speculated"?

8 A. I don't know.

9 Q. You don't know how much money that
10 company makes?

11 A. No.

12 Q. Do you know why -- withdrawn. Do
13 you know why you would want to see any e-mails
14 between Don and Bill Moore?

15 A. Why would I want to see e-mails?

16 Q. Yeah, why would you -- could you
17 think of any reason you would want to see
18 e-mails between Don and Bill Moore?

19 A. I don't know who Bill Moore is.

20 Q. Did Don have a cat that died?

21 A. Did he have a cat that died?

22 Q. Yes.

23 A. I believe he did.

24 Q. Did you see him crying at the drop
25 zone at any time?

1 MAYNARD

2 A. Did I personally see him crying?

3 Q. Yeah.

4 A. I don't believe so.

5 Q. Did anyone tell you that he cried?

6 A. I don't remember anybody telling me
7 that he cried. I know he was upset that his
8 cat died.

9 Q. Was he unable to do jumps for any
10 period of time because of the death of the cat?

11 A. I don't remember that.

12 Q. All right. This request for a
13 finding of misconduct was denied by
14 Unemployment; correct?

15 MR. ZABELL: Objection to the
16 mischaracterization of the document.

17 Q. I'm just asking if you know.

18 A. I don't know.

19 Q. Okay. Well, did Don get
20 unemployment?

21 A. I don't remember. I think he did.

22 Q. You're looking for people; is that
23 right?

24 MR. ZABELL: Objection to the form.

25 Q. You're looking for workers, aren't

1 MAYNARD

2 you?

3 A. We're always looking for workers.

4 Q. You're always looking for workers.

5 In fact, you put out two ads for workers, one
6 on Facebook and one on dropzone.com; is that
7 correct?

8 A. Correct.

9 Q. I'll show you what I've marked as
10 24?

11 MR. ZABELL: Thank you, Counselor.

12 (Exhibit R-24, posted ads, marked
13 for Identification.)

14 Q. How many -- are those ads that your
15 company has posted?

16 A. Yes.

17 Q. Seeking experienced skydivers?

18 A. Yes.

19 Q. Okay. How many do you need?

20 A. I like to get probably four to six
21 more tandem masters and a few more video guys,
22 a few ground guys.

23 Q. Okay. So Don -- how many video
24 guys?

25 A. I haven't crunched all the numbers,

1 MAYNARD

2 probably two or three more.

3 Q. All right. So you're looking for
4 between five and nine people who are
5 experienced jumpers; correct?

6 A. About that.

7 Q. Because the video guys also have to
8 go out in the parachute; correct?

9 A. Correct.

10 Q. Don is qualified for all of those
11 jobs; correct?

12 A. Correct.

13 Q. All right. Is Don eligible for
14 rehire this summer?

15 MR. ZABELL: Objection to the form
16 of the question.

17 Q. You can answer.

18 MR. ZABELL: Just yes or no.

19 THE WITNESS: Excuse me?

20 MR. ZABELL: Just answer yes or no.

21 A. No.

22 Q. Why not?

23 MR. ZABELL: Let's take a break.

24 MR. ANTOLLINO: No, no, no, hold
25 on. We are going to --

1 MAYNARD

2 MR. ZABELL: Step outside.

3 MR. ANTOLLINO: You have
4 interrupted the questioning. You're
5 coaching the witness and that's unfair.

6 THE VIDEOGRAPHER: Do you want me
7 to go off the record now?

8 MR. ANTOLLINO: Well, I have no
9 choice.

10 THE VIDEOGRAPHER: We are now off
11 the record at 5:16 p.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are now on
14 the record at 5:17 p.m.

15 MR. ANTOLLINO: Counsel, that was
16 completely inappropriate and I'm going to
17 ask for evidentiary sanctions because of
18 that.

19 MR. ZABELL: Counselor, look at me
20 when you speak to me, please. I am
21 telling you you are absolutely incorrect.
22 I started to get up to take a quick break
23 before you started asking your question.

24 MR. ANTOLLINO: Nonsense.

25 MR. ZABELL: You saw that I stood

1 MAYNARD

2 up and then you jammed out a question
3 while I had already was attempting to
4 take a break.

5 MR. ANTOLLINO: Nonsense. You went
6 out and coached your witness.

7 Q. Why is Don not eligible for rehire?

8 MR. ZABELL: Objection to the form.
9 You may answer.

10 A. He was let go for a customer
11 complaint and this was the second time it
12 happened. I believe in giving people a second
13 chance and he's had a second chance.

14 Q. Are there any other reasons?

15 A. No.

16 Q. All right. And would it be fair to
17 say you will never hire Don again?

18 MR. ZABELL: Objection to the form.
19 You can answer.

20 A. I never say never. Right now, two
21 strikes and -- I never say never though.

22 Q. Did you have a conversation with
23 your attorney outside?

24 MR. ZABELL: Objection.

25 Don't answer that question.

1 MAYNARD

2 Q. Just whether there was a
3 conversation?

4 MR. ZABELL: Don't answer that
5 question.

6 + MR. ANTOLLINO: Okay. We'll just
7 mark it for the ruling.

8 Q. How do you pay your workers?

9 A. Some people are W-2 and some people
10 are 1099 contract workers.

11 Q. Who is W-2 and who's a 1099?

12 A. Most -- well, half the -- half of
13 the video guys and half of the tandem guys have
14 chosen between the two. All the other
15 employees, the ground crew workers, the office
16 help and all of that, they're all W-2. There
17 are advantages, I guess, to being a 1099 that
18 the jumper guys like to take advantage of as
19 seasonal workers.

20 Q. Was Don a 1099 or a W-2?

21 A. I'm not sure.

22 Q. Are there any days where an
23 employee might be around the drop zone all day
24 long and not do any jumps?

25 A. What do you mean?

1 MAYNARD

2 Q. Well, how long is the work day at
3 the drop zone?

4 MR. ZABELL: Objection to the form.

5 You may answer.

6 A. On the weekends we expect everybody
7 to be there at 7:30 because we try to get
8 wheels up by 8 o'clock. On the weekdays we
9 expect the employees to be there at 9:30 to
10 have the wheels up by 10 o'clock.

11 Q. And would the end of the day be a
12 half hour before sundown or something like
13 that?

14 A. It would depend on the day and how
15 much business we have.

16 Q. All right. So are there any days
17 where jumpers arrive at the drop zone and stay
18 for the entire day until sundown and don't do
19 any jumps?

20 A. Do you mean employees?

21 Q. Yeah.

22 A. If we have a bad weather day, or we
23 might be on hold, but they -- they don't have
24 to be at the drop zone. They can go home.
25 They can do what they have to do, but they need

1 MAYNARD

2 to be available if there is -- if work is in.

3 Q. So they're on-call?

4 A. Correct.

5 MR. ZABELL: Objection to the form.

6 Q. All right. Is the cell reception
7 very good out there? Is the cell reception
8 good out there in Calverton?

9 MR. ZABELL: Objection.

10 A. Oh, cell, yes.

11 Q. Okay. There's not really much
12 around Drop Zone Long Island -- I'm sorry,
13 Skydive Long Island, is there in terms of, you
14 know, amenities, stores things like that?

15 MR. ZABELL: Objection to the form.

16 You may answer.

17 A. Yes, there are.

18 Q. All right. Well, what's within a
19 mile?

20 A. What's within a mile?

21 Q. Yeah.

22 A. There's a bagel place right north
23 of the airport on 25. There's a few stores
24 there.

25 Q. Well, isn't the runway itself two

1 MAYNARD

2 miles?

3 A. Yup.

4 Q. So, the drop zone is at least two
5 miles away from the bagel store; right?

6 A. When I said that place was a mile,
7 I meant from there to the airport. From the
8 entrance to the airport.

9 Q. Okay. So do you ever keep track of
10 the days when jumpers are not allowed to --
11 withdrawn.

12 Do you ever keep track of the days
13 when instructors spend the entire day at the
14 drop zone and don't get any jumps?

15 MR. ZABELL: Objection to the form.

16 You may answer.

17 A. We have records of days that we
18 don't jump, but no one is required. We don't
19 say you have to be here. You need to be
20 on-call, as you would say, and they have a
21 choice to go home or the Tanger Mall is not
22 that far away.

23 Q. So, how far can someone leave the
24 drop zone during the day and still be within
25 the company guidelines?

1 MAYNARD

2 MR. ZABELL: Objection to the form.

3 You may answer.

4 A. We like you to be within 20 to 30
5 minutes max.

6 MR. ZABELL: Counsel, you should
7 know that you are five minutes away from
8 your seven hours.

9 MR. ANTOLLINO: No, I'm not.

10 MR. ZABELL: No, you are. We're
11 leaving at 5:30.

12 MR. ANTOLLINO: Counsel, I'm not
13 done and I'm entitled to seven hours
14 without colloquy, okay, and without
15 breaks. So if you're going to leave then
16 we're going to have to make a motion to
17 continue the deposition and he's going to
18 have to come back.

19 MR. ZABELL: It seems like you're
20 wasting your time anyway, Counselor. Go
21 ahead, you have five minutes.

22 Q. Do you have a staff manual?

23 MR. ZABELL: Objection to the form.

24 You may answer.

25 A. You mean an employee handbook?

1 MAYNARD

2 Q. Yes.

3 A. Yes, we do.

4 Q. And how old is it?

5 A. A year and a half, a year. Fairly
6 new.

7 Q. Why did you write it?

8 A. My girlfriend, who is very business
9 minded, said I should have one.

10 + MR. ANTOLLINO: All right. I
11 call for the production of that. I'll
12 send you a follow-up letter.

13 MR. ZABELL: No.

14 Q. But you didn't have one when Don
15 was working at the drop zone; correct?

16 A. No, we did not.

17 Q. Does the employee manual instruct
18 employees not to provide any personal
19 information to the passengers?

20 A. I'm not sure.

21 Q. Does the employee manual say don't
22 mention to any employees if you're gay?

23 A. I'm not sure.

24 Q. Do you remember an occasion where
25 Don and some other staff members from Skydive

1 MAYNARD

2 Long Island went to Neptune's Bar and you were
3 there?

4 A. We have jumped in there, yes.

5 Q. Do you recall a time when Don
6 jumped in there with you?

7 A. Yes.

8 Q. Okay. And that was in 2010?

9 A. I'm not sure of the date, when it
10 was.

11 Q. Okay. Do you recall there being a
12 transgender person present?

13 A. A what?

14 Q. At Neptune's. Do you know what
15 transgender means?

16 A. I'm not too sure.

17 Q. Okay. A transgender person is a
18 person that has -- that either is biologically
19 a man and who either dresses, acts or performs
20 as another gender?

21 MR. ZABELL: I'm going to A, advise
22 you that that's incorrect, and, B, tell
23 you that you're under no obligation to
24 believe any representations he makes
25 because he is not under oath.

1 MAYNARD

2 Q. Okay. That's one way to describe
3 it a transgender person. Have you ever seen
4 anyone like at Neptune's?

5 A. I don't recall if I have.

6 Q. Okay.

7 MR. ZABELL: Counsel, it is now
8 5:30. If you represent that you can
9 finish within the next ten minutes, I
10 will gladly allow my client to sit for
11 another ten minutes. If you cannot, then
12 we are done for the day.

13 MR. ANTOLLINO: All right. If
14 you're leaving, and I'm not going to
15 represent that I'm done. I get seven
16 hours. If you insist on leaving then
17 we'll just have to continue the
18 deposition another time.

19 MR. ZABELL: Okay. I believe
20 you've used your seven hours. I say good
21 day, sir.

22 MR. ANTOLLINO: I haven't, but
23 that's okay. What time do you have for
24 the video?

25 THE VIDEOGRAPHER: We've gone on

1 MAYNARD

2 the record testimony five hours, 30
3 minutes and 16 seconds.

4 MR. ANTOLLINO: Does that sound
5 like seven hours to you, Counsel?

6 MR. ZABELL: You've used your seven
7 hours. We were invited to be here at 10
8 o'clock. You did not start on time. We
9 were here at 10 o'clock. This
10 deposition, from our position, started at
11 10 o'clock.

12 MR. ANTOLLINO: Well, even if you
13 count that 15 minutes of lateness, I'm
14 still well within my seven hours and I
15 get another hour, but we'll just have to
16 take it up to the judge like everything
17 else.

18 He has said that he's taking his
19 client, so I have no legal authority to
20 compel him and I have to go to the judge.

21 THE VIDEOGRAPHER: We are now off
22 the record at 5:28 p.m.

23 (Time noted: 5:28 p.m.)
24
25

A C K N O W L E D G M E N T

STATE OF NEW YORK)

:

COUNTY OF)

I, RAYMOND MAYNARD, hereby certify
that I have read the transcript of my testimony
taken under oath in my deposition of December
14, 2011; that the transcript is a true,
complete and correct record of my testimony,
and that the answers on the record as given by
me are true and correct.

RAYMOND MAYNARD

Signed and Subscribed to
before me, this day
of , 2011.

Notary Public, State of New York

C E R T I F I C A T E

STATE OF NEW YORK)

)

COUNTY OF NEW YORK)

I, SOPHIE NOLAN, a Notary Public within
and for the State of New York, do hereby
certify:

That RAYMOND MAYNARD, the witness whose
examination is hereinbefore set forth, was duly
sworn by me and that this transcript of such
examination is a true record of the testimony
given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 27th day of December, 2011.



SOPHIE NOLAN

ERRATA

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NAME OF CASE: Zarda vs. Altitude Express
DATE OF DEPOSITION: December 14, 2011
NAME OF WITNESS: RAYMOND MAYNARD

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Subscribed and sworn before me

this ____ day of _____, 20__.

(Notary Public)

My Commission Expires:

DONALD ZARDA VS
ALTITUDE EXPRESS

RAYMOND MAYNARD
December 14, 2011

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DONALD ZARDA VS.
ALTITUDE EXPRESS

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ORIGINAL

317

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----x
DONALD ZARDA,

4 Plaintiff,

5 -against-

6 ALTITUDE EXPRESS, ET ANO.,

7 Defendant,

8 Civil Action No.: 10-9334
9 -----x

10 One Corporate Drive
11 Bohemia, New York

12 November 16, 2012
1:21 p.m.

13
14 Continued Videotaped Deposition
15 of RAYMOND MAYNARD, pursuant to Notice, before
16 Jennifer Fuchs, a Notary Public of the State
17 of New York.

18

19

20

21

22

23 ELLEN GRAUER COURT REPORTING CO. LLC

24 126 East 56th Street, Fifth Floor

New York, New York 10022

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25 REF: 102023

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24 JOSE RIVERA, Legal Videographer

25

1 ----- I N D E X -----

2 WITNESS EXAMINATION BY PAGE
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6 ----- E X H I B I T S -----

7 EXHIBIT DESCRIPTION FOR I.D.
8 Exhibit 30 Photograph 324
9 Exhibit 31 Errata Sheet 331
10 Exhibit 32 Document entitled Ripoff
11 Report 336
12 Exhibit 33 Skydive Long Island Get
13 Laid Luau document 340
14 Exhibit 34 E-mail 349
15 Exhibit 35 Affidavit of Ray Maynard 350
16 Exhibit 36 E-mail 353

17

18

19 (Exhibits retained by counsel)

20

21

22

23

24

25

1 THE VIDEOGRAPHER: The time is 1:21
2 p.m., November 16, 2012, and this is tape
3 number one, volume two in the continued
4 videotaped deposition of Raymond Maynard.

5 MR. ANTOLLINO: Swear in the
6 witness.

7 MR. ZABELL: It is 1:21. Please
8 proceed.

9 R A Y M O N D M A Y N A R D, resumed as a
10 witness, having been duly resworn by a
11 Notary Public, was examined and testified
12 further as follows:

13

14 EXAMINATION BY

15 MR. ANTOLLINO (Cont'd):

16 Q. Mr. Maynard, we've met before.

17 Still photos can be made in a tandem
18 jump; is that correct?

19 A. That's correct.

20 Q. And Mr. Kengle and Ms. Orelana had
21 still photos in addition to video, correct?

22 A. I guess. I'm not sure.

23 Q. Well, let me just --

24 A. That's normal.

25 Q. It's normal, so it comes

1 MAYNARD

2 automatically or...

3 Well, anyway, let me just show you
4 what I got from Mr. Kengle. There's a package of
5 a hundred or so photos.

6 These photos are taken automatically
7 from the photographer's camera; is that correct
8 (handing)? How are they taken?

9 MR. ZABELL: I will object to the
10 multiple questions you've asked of him.

11 MR. ANTOLLINO: Withdrawn.

12 Q. How are the pictures taken?

13 A. A separate camera from the video
14 camera is attached to the helmet, and it's a
15 digital camera, and the videographer has a device
16 that's either triggered by his hand, or there's
17 other ones now that they actually have in their
18 mouth, they're called bite switches, and there's
19 also tongue switches, so they're able to control
20 their free fall and everything with their hands.
21 And when the time is right for a photo, they can
22 then chomp down on the bite switch and make the
23 camera take a picture.

24 Q. Is there any capacity for the camera
25 to keep going on automatically as time goes on

1 MAYNARD

2 without the switch?

3 MR. ZABELL: Objection to the form.

4 You may answer.

5 A. I've never jumped with one of those
6 cameras, so I'm not sure if that could just
7 automatically go on.

8 Q. Do these pictures appear to be
9 pictures from the -- if you look through them,
10 you can go through them by pressing the down
11 button, do these pictures appear to be the
12 pictures of Mr. Kengle and Ms. Orelana?

13 A. Looking from here, I don't know who
14 is jumping here.

15 MR. ZABELL: I would suggest you
16 look through all of them before answering.

17 THE WITNESS: Okay.

18 Q. Well, let me ask you this.

19 Do you recognize Ms. Orelana; have
20 you ever met her?

21 A. Yes.

22 Q. When did you meet her?

23 A. On the day of the jump.

24 Q. So you recognize her in these
25 photos?

1 MAYNARD

2 A. I don't know if I could pick her out
3 of a lineup, but.

4 Q. You don't know if you could pick her
5 out of a lineup?

6 A. No.

7 Q. You met her on the day of the jump,
8 but you can't recognize her.

9 A. Yeah.

10 Q. I am just going to ask you to
11 scroll -- withdrawn.

12 Could you scroll down these pictures
13 and pick out any pictures that you believe that
14 Mrs. Orelana is not having a good time on this
15 jump?

16 MR. ZABELL: I am going to object to
17 the form of the question.

18 You may answer, if you can.

19 (Witness perusing photographs.)

20 Q. I think Mr. Kengle's pictures start
21 with this one, 7927 (indicating).

22 Did you see any pictures where you
23 saw evidence Ms. Orelana was not having a good
24 time?

25 A. No.

1 MAYNARD

2 Q. Do you want to go through the rest
3 of Mr. Kengle's pictures to see any evidence of
4 him not having a good time or Ms. Orelana, where
5 she's pictured in there too?

6 MR. ZABELL: Objection to the form.

7 You may answer.

8 (Witness perusing photographs.)

9 A. I don't know normal facial
10 expressions and that.

11 Q. Wait. So you think that's evidence
12 he's not having a good time?

13 A. No. I don't know.

14 MR. ZABELL: Objection to the form.

15 You may answer.

16 A. I don't know.

17 MR. ZABELL: Counsel, I will advise
18 you to allow the deponent to finish
19 answering the question before asking your
20 next question.

21 MR. ANTOLLINO: I did, okay.

22 Q. Continue.

23 (Witness perusing photographs.)

24 Q. When you can't go down any further,
25 let me know.

1 MAYNARD

2 That's the last one. Didn't it look
3 like he was having a good time?

4 MR. ZABELL: Objection to the form.

5 A. I don't understand what you mean.
6 Does it look like he was having a good time?

7 Q. Doesn't it seem like he was having a
8 fantastic time?

9 MR. ZABELL: Objection to the form.

10 A. I saw a normal skydive. Normally
11 people have a good time when they skydive.

12 Q. And it looked like he was having a
13 good time when he was skydiving, correct?

14 MR. ZABELL: Objection; asked and
15 answered.

16 A. You could say that.

17 MR. ANTOLLINO: We have been marking
18 these exhibits as R and a number. We left
19 off at R-20 something, so I will mark this
20 as R-30, and I will give you a copy to
21 share with your counsel.

22 (Exhibit R-30, Photograph, marked
23 for identification.)

24 Q. Do you recognize that picture?

25 A. Well, it's a tandem that's being

1 MAYNARD

2 done over eastern Long Island.

3 Q. Do you recognize any of the people
4 in the picture?

5 A. I don't recognize the customer.

6 Q. Who is the tandem instructor?

7 A. Well, I couldn't say for certain,
8 but I believe it might be Bobby Swain.

9 Q. What is he doing?

10 A. He's acting like he's asleep.

11 Q. Why?

12 A. For the photo shoot.

13 Q. Why would he do that for the photo
14 shoot?

15 A. Almost every single tandem
16 instructor does that exact photo.

17 Q. That exact one?

18 A. Um-hum.

19 Q. It's a goofy type of atmosphere
20 where you try and have fun.

21 MR. ZABELL: I am going to object to
22 the form.

23 MR. ANTOLLINO: Question mark.

24 MR. ZABELL: You may answer.

25 A. No. I'm saying that I've seen

1 MAYNARD

2 multiple tandem instructors do that on film.

3 Q. For a laugh, correct?

4 MR. ZABELL: Objection to the form.

5 You may answer.

6 A. I didn't ask them why they did it.

7 Q. Do you encourage your tandem
8 instructors to take naps on your customers?

9 A. I didn't say that.

10 Q. Well, do you discourage it?

11 A. They're doing something for a photo
12 op.

13 Q. Okay. Why are they doing that for a
14 photo op; why is he taking a nap on her for a
15 photo op?

16 A. He's --

17 MR. ANTOLLINO: Wait for me to
18 finish asking the question.

19 MR. ZABELL: You asked two.

20 MR. ANTOLLINO: I asked one.

21 MR. ZABELL: I object to the form of
22 the question.

23 MR. ANTOLLINO: Withdrawn. I'll ask
24 it again.

25 Q. Why is he taking a nap on her for

1 MAYNARD

2 the photo op?

3 A. He's not taking a nap.

4 Q. He's awake?

5 A. Of course he's awake.

6 Q. Is he pretending to take a nap?

7 A. It looks like that way.

8 Q. Okay. Why is he pretending to take
9 a nap for the photo op?

10 A. That's something that has started to
11 be done, and other people liked it.

12 Q. Who liked it?

13 A. There are other customers that see
14 the videotapes after the jump.

15 Q. And they like it when their
16 instructor pretends to take a nap on top of them?

17 A. Yeah.

18 Q. Have they told you that?

19 A. It's obvious when they're watching
20 the videotape that they think it's pretty funny.

21 Q. Okay. Do you know that that's on
22 your Facebook page.

23 A. I'm not aware.

24 Q. All right. Thank you. I'm done
25 with that.

1 MAYNARD

2 All right. Did you read the first
3 portion of your deposition?

4 A. Not recently.

5 Q. Well, did you read it?

6 A. Yes.

7 Q. And were you aware that you had 30
8 days to review and make corrections in your
9 deposition transcript?

10 A. Yes.

11 Q. Were you aware that after 30 days
12 there were many changes that were made?

13 A. I guess.

14 Q. Why did you make those changes?

15 A. I thought that's what it was given
16 to me for.

17 Q. How did you decide to make these
18 changes?

19 A. Because I read what the deposition
20 said, and then I thought that I had clear mind
21 after the time to make my changes.

22 Q. You had a clear mind, so are you
23 saying you weren't having a clear mind at the day
24 of your first deposition?

25 A. Sometimes probably not.

1 MAYNARD

2 Q. Why not; were you on any
3 medications?

4 A. No.

5 Q. Are you on any medications today
6 that prevent you from having a clear mind?

7 A. No.

8 Q. Do you have a clear mind today?

9 A. Yes.

10 Q. At what point in the deposition on
11 the first date did you have a clear mind?

12 A. I don't know. I don't remember.

13 Q. What was it about your testimony;
14 can you recall what changes you made and why?

15 MR. ZABELL: Objection to the form.

16 You may answer.

17 A. No.

18 Q. Did someone -- go ahead. Are you
19 finished? You said "No," and then I thought you
20 were done, but you said something else. All
21 right.

22 Did anyone tell you to make any
23 changes?

24 A. No.

25 MR. ANTOLLINO: I am going to mark

1 MAYNARD

2 this as R-31.

3 (Exhibit R-31, Errata Sheet, marked
4 for identification.)

5 Q. Are those the changes you made about
6 80 days after the deposition was tendered to your
7 attorney?

8 MR. ZABELL: Take the opportunity to
9 review the document.

10 A. I need my glasses.

11 MR. ANTOLLINO: Mr. Zabell, all
12 right. The judge did warn you not to make
13 this prolonged, and already you've done
14 that on a couple of occasions.

15 You didn't tell me the videographer
16 was here. You brought your client in late,
17 all right, and you're making sure that your
18 client takes as much time as possible to
19 review the documents. I only have an hour,
20 as you know.

21 MR. ZABELL: Are you finished,
22 Counselor?

23 MR. ANTOLLINO: Yes.

24 MR. ZABELL: Review the document,
25 Ray.

1 MAYNARD

2 THE WITNESS: So I can't have my
3 glasses?

4 Q. All right. We are going to put that
5 aside if you can't read without your glasses. Do
6 you have them with you?

7 A. Yeah.

8 Q. Okay. How long will it take you to
9 get them?

10 A. A minute.

11 MR. ANTOLLINO: Okay.

12 THE VIDEOGRAPHER: Off the record?

13 MR. ZABELL: No.

14 (Whereupon, the witness leaves the
15 deposition room.)

16 MR. ANTOLLINO: We're not stopping
17 the clock?

18 MR. ZABELL: No.

19 MR. ANTOLLINO: All right. We're
20 going to call the judge then. We'll
21 eventually call the judge. The judge
22 warned you.

23 (Whereupon, the witness enters the
24 deposition room.)

25 THE WITNESS: Okay.

1 MAYNARD

2 Q. Okay. Are these the changes you
3 made about 80 days after your deposition was
4 tendered?

5 A. Yes.

6 Q. Okay. It seems to be a lot of --
7 you put -- you changed nos to maybes and
8 probablys to maybes, yeses to question marks, and
9 the reason for your changes is that no one
10 complained, complain and complain is mentioned on
11 this document; would you say that to be true?

12 MR. ZABELL: I will object to the
13 form of the question.

14 MR. ANTOLLINO: You can answer.

15 MR. ZABELL: You may answer.

16 A. After reading the deposition, this
17 is what I wrote in.

18 Q. Yeah, I know. I'm just asking you
19 if it appears that the word "complain" appears
20 about 10 times?

21 A. Yes.

22 Q. What is it about a complaint that
23 made you want to change portions of the
24 deposition?

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. I don't understand your question.

4 Q. Well, I'm trying to understand why
5 "complain" is such a major part of this errata
6 sheet, this exhibit.

7 MR. ZABELL: That's not a question.

8 A. Without seeing that statement from
9 me, I don't know how I could answer that.

10 Q. Okay, fair enough.

11 If someone complained -- is any
12 complaint grounds for termination?

13 MR. ZABELL: Objection to the form.

14 You may answer.

15 MR. ANTOLLINO: You can put that
16 away. We're done with that now.

17 THE WITNESS: Okay.

18 A. Is any complaint grounds?

19 Q. Yes.

20 A. Could you specify something?

21 Q. The question is is any complaint a
22 ground for termination, any complaint by a
23 customer ground for termination?

24 MR. ZABELL: Objection to the form
25 of the multiple question.

1 MAYNARD

2 MR. ANTOLLINO: Withdrawn,
3 withdrawn.

4 Q. Is any complaint by a customer
5 grounds for termination?

6 A. What kind of complaint?

7 Q. Any.

8 A. Any. Broad scope of any kind of
9 complaint about anything for the day?

10 Q. Yes, exactly.

11 A. No.

12 MR. ZABELL: Counselor, could I have
13 that copy of the exhibit, please?

14 MR. ANTOLLINO: Yes. We have
15 copies. Don't worry.

16 Q. We talked at your first deposition
17 about a complaint that was on the internet and
18 that was responded to, and that you believed that
19 it was written by an owner of a competing drop
20 zone. Do you remember that?

21 A. There was something out on the
22 internet years ago I remember.

23 Q. Yes. And you responded to that; is
24 that correct?

25 A. I believe I did.

1 MAYNARD

2 MR. ANTOLLINO: Okay. I want to
3 show you what we will mark as R-32.

4 (Exhibit R-32, Document entitled
5 Ripoff Report, marked for identification.)

6 Q. I want you to look through that.
7 I'm not asking you to read the whole thing, but
8 to look at it and see if that appears to be the
9 complaint that you talked about at your
10 deposition.

11 MR. ZABELL: Counselor, do you have
12 a copy for me?

13 MR. ANTOLLINO: I have a copy to
14 give you later, but while I question him,
15 I'd like to have it in front of me.

16 A. Even this may seem like it's a
17 complaint. To me this was somebody trying to
18 damage my reputation, so I don't believe -- no
19 one would even come forward and say who they
20 were. So anybody that wants to stand there
21 anonymously and say things, my feeling is, as I
22 said in here, if these things actually happened
23 and somebody was doing these things to their
24 friends at the time, if it really happened, they
25 would have said something at the time.

1 MAYNARD

2 Q. Okay. And that's what you wrote in
3 the updates and rebuttals.

4 When you found out about this, the
5 update and rebuttal number one says, "Owner of
6 company," quote, "Nothing but lies from a
7 skydiver with an agenda. Author, Ray, drop zone
8 owner." Do you see that?

9 MR. ZABELL: Objection to the form.

10 A. No. Where is that?

11 Q. In the middle of page 2, updates and
12 rebuttals.

13 A. Okay.

14 Q. You see that there? It say number
15 one, company, quote, "Nothing but lies from a
16 skydiver with an agenda." You wrote that,
17 correct?

18 A. Yes, I did.

19 Q. Okay. It continues on to the next
20 page, correct, and in the middle of the page it
21 says, "Thank you truthfully RM." Those are your
22 initials, correct?

23 A. Yes.

24 Q. And DZO means what?

25 A. Drop zone owner.

1 MAYNARD

2 Q. And you're the drop zone owner,
3 correct?

4 A. Yes, I am.

5 Q. Okay. Do you know who wrote the
6 other responses? The next one is the skydiver
7 chick from Williston Park. Do you know who wrote
8 that?

9 A. No, I do not.

10 Q. Did Lauren Callanan write any of
11 these responses, or did you direct her to?

12 A. I did not direct anybody to write
13 anything.

14 MR. ANTOLLINO: Here is your copy,
15 Counsel (handing).

16 Q. What happened to Lauren; why isn't
17 she working for you anymore?

18 A. Things change.

19 Q. Did she resign, or did you fire her?

20 A. It's an at-will business, and I told
21 her that things just weren't working out.

22 Q. So you fired her?

23 A. I let her go.

24 Q. Was there a reason why?

25 A. We're an at-will business, and we

1 MAYNARD

2 were taking a different path.

3 Q. Okay. So you just -- okay. Was
4 there any particular reason, or there was no
5 reason?

6 MR. ZABELL: Objection to the form.

7 Q. I know it's an at-will business. I
8 understand that.

9 MR. ZABELL: Counselor, are you
10 withdrawing your previous question?

11 MR. ANTOLLINO: No, I'm not.

12 Q. I'm just asking was there any
13 particular reason you let her go; did you believe
14 her performance was not up to standards, for
15 example?

16 MR. ZABELL: I am objecting to the
17 form of the multiple questions.

18 You may pick one and provide an
19 answer.

20 A. There was a change in direction, and
21 it wasn't going to work anymore.

22 Q. Why?

23 A. Because there was a change in
24 direction.

25 Q. What was the change in direction?

1 MAYNARD

2 A. We were going more corporate, things
3 were changing, other people were coming in, and
4 it was time that -- we weren't seeing -- things
5 were not going to be the way -- just it was time
6 for her to go.

7 Q. Why did Lauren not fit into the new
8 corporate culture?

9 MR. ZABELL: Object to the form.

10 You may answer.

11 A. Because it was going to be
12 different.

13 Q. Okay. Do you remember we talked
14 about at the first part of the deposition Skydive
15 Long Island Get Laid Luau?

16 A. Yep.

17 MR. ANTOLLINO: All right. Let's
18 just mark this as R-33.

19 (Exhibit R-33, Skydive Long Island
20 Get Laid Luau document, marked for
21 identification.)

22 Q. You recognize Jordan Miles, correct?

23 A. Yes, I know Jordan Miles.

24 Q. Does he still work for you?

25 A. Actually, he's moving on to another

1 MAYNARD

2 job in Denver, and he's going active, actually.

3 I believe this week he's being deployed.

4 Q. Did you fire him last summer; did
5 he -- withdrawn. Did he work for you last
6 summer?

7 A. Yes.

8 Q. Did you look into whether or not
9 this was grounds for termination, this "pulling
10 your pork" reference and the "getting laid luau"?

11 A. Well, they're talking about pulled
12 pork sandwich, and they're referring to getting
13 leis for the luau.

14 Q. How is "getting laid" spelled?
15 "Getting laid" is spelled L-A-I-D, correct, in
16 that post?

17 A. Yes.

18 Q. And "getting laid" means having
19 intercourse in the way that it is spelled that
20 way, correct?

21 A. That's your interpretation.

22 Q. What's your interpretation?

23 A. My interpretation is we were having
24 a luau. Everybody was going to get a lei.

25 Q. And do you know how lei is spelled?

1 MAYNARD

2 MR. ZABELL: Objection; asked and
3 answered.

4 You can answer it again.

5 A. I don't know, L-E-Y.

6 Q. It's a double entendre that he's
7 making there, getting a lei on his body, but he's
8 spelling it like having intercourse, correct?

9 MR. ZABELL: Objection to the form.
10 You may answer.

11 A. I don't know for a fact that that
12 means intercourse, and that is not my
13 interpretation of that.

14 Q. What about "pulling your pork"?

15 A. They had pulled pork sandwiches.

16 Q. All right. And is "pulling your
17 pork" a double entendre, or he was just stating
18 exactly; he was referring to pulled pork
19 sandwiches?

20 A. This was being referred to pulled
21 pork sandwiches.

22 Q. All right. Can I see it for a
23 second?

24 (Witness handing.)

25 Q. When someone eats a pulled pork

1 MAYNARD

2 sandwich, does someone actually pull the pork, or
3 is that the job of the cook?

4 MR. ZABELL: Objection.

5 You can answer.

6 A. I don't know.

7 Q. How do you make pulled pork?

8 A. I've never made pulled pork.

9 Q. All right. When you have an
10 unemployment claim filed against you, are there
11 any economic consequences that result from that
12 to you?

13 A. I believe how the unemployment
14 insurance works, that I pay a premium for that
15 insurance, and I'm not sure -- I believe that if
16 there are multiple claims, that possibly my
17 premium goes up.

18 Q. I see. So there's a chance that if
19 someone has multiple claims or, rather, an
20 employer has multiple claims like you, that you
21 might have to pay more money?

22 A. I believe that's how it works.

23 Q. Okay. And is there a way for you to
24 prevent a unemployment claim from being approved?

25 MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. When an unemployment claim is put
4 in, we have a -- a letter is sent to us, which I
5 read. And if we don't have anything to dispute
6 it, it's not answered. If we believe that that
7 person is working somewhere else, then we -- it's
8 our responsibility to send that information to
9 them.

10 Q. Are there any other grounds upon
11 which an unemployment claim can be denied?

12 A. Not that I know of.

13 Q. Did you know that if an employee is
14 fired for misconduct, he or she is not entitled
15 to unemployment benefits?

16 MR. ZABELL: Objection to the form.

17 A. That's probably part of the rules.

18 Q. Is that what your understanding of
19 the rules are?

20 A. I have not read them lately, but I
21 would believe they might be.

22 Q. Okay. Well, you actually accused
23 Don Zarda of misconduct when he put in his
24 unemployment claim, correct?

25 A. Well, Lauren wrote that letter.

1 MAYNARD

2 Q. She wrote it at your direction,
3 correct?

4 A. Yes.

5 Q. So let's mark this -- we've already
6 marked this as R-26. It's already been marked.

7 Lauren wrote this at your direction,
8 and you approved it, correct?

9 A. Yes.

10 Q. And you accused Don of misconduct,
11 correct?

12 A. I'd like to see the letter.

13 Q. Sure (handing).

14 If you look down to the fourth
15 paragraph, I think you will find it there.

16 (Witness perusing document.)

17 Q. The question is there's an
18 accusation of misconduct in that letter, correct?

19 A. For believed misconduct.

20 Q. And the misconduct was sharing
21 personal information, correct?

22 A. Received complaints from a customer,
23 yes.

24 Q. Okay. Thank you.

25 You have insurance to pay for this

MAYNARD

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case?

A. No.

Q. So you're paying it all out of pocket, your defense?

A. That's correct.

Q. And how much have you paid so far?

A. I don't know the exact amount.

Q. Is it over \$200,000?

A. I hope not.

MR. ZABELL: Objection.

Q. What?

MR. ZABELL: You can answer.

A. I hope not.

Q. Is it over a hundred thousand dollars?

A. I'm not really sure.

Q. Is it over \$50,000?

A. Most likely.

Q. Do you have any openings for work at the new drop zone?

A. Not right now.

Q. So you've hired everyone for the summer?

MR. ZABELL: Objection to the form.

1 MAYNARD

2 You may answer.

3 A. The season is over this weekend.

4 Q. Well, okay. I guess I'm thinking
5 into next summer.

6 A. Oh.

7 Q. Do you have any openings for this
8 summer?

9 A. There probably will be. I haven't
10 even explored that. I put some things out.
11 There most likely will be.

12 Q. What were the circumstances of Rich
13 Winstock's leaving the Skydive Long Island?

14 A. I wish I had that answer.

15 Q. He quit.

16 A. He did.

17 Q. You wish he still worked for you?

18 A. Yes.

19 Q. He was a good chief instructor.

20 A. Yes, he was.

21 Q. Did he say anything about why he was
22 leaving?

23 A. My last conversation with Winstock
24 when we stood eye to eye and talked about a lot
25 of the changes that were going on at the drop

1 MAYNARD

2 zone, and my last conversation with him was Rich,
3 you know, I want you to stay on, I need your help
4 here, and I really don't want you to leave, and
5 he said, I'm not going to leave. He says, I'm
6 leaving today to go to my daughter's softball
7 game, we'll talk during the week, and I will see
8 you next weekend, and I never saw him again.

9 Q. So he didn't even send in a letter
10 of --

11 A. Yeah. He sent me an e-mail stating
12 that he decided not to come back, and I asked him
13 to come back, and I never heard back from him
14 again.

15 Q. When he said I decided not to come
16 back, did he say anything else as to why?

17 A. He had some complaints about my
18 girlfriend.

19 Q. Is she working at the drop zone now?

20 A. She was never an employee there.

21 Q. Is she working there now?

22 A. She never was an employee there.

23 Q. Is she at the drop zone a lot?

24 A. Yes. She helped me out.

25 Q. Does she boss people around, maybe

1 MAYNARD

2 get in the way?

3 A. No.

4 MR. ZABELL: Objection to the
5 multiple question.

6 Q. So you think he quit because of your
7 girlfriend?

8 A. I don't know why he quit.

9 Q. Were you aware that he e-mailed Don
10 and said that he just couldn't take you anymore?

11 MR. ZABELL: I'm going to advise you
12 that if your answer to that question
13 requires you to reveal the content of
14 conversations between yourself and your
15 attorney, you need not answer that
16 question.

17 MR. ANTOLLINO: All right. I'll
18 hand you this. I'll hand you this.

19 Let's mark this as R-34.

20 (Exhibit R-34, E-mail, marked for
21 identification.)

22 MR. ZABELL: Have you withdrawn the
23 previous question?

24 MR. ANTOLLINO: Yes.

25 Q. Have you seen that before?

1 MAYNARD

2 A. No.

3 Q. What's your reaction to that?

4 A. My reaction to this is that -- I
5 would say two months before he left he was not
6 the same person that I knew. He hardly ever
7 talked to me. He walked around like he was very
8 unhappy all the time, and it was very noticeable,
9 even not just to myself but the other staff
10 members, and I never found out what was going on.
11 I had my thoughts, because there was a lot of
12 changes made at the drop zone, and a lot of
13 people didn't like it.

14 Q. But yet you wanted him --

15 A. I did. I wanted him to stay.

16 MR. ANTOLLINO: All right. Let's
17 mark this next as R-35.

18 (Exhibit R-35, Affidavit of Ray
19 Maynard, marked for identification.)

20 THE WITNESS: Could I have a copy of
21 this?

22 MR. ANTOLLINO: I gave one to your
23 lawyer. This is the original.

24 Q. Okay. Do you recognize this?

25 A. Yes.

MAYNARD

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Q. All right. Where did you sign this?

A. Excuse me?

Q. Where did you sign this?

A. Where did I sign it?

Q. What location, yeah.

A. I signed it here.

Q. All right. So you came to
Mr. Zabell's office?

A. Yes, I did.

Q. Did you write this affidavit
yourself?

A. Did I write this myself
(indicating)?

Q. Yeah.

A. No.

Q. Was it presented to you for
signature?

A. Yes.

Q. All right. And number 1 says,
quote, "An electronic search for electronic
information regarding Donald Zarda was performed
at my direction by Lauren Callanan at Altitude
Express, Inc. d/b/a Skydive Long Island." Do you
see that?

1 MAYNARD

2 A. Yes.

3 Q. Do you know what she did?

4 MR. ZABELL: Objection to the form.

5 You may answer.

6 A. Okay. I asked her to go through any
7 e-mails, any contacts, any kind of information
8 that possibly would be in the computers and print
9 it out and give it to me.

10 Q. Okay. But you don't know what she
11 did exactly, do you?

12 A. Well, I asked her to go through
13 e-mails and anything pertaining to Don at all
14 that was in the computers.

15 Q. Okay. You asked her to do that, but
16 do you know what she did?

17 MR. ZABELL: Objection; asked and
18 answered.

19 A. I asked her to do that.

20 Q. But do you --

21 A. I was not -- I -- no.

22 Q. You don't know what she did?

23 A. No, I don't.

24 MR. ZABELL: Objection; asked and
25 answered.

1 MAYNARD

2 MR. ANTOLLINO: All right. We've
3 obtained, or, I should say, Don produced
4 this to me. We will mark this as R number
5 next.

6 (Exhibit R-36, E-mail, marked for
7 identification.)

8 MR. ZABELL: Do you have a copy for
9 me?

10 MR. ANTOLLINO: Yes (handing).

11 Q. Don produced this to me, and we
12 produced it to Mr. Zabell.

13 Do you know why Lauren didn't find
14 this?

15 A. I've never seen this.

16 Q. All right. This was something that
17 was e-mailed to your drop zone; is that correct?

18 A. Well, it has our e-mail address on
19 it.

20 Q. Okay. And the word "Don" does
21 appear in there, correct?

22 A. Yes, it does.

23 Q. And you don't know why Lauren didn't
24 produce that to us, correct?

25 A. No, I do not.

1 MAYNARD

2 Q. All right. I want to show you -- I
3 am going to play your video. Do you have the
4 numbers? Your safety video. You know the safety
5 video, right?

6 A. Yes, I do.

7 Q. All right.

8 That's you, correct?

9 A. Yes.

10 MR. ZABELL: All right.

11 (Playing video.)

12 (Discussion off the record.)

13 MR. ZABELL: I would object. Any
14 transcription that gets done is what is
15 done here. There's no transcription that's
16 added at the conclusion of this deposition.

17 MR. ANTOLLINO: Try your best, and
18 I'll give it to you later.

19 Q. I want you to listen to this, okay.
20 You want to start over back at the beginning, or
21 should we just continue?

22 A. Sure.

23 Q. We start at 10 seconds. There we
24 go.

25 (The following portion is a

1 MAYNARD

2 transcription from a video.)

3 MR. MAYNARD: "My name is Ray
4 Maynard. I am the owner of Skydive Long
5 Island. Thank you for choosing our drop
6 zone to make your first skydive.

7 That release you just signed is a
8 very important legal document, and I am
9 going to explain why.

10 Skydiving is a dangerous sport. You
11 can be injured skydiving or even be killed.
12 When you sign that release, you agree to
13 various things. I am going to hit some of
14 the highlights of what you agree to.

15 You agree to release Skydive Long
16 Island and anyone remotely connected with
17 your skydive from liability if something
18 happens to you. You agree to release them
19 even if it happens as a result of their
20 negligence. You entered into that
21 agreement not only on behalf of yourself,
22 but on behalf of your family and your
23 estate.

24 You further agree to reimburse us
25 for any expenses in the event anyone does

1 MAYNARD

2 file a lawsuit on your behalf. You agree
3 to reimburse us for any judgment that
4 someone may get. That release also
5 contains an assumption of risk. You have
6 assumed the entire risk of the skydive.

7 Another aspect of the release is the
8 limitation of warranty. Equipment that you
9 use is warrantied only to the extent it has
10 been used before. There is no warranty of
11 merchantability or fitness for a particular
12 purpose.

13 That document you signed is a very
14 important legal document. It is essential
15 that you understand it. If you want to
16 discuss it with your attorney, feel free to
17 do that. You can come back at a later time
18 and make your skydive. I want to make sure
19 you understand, you don't have to make the
20 skydive. You don't have to sign the
21 release. The bottom line on the release is
22 that you agree not to sue us, and if you do
23 sue us, you can't win.

24 Now having gotten that out of the
25 way, let's get on with the training so we

1 MAYNARD

2 can go out and make the skydive."

3 Q. Okay. So is that -- that was a
4 video that you showed customers?

5 A. Correct.

6 Q. All right. And you believe that
7 everything in there is true, correct?

8 A. I don't understand.

9 Q. That someone should not -- has to
10 sign the release before they go on; everything in
11 there applies to your drop zone, correct?

12 MR. ZABELL: I object to the form.

13 MR. ANTOLLINO: Withdrawn, and I
14 will just ask it again.

15 Q. Everything that you said in there
16 applies to a person who is about to go on to a
17 tandem jump, correct?

18 A. Correct.

19 Q. All right. There's another guy in
20 another video with kind of a long beard. You're
21 aware of him, right?

22 MR. ZABELL: Objection to the form.

23 Q. Do you recognize this guy
24 (indicating)?

25 A. That's Bill Booth.

1 MAYNARD

2 Q. All right. So he's a big guy,
3 hotshot in the tandem jumping world; is that a
4 fair characterization?

5 MR. ZABELL: Objection to the form
6 of the question.

7 You may answer.

8 A. Bill Booth is the founder of the
9 Relative Workshop.

10 Q. Do you believe he's an expert?

11 MR. ZABELL: Objection to the form.

12 Q. Do you believe he's an expert in
13 this field?

14 MR. ZABELL: Are you withdrawing the
15 previous question?

16 MR. ANTOLLINO: Yes.

17 MR. ZABELL: I'm going to object to
18 the form of this question.

19 You may answer.

20 A. Do I believe he's an expert?

21 Q. Yes.

22 A. With what?

23 Q. In the field of skydiving.

24 A. He's a well -- he's a well-admired
25 skydiver. He has a couple of patents. Some

1 MAYNARD

2 people might think he's an expert.

3 Q. Do you?

4 A. Based on what he's done and the
5 things that he's manufactured, I guess.

6 Q. Okay. I am going to play a portion
7 of his safety video to you.

8 (The following portion is a
9 transcription from a video.)

10 MR. BOOTH: "Inherent risk you will
11 be taking by making a tandem parachute
12 jump. There is not now, nor will there
13 ever be a perfect parachute, a perfect
14 airplane, a perfect pilot, a perfect
15 parachute instructor or, for that matter, a
16 perfect student. Each of these systems and
17 people, all necessary for you to make a
18 tandem parachute jump, is subject to
19 malfunction or to human error."

20 Q. Do you believe that to be true?

21 A. It's not a perfect world.

22 Q. Do you believe that to be true is
23 the question, what he just said?

24 MR. ZABELL: Objection to the form.

25 A. I guess so.

1 MAYNARD

2 MR. ANTOLLINO: All right. Let me
3 just go over my notes. I think we're
4 almost done.

5 THE VIDEOGRAPHER: Off the record?

6 MR. ANTOLLINO: Off the record.

7 MR. ZABELL: There is no off the
8 record.

9 MR. ANTOLLINO: All right, fine.

10 Q. Oh, yes. Since you do not believe
11 what is contained in R-32, the Ripoff Report, is
12 a legitimate complaint, you didn't investigate
13 this particular allegation; would that be fair to
14 say?

15 A. I responded to it. How could I
16 possibly investigate it?

17 Q. Well, I mean, could you ask around
18 at the drop zone if anyone had complained about
19 these allegations?

20 A. That particular propaganda, for lack
21 of a better word, was discussed in length by most
22 of the staff and all agreed that someone is just
23 trying to discredit Skydive Long Island.

24 Q. Why do you think they wanted to do
25 that?

1 MAYNARD

2 A. Competition.

3 Q. Has your divorce been finalized?

4 MR. ZABELL: You may answer.

5 A. Yes.

6 Q. Are you married now?

7 A. No.

8 MR. ANTOLLINO: Okay. Thank you
9 very much.

10 MR. ZABELL: You may leave, walk
11 out.

12 MR. ANTOLLINO: That's it.

13 THE VIDEOGRAPHER: The time is 2:08
14 p.m., November 16, 2012, and this completes
15 today's deposition of Raymond Maynard.

16 (Time noted: 2:08 p.m.)
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A C K N O W L E D G M E N T

STATE OF)
) ss.:
COUNTY OF)

I, RAYMOND MAYNARD, hereby
certify that I have read the transcript of my
testimony taken under oath in my deposition;
that the transcript is a true, complete and
correct record of my testimony, and that the
answers on the record as given by me are true
and correct.

RAYMOND MAYNARD

Signed and subscribed to before
me, this _____ day of _____, 20__.

Notary Public, State of _____

C E R T I F I C A T E

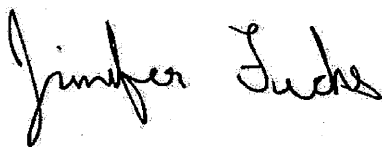
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, JENNIFER FUCHS, a Notary Public
within and for the State of New York, do
hereby certify:

That RAYMOND MAYNARD, the witness
whose deposition is hereinbefore set forth,
was duly resworn by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 26th day of November, 2012.



JENNIFER FUCHS

ERRATA

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212-750-6434

NAME OF CASE: ZARDA VS. ALTITUDE EXPRESS, ET ANO
DATE OF DEPOSITION: November 16, 2012
NAME OF WITNESS: RAYMOND MAYNARD

PAGE	LINE	FROM	TO	REASON

Subscribed and sworn before me

this ____ day of _____, 20__.

(Notary Public)

My Commission Expires:

	addition (1) 320:21	357:11,16 approved (2) 343:24;345: 8	342: 7 Booth (3) 357:25;358: 8;359:10	347:19 chomp (1) 321:22
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EXHIBIT D

EXHIBIT C WINSTOCK DEP.

Page 3

1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT
5 -----X
6 DONALD ZARDA,
7 Plaintiff,
8 - against - INDEX NO.:
9 CV-10-4334
10 ALTITUDE EXPRESS, INC., d/b/a
11 SKYDIVE LONG ISLAND AND RAY MAYNARD,
12 Defendants,
13 -----X
14 Bee Reporting Agency, Inc.
15 32 Court Street
16 Brooklyn, New York
17 December 8, 2011
18 2:11 P.M.
19
20 EXAMINATION BEFORE TRIAL OF RICHARD M.
21 WINSTOCK, a non-party witness, taken by the
22 attorney for the Plaintiff, pursuant to Subpoena,
23 and held before Deborah Thier, a Notary Public of
24 the State of New York at the above-stated time and
25 place.
* * * *

3
2 RICHARD M. WINSTOCK,
3 The witness herein, having first been duly
4 sworn by Deborah Thier, a Notary Public in and
5 for the State of New York, was examined and
6 testified as follows:
7 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:
8 Q Please state your name for the record.
9 A Richard M. Winstock.
10 Q What is your address?
11 A 65 Ridge Road, Hackettstown, New
12 Jersey, 07840.
13 Q Good morning, Mr. Winstock. We've met
14 before, I mean five minutes before, and I'll just
15 give you some ground rules about the deposition.
16 I'm just going to ask questions and
17 you're just going to answer them, and you've been
18 sworn to tell the truth, and I'd ask you to ask me
19 to rephrase a question if you don't understand a
20 question.
21 Would you agree to do that?
22 A Yes.
23 Q And if you don't know the answer to my
24 question, the answer is, I don't know. I don't
25 want you to guess or speculate or anything like

Page 2

1
2 APPEARANCES:
3
4 GREGORY ANTOLLINO, ESQ.
5 Attorney for the Plaintiff
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7 New York, New York 10010
8
9 ZABELL & ASSOCIATES, P.C.
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12 Bohemia, New York 11716
13 BY: SAUL D. ZABELL, ESQ.
14
15 ALSO PRESENT:
16 DONALD ZARDA
17 JOHN SANCHEZ, ESQ.
18
19
20
21
22
23
24
25

Page 4

1 Richard Winstock 4
2 that.
3 You were subpoenaed to come here
4 today --
5 A Yes.
6 Q -- for your deposition?
7 MR. ANTOLLINO: Just for the record,
8 I'm going to have this marked as Exhibit 1,
9 and I'll make copies of everything after.
10 (Whereupon, the subpoena was marked as
11 Plaintiff's Exhibit 1 for identification, as
12 of this date.)
13 Q Does this look like the subpoena that
14 you were served?
15 A Yes.
16 Q In that subpoena there's a reference to
17 production of documents.
18 A Yes, sir.
19 Q Did you read this?
20 A I did.
21 Q Were you able to find any documents
22 that were responsive to those requests?
23 A No, sir.
24 Q Let's put that aside. We're done with
25 that.

1 (Pages 1 to 4)

Page 5 1 Richard Winstock 5 2 By the way, when I'm asking questions, 3 if Mr. Zabell, who is Mr. Maynard's lawyer, 4 objects, that means he doesn't like the way I 5 asked the question and he might have the 6 opportunity to go to the judge and say, he didn't 7 ask that question right, so the answer should be 8 stricken, but that doesn't mean you don't answer. 9 It simply means that he is keeping a record. 10 A I understand. 11 Q So every time he objects, you answer. 12 You're not being represented by him, 13 are you? 14 A No. 15 MR. ZABELL: Unless you want to be. 16 I've been authorized by Mr. Maynard that if 17 you feel the need for representation at this 18 deposition, I am available to represent you, 19 but only if you feel the need. 20 THE WITNESS: Understood. Thank you. 21 Q What is your current place of 22 employment? 23 A Encore Nationwide, Inc., and the 24 address is 2780 Columbia Street, Torrance, 25 California, 09 -- I'm sorry, 90503.	Page 7 1 Richard Winstock 7 2 Is it a nonprofit organization? 3 A Yes. 4 Q You're the director at this nonprofit 5 organization that oversees all or many drop sites? 6 A Correct. 7 Q One of which is Long Island Sky Dive? 8 MR. ZARDA: It's Skydive Long Island. 9 You said Long Island Skydive. 10 MR. ANTOLLINO: If I've said Long 11 Island Skydive, Skydive Long Island is what I 12 meant to say. 13 MR. ZARDA: Because there is a Long 14 Island Skydive. 15 MR. ZABELL: Counsel, I'm going to ask 16 that if you need to confer with your client, 17 that should probably be done off the record. 18 It's not appropriate to do while this 19 deposition is going on. 20 MR. ANTOLLINO: All right. Thank you. 21 Q What is your highest level of 22 education? 23 A I have a master's degree in education 24 and one year PhD work in psychiatry. 25 Q From what institutions?
Page 6 1 Richard Winstock 6 2 Q What do you do there? 3 A Director of sales. 4 Q What do you sell? 5 A Staff. 6 Q So it's a staffing agency? 7 A Yes. 8 Q Do you have anymore connection to Long 9 Island Skydiving? 10 A Yes. 11 Q What is your connection to L.I.S.D.? 12 A Currently I'm the safety and training 13 advisor. I'm also the chief instructor. I'm an 14 advanced free fall instructor examiner, a tandem 15 instructor examiner, a coach instructor examiner 16 and national director with U.S.P.A. 17 Q National director of U.S.P.A., that 18 does not have anything to do with L.I.S.D., does 19 it? 20 A Indirectly. 21 Q How so? 22 A Skydive Long Island is a group member 23 of the United States and we are a member of the 24 U.S.P.A. where I'm a director. 25 Q So you're a director.	Page 8 1 Richard Winstock 8 2 A Seton Hall University was my master's 3 of education and Walden University was the PhD 4 stint. 5 Q Just tell me a little bit about your 6 professional life since leaving college as an 7 undergraduate. 8 MR. ZABELL: I'm going to object to the 9 form. 10 A Can you be a little more specific? 11 Q Why don't you start with, what did you 12 do after you graduated from college, and lead me 13 to how you've gotten to be doing what you're doing 14 today. 15 A Okay. I graduated college. I got my 16 master's degree in 1992. I started with the 17 Roxbury Township Police Department in December of 18 1992. I was a police officer for seventeen years, 19 sergeant of the emergency services unit, which is 20 a S.W.A.T. team dive team. 21 I made my first skydiving jump in 1992 22 and continued to jump primarily for sport and fun 23 until it became a part-time job, and I 24 collaterally jumped, and was a police officer for 25 the next fifteen years.

Page 9 1 Richard Winstock 9 2 I moved on from the police department 3 and continued skydiving at Skydive Long Island. 4 I've been employed at Skydive Long Island for, 5 approximately, fifteen years, and I am still 6 currently employed there right now. 7 Q Is that a seasonal position? 8 A Yes. 9 Q So you work there from when till when 10 every year? 11 A March, usually early, March 8th to 12 March 12th, straight to November, around 13 Thanksgiving. 14 Q How long have you known Don Zarda? 15 A I'm gonna estimate, approximately, six 16 years. 17 Q Where did you meet him for the first 18 time? 19 A I met Don for the first time at Skydive 20 Long Island. There is -- There's a very good 21 possibility we may have met up in Vermont one time 22 over the summer. So I believe I met him one time 23 in Vermont and then he came to work for us at 24 Skydive Long Island. 25 Q Was it you who invited him to come work	Page 11 1 Richard Winstock 11 2 maybe, eight to ten years prior. 3 Q But you weren't there at the time? 4 A I was, but I didn't -- I didn't have 5 the opportunity to meet Mr. Zarda. 6 Q How many tandem jumps have you done, do 7 you know? 8 A Seventy-five hundred. 9 Q What kind of tandem equipment did you 10 use at Skydive Long Island? 11 A Over the years they've used Strong 12 Rigs, that's the name of the manufacturer, and 13 also United Parachute Technologists, which is 14 commonly referred to as U.P.T., or Vector/Sigma. 15 We've had both manufacturers. 16 Q Is that what is used currently? 17 A Currently U.P.T. Vector/Sigma. 18 Q For how long has that been? 19 A Almost three years, approximately. 20 Q So then -- 21 A Strong Rig was phased out slowly over 22 time. 23 Q In 2010 what was being used? 24 A Vector/Sigma, and specifically only 25 Sigma.
Page 10 1 Richard Winstock 10 2 at S.D.L.I.? 3 A No. 4 Q Do you know who that was? 5 A Curt Kellinger. C-U-R-T. 6 Q He was also in Vermont? 7 A Yes. 8 Q Did Don subsequent to that invitation 9 come to S.D.L.I. and work for a summer? 10 A He did. 11 Q When was that, approximately? 12 A Three years ago, possibly four years 13 ago. I'm approximating here. I'm not sure. 14 Q How long did he work there? 15 Well, if I were to ask you if this was 16 as long ago as ten years ago, would you say that 17 could be possible or -- 18 A No, it wasn't ten years ago. It was 19 within the last six years. 20 Q So let's stick with the first time that 21 he's hired at S.D.L.I. 22 How long did he work there? 23 A While I was there, two summers, 24 possibly a third, and I am aware of previous 25 employment at Skydive Long Island, probably,	Page 12 1 Richard Winstock 12 2 Q As a tandem instructor, are you 3 familiar with all of the procedures required by 4 tandem instructors for gearing up tandem 5 passengers? 6 A Yes. 7 Q Are you familiar with the aspects from 8 gear up to gear down for tandem passengers on a 9 tandem jump? 10 A Yes, I am. 11 Q Do any of these procedures involve 12 touching a passenger? 13 A Yes. 14 Q In what manner? 15 A A professional manner. 16 Q Well, what do you mean by that? 17 A It's specifically covered in the U.P.T. 18 waiver, but when you're putting a harness on 19 someone, it has to be adjusted properly, securely, 20 to ensure safety, and that sometimes makes it 21 necessary to actually physically touch a person. 22 Q Can you explain? 23 A In layman's terms, if you're putting a 24 harness around your leg or thigh and I need to 25 tighten the strap, I might need to touch your

3 (Pages 9 to 12)

Page 13

1 Richard Winstock 13

2 thigh to tighten the strap.

3 Q Does the manner in which you touch a

4 passenger vary from situation to situation?

5 A Yes.

6 Q Can you briefly describe the procedure

7 for gearing up a tandem passenger?

8 A I can.

9 The tandem passenger goes through a

10 series of waivers and videos that describe what is

11 going to happen to them prior to getting them out

12 to the gear up area.

13 They're gonna take all their jewelry

14 off, empty their pockets. Depending on the time

15 of year, they may be in shorts. We may offer them

16 a jumpsuit, although it's not mandatory or

17 necessary.

18 I'm going to have them step into a

19 harness which has two leg straps, two shoulder

20 straps, like a backpack, and it has six adjustment

21 points.

22 Q Where are those adjustment points?

23 A Two leg straps, one belly, one back

24 band strap, two lateral straps and two shoulder

25 straps. Two --

Page 14

1 Richard Winstock 14

2 Q Go ahead?

3 A If you give me a second, I can answer

4 that.

5 Two leg straps -- two, three, four,

6 five seven, eight -- There's eight adjustment

7 points on the harness, and then when the harness

8 attaches to the rig, there's two more adjustment

9 points.

10 Q When you say the rig, you mean the

11 plane?

12 A When I say the rig, I'm referring to

13 the actual parachute itself.

14 Q So in total there appear to be ten

15 adjustment points?

16 A Correct.

17 Q So since the original answer was six,

18 let's start again with the eight adjustment points

19 on the person. So if I could just write those

20 down.

21 A Two leg straps, one belly band, one

22 lower lumbar, or back band, two lateral straps, in

23 the rear of your back, two shoulder straps.

24 That's eight right there on the actual harness

25 itself.

Page 15

1 Richard Winstock 15

2 There are another two that allow

3 adjustment once they attach to the parachute rig,

4 or container system.

5 Q The two that are on the leg, where on

6 the leg are they located?

7 A Inner groin, thigh.

8 Q Is it the duty of the instructor to

9 make the attachment to the passenger?

10 A I'm sorry, repeat that?

11 Q How does the instructor, and if I'm

12 asking this incorrectly, then maybe you can

13 clarify what I'm trying to get at, but how does

14 the instructor attach the adjustment points on the

15 legs of the passenger?

16 A Usually, and when I say usually, it's

17 upwards of ninety plus percent, the leg straps are

18 already fastened, they're just loosened up to form

19 almost like an open leg strap that you could slip

20 your leg through.

21 So if I were to ask a tandem student to

22 put a harness on while I held it, they would

23 basically just step into two round circles. I

24 would pull it up to their inner groin or thigh and

25 tighten up the straps.

Page 16

1 Richard Winstock 16

2 So if you're referring to actually

3 hooking up the strap itself, it's hooked up

4 already.

5 Q What about the shoulders?

6 A They're all -- every other strap is

7 already intact, it just would take some tightening

8 or loosening up to adjust it.

9 Q Is the instructor required to monitor

10 the tightness of the strap during the jump or is

11 that something that just doesn't vary?

12 A No, they are required to monitor it.

13 Q If a strap became loosened, what could

14 result?

15 A If a strap became loosened?

16 Q Yes.

17 A Unsafe scenario.

18 Q Have you known Ray Maynard to fire any

19 employees during your tenure?

20 A Yes.

21 Q Approximately, how many over the

22 fifteen years you've been there?

23 A Six.

24 Q So aside from Don, who were they?

25 A Alex Allen.

Page 17 1 Richard Winstock 17 2 Q When was that? 3 A Three years ago. Approximately, three 4 years ago. 5 Q Anyone else? 6 A There were others. I don't recall 7 names. 8 Q What was Alex Allen fired for? 9 A I don't know. 10 Q Did you ask Ray or -- 11 A No. 12 Q How did you find out that Alex was 13 fired? 14 A Word of mouth. 15 Q Not from Ray, but from someone else? 16 A I don't recall. 17 Q Did you have any opportunity during the 18 summers that Don worked under your tutelage, let's 19 say, to observe his performance as an instructor? 20 A Yes. 21 Q Did you have an opinion about it? 22 A Yes. 23 Q What was it? 24 A I had no objections with his ability to 25 perform tandem instructor duties.	Page 19 1 Richard Winstock 19 2 this lawsuit, correct? 3 A I am -- 4 MR. ZABELL: Object to the form. You 5 can answer. 6 A I am now. 7 Q Have there been any other complaints 8 about Don that you're aware of? 9 A Not that I'm aware of. 10 Q Have there been any other complaints by 11 any other customers about anything over the years 12 that you've worked there? 13 A Not that I'm aware. 14 Q The five people other than Alex Allen 15 whose names you didn't remember, do you know what 16 any of them were fired for? 17 A I don't. 18 Q Are you also a cameraman at Skydive 19 Long Island? 20 A Yes. 21 Q What are your duties as a camera man? 22 A Primary responsibility is to video the 23 entire tandem experience for the passenger and 24 then produce a product for them to take home. 25 Q When you say, produce a product, do you
Page 18 1 Richard Winstock 18 2 Q Did you believe that Don was a good 3 instructor? 4 A Yes. 5 Q Was it known at S.D.L.I. that Don was 6 gay? 7 A Yes. 8 Q Issued say Don is gay. 9 Q How was that something that was known? 10 A I would say from Don. 11 Q Was it something that was ever 12 discussed among other people? 13 A Not specifically. It was known. 14 Q Did you ever hear anyone say to Don 15 anything like referring to his homosexuality in 16 any way? 17 A I didn't. 18 Q Over the years that you have worked at 19 Skydive Long Island, has there ever been a 20 customer complaint? 21 A While I was there about Don? 22 Q Well, has -- 23 A Can you just clarify for me? 24 Q So you are aware that there was a 25 customer complaint about Don that is the basis of	Page 20 1 Richard Winstock 20 2 mean edit the raw material that you've filmed? 3 A Correct. 4 Q So are there frequently out takes from 5 the video? 6 A Correct. 7 Q What is done with those, that you know 8 of? 9 A The raw footage? 10 Q Yes. 11 A I can only speak with my footage, but 12 we record over it, or destroy it. We're using 13 digital media now. It used to be, actually, 14 cassette like media where we would just record 15 over it. Some people do save it. I'm talking 16 about myself. I record over them. 17 Q When you say you use digital now, how 18 long have you been using digital? 19 A This summer, one year. 20 Q So in 2010 you were still, or the 21 company was still using the cassette? 22 A The compact cassette, yes. 23 Q Did you ever hear any staff members 24 make jokes about Don's sexuality in front of Don? 25 A No.

5 (Pages 17 to 20)

Page 21

1 Richard Winstock 21

2 Q Did there come a time that you learned

3 that Ray had suspended Don?

4 A Yes.

5 Q How did you learn about this?

6 A From Don.

7 Q What did Don tell you?

8 A He explained that he -- he explained

9 that he was suspended for an incident. He was

10 upset and I told him I would look into it and then

11 contact him.

12 Q Did he know what the incident was about

13 or did he just say he was suspended for an unknown

14 incident?

15 MR. ZABELL: I'm going to object to the

16 form of the multiple questions. You may

17 answer.

18 A I don't recall if Don knew exactly the

19 incident.

20 Q Where did you discuss this suspension?

21 A It was outside.

22 Q Outside where?

23 A Outside of -- it was in a gear up

24 tandem area outside of Skydive Long Island's

25 office in private.

Page 22

1 Richard Winstock 22

2 Q Is there a classroom --

3 A Yes.

4 Q -- on the premises?

5 A Yes.

6 Q Was it in the classroom?

7 A It may very well have been.

8 Q Do you remember Ray Maynard walking

9 into the meeting when Don was telling you about

10 the suspension?

11 A I don't.

12 Q So did you later approach Ray to

13 discuss the matter with him?

14 A I did.

15 Q When was that?

16 A It may have been that evening, that

17 weekend. Shortly thereafter speaking to Don.

18 Q What did you say to Ray?

19 A I asked him what happened.

20 Q What did he say?

21 A He said that he sent Don home because

22 of a complaint.

23 Q Did he say anything else?

24 A He explained the complaint briefly, and

25 when I say briefly, I knew that it was either a

Page 23

1 Richard Winstock 23

2 husband/wife, girlfriend/boyfriend scenario, and

3 there was a complaint about the female passenger

4 was with Don and she and the husband had a

5 complaint.

6 Q Do you remember anything else?

7 A I don't. I will say Ray Maynard was

8 the one that spoke to both of them, and I don't

9 have any intimate knowledge of the actual

10 complaint or the investigation that ensued, took

11 place, or if there was one. I don't know.

12 Q Are you certain that Ray spoke to both

13 the husband and the wife or the boyfriend and the

14 girlfriend?

15 A Ray took the complaint, and if -- I

16 need to amend that, it was from one or the other.

17 Q So you don't know anything about what

18 Ray did to investigate this complaint?

19 A I don't.

20 Q Did there come a time that you spoke to

21 Ray later about this complaint and Don's

22 suspension?

23 A Yes.

24 Q When was this?

25 A It was post Don being terminated. Post

Page 24

1 Richard Winstock 24

2 termination.

3 Q Let's talk about before Don was

4 terminated.

5 Did there come a time that you went to

6 Ray and argued in favor of Don not being fired?

7 A Yes.

8 Q What did you say?

9 A Ray asked my opinion, or when I -- Ray

10 asked me what I would do.

11 Q What did you say?

12 A My suggestion was a letter of

13 reprimand, spelling out the exact situation,

14 exactly what the complaint was, go over it with

15 Don and sit Don down, make it exorbitantly clear

16 that it had nothing to do with sexual orientation,

17 it was a reprimand, and have Don sign it saying

18 that if it ever happened again, that he would be

19 terminated.

20 Q What did Ray say in response to that?

21 A He just took -- he just asked for my

22 advice.

23 Q When you say that you wanted to put it

24 in the letter, this letter of reprimand, that you

25 suggested to make it exorbitantly clear that it

Page 25 1 Richard Winstock 25 2 had nothing to do with sexual orientation, why did 3 you suggest that? 4 A Because it's a sensitive -- it's a 5 sensitive situation. 6 Q But why mention sexual orientation in 7 the letter, or in this proposed letter I should 8 say? 9 A It was outwardly known that Don is gay, 10 and when I say outwardly, in a positive way. It 11 was Don -- in fact, I was introduced to him as gay 12 Don. So this wasn't something that was hidden. 13 When it comes to sexual orientation and 14 being politically correct, I feel that it was -- 15 the advice I gave Ray was to be very sensitive to 16 that situation and be very politically correct and 17 do -- document it accordingly. 18 Q Did the complaint have anything to do 19 with sexual orientation that you can recall? 20 A Yes. 21 Q How so? 22 A It was brought up, the fact that Don 23 was gay was brought up. I believe Don brought it 24 up to the passenger, so it was definitely 25 mentioned in the complaint to Ray.	Page 27 1 Richard Winstock 27 2 person at ease, I personally would not have a 3 problem with it, and, of course, you can go 4 overboard with it as well. 5 So I would tread lightly on how much 6 information you gave or didn't give a passenger. 7 Sometimes no information is better than too much. 8 Q So there came to be a point when you 9 had a discussion with Don -- or rather Ray, about 10 the complaint after Don was terminated? 11 MR. ZABELL: I'll object to the form. 12 You can answer. 13 A Yes. 14 Q When was that, about how long after Don 15 was terminated? 16 A Within the week. 17 Q What did you say to Ray or what did he 18 say to you? 19 A Ray had advised me that he had 20 terminated Don under the advice of his attorney. 21 Q Do you know who his attorney was? 22 A I don't. 23 Q Do you know if it was not Saul Zabell? 24 A I don't know. 25 Q So you definitely don't know who the
Page 26 1 Richard Winstock 26 2 Q How did Ray react to that? 3 A I don't know. 4 Q Well, did Ray express any opinion about 5 whether or not that was appropriate? 6 A To bring that up? 7 Q Yes. 8 A Ray's the drop zone owner, and anything 9 tandem instructor wise would usually -- he would 10 defer to me to make the decision. 11 I wasn't -- if you can clarify one 12 thing, when you say that wasn't appropriate, what 13 wasn't appropriate? 14 Q Don mentioning to the passenger that he 15 was gay. 16 A The answer to that is I don't know that 17 Ray said that was okay or not. 18 Q What is your opinion? 19 A I would instruct, or I would probably 20 give a tandem instructor advice that doing a 21 tandem is inherently an awkward situation, and if 22 you feel that can lighten the mood or possibly 23 make that person more comfortable and that would 24 make it a safer skydive, if the instructor felt 25 that it would make the skydive safer or put a	Page 28 1 Richard Winstock 28 2 attorney was, and just to clarify this, you would 3 not be able to have say, oh, no, I know it wasn't 4 Saul Zabell because I know Don got Saul Zabell at 5 a different time? 6 A I'm sorry, Saul Zabell? 7 Q This is Saul Zabell. 8 A I don't know if it was or it wasn't. 9 It was his attorney. 10 Q That's all he said, was on the advice 11 of his attorney? 12 A I heard the name Harvey as the 13 attorney. I have no idea who gave him the advice. 14 Q Was there any further discussion? 15 A There wasn't. 16 Q Did there come a time that you learned 17 about this lawsuit? 18 A Was there a time what? 19 Q Oh, and by the way, I offer to 20 represent you as well if you feel like taking me 21 up on that, but I don't think you're going to need 22 any representation. 23 MR. ANTOLLINO: We'll have the question 24 read back. 25 (Whereupon, the requested section was

7 (Pages 25 to 28)

Page 29 1 Richard Winstock 29 2 read back.) 3 A Yes. 4 Q When was that? 5 A Shortly thereafter the termination. 6 Within three months. 7 Q What did Ray say? 8 A That he was being sued. 9 Q What did you say in response? 10 A I didn't say anything. 11 Q Did Ray say anything about this 12 lawsuit? 13 A No. 14 Q Have you spoken to him about the 15 lawsuit since then? 16 A No. 17 If I can add, I told him I was coming 18 here today. 19 Q What did he say in response to that? 20 A He didn't. 21 Q Do you know anything about the husband 22 and wife, boyfriend/girlfriend team that made the 23 complaint about Don? 24 A I don't know -- I do not. 25 Q Would it be fair to say that you were	Page 31 1 Richard Winstock 31 2 you, the safer the jump will be. 3 Q Have you ever heard any jokes made in a 4 situation where a boyfriend and a girlfriend are 5 going up on a skydive and the girlfriend gets 6 strapped to another guy? 7 A Have I ever heard -- Repeat that, 8 please. 9 MR. ANTOLLINO: If the reporter would 10 please read it back. 11 (Whereupon, the requested section was 12 read back.) 13 A Yes, I have. 14 Q Is that common? 15 A Yes. 16 Q Why are jokes like that made? 17 A Again, it boils down to a safety issue. 18 Q You've heard these jokes made at 19 Skydive Long Island? 20 A Yes. 21 Q So a joke is something like, wow, I bet 22 you didn't think your girlfriend was gonna be 23 crotch to crotch with another guy? Would that be 24 a type of joke that would be made? 25 A No.
Page 30 1 Richard Winstock 30 2 not on that particular jump? 3 A I wasn't -- Strike that, or let me 4 rephrase that. 5 I may have been. There's a very good 6 chance I was on the plane or at the jump zone, but 7 I do not recall the jump or the passengers 8 involved. 9 Q In your experience doing tandem jumps, 10 is it common to make jokes as one approaches the 11 point where one is going to drop out of the plane? 12 A Yes. 13 Q Why do you do this? 14 A Well, as I said earlier, I'm an 15 instructor examiner, so I teach the instructor 16 course for U.P.T., and the reason for, you called 17 it joking, or making the situation less tense, 18 really boils down to instructor and student 19 safety. 20 Q How so? 21 A The calmer a passenger is to exiting, 22 generally the safer the skydive will be. As an 23 instructor, you're given a short amount of time to 24 build a confidence between him and her and 25 yourself, and the more confidence they have in	Page 32 1 Richard Winstock 32 2 Q How about something like, I bet you 3 didn't know your girlfriend was gonna be strapped 4 to another guy? 5 A Possibly. 6 Q Can you give me an example of another 7 one you can think of? 8 A I've heard the instructor of a female 9 say, who's more important to you now. 10 Q Anything else? 11 A Not off the top of my head. 12 Q Did you ever hear Ray Maynard make any 13 disparaging comments about Don's homosexuality? 14 A No. 15 Q Did you ever hear him reference it at 16 all? 17 A Again, I'll be very clear, people 18 referred to Don as gay Don. So if that's a 19 reference to it, then, yes. A good portion of the 20 instructors, if not all of them, and all video 21 guys and coaches and everyone that works there 22 referred to Don as gay Don. 23 I thought that this was acceptable 24 because that's how I was introduced to him. I 25 didn't know if that upset him or -- then it would

8 (Pages 29 to 32)

Page 33

1 Richard Winstock 33
2 be disparaging, but that's the only thing that I
3 can think of.
4 Q Do you know where gay Don originated?
5 A I have no idea.
6 Q Did Don ever seem to be bothered by
7 being referred to as gay Don?
8 A No.
9 Q Did there come a time where Don had
10 an accident in the workplace?
11 A Yes.
12 Q Do you remember what happened?
13 A Don hurt one of his ankles.
14 Q Do you remember how that happened?
15 A Or foot or feet.
16 Without getting very specific, and I
17 believe it was a landing injury, and it was one of
18 his ankles or his left or right foot.
19 Q Is there a weight limit for passengers
20 to go on a tandem jump?
21 A Yes.
22 Q What has been the weight limit at
23 Skydive Long Island?
24 A There's a weight -- There's several
25 weight limits. Skydive Long Island has a weight

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1 Richard Winstock 34
2 limit of two hundred twenty-five pounds. We can
3 -- the reason for that weight limit is the wear
4 and tear on the equipment and instructor ability.
5 Based on the actual manufacturer of the
6 rig, we can take up to five hundred total pounds
7 under the system. So depending on instructor
8 weight, that two twenty-five can be exceeded.
9 Q So, in other words, if someone came who
10 weighed two hundred and fifty pounds, that would
11 be an acceptable weight, so long as the instructor
12 weighed two hundred and fifty pounds or less?
13 A The instructor would be two hundred,
14 the rig itself is fifty pounds. So, for example,
15 I am two hundred pounds. With the rig I'm
16 two-fifty. I can take up to a two hundred fifty
17 pound passenger.
18 Q So anything over five hundred is
19 inappropriate, including the rig, the passenger
20 and the instructor?
21 A It's outside of manufacturer
22 guidelines.
23 Q Was Don asked to take an overweight rig
24 on the time that he broke his ankle?
25 A An overweight rig?

Page 35

1 Richard Winstock 35
2 Q Yes. Was the passenger over weight at
3 the time that he broke his ankle?
4 MR. ZABELL: Object to the form of the
5 question.
6 A I have no idea.
7 Q When I say the passenger is over
8 weight, what I mean to say is did the total
9 weight, the instructor and passenger weight,
10 exceed five hundred pounds, and your answer is you
11 don't know?
12 A I don't know.
13 Q Do you ever recall Don coming back to
14 work after his injury with a cast?
15 A Yes.
16 Q Do you remember what the cast looked
17 like?
18 A Yes.
19 Q What did it look like?
20 A Bright fluorescent pink.
21 Q Was there anything else pink that you
22 saw?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A On Don, yes.

Page 36

1 Richard Winstock 36
2 Q Yes. What was it?
3 A I've seen a pink hats, I've seen pink,
4 I believe, nail polish, pink shirts. That's the
5 best of my recollection.
6 Q When you say pink polish, you mean
7 toenail polish, fingernail polish or both?
8 A I believe toe.
9 Q Do you remember Ray ever making any
10 disparaging comments about that?
11 A No.
12 Q Did anyone contact you after Don was
13 fired to inquire about Don's ability as a worker
14 as a reference for future employment?
15 A I don't know. Quite possibly.
16 Q Do you know someone by the name of Doug
17 Smith?
18 A No.
19 Q You talked about a waiver that is
20 signed before the passenger goes up in the plane.
21 Do you recall?
22 A Yes.
23 MR. ANTOLLINO: So I'm just going to
24 have this marked as Plaintiff's Exhibit 2.
25 (Whereupon, the waiver was marked as

Page 37 1 Richard Winstock 37 2 Plaintiff's Exhibit 2 for identification, as 3 of this date.) 4 Q Is this the waiver at S.D.L.I.? 5 A This is a portion of it. 6 Q I'm sorry, did I leave something out? 7 A That is the waiver. There's usually a 8 U.P.T. waiver attached too. 9 Q So this is an S.D.L.I. waiver? 10 A Yes. 11 Q And the U.P.T. waiver is something 12 else? 13 A Correct. 14 Q What does the U.P.T. waiver have on it? 15 A It's a manufacturer waiver. 16 Q When do you give in the tandem process 17 this waiver to the passenger? 18 A Usually when they first show up. They 19 fill out the waiver in its entirety and then they 20 watch a training video. 21 Q Is there ever a circumstance where 22 they're watching the video at the same time 23 they're reading the waiver? 24 A Not to my knowledge. I don't get 25 involved in that end of it, so I'm not -- I can't	Page 39 1 Richard Winstock 39 2 Q It wasn't Mr. Zabell? 3 A That I know as a fact. No, it wasn't 4 him. 5 Q Did you ever hear Ray complain about 6 his wife while they were married? 7 A Yes. 8 Q Was it something that was pretty often? 9 A I wouldn't say often. I would say once 10 in a while I heard him complain about his wife. 11 Q What types of things would he say? 12 A I don't recall specifics. 13 Q How long were Ray and his previous wife 14 married? 15 MR. ZABELL: I'm going to object to the 16 form. 17 Q If you know. 18 A Eight years, seven years. Seven or 19 eight years, approximately. 20 Q Over the course of the entire marriage, 21 did you hear complaints on a continual or a time 22 to time basis, or did it happen more often at the 23 end? 24 A More often at the end. 25 Q Are you on the S.D.L.I. Facebook page?
Page 38 1 Richard Winstock 38 2 answer either way. 3 Q Do you know anything about this waiver 4 or why this waiver was written up? 5 A Not specifically. I know it is a 6 waiver. 7 Q How many videos does the tandem 8 passenger watch? 9 A One. 10 Q Who's in that video? 11 A Currently Ray Maynard and myself. 12 Q Who was in it in 2010? 13 A 2010, very well may have been the same 14 video. The prior video was Duncan Shaw and an 15 attorney. 16 Q Mr. Shaw -- 17 A Wasn't him. 18 Q Mr. Shaw is an attorney? 19 A No, Duncan Shaw is a tandem instructor. 20 So he was in a video doing -- a tandem instructor 21 needs to do the training of the student. So the 22 video suffices for the training. 23 The current one I'm in. The prior one 24 was Duncan Shaw, and there was also an attorney 25 reading some sort of disclaimer or waiver prior.	Page 40 1 Richard Winstock 40 2 A Yes, as a -- Yes. 3 Q Have you ever seen Ray complain about 4 his wife on the S.D.L.I. Facebook page? 5 A Not off the top of my head. 6 Q I'm going to show you some pictures. 7 We talked about the jokey atmosphere that might 8 occur when somebody is going up in a plane before 9 you jump, and I do believe that you have a web 10 site, is that correct? 11 A I do. When you say we -- 12 Q You, you have a web site? 13 A My own web site? 14 Q Yes. 15 A Yes, I do. 16 Q And I believe S.D.L.I. has its own web 17 site? 18 A Yes, they do. 19 Q Would it be fair to say that people 20 have tagged you on Facebook in videos and 21 photographs? 22 A Yes. 23 Q Some of these are publicly available? 24 A Yes. 25 Q And some of them are available to your

Page 41 1 Richard Winstock 41 2 Facebook friends? 3 A Yes. 4 Q And you have about three thousand 5 Facebook friends? 6 A Yes. 7 MR. ANTOLLINO: We'll go one by one. 8 We'll make copies later. 9 This will be Plaintiff's Exhibit 3. 10 (Whereupon, the photographs were marked 11 as Plaintiff's Exhibit 3 for identification, 12 as of this date.) 13 (Whereupon, a short break was taken.) 14 Q We've marked as Plaintiff's Exhibit 3 a 15 twenty-nine page document, and I've numbered each 16 of the documents in my own handwriting of stills 17 that I've taken from various point on the 18 Internet. 19 MR. ZABELL: You said twenty-nine 20 pages? 21 MR. ANTOLLINO: Twenty-nine pages. 22 Q I'm just going to give you this, and 23 you can take some time if you'd like, I don't 24 think you'll need that much time, but I'd like you 25 to look at each of these pages and tell me, A, is	Page 43 1 Richard Winstock 43 2 Do you recognize the people in that in 3 that shot? 4 A The instructor. 5 Q You recognize the instructor? 6 A Yes. 7 Q Who is it? 8 A John Sherman. 9 Q Does John Sherman now work for 10 S.D.L.I.? 11 A He does. 12 Q What's unsafe about that? 13 A He had a mask on. 14 Q What's unsafe about wearing a mask? 15 A It could hinder his visibility. 16 Q Is that a serious safety violation, a 17 major one? 18 A No, it's not a major one. It's one I 19 would note, though. 20 Q Is there anything else that's improper 21 or unsafe or inappropriate about page twelve? 22 A No. 23 Q And you said page fourteen. 24 Do you recognize any of the people on 25 page fourteen?
Page 42 1 Richard Winstock 42 2 there anything improper, B, unsafe, or C, 3 inappropriate. 4 Do you understand the question? 5 A I do. 6 Q Okay. 7 A I've gone through all the photos. 8 Q And your answer? 9 A I did see one thing that I consider to 10 be unsafe. 11 Q What was that? 12 MR. ZABELL: I'm going to ask you just 13 to count the pages. 14 THE WITNESS: I think they're numbered. 15 MR. ANTOLLINO: Yes, they're numbered. 16 A Number twelve, and there's one other I 17 found. Number fourteen. 18 Q So twelve and fourteen. 19 Were there any other documents or any 20 other pages in this document where you saw 21 anything improper, unsafe or inappropriate? 22 A Other than those two, I didn't notice 23 anything. 24 Q Now, let's talk those. We'll start 25 with twelve.	Page 44 1 Richard Winstock 44 2 A Yes. 3 Q Who are they? 4 A Tandem instructor, Brett Nock. 5 N-O-C-K. 6 Q What is inappropriate, unsafe or 7 improper about what's happening here? 8 A Unsafe category. I would say jumping 9 with an external -- a bottle of water or plastic, 10 whatever. 11 Q So it appears that in this picture 12 Brett is putting water into the mouth of the 13 tandem passenger while they are in flight, is that 14 correct? 15 A Brett's simulating giving his passenger 16 a drink of water, correct. 17 Q Is it a simulation or was he actually 18 doing that or do you know? 19 A The bottle is empty. 20 Q How do you know the bottle is empty? 21 A I saw the video. 22 Q Do you know where this video is? Do 23 you know which of the locations this is? Is this 24 someone that tagged you or is this is on the 25 S.D.L.I. page?

11 (Pages 41 to 44)

Page 45 1 Richard Winstock 45 2 It appears this is on Facebook, right? 3 MR. ZABELL: Objection to the form of 4 the multiple questions. 5 MR. ANTOLLINO: Okay. Withdrawn. 6 Q Does this -- 7 A I don't know, I don't know. 8 Q Do you know when this took place? 9 A I don't know. 10 Q Did Mr. Nock get disciplined for any 11 reason as a result of that? 12 A No. I put this into the category of 13 very minor. 14 Q Did you in any way, you know, tell him 15 that he shouldn't do that? 16 A No. Brett Nock has in excess of ten 17 thousand tandem jumps. He's one of our very, very 18 senior instructors, and if I were teaching a brand 19 new tandem instructor, I wouldn't want a new 20 instructor doing that. 21 Q You saw a lot of pictures of yourself 22 in there, right? 23 A I did. 24 Q And you saw pictures of a lot of people 25 who you recognized?	Page 47 1 Richard Winstock 47 2 Q Do you know why your hands are at the 3 passenger's hips? 4 A Yes. 5 Q Why? 6 A When you land a tandem, there's two 7 methods to landing in tandem. You can both sit 8 down and slide, which is a preferred method, it's 9 taught, it's for newer instructors, or you can 10 both stand up, which is more difficult. 11 If you'll notice in this picture, the 12 lower connectors are already detached, that's why 13 the passenger is allowed to move away from him. 14 When you do that, you do that up in the air so you 15 land safely. 16 This picture, and I remember the actual 17 jump, I stood up and my passenger went to stand 18 up, but he was sitting, in other words, he was 19 going to the ground, and my hands were there to 20 pick him up to stop him. 21 It's important to note you're still 22 attached at the shoulders, so if your tandem goes 23 down or goes down quick, I go down. So all I was 24 doing there was grabbing his side connectors, 25 which are natural handles or straps to hold him
Page 46 1 Richard Winstock 46 2 A I did. 3 Q And there were a lot of tandem 4 instructors in there too? 5 A Yes. 6 Q And Don is on the first page? 7 A Correct. 8 Q Would you say that a lot of those 9 pictures represented the general goofiness that 10 builds ease in a customer while he is going up in 11 the plane? 12 MR. ZABELL: I'm going to object to the 13 form of the question. You may answer it. 14 A Yes. 15 Q Again, aside from those two safety 16 issues, you didn't see any goofiness that you 17 thought was inappropriate, is that correct? 18 MR. ZABELL: Object to the form of the 19 question. 20 A I didn't. 21 Q There's a couple of things I want to 22 ask about, some particular ones. 23 Number two, it looks like you are 24 landing with someone. Do you see that? 25 A Yes.	Page 48 1 Richard Winstock 48 2 up. 3 Q You did this because you thought it was 4 in the best interest of the passenger to do that, 5 correct? 6 A No. 7 Q Why did you do that? 8 A It was in the best interest for me. 9 Q It was for your safety? 10 A Correct, and my passenger's safety. 11 Q Under the circumstances using your 12 judgment, you thought it was necessary to grab his 13 hips? 14 A Yes. 15 Q In number three, I don't know if you 16 are the tandem instructor there. Are you? 17 A No. 18 Q Do you recognize who it is? 19 A Yes. 20 Q Who is it? 21 A It's a Greek name. I call him Sully. 22 His real name is Telly, and his last name was -- 23 it's a Greek last name. It's Telly. He's known 24 as Telly. 25 Q Do you know why he's touching the

12 (Pages 45 to 48)

Page 49

1 Richard Winstock 49
2 woman's head there?
3 A Yes, I do.
4 Q Why is that?
5 A There's also a few methods to exiting a
6 aircraft with a passenger. In all instances,
7 whether it be standing, sitting, kneeling, you
8 want your passenger's head to be back. If their
9 head is forward as you leave the aircraft, the
10 tendency is for the head -- it's tandem, so it is
11 going to be to go forward or do a front flip.
12 So we teach them, and this is also
13 trained in the video on the ground, that when they
14 sit in the doorway to keep their head back so if a
15 passenger sits in the doorway and they're looking
16 at the ground or scared or looking at the
17 videographer, it's very, very common, and it's
18 also taught that the tandem instructor can
19 reposition their head backwards, and that's what
20 he's doing.
21 Q It appears that their heads are very
22 close to each other, correct?
23 A Correct.
24 Q That's for the passenger's safety,
25 correct?

Page 50

1 Richard Winstock 50
2 A What is, that their heads are close?
3 Q Yes, or does it just depend on the
4 circumstances?
5 A You're strapped pretty closely. I can
6 say that some instructors prefer the head -- the
7 passenger's head on the left side, some prefer it
8 on the right side.
9 Virtually no instructors that I know of
10 like it right in front of them, and the reason for
11 that is when the parachute opens, the head can
12 literally knock you out or crack your teeth.
13 Usually the passenger's head is to the right or
14 left. When that happens, it causes you to put it
15 a little closer to their head.
16 Q And their chin would come close to the
17 passenger's neck, correct?
18 A Correct.
19 Q When you're up in the air, is it loud?
20 A Generally. Can you please -- In a
21 plane, free fall? When I'm in the plane?
22 Q Yes. Not free fall, but in the plane.
23 A We can hear each other speak, it's not
24 deafening, but it's loud.
25 Q When you get out in the air?

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1 Richard Winstock 51
2 A You can't even speak.
3 Q Is there a way to communicate when
4 you're in the air?
5 A Yes.
6 Q How is that?
7 A Hand signals.
8 Q Is there any other way?
9 A Not that I know of.
10 Q What does under canopy mean?
11 A It means the parachute has inflated and
12 you're basically using it as a wing to get
13 yourself to the ground. So you're flying the
14 parachute, and they call that under canopy.
15 Q When you're under canopy, can you
16 communicate verbally with a passenger?
17 A Yes.
18 Q How easy or hard is that?
19 A Easy.
20 Q Number seven, do you recognize this
21 still from this video?
22 A I do.
23 Q Do you know whose hand that is?
24 A I do.
25 Q Whose hand is it?

Page 52

1 Richard Winstock 52
2 A Dan Feitlan's.
3 Q Do you know the person with the
4 backpack there?
5 A I'm not sure.
6 Q When I say the backpack, is that the
7 parachute?
8 A Yes.
9 Q Do you know why Dan's hand is touching
10 the other person's posterior?
11 A Yes.
12 Q Why?
13 A This was a coach course evaluation, and
14 basically the person that you just referred to in
15 the front of this picture number seven is a
16 simulated student. As a coach, and that's the
17 person whose hand it is, it appears to me they're
18 putting their hand there to anticipate the student
19 leaving the plane. If the student leaves the
20 plane without you, you have to catch up with them.
21 So it's taught that you have a physical
22 presence on the student so that when they go, you
23 go, and that's exactly what they're taught to do,
24 is have a physical presence.
25 Q So in this particular circumstance,

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1 Richard Winstock 53
2 it's perfectly appropriate and necessary for
3 safety for the instructor to put his or her hand
4 on the posterior of the student, correct?
5 A In this particular photo, yes.
6 Q Do you recognize number fifteen?
7 A Yes, I do.
8 Q It appears that someone's giving
9 someone the finger there. Do you see that?
10 A Yes.
11 Q Do you know why?
12 A No idea.
13 Q What?
14 A I have no idea.
15 Q Do you know what this group was?
16 A What do you mean?
17 Q Do you know who these people were?
18 A I do.
19 Q Who were they?
20 A Joseph Fortune, --
21 MR. ANTOLLINO: Let me withdraw the
22 question and ask it generally.
23 Q Do you know generally who they are;
24 were they passengers, were they fun jumpers?
25 A These are two instructors and a fun

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1 Richard Winstock 54
2 jumper, and this is at a special event that we
3 call a Boogie, where we have planes that hold
4 upwards of thirty people. So this was just fun
5 jumpers. They're instructors acting as fun
6 jumpers.
7 Q Are the fun jumpers paying customers
8 also?
9 A Yes.
10 Q Are the fun jumpers treated differently
11 than first time customers or are they also
12 considered paying customers?
13 A They're considered experienced
14 skydivers. So there's usually a separation
15 between a first time student and someone who is a
16 student. Yes, they are treated differently.
17 Q Do you recognize who's sticking his
18 tongue out in number sixteen?
19 A I don't know.
20 Q Is that from the same video in fifteen,
21 if you know?
22 A It might be, yes.
23 Q But you're not sure?
24 A I'm not sure if that's the same time.
25 Q There are a couple of repeats here.

Page 55

1 Richard Winstock 55
2 On page twenty-six, it appears that
3 you're touching the passenger's head. Is that
4 what you had described earlier with regard to the
5 other page we were looking at or is that a
6 different situation?
7 A You said me? I don't know if that's
8 me.
9 Q It appears that you are tagged here,
10 so, I mean, I don't know if this is you or not.
11 Does it look like you right there?
12 A Yes, I'll give it to you, it looks like
13 me.
14 Q Do you know why you're touching that
15 passenger's head?
16 A Yes.
17 Q Why?
18 A Exactly the reason I explained earlier.
19 Q Okay.
20 A To get that passenger's head on my
21 shoulder.
22 Q So I'm done with Exhibit 3.
23 MR. ANTOLLINO: We'll mark this
24 collectively as Exhibit 4.
25 (Whereupon, the web site pages were

Page 56

1 Richard Winstock 56
2 marked as Plaintiff's Exhibit 4 for
3 identification, as of this date.)
4 Q I'm handing you Exhibit 4, and I'm just
5 going to ask you, do these appear to be from your
6 personal web site?
7 A Yes, they do.
8 Q Why don't you look at all three.
9 A Okay.
10 Q So they're all snapshots of your web
11 site, is that fair to say?
12 A I believe they are, yes.
13 Q One of them is a link to some videos,
14 is that right?
15 A Yes.
16 Q Two of them are a link to S.D.L.I.
17 videos, is that right?
18 A Yes.
19 Q One of them is a link to a video with
20 Rich, Tony and Curt.
21 Are those friends of yours?
22 A Yes.
23 Q On the second page of the exhibit you
24 have a page about canopy safety, is that correct?
25 A Yes.

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1 Richard Winstock 57
2 Q In this canopy safety, I believe you
3 refer to there having been five fatalities and one
4 critical injury that were canopy related.
5 I don't know when this was written, but
6 you refer to one fatality and one critical injury,
7 correct?
8 A Yes.
9 Q And you refer the reader --
10 A I'm sorry, if I can, I'm pretty sure
11 this is taken from the U.S. Parachute Association,
12 so it was a copy and paste. So those five
13 incidents were nationwide.
14 Q But you thought that this was something
15 that was important that you wanted to put on your
16 own web site, is that fair to say?
17 A Yes.
18 MR. ANTOLLINO: Off the record.
19 (Whereupon, there was a discussion
20 held off the record.)
21 Q Is there a safety manual that is highly
22 regarded in the industry that you recommend on
23 your web site?
24 A Yes.
25 Q What is it?

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1 Richard Winstock 58
2 A There's two. Skydiver Information
3 Manual, commonly referred to as the S.I.M., and
4 the Instructor's Rating Manual, commonly referred
5 to as the I.R.M.
6 Q Are these manuals that are supposed to
7 be followed at S.D.L.I.?
8 A Yes.
9 Q Are they generally followed at most
10 reputable drop zones?
11 A Yes.
12 MR. ANTOLLINO: I'm going to mark this
13 as Exhibit 5.
14 (Whereupon, the Facebook page printout
15 was marked as Plaintiff's Exhibit 5 for
16 identification, as of this date.)
17 Q Here we have a snapshot of some
18 Facebook comments, and it appears that S.D.L.I.,
19 Skydive L.I., has made a comment there, is that
20 correct?
21 A Yes.
22 Q Who's the one who's writing when it's
23 S.D.L.I. Skydive L.I.?
24 A I don't know the answer to that. I
25 didn't read these yet.

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1 Richard Winstock 59
2 Q Why don't you take a look at the first
3 paragraph.
4 A Okay.
5 Q Does it appear to you that anyone in
6 particular wrote that?
7 A Yes.
8 Q Who wrote that?
9 A The owner, Ray Maynard.
10 Q How do you know that it's Ray?
11 A 'Cause he's making reference to his
12 ex-wife and Barbara, who I know is his current
13 girlfriend.
14 Q Does Barbara know anything about this
15 current case?
16 A I don't know.
17 Q What's Barbara's last name?
18 A I don't know.
19 Q Is this a comment that Ray made typical
20 of the comments that Ray made about his wife
21 toward the end of their marriage that you heard?
22 A I don't take this as disparaging as --
23 Q No, I'm just asking is it the typical
24 kind of comments. I'm not saying it's disparaging
25 or not.

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1 Richard Winstock 60
2 A Typical, yes.
3 Q How are skydivers paid at S.D.L.I.?
4 A There's two methods. There's W-2 and
5 there's 1099.
6 Q What's the difference between a W-2
7 employee and a 1099 employee?
8 A The 1099 employee, I am one, I have my
9 own skydiving LLC, so I invoice Skydive Long
10 Island each week for my services, and then W-2
11 employees are directly working for Skydive Long
12 Island.
13 Q So are you the only 1099 that you're
14 aware of?
15 A No.
16 Q Who else might be a 1099?
17 A I know there are others. I don't know
18 specifically the financial arrangements for each
19 instructor.
20 Q For the W-2 employees, how are they
21 paid?
22 A With a paycheck biweekly -- I'm sorry,
23 weekly by paycheck.
24 Q Do they get an hourly wage, a weekly
25 wage?

Page 61 1 Richard Winstock 61 2 A Per jump. 3 Q How much do you get per jump? 4 A Tandems get forty dollars, training 5 tandems get fifty dollars, advanced free fall 6 jumps get fifty-five, video jumps get fifty-nine 7 dollars, coach jumps get thirty dollars. 8 I could go into a slew of other 9 recertification jumps. I don't know how far you 10 want me to go. 11 Q All right. That's good enough. 12 Are there any days where the weather is 13 bad and no one shows up to the drop zone? 14 A Yes. 15 Q On those days do the employees get 16 compensated in any way? 17 A No. 18 MR. ANTOLLINO: Let's mark these as 19 Exhibits 6 through 9. 20 (Whereupon, the e-mail was marked as 21 Plaintiff's Exhibit 6 for identification, as 22 of this date. 23 The letter dated August 17, 2010 was 24 marked as Plaintiff's Exhibit 7 for 25 identification, as of this date.	Page 63 1 Richard Winstock 63 2 with Mike Gamble? 3 A I don't believe I did. To the best of 4 my recollection, I don't believe I did. 5 Q Exhibit 9, why don't you take a look at 6 this. 7 A Yes. 8 Q Does that appear to be an e-mail 9 exchange you had with Don Zarda after he 10 was terminated? 11 A Yes. This is me forwarding those two 12 documents to Don. 13 Q Now we're going to watch some video. 14 They're not very long. 15 MR. ANTOLLINO: I brought a little 16 Phone Drive for you. If you could return it 17 tomorrow, I would appreciate it. 18 MR. ZABELL: I should be able to. If 19 not, I'll replace it with a new one. 20 MR. ANTOLLINO: I'm going to deem this 21 folder marked Rich collectively as Exhibit 22 10, and I'll make a copy for Mr. Zabell. 23 (Whereupon, the video was deemed marked 24 as Plaintiff's Exhibit 10 for identification, 25 as of this date.)
Page 62 1 Richard Winstock 62 2 The undated letter was marked as 3 Plaintiff's Exhibit 8 for identification, as 4 of this date. 5 The Facebook pages were marked as 6 Plaintiff's Exhibit 9 for identification, as 7 of this date.) 8 Q I just want to show you Exhibit 6 and 9 ask you if this is an e-mail exchange between you 10 and Don? 11 A Yes. 12 Q Is everything in that e-mail exchange 13 true? 14 A Yes. 15 Q I'm going to show you Exhibits 7 and 8 16 and ask you if you recognize these? 17 A Can I read this? 18 Q Sure, of course. Take your time. 19 A Yes, I recognize both pages. 20 Q Let me just ask you very quickly, is 21 Exhibit 7 a letter you received from Michael 22 Gamble and Exhibit 8 a letter you responded to 23 Michael Gamble's letter with? 24 A Yes. 25 Q Did you have any phone conversation	Page 64 1 Richard Winstock 64 2 MR. ANTOLLINO: I'm opening this 3 folder, and we'll all have to move around to 4 the other side of the table, and it appears 5 inside this folder Rich there are six items 6 marked image, 1334, 1335, 1337, 1339, 1340 7 and 1341. 8 Q Do you see that? 9 A I do. 10 Q So we're going to look at 1334, and 11 again, I'm going to ask you the question, do you 12 see anything inappropriate, unsafe or improper in 13 this video? 14 Do you want to see it again? 15 A No. 16 Q And your answer is? 17 A Inappropriate, unsafe or improper? 18 Q Yes. 19 A No. 20 Q There was some point in there where the 21 passenger exclaims, make shit happen, is that 22 correct? 23 A Yes. 24 Q And everyone in unison, including 25 instructors, respond, make shit happen, correct?

16 (Pages 61 to 64)

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1 Richard Winstock 65
2 A Correct.
3 Q And that's part of the goofiness of the
4 tandem experience, would that be a fair statement?
5 MR. ZABELL: Objection to form. You
6 may answer.
7 Q Would that be fair to say?
8 A Yes.
9 Q Let's look at 1335, and once again the
10 question is, do you see anything in here that's
11 improper, unsafe or appropriate?
12 A I saw nothing unsafe. It depends, the
13 reference -- if giving the middle finger to
14 someone else is inappropriate, you could probably
15 deem that inappropriate. It was two people having
16 fun. Unsafe though, I would probably say if you
17 played it a little further, you might see
18 something unsafe.
19 Q You've seen this video before?
20 A No, I haven't.
21 Q I only got a snippet of it, but I'm
22 just asking you about the snippet.
23 Do you remember anything about this
24 particular video?
25 A I don't.

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1 Richard Winstock 66
2 Q Because I have a longer shot of it on
3 my iPhone if you want to see it.
4 A I'm just making mention there's about
5 to be a collision in the air right there, and I
6 think that's unsafe.
7 Q Why is there about to be a collision in
8 the air?
9 A Rewind it a little bit and you'll see
10 that guy about to collide with -- right there.
11 Q Really?
12 A I would say that's unsafe.
13 Q How did that happen?
14 A I have no idea. I've never seen this
15 video before.
16 MR. ZABELL: I think it might have
17 something to do with physics.
18 Q What could have been done to prevent
19 that collision?
20 A That's a very gray general question.
21 They could have not jumped.
22 Q Do you know if there were any injuries?
23 A No. No one reported to me. But again,
24 all kidding aside, I've never seen that video.
25 That was unsafe.

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1 Richard Winstock 67
2 Q Inside a plane, though, aside from the
3 middle finger, which was a borderline
4 inappropriate, there was nothing else
5 inappropriate?
6 MR. ZABELL: Objection. You may
7 answer.
8 A Depending who you ask, that could be
9 considered borderline inappropriate.
10 Q Would it depend on the circumstances?
11 A Yes.
12 Q I'm sorry, I should really ask the
13 question for the record.
14 I'm now opening 1337, and the question
15 is again, here do you see anything improper, unsafe
16 or inappropriate, and I'm going to start it again?
17 A I didn't notice anything improper,
18 unsafe or inappropriate.
19 Q That appears to be the video of the
20 hand on the posterior in the picture that I showed
21 you earlier, is that correct?
22 A I didn't notice that on that video.
23 MR. ANTOLLINO: Withdrawn. It doesn't
24 matter.
25 Q All the videos you've seen so far,

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1 Richard Winstock 68
2 they're all Skydive Long Island videos, correct?
3 A Yes.
4 Q I'm going to open now 1339, and the
5 same question, do you see anything improper,
6 unsafe or inappropriate?
7 A There was a glare.
8 Q We're going to watch that one again,
9 because you said there was a glare.
10 A I didn't notice anything unsafe,
11 inappropriate or unusual.
12 Q At one point the instructor in that
13 video touched the face of the passenger, is that
14 correct?
15 A I thought he reached out for the video
16 guy, but if --
17 Q Let's watch it again.
18 A I briefly see him use his left hand, or
19 it looked like he hit him in the goggle, or he
20 might have been straightening the student's
21 goggle. But I don't deem that unsafe or improper.
22 Q What if he was just, for example,
23 joking around and was putting his hands over the
24 passenger's eyes and then taking them off?
25 MR. ZABELL: Let the record reflect

Page 69 1 Richard Winstock 69 2 that counsel for the plaintiff motioned for 3 the witness by putting both his hands over 4 both his eyes and removed them demonstrating 5 with the physical context of his question. 6 MR. ANTOLLINO: I'll agree with that 7 characterization. 8 Q Would there be anything inappropriate 9 about that? 10 A No. 11 Q I'm opening 1340. Same question, is 12 there anything improper, inappropriate or unsafe? 13 A No. 14 Q There came to be one point where the 15 passenger, or rather the instructor put two of his 16 fingers into the passenger's ears and made a 17 little like monkey joke. Would that be a fair 18 characterization? 19 A Yes. 20 MR. ZABELL: Let the record reflect 21 that counsel for the plaintiff is gesturing 22 with his two hands around his ears. I don't 23 know if I would characterize it as making a 24 monkey joke. I would characterize it more 25 like antlers.	Page 71 1 Richard Winstock 71 2 hands in close to herself specifically. They're 3 holding the harness. A drogue needs to be 4 deployed. It has to be deployed usually within 5 ten seconds. If a student's hands get away from 6 their body, it's impossible to untangle. It's a 7 fatal error. 8 Again, I hate to guess what somebody 9 else is doing, but it's very important that a 10 student's hands stay in prior to that drogue 11 coming out. So I would not say that was improper. 12 Q Could you tell me the point or just tap 13 this when you get to the point where he's in 14 contact with -- 15 A Yeah, he's -- I don't know if he's as 16 much holding her as he's holding the camera guy 17 right now. He might be reaching around her to 18 hold the camera guy. 19 Q That would be improper? 20 A Holding the camera guy, not reaching 21 around, I consider it inappropriate. You can do 22 whatever you have to do or whatever you feel is 23 necessary to make that skydive successful, and by 24 successful, I mean you live. 25 Q Now we're going to go to the main
Page 70 1 Richard Winstock 70 2 Q Was there anything inappropriate about 3 that? 4 A No. 5 Q We're going to open 1341, and same 6 question as before, do you see anything 7 inappropriate, unsafe or improper? You can forget 8 about the band, just the jump. Was there anything 9 improper, unsafe or inappropriate? 10 A I would characterize that as improper. 11 Q Why? 12 A The tandem instructor prior to drogue 13 release was in contact with the camera, the 14 videographer. 15 Q Other than that, anything else? 16 A No. 17 Q What about the part where he puts his 18 arms around the, I guess, torso of the passenger, 19 was there anything inappropriate about that? 20 A No. 21 Q Was it necessary? 22 A Yes. 23 Q Why? 24 A I'm surmising, because I know the 25 instructor, that he was keeping the student's	Page 72 1 Richard Winstock 72 2 event, and we're going to watch the video of -- 3 Well, I'm not going to preface it. I'm just going 4 to ask you the same question. 5 MR. ANTOLLINO: I'm going to show Mr. 6 Winstock, which I'll deem Plaintiff's Exhibit 7 11, that which is the file we had used in the 8 previous deposition and entitled 9 SKYDIVE.ABI.AVI. 10 (Whereupon, the video was deemed marked 11 as Plaintiff's Exhibit 11 for identification, 12 as of this date.) 13 Q I'm going to ask you the same question, 14 is there anything in there improper, unsafe or 15 inappropriate? 16 A Do you want me to critique that video? 17 Q Was there anything you saw unsafe, 18 inappropriate or improper? 19 A I saw absolutely nothing inappropriate, 20 unsafe or improper -- Strike that. 21 If I want to get technical, if I was 22 evaluating that, I would suggest, probably 23 recommend he do a check of cut away and reserve 24 handles and probably would have advised that the 25 drogue get out there a little bit quicker, and I

18 (Pages 69 to 72)

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1 Richard Winstock 73

2 would say that the landing was outstanding.

3 So, yes, I would probably -- if I were

4 to critique it, I would say that to Don.

5 Q Would that be something --

6 A Safety, that falls under safety.

7 Q Explain again exactly what you mean by

8 that. Let's watch the video.

9 Is this a major safety violation, a

10 minor one or just something that you would

11 critique for him to do better next time?

12 A I personally, if I were given this

13 video, I would critique it and talk to him. I'm

14 sure he knows this, but, yes, it's major. You

15 could have your ratings suspended for thirty days

16 on your first violation. But he did check his

17 lower.

18 Q Was this in the jump? I'll just skip

19 ahead.

20 A Way after. Go to the exit.

21 The exit was outstanding. It was a

22 great exit. In the instructor class you're taught

23 to deploy the drogue in five seconds. You do not

24 want to get up to the terminal velocity, which is

25 usually about twelve seconds.

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1 Richard Winstock 74

2 Although the exit was perfect, it was

3 an outstanding exit, I would probably critique and

4 say you want to get the drogue out earlier.

5 That's a safety issue.

6 The second -- if I were critiquing it

7 for safety, which is checking your primary

8 release, secondary release, cut away handle, your

9 reserve handle, and also your R.S.L., and if you

10 press play --

11 Q Let me ask this. When you said primary

12 and secondary release, --

13 A It's right handed and left handed.

14 Q When checking your primary and

15 secondary releases, you put your hands on your

16 hips, correct?

17 A Yes.

18 Q Why does it appear that he didn't do

19 that at an earlier point?

20 A He did do that. I saw him do that. He

21 checked his right and left release, which is

22 outstanding, and also check a cut away handle,

23 which is up on your shoulder, and reserve handle,

24 which is that handle, and R.S.L. device. That

25 should be checked in free fall.

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1 Richard Winstock 75

2 Those should -- five handles should be

3 touched in free fall every time. You're asking me

4 a safety question, so I'm being honest.

5 Q If you were to grade it, what grade

6 would you give?

7 A I would give it a ninety-seven.

8 Q Let's just watch the rest.

9 A Right there the drogue should have came

10 out. Right there is the bottom handle. So he

11 missed the top handles. Nice landing.

12 Q So basically you had a couple of

13 critiques, but overall you'd grade it a

14 ninety-seven?

15 A I would. It was an outstanding tandem

16 jump.

17 MR. ANTOLLINO: Why don't we take a

18 break now, and I'm going to talk to Don, and

19 we'll finish up, unless Mr. Zabell has

20 questions.

21 MR. ZABELL: I have some questions, but

22 that's fine. We can take a break.

23 (Whereupon, a short break was taken.)

24 MR. ANTOLLINO: Just a few more

25 questions for me.

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1 Richard Winstock 76

2 Q Is it a good practice for a tandem

3 instructor to check the handle checks more than

4 once?

5 A Yes.

6 Q Is it possible that Don did all of his

7 handle checks prior to the camera man getting

8 close enough to videotape?

9 A I'd have to watch the video again. Is

10 it possible, yes.

11 Q Is it possible that the check that you

12 saw in the video was an additional check and not

13 the initial check that is required of all six

14 handles?

15 A Actually, no, it's not.

16 Q Why?

17 A Because the check I saw was after the

18 drogue came out. Any other checks would have been

19 pre-drogue, which is very, very, very rare, and

20 it's actually discouraged. I don't think there

21 were pre-drogue checks.

22 Q When we talked about the attachment

23 points, is there also a chest strap?

24 A Yes.

25 Q Where is that located?

Page 77 1 Richard Winstock 77 2 A It's an adjustable chest strap, so it 3 adjusts up the torso. 4 Q What is its function? 5 A Primarily to hold the passenger in the 6 harness. 7 Q Does it ever loosen and need 8 readjustment during the jump? 9 A I can say that in seventy-five hundred 10 tandems, I've never had one loosened that I had to 11 tighten up during the jump. I've had them so 12 tight that I've had to loosen them, but I've never 13 had it the other way. 14 Q How about any other attachment points? 15 A That you have to loosen? 16 Q Yes. 17 A Yes. 18 Q What about the lateral straps or the 19 lateral bands or straps? 20 A The lateral? 21 Q Are there lateral straps at the hips 22 that strap the passenger to the instructor? 23 A Side connectors. Talking about side 24 connectors, can they loosen up? 25 Q Yes.	Page 79 1 Richard Winstock 79 2 Q When you say the lower side connectors, 3 are those the ones at the hips? 4 A Those are the ones at the hips, yes. 5 Q Do instructors ever have passengers sit 6 in their laps to attach them? 7 A Yes. 8 Q Why? 9 A The reason it's done -- the side 10 connectors have to be extremely tight. They 11 almost can't be too tight. When a passenger sits 12 up in your lap, it brings the attachment point 13 closer to your hips and it allows you to tighten 14 the side strap thoroughly. It also makes it 15 easier to do. 16 I could say not every instructor does 17 it, I don't teach it, but it has been done and I 18 have seen instructors do it. 19 Q And you've seen them do it at Skydive 20 Long Island? 21 A Yes. 22 Q Do instructors ever guide passengers 23 into this position? 24 A Guide them? 25 Q Yes.
Page 78 1 Richard Winstock 78 2 A It's not very common. I couldn't sit 3 here and say it could never happen, but it's not 4 very common. 5 Q Would there be any situation like you 6 suggested before where they would be too tight and 7 you had to loosen them? 8 MR. ZABELL: Ask your client not to 9 speak. 10 MR. ANTOLLINO: Don, if you want to 11 talk to me outside, we can talk outside. 12 Q When going to hook up or attach a 13 passenger in a plane, when does that occur? 14 A It really depends on the plane you're 15 in, it depends on the drops you're at. There's a 16 lot that goes into that question. 17 Are you referring to Skydive Long 18 Island? 19 Q Yes. 20 A If you're referring to Skydive Long 21 Island, we have benches in our planes. When we 22 board the plane, the passenger sits in front of us 23 and we hook up the lower side connectors right 24 then and there on the ground before we take off, 25 and then we seat belt ourself into the plane.	Page 80 1 Richard Winstock 80 2 A For lack of sounding ignorant, when you 3 say guide -- 4 Q Pull them toward their lap, yes. 5 A Yes. 6 Q Could that involve touching of the 7 hips? 8 A It could. 9 Q During the plane ride up -- Well, what 10 is the Caravan? 11 MR. ZABELL: Object to the form. You 12 may answer. 13 A The Caravan -- We have two planes. The 14 Caravan is one of the two planes. A Cessna 15 Caravan, they call it the Grand Caravan. 16 Q On the ride up in the Caravan, where is 17 the passenger sitting in relation to the 18 instructor? 19 A In front of. 20 Q What is the instructor supposed to do 21 with his arms at that juncture, or is there 22 anything that -- 23 A What juncture? 24 Q When the passenger is sitting in front 25 of the instructor.

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1 Richard Winstock 81

2 A Our arms?

3 Q Yes.

4 A It's important to note that we can't

5 dictate every single movement an instructor makes,

6 but I can tell you what is commonplace or taught.

7 Instructors are supposed to do handle

8 checks in the plane the whole way up. It's not

9 uncommon that I do five, six, seven, eight handle

10 checks. So with my hands I'm touching my right

11 hand release and left hand release, cut away and

12 reserve handle, my R.S.L., and I'm also checking

13 the side connectors as well, which are attached at

14 the hips.

15 Some other functions an instructor

16 might do, they might check the harness itself on

17 the passenger, and that might involve looking over

18 his shoulder or tightening up a chest strap.

19 Q On a busy day at the drop zone, would

20 it be easy to forget the passengers that you

21 did --

22 A I can only see where this is going.

23 Q -- would it be easy to forget the

24 passengers that you had taken out on a jump?

25 A Yes. Elaborate, forget visually, face

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1 Richard Winstock 82

2 wise, name wise?

3 Q Yes.

4 A Yes, it would be very common.

5 Q Do you ever refer to flipping

6 hamburgers at the drop zone?

7 A To what?

8 Q Flipping hamburgers, is that an

9 expression you've heard?

10 A I never heard it used.

11 Q In the waiver there's a point about the

12 passenger acknowledges close proximity to the

13 instructor.

14 Have you familiarized yourself with

15 that portion of the waiver?

16 A Yes.

17 Q I believe it's item thirteen. Whatever

18 it is, why is that there?

19 A Again, it's important to let the

20 passenger know that they're making, first off, a

21 very dangerous -- they're making a jump out of an

22 airplane, and they're going to be in such close

23 proximity, and like I explained, those side

24 connectors are very tight, so you're violating

25 their personal space basically, and you need to

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1 Richard Winstock 83

2 let them know we're violating your personal space

3 to make this safe. That's the only --

4 Q I think that answers the question.

5 MR. ANTOLLINO: Don, I think we've

6 asked everything we need to ask, and I just

7 have one more question, but do you have

8 anything else you want to discuss with me

9 outside or is that enough?

10 MR. ZARDA: If you think this one more

11 question covers all that.

12 MR. ANTOLLINO: Is there anything else

13 based on these questions you want me to ask?

14 MR. ZARDA: I can't think of any other

15 questions.

16 Q When you suggested this letter of

17 reprimand you talked about before, what would the

18 reprimand have been for exactly?

19 A I was not -- It's important that you

20 understand, I wasn't involved in the complaint, I

21 wasn't involved in the decision to terminate Don

22 at all, nor did I ever get involved, and I'll go a

23 step further, that's the first time I've seen the

24 video ever. I've never seen that video, and it

25 appears to be raw footage, so I've never seen the

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1 Richard Winstock 84

2 footage.

3 I didn't talk to the husband, I didn't

4 talk to the wife. I advocated on Don's behalf.

5 So when I was asking for the letter of

6 recommendation, it was more a -- more so, don't

7 terminate, how about a letter of recommendation.

8 Q Letter of reprimand.

9 A I'm sorry, a letter of reprimand, and

10 my reason for that, and I've been very vocal about

11 that, Don, in my opinion, is an outstanding tandem

12 instructor. There's never been a safety issue,

13 and I advocated for him.

14 It wasn't based on a video or

15 complaint, because I didn't have that knowledge, I

16 didn't have the facts to make a decision, as I

17 don't right now, because I didn't talk to anyone,

18 and I still don't know exactly what the complaint

19 is. So the letter was really advocating for Don.

20 MR. ANTOLLINO: No further questions.

21 Thank you very much.

22 MR. ZABELL: I have a couple of

23 questions.

24 EXAMINATION BY SAUL ZABELL, ESQ.:

25 Q You said that everybody was aware that

Page 85

1 Richard Winstock 85
2 Don was gay, is that correct?
3 A Yes.
4 Q How did you know that everybody was
5 aware that Don was gay?
6 A Don was flamboyant. He was very
7 outwardly -- he's a friendly guy, and in his
8 friendliness he doesn't hide the fact that he's
9 gay. In fact, it's very out in the open. The
10 pink hats, the pink toenail polish, he's called
11 gay Don. I never knew that that bothered him. If
12 it did, I'm sorry.
13 MR. ZABELL: I hate to interrupt, but I
14 think the record should reflect when the
15 deponent was testifying he was called gay
16 Don, I didn't know if it bothered him, that
17 Mr. Zarda shook his head no, it didn't.
18 MR. ANTOLLINO: There's been no
19 testimony here. I didn't see --
20 MR. ZABELL: You have to let me finish
21 speaking, because I give you the courtesy of
22 that.
23 I'm saying that the record should
24 reflect that Mr. Zarda was physically shaking
25 his head from left to right while the

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1 Richard Winstock 86
2 deponent was saying, I didn't know that it
3 bothered him, indicating that, no, it did
4 not.
5 MR. ANTOLLINO: I didn't see that.
6 MR. ZABELL: You can feel free to ask
7 Mr. Zarda.
8 MR. ANTOLLINO: He's not under oath.
9 You can ask him tomorrow, and he's gonna tell
10 you the truth.
11 Q You can go ahead. I just needed to
12 verbally clarify that.
13 A I think I finished answering.
14 Just that Don himself was very open
15 about it. This was not something hidden or
16 something that was quiet. It wasn't clandestine.
17 Q Did you ever hear Don refer to
18 himself or introduce himself as gay Don?
19 A I may have.
20 Q Did you ever treat Mr. Zarda
21 differently because of his sexuality?
22 A No.
23 Q Did you have occasion to work with Mr.
24 Zarda?
25 A Yes.

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1 Richard Winstock 87
2 Q How frequently?
3 A If not every weekend, almost every
4 weekend for two summers, minus possible injuries,
5 or he might have missed a few days here and there.
6 Q Did you ever observe any of your
7 co-workers treating Mr. Zarda differently than any
8 other co-worker?
9 A I didn't.
10 Q Did you ever observe Mr. Zarda being
11 treated differently because of his sexual
12 orientation?
13 A I didn't.
14 Q Did you ever hear any jokes in the
15 workplace about Mr. Zarda's sexuality?
16 A No.
17 Q Did Mr. Maynard ever make disparaging
18 comments about Don Zarda?
19 A Not in front of me.
20 Q Are you aware if he had made any
21 disparaging comments?
22 A No.
23 Q So when you say, not in front of me,
24 does that mean you're not aware of comments that
25 were made?

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1 Richard Winstock 88
2 A No, I am not.
3 Q Are you aware of any of the co-workers
4 at Skydive Long Island making disparaging comments
5 about Mr. Zarda?
6 A No.
7 Q Now, you hold a special title at
8 Skydive Long Island, do you not?
9 A Yes.
10 Q What is your title?
11 A Safety and training advisor. Chief
12 instructor and instructor examiner in a few
13 different disciplines.
14 Q What does an instructor examiner do?
15 A Certifies instructors. It's the person
16 if you want to become a tandem instructor or a
17 free fall instructor, or a coach, you have to go
18 to an instructor examiner. That's the person who
19 actually gives -- signs off on the rating for a
20 tandem instructor. So it's called -- commonly
21 referred to as an I.E., and I'm the only one at
22 Skydive Long Island.
23 Q Who was the most senior skydiver at
24 Skydive Long Island?
25 A Seniority -- That's a good question.

Page 89 1 Richard Winstock 89 2 Seniority is determined in several ways. We have 3 license numbers. Once you become a professional 4 skydiver, you get what's called a D license 5 number, and the lower your license number, that 6 means the longer in the sport you've been. 7 So that's -- For example, if we all had 8 D licenses, whoever had the lowest number would 9 have the most time in the sport. If it's based on 10 time in the sport, I am the most senior guy, 11 instructor there. If it's based on number of 12 jumps, sometimes the guy with the most jumps 13 they'll consider the most senior guy, that's 14 another way to determine it, there are a couple of 15 guys with more jumps than myself. 16 Q What about professional qualifications, 17 is there anybody at Skydive Long Island with more 18 professional qualifications than you? 19 A No. 20 Q Now, if an instructor had a complaint 21 at Skydive Long Island, who were they to bring 22 that complaint to? 23 A Me. 24 Q Why were they to bring their complaint 25 to you?	Page 91 1 Richard Winstock 91 2 been fired from Skydive Long Island before? 3 A Yes. 4 Q How do you know that? 5 A Word of mouth from Ray Maynard. 6 Q What did Ray Maynard say was the reason 7 for his termination the previous time? 8 A It had to do with instructor and 9 passenger interaction. 10 Q You testified about the various roles 11 of an instructor. Is it safe to say that the 12 primary role of the instructor is to get the 13 instructor and the passenger from the airplane to 14 the ground safely? 15 A That is their primary goal, period. 16 Q Are there secondary goals? 17 A Yes. 18 Q What are the secondary goals and so on, 19 if there are? 20 A Primary goal is safety and always is. 21 Secondary would be to make sure they enjoy their 22 experience. The video would be the secondary. 23 Safety out trumps a nice pretty video if you're 24 having some sort of issue up there. Safety, 25 obviously, is number one. Video, passenger
Page 90 1 Richard Winstock 90 2 A Because of the title chief instructor, 3 because of my safety and training and title. It 4 depends on what the complaint involves. 5 Of course, I guess if it was a 6 complaint about me, they might go to Ray, the drop 7 zone owner, but if I'm not at the drop zone, the 8 possibility exists that they could also go to Ray. 9 Q Did Mr. Zarda ever complain to you 10 about anything that occurred at Skydive Long 11 Island? 12 A The only -- Only one time. 13 Q What did he complain about? 14 A I remember Mr. Zarda came up to me to 15 discuss that he had been sent home in reference to 16 this particular incident, and that was the only 17 time that I remember him coming to me with a 18 complaint of any sort. 19 Q Do you recall what he told you? 20 A Other than Ray sent me home, no, I 21 can't give specifics. 22 Q Did Mr. Zarda know why he was being 23 sent home? 24 A I don't know. 25 Q Now, do you know if Mr. Zarda had ever	Page 92 1 Richard Winstock 92 2 experience, that comes second. 3 Q Do you consider what you engage in as 4 an instructor at Skydive Long Island to be a 5 customer service business? 6 A Yes. 7 Q Why do you consider it to be that? 8 A We're offering a product. In my 9 opinion, we're offering a product and we're basing 10 it on the safety record, and I think that we have 11 the obligation to deliver the product as safely as 12 possible. 13 Q As a training instructor and chief 14 instructor of Skydive Long Island, do you teach 15 the other instructors, advise the other 16 instructors that they're responsible for their own 17 actions? 18 A Yes. 19 Q Are they taught that what works for one 20 customer may not work for another customer? 21 A Absolutely, yes. 22 Q If they do something that makes a 23 customer uncomfortable, are they responsible for 24 that? 25 A Yes.

Page 93 1 Richard Winstock 93 2 Q And they would, in fact, be responsible 3 for damaging the jump experience, is that correct? 4 A Correct. 5 Q Would it be inappropriate to discipline 6 an employee who for one reason or another gives 7 the customer a bad experience? 8 A No. 9 Q Even though another customer might have 10 responded positively to the same actions, is that 11 correct? 12 A Correct. 13 Q Is that because it's a customer service 14 business? 15 A Yes. 16 Q And you need to read your customers? 17 A Yes. 18 Q Now, instilling trust between yourself 19 and the customer is a big part of the jump 20 experience, is it not? 21 A Yes. 22 Q I think you testified that it's one of 23 the most crucial parts of the experience? 24 A Correct. 25 Q So if you needed to place your hand in	Page 95 1 Richard Winstock 95 2 instructors discussing their sexual orientation at 3 Skydive Long Island? 4 A No. 5 Q Would you recommend as a training 6 instructor and a chief instructor that the 7 instructors discuss their sexual orientation 8 during a jump? 9 A I wouldn't recommend it. 10 Q Why would you not recommend it? 11 A To me that pre-jump phase is one of 12 building trust, and I think, even in the course I 13 teach I talk about this, in building trust, and I 14 think there's better ways to build trust, in my 15 opinion. 16 Every passenger is different. It's 17 important to know that every passenger is 18 different. 19 Would I recommend it was the question? 20 I would say, no. 21 Q Now, you were asked some questions 22 about Mr. Zarda appearing at the drop zone with a 23 cast? 24 A Correct. 25 Q Do you recall that?
Page 94 1 Richard Winstock 94 2 a certain area or rest your head in a certain 3 area, would it be your responsibility to explain 4 to the customer exactly why you're doing it? 5 A Yes. 6 If I can elaborate, a lot of times you 7 don't have the opportunity to explain why you're 8 doing something, but at some point you would have 9 the obligation, or if you were asked, you would be 10 able to explain why you did what you did. 11 Q Did you ever take the opportunity to 12 explain to a customer that you were taking a 13 particular action because of your sexual 14 orientation? 15 A No. 16 Q Can you think of any situation that 17 might arise where discussing your sexual 18 orientation would be appropriate in the context of 19 a skydive? 20 A No. 21 Q Do you discuss your sexual orientation 22 with customers? 23 A I have told customers I'm married. 24 Other than that, no. 25 Q Are you aware of other skydive	Page 96 1 Richard Winstock 96 2 A Yes. 3 Q Do you remember Mr. Zarda appearing at 4 the drop zone with a cast? 5 A Yes, I do. 6 Q Was he working at that time that he was 7 there with the cast? 8 A I do not believe so, no. 9 Q And you can't be a skydive instructor 10 with a casted foot or ankle, is that correct? 11 A No. 12 Q No, that's not correct or, no -- 13 A I'm sorry, no, you cannot be a skydive 14 instructor with a cast on your foot. 15 Q Can you think of why Ray Maynard 16 wouldn't want someone hanging around the drop zone 17 with a cast on not during a workday? 18 A Yes. 19 MR. ANTOLLINO: Objection to form. Go 20 ahead. 21 A Yes. 22 Q What would that reason be, or those 23 reasons be? 24 A It would kind of fall into the -- I 25 don't have to explain the bad karma category. If

24 (Pages 93 to 96)

Page 97 1 Richard Winstock 97 2 you see someone with a cast at a skydiving 3 operation, I think it's probably not the best for 4 business. 5 If I was Ray, or if I was the owner and 6 I had to make that decision, I probably wouldn't 7 want someone, especially an instructor, walking 8 around with a cast on or possibly in a wheelchair 9 or something that would bring up -- we're trying 10 to be positive and build trust and get a good 11 feeling going. 12 So, no, I wouldn't think there would be 13 any reason for an instructor with a cast on -- It 14 wouldn't help the business, let's put it that way. 15 Q Did you ever hear Ray Maynard comment 16 about any of the colors that Don Zarda was 17 wearing? 18 A I didn't hear, no. 19 Q Did you ever hear any of the co-workers 20 comment on the colors that Don Zarda wore? 21 A I didn't. 22 Q Do you think Don Zarda was treated any 23 differently at Skydive Long Island because he's 24 gay? 25 A No.	Page 99 1 Richard Winstock 99 2 definitely upset about the situation and that I 3 would put that in the category of that is how Don 4 would speak to me. I didn't take it as 5 disrespectful. 6 Q Do you see how somebody could see that 7 as being disrespectful? 8 A Yes. 9 Q Do you see how Mr. Maynard could see 10 that as disrespectful? 11 A Yes. 12 Q Do you know on how many different 13 occasions Mr. Zarda was terminated from Skydive 14 Long Island? 15 A To the best of my recollection, one 16 time prior to this incident. 17 Q So a total of two times? 18 A To the best of my knowledge. 19 Q Do you know how many times Mr. Zarda 20 was hired by Skydive Long Island? 21 A Two. I'm surmising here. 22 Q Let's work this through. 23 If he was hired once and terminated 24 once -- 25 A Correct.
Page 98 1 Richard Winstock 98 2 Q Did you ever hear Ray Maynard complain 3 about Don Zarda? 4 A I didn't. 5 Q Did you ever hear Don Zarda complain 6 about Ray Maynard? 7 A I did not -- Strike that. 8 Minus the one time, the very last 9 incident when he was upset that he was sent home, 10 that he came to me with a complaint about Ray 11 because I was his direct supervisor at the time, 12 other than that, I never heard Don complain about 13 Ray at any time. 14 Q I believe you were shown an e-mail by 15 counsel for Mr. Zarda, and in that e-mail Mr. 16 Zarda had commented about whether or not Mr. 17 Maynard came to his senses. 18 Do you recall that? 19 A Yes. 20 Q Do you believe that's an appropriate 21 question to ask, A, of your supervisor, and, B, 22 about the owner of the company? 23 A I believe -- I think I could classify 24 Don and my personal relationship as friendly. I 25 think it was a friendly e-mail. I know Don was	Page 100 1 Richard Winstock 100 2 Q -- and hired again and then terminated 3 again, then two would be correct, right? 4 A Right. 5 Q Was Mr. Zarda hired while you were 6 employed at Skydive Long Island? 7 A Yes. 8 Q Were you responsible for the hiring? 9 A No. 10 Q Did you have any input in the hiring? 11 A No. 12 Q When he was hired, were you advised of 13 anything regarding Mr. Zarda? 14 A Yes. 15 Q What were you advised of? 16 A Curt Kellinger, who is the instructor 17 who introduced me to Don up in Vermont, told me 18 that he asked Don to come to Skydive Long Island. 19 He told me that Don was gay and he told me that 20 Don was an excellent tandem instructor, and that's 21 all that was told to me prior to his being hired. 22 Q In any of your experiences with Don, 23 did you ever find any of that to be untrue? 24 A No. 25 Q I'm sorry, who was that that told you?

25 (Pages 97 to 100)

Page 101	Page 103
1 Richard Winstock 101 2 A Curt Kellinger. 3 Q Does Curt Kellinger work at Skydive 4 Long Island? 5 A He does. 6 Q The fact that Curt Kellinger told you 7 that Don Zarda was gay, did that effect whether or 8 not Don Zarda was hired by Skydive Long Island? 9 A No. 10 Q So, in fact, he was hired even though 11 his sexuality was known? 12 A Correct. 13 Q Did it effect what he was paid? 14 A No. 15 Q To your knowledge, did it effect how he 16 was treated? 17 A No. 18 Q Is there anything else you'd like to 19 tell me? 20 A No. 21 MR. ZABELL: Thank you for your time. 22 I appreciate it. 23 Would you like to reserve the right to 24 the see a copy of this deposition at the 25 conclusion of the deposition?	1 Richard Winstock 103 2 to do with a passenger and instructor interaction? 3 A That's right. 4 Q And Ray told you that? 5 A Yes. 6 Q When did Ray tell you that? 7 A Sometime over the course of the last 8 three to last four years. 9 Q So it could have been after this 10 lawsuit had been filed? 11 A No, this is back when, approximately, 12 around the time that he was hired. Ray explained 13 to me that he hired Don and that he also explained 14 to me that he was terminated once before. 15 Q But you don't recall any of the 16 specifics about what Ray said about this 17 interaction? 18 A It was passenger/instructor interaction 19 was the reason he was terminated. 20 Q If a passenger complains about an 21 unwillingness to violate safety standards, is that 22 a legitimate complaint? 23 A If a passenger -- 24 Q If a passenger -- 25 A I'm trying to get -- If a passenger
Page 102	Page 104
1 Richard Winstock 102 2 THE WITNESS: At the conclusion? 3 MR. ZABELL: Not immediately. 4 THE WITNESS: Yes, I would. 5 MR. ANTOLLINO: All right. There's a 6 few things to follow-up on here. 7 CONTINUED EXAMINATION BY MR. ANTOLLINO: 8 Q You said that Don wasn't hired by you, 9 but did you inform Ray that Don was gay before Ray 10 made the decision to hire Don? 11 A Ray knew Don prior -- I think -- I 12 don't know who's confused here. Ray had already 13 worked with Don, so Ray knew Don. All I was 14 saying to the question was I didn't have much to 15 do with the hiring. So when Ray hired Don, Ray 16 knew Don was gay. 17 Q The first termination of Don, do you 18 know when that was? 19 A I don't. 20 Q Was that before you were working at 21 S.D.L.I.? 22 A I was working at Skydive Long Island, 23 but I wasn't there for this incident, or I wasn't 24 there while he was working. 25 Q You testified that you believe it had	1 Richard Winstock 104 2 complains about an unwillingness to violate a 3 safety, can I -- My passenger is asking me and I 4 don't want to violate safety standards? 5 Q No. If the passenger says something 6 like, can we do X, Y or Z, whatever it is, and you 7 know that violates safety standards and you say no 8 because that violates safety standards, is that a 9 legitimate passenger complaint? 10 A No. 11 Q You said you've told some passengers 12 that you're married? 13 A Yes. 14 Q So this happened over the course of say 15 the last ten years? 16 A Over the course of the last thirteen 17 years, give or take. 18 Q So certainly between 1998 and 2011? 19 A Yes. 20 Q Before last year, if you told someone 21 that you were married, that person would 22 understand that you were heterosexual, correct? 23 A Correct. 24 Q Did you show Ray Maynard that e-mail 25 where Don said, has Ray come to his senses?

Page 105

1 Richard Winstock 105
2 A I don't believe I did.
3 Q Did you go to Ray and say, Don wants to
4 know if you've come to your senses?
5 A No.
6 Q Early in the deposition I believe you
7 testified whether or not to reveal one's sexual
8 orientation would be something that depended on
9 the circumstances, correct?
10 A Correct.
11 MR. ZABELL: Object to the form.
12 Q Do you know if anyone ever called Don
13 gay Don in front of another customer?
14 A Quite possibly, but I can't give you a
15 specific instance. It wouldn't surprise me if it
16 did happen.
17 MR. ANTOLLINO: I'm hoping he has no
18 further questions, but I have to speak to my
19 client outside.
20 (Whereupon, a short break was taken.)
21 MR. ANTOLLINO: As usual, my client has
22 excellent questions he wants me to ask, and
23 he's happy to have written these down.
24 MR. ZABELL: Object to the questions
25 being excellent, but....

Page 106

1 Richard Winstock 106
2 Q Have you ever heard any gay tandem
3 jokes made over the years in the air, such as
4 jokes as when two guys are strapped together?
5 A Yes.
6 Q Can you give me an example?
7 A I can say that over the last twenty
8 years I've heard quite a few tandem instructors
9 with quite a few different ways to loosen up the
10 situation in order to make their passengers feel
11 more comfortable.
12 A specific joke or comment, one's not
13 coming to my mind right now. If you know of one,
14 I'll tell you if I've heard it used, if that'll
15 work. I can't think of a particular joke.
16 Q Did you ever hear a joke, I bet you
17 didn't guess you were gonna be strapped to another
18 guy for this experience?
19 A I've probably heard that.
20 Q And that is when the speaker is
21 presuming that the speaker is heterosexual and is
22 being put into an intimate situation with a man,
23 correct?
24 A Hundred percent correct.
25 Q When Don was out on injury leave let's

Page 107

1 Richard Winstock 107
2 call it, did Ray ever call a mandatory staff
3 meeting in which he asked everyone, whether out on
4 injury leave or not, to come to the workplace?
5 A I have absolutely no idea. I don't
6 recall it if he did.
7 Q Does Skydive Long Island ever have a
8 summer party where it invites the community and
9 customers?
10 A A summer party?
11 Q A summer party.
12 A They have different gatherings and
13 parties during the summer, yes.
14 Q Did they ever have a luau called, get
15 laid?
16 A They may have. I do not remember a
17 party called get laid. There was a luau five, six
18 years ago. I don't remember it being categorized
19 like that.
20 Q Has Ray ever fired and rehired other
21 instructors?
22 A Yes.
23 Q Do you know who?
24 A Jerry Hannick was fired and rehired.
25 There's been so many. He's the one

Page 108

1 Richard Winstock 108
2 that comes to mind right now. That's the most
3 recent.
4 Q I notice you're not wearing a wedding
5 band. Would it be fair to say looking at you one
6 would not be able to tell you're married?
7 A Correct.
8 Q Would it be fair to say that your
9 marriage is personal information?
10 A No.
11 Q Why not?
12 A I would say it's public information.
13 My -- whether or not -- whether I'm married or not
14 -- if you were to ask me whether I'm married, I
15 don't take that as a violation of my personal
16 stock or knowledge.
17 Q When I walked into this room, I didn't
18 know you were married, and I didn't see any ring
19 on your finger. So would you agree that in this
20 setting, without any other indicia, that your
21 marriage is personal information to you that you
22 might be willing to share, but it's not obvious?
23 A Okay.
24 Q There's nothing I can tell by looking
25 at you that says, this is a married guy?

Page 109

1Richard Winstock109

2A Okay.

3Q Is that fair to say?

4A Yes, it is.

5Q Would you agree that your marriage is

6personal information in this circumstance?

7A Yes.

8MR. ANTOLLINO: No further questions.

9MR. ZABELL: Just a few.

10In what kinds of context would you

11reveal to customers that you were married?

12THE WITNESS: It's a very, very

13specific context, actually.

14Over the years, I personally find that

15women, female passengers, usually older, when

16they're extremely nervous, and their mothers,

17I have to calm down my passenger, especially

18when they're extremely nervous I have to,

19otherwise it's a safety issue, and like I

20said earlier, our job is to land safely, and

21I want to go home to my three kids.

22Every passenger is different. So when

23you're dealing with an older woman who is a

24mother, I say, I'm married, I have three

25children, I want to go home to my family,

Page 111

1Richard Winstock111

2MR. ZABELL: Thank you..

3(Whereupon, the examination of

4this witness was concluded at 5:00 P.M.)

5

6* * * *

7

8STATE OF NEW YORK)

9)ss.:

10COUNTY OF)

11I have read the foregoing record of my

12testimony taken at the time and place noted in the

13heading hereof and I do hereby acknowledge it to

14be a true and correct transcript of same.

15

16

17RICHARD M. WINSTOCK

18

19Subscribed and sworn to

20before me on this _____ day

21of _____, 2011.

22

23

24NOTARY PUBLIC

25

Page 110

1Richard Winstock110

2it's okay.

3That's when, and that's the only

4scenario I reveal it, and I'll add that I

5have three children, and it tends to calm

6older women down. That's in my mind when I

7said that. That's the one time I do that.

8So I do in certain situations. That's

9why the question was asked, do I recommend

10not bringing it up. Yes, of course I

11recommend you don't bring it up, but there

12are situations where it could benefit you.

13

14

15

16

17(Continued on following page to

18allow for signature and jurat.)

19

20

21

22

23

24

25

Page 112

1112

2I N D E X

3

4EXAMINATION OF BY PAGE

5Richard Winstock Mr. Antollino 3-84

6Mr. Zabell 84-102

7Mr. Antollino 102-111

8

9E X H I B I T S

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CERTIFICATION

I, Deborah Thier, a Notary Public
of the State of New York do hereby certify:
That the testimony in the within
proceeding was held before me at the aforesaid
time and place. That said witness was duly sworn
before the commencement of the testimony, and that
the testimony was taken stenographically by me,
then transcribed under my supervision, and that
the within transcript is a true record of the
testimony of said witness.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, that I am not interested directly or
indirectly in the matter in controversy, nor am I
in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set
my hand this 16th day of December, 2011.

DEBORAH THIER

EXHIBIT E

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff

-against-

CASE NO.:
10 civ 4334
(JFB) (ARL)

ALTITUDE EXPRESS, INC. d/b/a SKY DIVE
L.I. and RAY MAYNARD,

Defendants

-----X

4875 Sunrise Highway
Bohemia, New York

December 21, 2011
1:00 P.M.

EXAMINATION BEFORE TRIAL of LAUREN CALLANAN, a
Non-Party Witness, taken by the attorney for the
Plaintiff pursuant to Subpoena and held at the above
stated time and place before Joseph J. Pontillo, a
Notary Public of the State of New York.

ORIGINAL

2
1
2 A P P E A R A N C E S:
3
4
5

6 GREGORY ANTOLLINO, ESQ.
Attorney for the Plaintiff
7 18-20 West 21st Street, Suite 802
New York, New York 10010
8
9

10
11 ZABELL & ASSOCIATES
Attorneys for the Defendants
12 4875 Sunrise Highway
Bohemia, New York 11716
13

14 BY: SAUL ZABELL, ESQ.
15
16
17

18 ALSO PRESENT: GERT DEKEGEL
19
20
21
22
23
24
25

1 L A U R E N C A L L A N A N ,

2 The witness herein, having first been duly sworn
3 by Joseph J. Pontillo, a Notary Public in and for the
4 State of New York, was examined and testified as
5 follows:

6 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:

7 Q State your name for the record, please.

8 A Lauren Callanan.

9 Q What is your address?

10 MR. ZABELL: Your business address.

11 A My business address is 525 Jan Way,
12 Calverton, New York 11933.

13 Q You're here pursuant to a Subpoena, is that
14 correct?

15 A That is correct.

16 Q Did you receive that Subpoena in the mail?

17 A I did not.

18 Q You did not. Is your address P.O. Box 353
19 Yaphank, New York?

20 A Yes.

21 Q You received the Subpoena?

22 A I have not been to my post office box
23 probably since the second week of November.

24 MR. ANTOLLINO: Let's mark this as

25 Callanan Exhibit 1.

4

1

LAUREN CALLANAN

2

(Whereupon, a Subpoena was marked as

3

Callanan Exhibit 1 for identification, as of

4

this date.)

5

Q Have you ever seen this before?

6

A I have not.

7

Q Why do you have a post office box?

8

A Because I need a place to get my mail.

9

Q Do you get mail anyplace else?

10

A Sometimes at work. Most of my mail is

11

electronic.

12

Q You have not been to that post office box in

13

how long?

14

A Since my birthday, which was November 13th.

15

Q You have never seen that Subpoena before?

16

A I have not.

17

Q Well, you're here today at 1:00, which is a

18

date that Mr. Zabell and I agreed upon. The Subpoena

19

requests certain information that you provide. I'd

20

like you to read the production box to yourself and

21

tell me when you're finished.

22

MR. ZABELL: You may do so.

23

A I have finished, yes.

24

Q Would it be fair to say that you have not

25

searched for any documents such as those that are referred

1 LAUREN CALLANAN

2 to in the production box?

3 A I have not.

4 MR. ANTOLLINO: So counsel, I'll put it
5 on the record. We don't have to argue about
6 it now.

7 You gave me Lauren Callanan's P.O. Box
8 in the list of employees. I couldn't serve
9 her with a Subpoena. The witness has never
10 seen the Subpoena. I sent it to you. I told
11 you that I didn't have her physical address.

12 I hoped that mailing it would be
13 acceptable. The witness has not responded to
14 the Subpoena so we don't have an answer as
15 to whether or not there is anything.

16 MR. ZABELL: That is actually incorrect.
17 You could have asked the deponent if she has
18 in her personal possession any documents
19 that would have matched or have been
20 responsive to those requested at which
21 point she would have told you no, she does
22 not. You did not ask that question, so you
23 don't know the answer to that question.

24 MR. ANTOLLINO: She has not done a
25 search for them. Therefore, the answer is

6

1

LAUREN CALLANAN

2

unclear. We'll deal with that at a later

3

date.

4

Q Have you ever testified under oath before?

5

A For a traffic violation multiple years ago.

6

Q Anything else?

7

A No.

8

Q Do you understand what it means to be under

9

oath?

10

A Yes.

11

Q Do you understand that you are sworn to tell

12

the truth?

13

A Yes.

14

Q Do you understand that even though we are in

15

an informal setting here in this office, your answers

16

have the same force and effect as if you were in a

17

courtroom with a judge and jury?

18

A Yes.

19

Q Do you understand that any false testimony

20

could be a basis for a perjury charge?

21

A Yes.

22

Q Do you understand what perjury is?

23

A Yes.

24

Q Is there anything that would prevent you from

25

giving me your full attention today?

1 LAUREN CALLANAN

2 A No.

3 Q Are you taking any medications or suffering
4 from any illness that would prevent you from
5 understanding my questions?

6 A I am not.

7 Q If you don't understand any of my questions,
8 will you let me know?

9 A Yes.

10 Q I don't think we'll be here for too long,
11 but if you need a break will you let me know?

12 A Yes, I will.

13 Q Did you prepare for this deposition?

14 A I met with Mr. Zabell.

15 Q When was that?

16 A Earlier today.

17 Q At what time?

18 A I got here about twelve-twenty.

19 Q Did you look at any documents?

20 A I saw one document, yes.

21 Q What document?

22 A Regarding a letter that my name was on that I
23 had written.

24 Q Would that be the document that is part of
25 Exhibit 1?

8

1

LAUREN CALLANAN

2

A That is the document, yes'.

3

MR. ANTOLLINO: Why not mark this as

4

Callanan 1-A, since it is part of Exhibit 1.

5

(Whereupon, a letter was marked as

6

Callanan Exhibit 1-A for identification, as

7

of this date.)

8

Q When did you retain Mr. Zabell.

9

A Earlier today.

10

Q Was it a suggestion made by him that he would

11

represent you?

12

MR. ZABELL: Objection. I'm going to

13

advise you that if answering that question

14

requires you to reveal the contents of

15

conversations that you had between yourself

16

and myself, you may simply say, I can't

17

answer that question. If you can answer the

18

question without revealing the content of

19

conversations between yourself and myself,

20

you may do so.

21

A I apologize. The question is?

22

* Q Did Mr. Zabell tell you that he was going to

23

represent you or did you ask him to represent you?

24

A I apologize, I can't answer the question.

25

MR. ANTOLLINO: Mark it for a ruling.

1 LAUREN CALLANAN

2 Q Did Ray talk to you about this deposition?

3 A All I was told was that there was a

4 deposition going on. I made a call.

5 Q Who told that you?

6 A Ray told me that.

7 Q Did Ray tell you anything about the case?

8 A No, not anything specific. Just basically

9 that the case was going on.

10 Q Did you speak to Mr. Zabell before today?

11 A Before today I spoke with him regarding --

12 MR. ZABELL: You can only confirm that

13 you spoke to me. You cannot disclose the

14 contents of our conversation.

15 Q You can answer.

16 A Yes.

17 Q How many times?

18 A Once.

19 Q When was that?

20 A That was, I believe, on Friday. I believe on

21 Friday. I apologize. Was it Monday? I don't recall.

22 Either Monday or Friday regarding a deposition today at

23 one p.m.

24 Q Within the last week or so?

25 A Yes, within the past week.

10

1

LAUREN CALLANAN

2

Q Anytime before that?

3

A No.

4

Q The time that you spoke to him last Friday or

5

Monday, whenever it was, was before you retained Mr.

6

Zabell this morning, correct? I note you're looking at

7

your lawyer.

8

A I apologize. Can you repeat the question.

9

MR. ANTOLLINO: Can you read it back.

10

(Whereupon, the above referred to

11

question was read back.)

12

A When I spoke to him within the past week,

13

yes, that was before I retained him this morning.

14

Q Who dialed the number? Was that Mr. Zabell

15

that called you or was it you that called Mr. Zabell?

16

MR. ZABELL: Objection to the form of

17

the multiple questions. You may pick one and

18

answer.

19

A I dialed the phone and called the office.

20

Q You dialed the phone from where?

21

A On my cell phone. I called the office.

22

Q You called this office or Sky Dive Long

23

Island?

24

A I called this office.

25

Q Why did you call this office?

1 LAUREN CALLANAN

2 A Because I received a message to call the
3 office.

4 Q Who did you receive the message from?

5 A I don't recall. Actually, I do believe I
6 received a message from Ray to call the office.

7 Q What did Ray say in the message, simply to
8 call the office or something else?

9 A To call the office regarding the deposition.

10 Q Was anything else said?

11 A No.

12 Q When you called the office, did you speak to
13 Mr. Zabell?

14 A I did.

15 * Q What did you say to him?

16 MR. ZABELL: Objection. The same
17 direction I gave you before regarding
18 communications between yourself and myself.

19 A I cannot answer the question.

20 MR. ANTOLLINO: Mark it for a ruling
21 since she said she retained you this morning.

22 Q Did you do any search for documents in
23 connection with this lawsuit?

24 MR. ZABELL: Objection to the form. You
25 may answer.

12

1

LAUREN CALLANAN

2

A I previously did gather information, yes.

3

Q When was that?

4

A That was over the winter last year.

5

Q How did you gather information?

6

A I searched e-mails and documents.

7

Q How did you search e-mails?

8

A I believe by doing a general search.

9

Q How did you do a general search?

10

A I went into the e-mails and I searched Don or

11

Zarda.

12

Q And.

13

A To see if any correspondences populated.

14

Q What did you come up with?

15

A I don't recall specific documents off the top

16

of my head.

17

Q You said you searched documents, how did you

18

search documents?

19

A I searched documents in terms of a legal

20

waiver that was written.

21

Q Anything else?

22

A Also other legal waivers.

23

Q When was that?

24

A Last winter.

25

Q What other documents did you search for?

1 LAUREN CALLANAN

2 A I can't remember specific documents?

3 Q On what computer did you search for the
4 e-mails?

5 A One of the computers at Altitude Express.

6 Q Did you search any of the other computers at
7 Altitude Express?

8 A We have multiple computers. I'm not aware of
9 which computer I used to perform any search.

10 Q Do you have a server?

11 MR. ZABELL: Objection to the form. You
12 may answer?

13 A We currently have a server. We did not
14 previously have a server.

15 Q In order to do a search for e-mails, a
16 comprehensive search for e-mails, you would have to go
17 to each individual computer before you had the server.
18 Is that a fair statement?

19 MR. ZABELL: Objection to the form of
20 the question. You may answer.

21 A I cannot confirm whether I went to each
22 individual station to perform any type of comprehensive
23 search. Therefore, I can't say whether I performed a
24 comprehensive search or not.

25 Q So, you don't remember the particular

14

1 LAUREN CALLANAN

2 computer you looked on, correct?

3 A Correct. It may have been multiple
4 computers.

5 Q Wait a minute. Before you said it was one
6 computer. Now, you're saying it was multiple computers
7 perhaps.

8 MR. ZABELL: Objection to the form. To
9 the extent you can, you may answer.

10 A I'm saying, I do not recall which computer I
11 used. I did not say it was a single computer that I
12 used to perform the search. I may have used multiple
13 computers to perform the search. I use multiple
14 computers on a daily basis.

15 Q How many computers are there in total?

16 MR. ANTOLLINO: Objection to the form of
17 the multiple question. You may pick one and
18 answer.

19 A Last year there were four computers in my
20 office or in the manifest office, the office which I
21 work in.

22 Q The computer or computers that you searched
23 were in the manifest office alone, correct?

24 A Correct.

25 Q You didn't search anything on Ray's computer,

1 LAUREN CALLANAN

2 correct?

3 A Not that I recall, no.

4 Q Have you ever used Ray's personal computer?

5 A I have previously, yes. It's not his
6 personal multiple computer. It's a business computer.

7 Q What do you mean by that? Is it one of the
8 four in the manifest room or a different one
9 altogether?

10 A A different computer.

11 Q Do you have any document retention policy at
12 Sky Dive Long Island?

13 A Document retention in what respect?

14 Q For how long do you keep documents?

15 MR. ZABELL: Objection to the form. You
16 may answer.

17 A It depends on the document.

18 Q What is the longest you would keep a
19 document?

20 MR. ZABELL: Objection to the form. You
21 may answer.

22 A There is no time line that we have set aside
23 for a particular document. It depends on the document.

24 Q Well, I guess -- you say it's depending on the
25 document. Is it just a document by document basis or

16

1

LAUREN CALLANAN

2 do you have a category of documents that you keep for
3 longer than others?

4 MR. ZABELL: Objection to the form of
5 the multiple questions. You may pick a
6 question and answer.

7 A It depends on the actual document at hand,
8 whether we are going to keep it for a length of time or
9 not. A general e-mail, I may discard it. If it's a
10 legal waiver, I would keep it on file.

11 Q How long would you keep a legal waiver on
12 file?

13 A I would never destroy a legal waiver.

14 Q How about employee time and wage documents?

15 MR. ZABELL: Objection to the form. You
16 may answer.

17 A Everything is in digital format and
18 automatically stored.

19 Q Forever?

20 A To my knowledge, I cannot tell you how long
21 it is stored. I would imagine it being stored with the
22 actual payroll company.

23 Q What is your title at Sky Dive Long Island?

24 MR. ZABELL: Objection to the form of
25 the multiple question. You may pick a

1 LAUREN CALLANAN

2 question and answer it.

3 A I'm the office manager at Altitude Express.

4 Q Can you describe the chain of command at Sky
5 Dive Long Island?

6 A You have Ray, the owner and president of the
7 company. You have Rich Winstock, our safety and
8 training advisor. Myself in the office. Multiple
9 instructors, vidiographers, packers and grounds crew,
10 that all work together on the common grounds.

11 Q Anyone else in the office?

12 A Currently or at that time?

13 Q Well, start with at that time.

14 A On a daily basis there may have been two
15 other girls present in the office.

16 Q Who are they?

17 A Who, the manifest workers?

18 Q Yes.

19 A Employees, office employees.

20 Q What are their names?

21 A One is Megan Ayers and the other is Alison
22 Rodriguez.

23 Q Are they still working at Sky Dive Long
24 Island?

25 A The business is currently closed for the

18

1

LAUREN CALLANAN

2

winter, so no.

3

Q Are they expected to come back in the summer?

4

A I do not believe that the hiring has been

5

done for next year.

6

Q Is there any reason, that you know of, why

7

Megan or Alison would not be hired next year?

8

A No.

9

Q Do you have a year long job there?

10

MR. ZABELL: Objection to the form. You

11

may answer.

12

A My main employment is during the spring,

13

summer and fall months. Now, during the winter, I'm

14

sometimes in and out. But, I'm not employed full-time.

15

Q Do you collect a part-time salary during the

16

winter or a full-time salary?

17

MR. ANTOLLINO: Objection to the form of

18

the multiple question. Objection to the form

19

of the question. You may answer.

20

A I do not collect a salary during the winter.

21

Q What is your training and experience?

22

MR. ZABELL: Objection to the form.

23

Training and experience in what?

24

MR. ANTOLLINO: Withdrawn.

25

Q What is your highest level of education?

LAUREN CALLANAN

1

2 A A bachelor degree.

3 Q In what?

4 A Social sciences.

5 Q When did you graduate?

6 A I graduated in January of 2010.

7 Q From what institution?

8 A Dowling College.

9 Q Where is that?

10 A There is a campus in Oakdale and a Campus in
11 Brookhaven.

12 Q Are they both on Long Island?

13 A Correct.

14 Q After that what did you do?

15 MR. ZABELL: Objection to the form of
16 the question. Did you throw your mortar
17 board in the air, did you have a drink.

18 Q After you graduated did you obtain any
19 employment?

20 A I remained employed at my current employer.

21 Q What was that?

22 A Altitude Express.

23 Q Were you working at Altitude Express while
24 you were in college?

25 A Correct.

20

1

LAUREN CALLANAN

2

3

4

Q Have you worked for any company, other than Altitude Express, in between the time you graduated and the present?

5

A In between the time I graduated, yes.

6

Q Where?

7

A I worked at an oil company during the winter.

8

Q Other than that?

9

A No.

10

Q When did you start working at Altitude

11

Express?

12

A In June or July of 2005.

13

Q How did you get the job?

14

A I moved out to Long Island with my

15

ex-boyfriend. Then I asked if they needed help in the office.

16

17

Q How did you get in contact with Sky Dive Long

18

Island?

19

A My boyfriend was an instructor at the time.

20

Q Who is that?

21

A His name was Russ Smith.

22

Q Where were you working before that?

23

A Sky's the Limit.

24

Q Where is that?

25

A It's currently in Stroudsburg, Pennsylvania.

1 LAUREN CALLANAN

2 Q How long had you been working there?

3 A From 2003, to the best of my knowledge.

4 Q From 2003 to 2004 or 2005?

5 A Correct, 2003 to 2005.

6 Q Have you ever worked in any other drop zones?

7 A No.

8 Q What is your training in skydiving, if any?

9 A Pertaining to?

10 Q Pertaining to any aspect of the actual
11 activities?

12 A Formal training, it depends on what you're
13 asking, how to answer the question.

14 Q Well, have you ever done a tandem?

15 A Yes, I have.

16 Q How many?

17 A I have multiple tandems.

18 Q More than ten?

19 A Yes.

20 Q More than a hundred?

21 A No.

22 Q More than fifty?

23 A I do believe so. I can't guarantee the exact
24 number.

25 Q In the range of up to fifty, is that fair?

22

1

LAUREN CALLANAN

2

A That is fair.

3

Q What about solo jumps?

4

A Yes.

5

Q How many?

6

A Up to three-hundred.

7

Q You have done fifty tandems, approximately.

8

I'm not holding you to that.

9

A I can't say that I have done fifty. I have

10

done more than one, multiple tandems, yes.

11

Q Were you the instructor for any of the

12

tandems?

13

A No.

14

Q The solo jumps about three-hundred.

15

A Up to.

16

Q Up to three-hundred?

17

A Yes.

18

Q Have you received any training to be a tandem

19

instructor?

20

A I have not.

21

Q Have you ever received any other type of

22

training to do anything other than go on fun jumps or

23

be the tandem passenger in skydiving?

24

A I'm a USPA coach.

25

Q What is that?

1 LAUREN CALLANAN

2 A A coach could teach new jumpers different
3 functions of a skydive, under the direct supervision of
4 a safety training advisor or a coach examiner.

5 Q So, a safety training advisor or a coach
6 examiner, who at Sky Dive Long Island would fit that
7 category, if anyone?

8 A Either Ray Maynard or Rich Winstock.

9 Q So, you can do a tandem with a passenger?

10 A No, I did not say I could do a tandem.

11 Q I'm just asking for a clarification.

12 A I have never received any tandem training to
13 become an instructor or instruct, for that matter.

14 Q What is it that you can do? Can you describe
15 that in a conversational way. What is it that you can
16 do under the supervision of Ray or Rich at the drop
17 zone?

18 MR. ZABELL: Objection to the form.

19 A I can perform the functions of a USPA Coach.

20 Q What is it that you do as a USPA Coach, in
21 laymen terms?

22 A I could basically take a student that
23 graduated the AFP program and take them on a coached
24 jump, training them on different aspects of the
25 skydive.

24

1

LAUREN CALLANAN

2

Q But not to tandem?

3

A No.

4

Q If you did that would you both be solo

5

jumpers?

6

A Correct.

7

Q You'd be giving the person instructions, do

8

this next, do that next, look out there, follow certain

9

procedures?

10

A Yes, follow certain guidelines.

11

Q Okay. When did you meet Don?

12

A In 2009, I believe.

13

Q Under what circumstances?

14

A Don had been hired back by Ray for the 2009

15

season.

16

Q Alright. Did Ray say anything about Don

17

before Don arrived on the grounds of Sky Dive Long

18

Island?

19

A I can't remember anything specific.

20

Q Did anyone say anything about Don?

21

A Other than that he was an employee, I can't

22

remember anything specific said.

23

Q When you say, a former employee, was anything

24

said about the ending of the relationship that was

25

previous to 2009?

1 LAUREN CALLANAN

2 A I don't remember any discussions verbatim.

3 But, I do believe it was mentioned in passing that Don
4 had previously been let go from the company.

5 Q Who said that?

6 A I cannot absolutely tell you for sure.

7 Q Could it have been Ray?

8 A It could have.

9 Q It could have been someone else?

10 A It could have been another instructor. It
11 could have been anyone that knew Don previously.

12 Q Didn't you meet Don in 2008 at a fun jump?

13 A I don't recall.

14 Q Don worked at Sky Dive Long Island in 2009
15 and 2010 when you were at Sky Dive Long Island,
16 correct?

17 A Yes.

18 Q You were not at Sky Dive Long Island in 2001?

19 A I was not.

20 Q What do you know about his employment in
21 2001, other than what you have just testified to?

22 A I don't have any knowledge. I was not there,
23 I cannot say.

24 Q Did you have an opinion on whether Don was a
25 good instructor or not?

26

1

LAUREN CALLANAN

2

MR. ZABELL: Objection to the form. You

3

may answer.

4

A I never received instructions from Don. So,

5

I couldn't form that opinion.

6

Q Did anybody ever say that they were happy

7

with Don's instructions?

8

MR. ZABELL: Objection to the form. You

9

may answer.

10

A Absolutely. Customers would come up and

11

leave tips and say that they had a great time.

12

Q That happened on a regular basis?

13

A It happened for all the instructors on a

14

regular basis.

15

Q Including Don?

16

A I would imagine so, yes.

17

Q Do you remember anyone in particular

18

mentioning Don and saying how much they enjoyed their

19

jump with Don?

20

A Any specific cases, off the top of my head, I

21

cannot. But, there might be. I'm sure there were.

22

Q Do you remember ever giving Don an e-mail

23

from a customer that really enjoyed his tandem?

24

A Like I said, I'm sure there were many happy

25

customers. Specifically, I cannot remember.

1 LAUREN CALLANAN

2 MR. ANTOLLINO: Plaintiff's Exhibit 2,
3 please.

4 (Whereupon, an e-mail was marked as
5 Callanan Exhibit 2 for identification, as of
6 this date.)

7 Q Do you recognize that document?

8 A No. Unfortunately, I do not remember it off
9 the top of my head.

10 Q Do you see what the e-mail address is?

11 A I do see it's addressed, fun jumps.

12 Q What is fun jumps?

13 A It's printed for Ray Maynard, Jumper Ray, who
14 is Ray Maynard.

15 Q Can you tell what computer that came from?

16 A No, unfortunately not.

17 Q Do you know whose e-mail that was?

18 A Fun jumps is a general e-mail for Sky Dive
19 Long Island.

20 Q Can you think of any reason why this would
21 not have been found in the search that you did?

22 A I can't say that it wasn't found. But,
23 seeing as it was printed for Ray Maynard, I would take
24 it that Ray printed that.

25 Q Do you recall handing that to Don and saying

28

1

LAUREN CALLANAN

2

Don, look someone just complimented you on a jump, I

3

wanted to give that to you?

4

A That specific piece of paper, no. I do not
5 recall. I apologize.

6

Q No need to apologize.

7

MR. ZABELL: Counsel, I'll ask that the

8

documents you have marked, put them in the

9

center of the table, at least until we get

10

them photocopied. Thank you, counselor.

11

Q Have you watched any videos of Don do a
12 tandem jump?

13

A I have seen video footage before, yes.

14

Q How many times?

15

A I couldn't tell you with any certainty.

16

Q Have you seen the video in this particular
17 case?

18

A What video?

19

Q Do you understand that there was a customer
20 that made a complaint about Don?

21

A I do understand a complaint was made, yes.

22

Q Did you ever watch the video of the customer
23 and his girlfriend?

24

A What customer are you referring to?

25

Q Do you know who the customer was that made

1 LAUREN CALLANAN

2 the complaint?

3 MR. ZABELL: Objection to the form. You
4 may answer.

5 A The customer that made what complaint?

6 Q How many complaints have there been about
7 Don?

8 A I couldn't tell you off the top of my head.

9 Q Were there more than one?

10 MR. ZABELL: Objection to the form of
11 the question. You may answer.

12 A There may have been.

13 Q You don't know if there were or not, correct?

14 A I cannot remember specific complaints. But I
15 do believe that yes, multiple complaints have been
16 made.

17 Q Why do you believe that?

18 A Because I don't recall only receiving one
19 complaint.

20 Q What other complaints?

21 A Unfortunately, I don't remember.

22 Q It could have been anything?

23 MR. ZABELL: Objection. That is a
24 statement to which no response is required.

25 Q Correct?

30

1

LAUREN CALLANAN

2

MR. ZABELL: Objection. That is one

3

word to which no response is required.

4

Q It could have been anything, correct?

5

MR. ZABELL: Counsel, are you

6

withdrawing your two previous statements?

7

Q You can answer the question.

8

MR. ZABELL: If you can. If you can't,

9

you don't have to.

10

A I apologize. Yes, the complaint could have

11

been regarding anything.

12

Q It could have been a complaint of the color

13

of his hat, correct?

14

A No. I don't believe that is what a complaint

15

was. No, I don't believe so.

16

Q You have no documentation about any of these

17

complaints, correct?

18

A I don't believe -- personally, I don't have

19

anything on me, no.

20

Q I know you don't have anything on you. You

21

don't have anything back at the office either, do you?

22

A I don't think so, but I don't know.

23

Q You don't remember anything about these other

24

complaints?

25

MR. ZABELL: Objection, asked and

1 LAUREN CALLANAN

2 answered. You can answer again, if you can.

3 A At this time, I do apologize, I do not.

4 MR. ANTOLLINO: We'll leave a space in
5 the transcript. Since you'll ask for a copy
6 of the transcript, I'll send it to you.

7 Q Will you fill in anything, at a later date,
8 that you remember when you review the transcript.
9 We'll leave a space in the transcript.

10 A Of course.

11 INSERT:

12 Q Have there been complaints about other
13 skydivers?

14 A I'm sure that complaints have been received
15 in the past. I don't remember any specifically off the
16 top of my head.

17 Q You do remember that there were some
18 complaints made about other instructors at some point,
19 correct?

20 A I can't answer that one way or the other. I
21 don't have any specific complaints that I can think of.

22 Q I'm not asking about specifics, just --

23 A Unfortunately, if I can't remember specific
24 complaints, I can't verify whether a complaint had been
25 made.

32

1

LAUREN CALLANAN

2

Q You were able to verify that complaints had
3 been made about Don. You couldn't remember the
4 specifics of those complaints --

5

A No, that --

6

Q Wait until I finish asking the question.

7

MR. ANTOLLINO: Read back the question,

8

please.

9

MR. ZABELL: Slow down a little bit.

10

When he says wait, he means wait, please.

11

Because we are going to maintain all

12

appropriate levels of civility at the

13

deposition. Correct, counsel?

14

MR. ANTOLLINO: Can you read it back.

15

MR. ZABELL: If he will not maintain all

16

appropriate levels of civility, I will impose

17

my standards civility. If he refused to say

18

please, please allow me to ask you please.

19

MR. ANTOLLINO: Can you read it back.

20

(Whereupon, the above referred to

21

question was read back.)

22

Q Can you answer that question, please.

23

A I know that a specific complaint was made

24

against Don. I could not verify whether other

25

complaints had been made.

1 LAUREN CALLANAN

2 Q So, there was at least one complaint made
3 against Don, correct?

4 A Correct.

5 Q You could not verify whether there were any
6 other complaints, whatsoever, against Don, correct?

7 A At this time I do not have anything to
8 support any other complaints. I couldn't tell you with
9 a hundred percent accuracy.

10 Q I'll leave another line in the transcript.
11 Would you agree to fill that in if you come up with any
12 other complaints?

13 A Sure.

14 INSERT:

15 Q Do you know who made the complaint about Don,
16 the one you are aware of?

17 A Okay, yes. It was the boyfriend. David, I
18 do believe is the name.

19 Q Is the name David Kengle?

20 A That does ring a bell, yes.

21 Q Did you take his complaint, initially?

22 A I did receive a phone call, yes.

23 Q What did he say?

24 A He called very upset. He brought his
25 girlfriend skydiving for her birthday. Her birthday

34

1

LAUREN CALLANAN

2 was ruined because she felt very uncomfortable during
3 the skydive and when she landed. Basically, he said
4 that it had ruined her birthday.

5 Q Did he say anything else, anything more
6 specific than that?

7 A He basically told me that Don rested his head
8 on his girlfriend's shoulder and was whispering into
9 her ear. Multiple times during the plane ride or
10 rather the time that they spent together, he told her
11 multiple times that he was gay. And not to worry while
12 he was adjusting certain straps because he was gay.

13 Q Anything else?

14 A That was basically the phone call that I
15 remember.

16 Q Did you speak to Mr. Kengle any other time?

17 A I don't recall having any further
18 conversation with him after that.

19 Q Did you speak to the girlfriend?

20 A I don't recall speaking to the girlfriend.

21 Q Do you know the girlfriend's name off the top
22 of your head?

23 A I believe it's Roseanna.

24 Q Have you ever seen the jump video of Don and
25 Roseanna or the other instructor and David Kengle?

1 LAUREN CALLANAN

2 A I do not recall seeing a video of David. I
3 did see a video of Roseanna and Don.

4 Q Did you notice anything improper in the
5 video?

6 A Unfortunately, it was a short video. I did
7 recall seeing Don making gestures with his fingers
8 around his lips, I do believe, or hand gestures in
9 general.

10 Q When you say it was unfortunately a short
11 video, why was it unfortunately a short video?

12 MR. ZABELL: Objection to the form. You
13 may answer.

14 A The video clip was very short with respect to
15 the actual plane ride and skydive. A plane ride
16 typically takes about fifteen to twenty-five minutes.

17 Q When you say unfortunately, why was it
18 unfortunate that it was short?

19 A Because it only showed a very short picture
20 of the plane ride.

21 Q So, when was the first time that you saw that
22 video?

23 A I do believe I saw the video after the
24 complaint was made.

25 Q When?

36

1

LAUREN CALLANAN

2

A I don't remember.

3

Q After the complaint was made, the complaint

4

was made, I believe, in June of 2010, correct?

5

A Unfortunately, I don't remember. I don't

6

have any notes with me.

7

Q It was a couple of years ago, correct?

8

A It was not within this past year.

9

Q Not within this past year, okay. Do you

10

remember when Ray fired Don?

11

A Do I remember?

12

Q Yes.

13

A I don't remember when, specifically. I do

14

remember when Don was fired.

15

Q It was before this lawsuit was filed,

16

correct?

17

A I would imagine so.

18

Q Did you see the video before the lawsuit was

19

filed?

20

A I do not recall. I don't remember.

21

Q Is it fair to say that you were the one that

22

searched for the raw footage of the video in response

23

to this lawsuit?

24

A No.

25

Q No?

1 LAUREN CALLANAN

2 A No.

3 Q So, you don't remember if you saw the video
4 before the lawsuit was filed or not, correct?

5 A I do not remember.

6 Q When was the last time you saw the video?

7 A I saw the video today.

8 Q You're reaction to it was that you thought
9 there was something wrong with the way Don was using
10 his hands or something?

11 A I didn't say that I thought there was
12 something wrong with it. You asked if I noticed
13 anything.

14 Q Have you seen a lot of skydive videos in your
15 career?

16 A I have.

17 Q About how many do you do in one season?

18 MR. ZABELL: Objection to the form. You
19 may answer.

20 A I don't do any videos. I own video
21 equipment, but I don't actually -- I'm not a
22 vidiographers.

23 Q How many videos of skydivers does Sky Dive
24 Long Island do in a season?

25 A A couple of thousand maybe.

38

1

LAUREN CALLANAN

2

Q Do most people who go on skydives request

3

video?

4

A Not everyone. I want to say half, maybe

5

fifty percent.

6

Q So as we sit here today, you can't remember

7

any other complaints that have been made about any

8

other instructors?

9

A No specific complaints come to mind at this

10

time.

11

Q I'm not asking you whether or not a specific

12

complaint comes to mind. Whether or not there have

13

been any complaints or not?

14

A If I cannot verify a specific complaint, I

15

cannot say whether or not one has come through.

16

Q I'm not asking you to verify a complaint. Do

17

you have in your mind, do you ever remember anyone

18

complaining about something, without being able to put

19

your finger on what the complaint was about?

20

MR. ZABELL: Objection to the form of

21

the multiple questions pending before you.

22

You may pick any one of the questions and

23

provide an answer to that.

24

A I do not recall any complaints at this time.

25

Q We'll leave a space again in the transcript.

1 LAUREN CALLANAN

2 If you can think of any complaints, you can put them
3 the there. Would you agree to do that.

4 A I would.

5 INSERT:

6 Q I just have to ask you again, just to make
7 sure I understand. As we sit here today, regardless of
8 what the complaint was, you cannot recall anyone
9 complaining about any other skydiver, other than Don,
10 is that a fair statement?

11 MR. ZABELL: Objection to the form of
12 the question. Objection, asked and answered.
13 You can answer.

14 A Were you asking about complaints against
15 instructors?

16 Q Yes.

17 A I can't remember any complaints at this time.

18 Q How about complaints against any employees at
19 Sky Dive Long Island?

20 A Complaints from who?

21 Q From any customers.

22 A Complaints from customers, I cannot recall
23 any other complaints, other than the complaint at hand,
24 from any other customers at this time.

25 Q About any employees, whatsoever.

40

1

LAUREN CALLANAN

2

A At this time, no. I do apologize.

3

Q There are some complaints about Sky Dive Long

4

Island on-line, is that correct?

5

A There may be.

6

Q Are you aware of any websites that have

7

complaints on-line?

8

A I don't recall the name. Rip Off Report. I

9

recall one web-site with a complaint that is on-line,

10

yes.

11

Q Was that responded to?

12

A That was responded to.

13

Q Who responded to that?

14

A Multiple people.

15

Q Who were they?

16

A I don't know specifically, at this time, who

17

responded.

18

Q Do you know anyone that responded?

19

A I know I responded.

20

Q Did Ray respond?

21

A I do believe he did, yes.

22

Q Did anyone else that works at Sky Dive Long

23

Island respond?

24

A I believe Alison may have responded. Yes

25

Alison, I do believe, responded to it.

1 LAUREN CALLANAN

2 Q Who is Alison?

3 A Alison was one of the other manifest workers
4 at that time.

5 Q Is there anyone else that responded?

6 A I don't have --

7 Q Anyone else that worked at Sky Dive Long
8 Island that you recall?

9 A I don't recall.

10 Q So, Ripoffreport.com. Have you ever worked
11 at any other drop zones on Long Island?

12 A No.

13 Q What was the complaint at Rip Off Report
14 about?

15 A I don't recall, unfortunately.

16 Q Did you think that it was an actual customer?

17 A From what I do remember I do not believe it
18 was an actual customer.

19 Q Who do you think it was?

20 A I can't point fingers. I don't know who it
21 was. From what I remember, the information that was in
22 the complaint was false, from my knowledge.

23 Q What was in the complaint?

24 A I don't have the complaint to tell you that.
25 I don't remember what was in it.

42

1

LAUREN CALLANAN

2

Q Do you remember when it was posted?

3

A No, I do not recall.

4

Q Did the complaint concern any of the

5

instructors.

6

A I do believe that it did quite possibly, but

7

there were no names.

8

Q Did you do a search to find out who the

9

customer might have been?

10

A There was no way to search for that

11

information.

12

Q Have you seen any other complaints about Sky

13

Dive Long Island on-line?

14

A I believe I saw a complaint from a gentleman

15

that was upset about not receiving his video.

16

Q That was a complaint, I believe, he was

17

complaining about the ladies in the office, correct?

18

A I don't know what complaint you're referring

19

to.

20

Q What about that complaint did you do to

21

address the problem?

22

A What complaint are we talking about?

23

Q The complaint you just spoke about.

24

A The complaint, which I vaguely recall, was

25

regarding a video that a customer did not receive. I

1 LAUREN CALLANAN

2 do believe it was a weekend day. I can't say for sure
3 when he jumped.

4 There were two people with similar names and
5 the videos got mixed up. I recall once that customer,
6 I do believe if that is the correct complaint that we
7 are speaking of, had left, we mailed him out another
8 copy of the right video. Making sure that he had the
9 proper video in his possession.

10 Q Did he suggest, in that complaint, that the
11 people that he dealt with on the phone were rude?

12 A I don't recall.

13 Q Did you or anyone else discipline anyone as a
14 result of that complaint?

15 A As a direct result of that complaint, I can't
16 say that any disciplinary action came of it. I know
17 from my office experience, I very definitely would have
18 talked to everyone, if we received any type of
19 complaint. I'm sure that no customer is treated with
20 any disrespect.

21 Q Are you aware of an injury that Don suffered
22 in 2009?

23 A I am.

24 Q What was that injury?

25 A It was an ankle injury, a fractured ankle.

44

1

LAUREN CALLANAN

2

Q Do you remember how it happened?

3

A That happened on a landing.

4

Q Did you see the video?

5

A I don't recall if I saw the video.

6

Q Was there an overweight passenger that he was taking on that trip, if you know?

8

A I don't know what is classified as overweight.

10

Q Did he just look like he was two-hundred fifty pounds or higher, if you recall?

12

A I can't really judge that. I do apologize. I don't remember.

14

Q What happened after Don was injured? Did he say, I got hurt, I need to go to the hospital? Do you recall any specifics?

17

A This is definitely going back some time. I recall Don coming into the office. He was basically limping into the office and telling me that he hurt his ankle on the landing.

21

I recall Don not wearing sneakers and advising him that he should probably be jumping in tennis shoes or a more supportive footwear. He should go and get his ankle x-rayed.

25

I remember Don telling me later that he went

1 LAUREN CALLANAN

2 to Tanger Outlets and bought a pair of sneakers, I do
3 believe. I can't guarantee they were sneakers. He
4 bought a different footwear. He then went to the
5 emergency room to get an x-ray, in which it was
6 determined that his ankle was fractured.

7 Q When you said that he was not wearing
8 sneakers, are you saying he was bare foot?

9 A No. He had footwear on. I believe he was
10 wearing boots.

11 Q Why do you believe that sneakers would be
12 better than the boots that he was wearing?

13 A We always advise, tandem passengers and
14 jumpers in general, to wear supportive footwear. No
15 shoes with hooks or boots or anything of the sort.

16 Q Do you think that Don did anything wrong on
17 that jump?

18 A I can't be the judge of that.

19 Q Did you doubt Don's injury?

20 A I did not doubt Don's injury. I asked Don to
21 go get an x-ray. I may have even offered to take him
22 to get an x-ray.

23 Q Was Ray notified about Don's injury?

24 A He was.

25 Q What did you say?

46

1

LAUREN CALLANAN

2

A I don't recall whether Don notified Ray or I notified Ray or who notified him of the injury.

4

Q What was Ray's reaction?

5

A I don't recall.

6

Q Do you remember having a conversation with Don's partner, from the hospital, about Don's injury?

8

A No, I do not recall.

9

Q Do you know Bill Moore?

10

A I believe I met Bill Moore before. I can't say that I know him.

12

Q Do you know what his relationship to Don is?

13

A I do believe, to the best of my knowledge, that he was his partner, business partner and possible boyfriend, I believe. But I do not know for sure.

16

Q Did you have a conversation with Bill Moore from the hospital?

18

A I don't recall.

19

Q Do you remember Don ever coming to the drop zone with a cast?

21

A I do.

22

Q Do you remember what the cast looked like?

23

A I remember that Don came to the drop zone with a fluorescent pink cast.

25

MR. ANTOLLINO: Let's mark this as

1 LAUREN CALLANAN

2 Exhibit 3.

3 (Whereupon, a photograph was marked as
4 Callanan Exhibit 3 for identification, as of
5 this date.)

6 Q Does this photograph fairly and accurately
7 represent the cast that Don wore to the drop zone after
8 he was injured?

9 MR. ZABELL: Before you answer that.

10 Counselor, it's been our practice
11 throughout the depositions, and I know you
12 know this, at previous depositions you have
13 had copies of the exhibits ready to go. I
14 don't understand why you don't feel it's
15 appropriate to have courtesy copies of the
16 exhibits which are introduced into evidence.

17 MR. ANTOLLINO: I didn't have the time
18 to get a color copy. Off the record.

19 (Whereupon, a discussion was held off
20 the record.)

21 MR. ZABELL: I want this on the record.

22 MR. ANTOLLINO: We don't need to discuss
23 it. I'll get you a copy.

24 MR. ZABELL: Just understand Counsel,
25 it's not just the color copies that you are

48

1

LAUREN CALLANAN

2

not providing, it's even the black and white

3

copies that you failed to provide today.

4

MR. ANTOLLINO: I did not make copies

5

before I left. There are very few exhibits

6

in this deposition. You'll get copies, don't

7

worry.

8

Q Can you answer the question, please.

9

MR. ZABELL: You may, if you can.

10

A I do apologize. I must have been mistaken of

11

the color of the cast. The cast is apparently pink,

12

not fluorescent. It appears that the toenails are

13

fluorescent pink.

14

Q When you say the toenails, what do you mean,

15

that his toenails are painted?

16

A Correct.

17

Q Did you make any comments about the toenails

18

to Don?

19

A Not that I can recall.

20

Q Did you believe that it was inappropriate for

21

Don to paint his toenails?

22

A Inappropriate, not necessarily. I paint my

23

nails.

24

Q What color do you paint your nails?

25

A I paint my nails any color to go with what

1 LAUREN CALLANAN

2 I'll be wearing that requires painted toenails or
3 fingernails.

4 Q Including the color pink?

5 A Sure. I can't say what color or what shade.
6 I have definitely had pink coral, fluorescent pink, red
7 fingernails and toenails before.

8 MR. ANTOLLINO: Let's mark Exhibit 4.

9 (Whereupon, a photograph was marked as
10 Callanan Exhibit 4 for identification, as of
11 this date.)

12 Q Does this fairly and accurately represent the
13 color of Don's pink toenails after he was injured?

14 A I cannot recall if that is the exact shade or
15 if that is, unfortunately, the color that I saw. That
16 does appear much more faded and orange than what I
17 recall.

18 Q How would you characterize that color? What
19 would you call that?

20 A If I had to come up with a color I would --
21 Unfortunately, the picture is very, to me, it appears
22 to be pixilated. It looks like a mixture of colors.
23 It doesn't appear to be a clear picture. There is not
24 one color that could describe the color I'm seeing
25 based on the mixture of colors.

50

1

LAUREN CALLANAN

2

Q When you say a mixture of colors, the big toe has a happy face on it, right?

4

A I can't make out a happy face on the big toe.

5

Q There is a little face there, right?

6

A I can't tell if that is a happy face or not that I'm looking at currently.

8

Q Aside from the big toe, can you identify the color on the other two toes?

10

A The image quality is the same.

11

Q So sitting here today, you could not pick a shade of nail polish that you know and describe it?

13

A Not with the picture provided. There is a mixture of colors.

15

Q What about the toenails in Exhibit 3?

16

A It's a much smaller picture. They look much brighter. I would have to say they look much more like a shade of pink or an identifiable color. Then again, it's a very small picture.

20

Q Is that a color that you have worn before?

21

A I can't say that I have worn the exact shade. But, I think my toenails are probably painted a very similar color at this time.

24

Q Has anyone ever complained about that, to you, at work?

25

1 LAUREN CALLANAN

2 A Not that I recall.

3 Q Do you remember ever making fun of Don or his
4 pink cast or his toenails?

5 A I don't recall that, no.

6 Q Do you recall saying to him, that's a bit
7 much?

8 A Unfortunately, I do not recall.

9 Q Do you deny saying that?

10 A I do not deny it. I just do not recall.

11 Q Did you say anything to Don like, Don that's
12 really just too gay?

13 A I don't believe I'd say anything like that.

14 Q Do you recall Ray saying anything about the
15 pink cast or the toenails?

16 A I do not recall anything specific.

17 Q Well, would you recall anything in general?

18 A I do recall Don was sitting at the entrance
19 of our office building. Everyone was walking through
20 that door to which Don was sitting next to at the
21 office. I recall that everyone would have to walk past
22 him at that specific point.

23 I do believe that's when he first arrived
24 with the pink cast. Other than that, I can't recall
25 anything specific that was said.

52

1 LAUREN CALLANAN

2 Q Do you recall Ray asking Don to paint the
3 cast black?

4 A I do not recall that.

5 Q Do you recall Ray asking Don to cover his
6 toenails with a sock?

7 A I do not specifically recall that, no.

8 Q Do you remember Ray saying, that's really
9 gay?

10 A I do not recall that.

11 Q Are you denying that that happened or you
12 just don't recall?

13 A I am not denying it. I just don't remember.

14 Q Was that time when Don first showed at the
15 drop zone, for the first time after injury, at a staff
16 meeting?

17 A I honestly don't remember if it was. It's a
18 possibility.

19 Q Did you think that Don's cast was funny?

20 A I don't think any cast is funny.

21 Q The way that he decorated it, I mean.

22 A It was not a decorated cast to me. It was a
23 regular cast.

24 Q He has a certain color, he chose a certain
25 color, didn't he?

1 LAUREN CALLANAN

2 A You can go to the orthodontist and choose
3 colored bans for your teeth. You can go and choose
4 colors to paint your room. Everyone has a right to
5 choose their own colors.

6 Q You felt there was nothing wrong with Don
7 choosing those colors?

8 A Personally, I don't think there is anything
9 wrong with that, no.

10 Q What about professionally, did you think it
11 was unprofessional?

12 A He was not instructing at that point. So,
13 from a professional level, I mean he was not working at
14 that point.

15 MR. ZABELL: You have something to say,
16 counsel.

17 MR. ANTOLLINO: I don't have to say
18 anything.

19 MR. ZABELL: You're grunting. I'm
20 trying to clarify on the record what the
21 grunting is.

22 MR. ANTOLLINO: I have no clarification
23 to make.

24 MR. ZABELL: Your grunting, you'll just
25 leave it at that.

54

1

LAUREN CALLANAN

2

Q Did Ray ever talk to you about the cast

3

later?

4

MR. ZABELL: Objection to the form. You

5

may answer.

6

A I don't recall.

7

Q What time of day was it?

8

MR. ZABELL: Objection to the form.

9

MR. ANTOLLINO: Withdrawn.

10

Q The day you first saw the cast, what time of

11

day was it?

12

A Unfortunately, it was so long ago, I can't

13

remember.

14

Q That's the answer then. Do you know Don's

15

sexual orientation?

16

A I do, from what he has told me, yes.

17

Q Was it that he told you or someone else told

18

you?

19

A He told me.

20

Q When was that?

21

A I don't remember specifically.

22

Q Were you offended, in anyway, that he told

23

you his sexual orientation?

24

A No.

25

Q Why not?

1 LAUREN CALLANAN

2 A Because I have many friends that are gay as
3 well and that doesn't offend me.

4 Q Have you ever talked to any of them about
5 whether or not homosexuality is something that is
6 inborn or not?

7 A Have I talked to who?

8 Q Your gay friends about whether or not they
9 were born that way?

10 A No, I haven't had that conversation with my
11 friends. I have taken college classes regarding human
12 sexuality.

13 Q In your opinion, is someone born that way or
14 is that something that is --

15 A That is a very vague question to ask. I
16 mean, I have not thought about that deeply enough to
17 tell you absolutely one way or the other. I don't
18 really have an opinion on that.

19 Q You said before that you have a boyfriend?

20 A I have had a boyfriend, yes.

21 Q That implies that you're a heterosexual,
22 correct?

23 A I am.

24 Q Do you believe that you were born that way?

25 A I could have been. It could have been a

56

1

LAUREN CALLANAN

2

process of socialization. It could have been a process

3

or a product of the environment that I grew up in.

4

Q Do you keep a record of the tips that workers

5

get at the drop zone?

6

A No.

7

Q How are the tips divided up?

8

A We have tip envelopes. Basically, we have

9

little coin envelopes that we leave out for the

10

students. They can grab a coin envelope and put

11

whatever tip they feel they would like to leave for an

12

instructor.

13

Then they will typically either hand it

14

directly to the instructor if they didn't hand it to

15

them previously or if they are going to at all.

16

Otherwise, they can leave them at the office and we put

17

them in a specific envelope for that instructor.

18

Q You don't keep a record of how much is

19

tipped?

20

A No. Lots of times they're sealed envelopes.

21

The student will put a tip in an envelope, seal it and

22

there is no record.

23

Q What is a typical tip for a tandem jump, if

24

you can answer?

25

A Unfortunately, I'm not an instructor. I

1 LAUREN CALLANAN

2 can't say for sure what a typical tip is.

3 Q What have they discussed with you?

4 MR. ZABELL: Objection to the form. You
5 may answer.

6 A I have heard that the average is about ten to
7 twenty dollars. I have heard people say they have not
8 gotten a tip. I have heard people say that have gotten
9 a hundred dollar tip.

10 Q Are there ever any days that no one gets a
11 jump at all?

12 A Of course, it's a very weather related sport.

13 Q Are there ever any days that are sunny where
14 people still don't get a jump?

15 A It goes back to being a very weather
16 dependant sport as well. Even though it's sunny, it
17 may be very windy.

18 Q Do you keep a record of those days? What are
19 the rules for the employees who are at the drop zone
20 when you're waiting for customers?

21 MR. ZABELL: Objection to the compound
22 question, the multiple questions. You may
23 pick any of one of the multiple questions
24 that were posed before you and answer.

25 A So, basically it is depending upon the

58

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LAUREN CALLANAN

2 schedule. In the season, you know, some days we may
3 not have anyone scheduled. In that respect, we may
4 choose to close. Or if we get a call that people want
5 to come in, we may call and see who is available to
6 possibly come in and work.

7 On weather related days, basically, it
8 depends on the weather. Quite honestly, if it's a
9 beautiful July day and a passing shower goes through,
10 then everyone will typically wait until the shower
11 passes. If the forecast is for a hurricane, then
12 probably more so likely that we will call it a day and
13 everyone can go about their business.

14 Q Who makes the final decision?

15 A That would be Ray.

16 Q Sometimes is there any pressure put on Ray to
17 call the day?

18 MR. ZABELL: Objection to the form. You
19 may answer.

20 A I'm sure there is pressure when people don't
21 want to hang around or it looks like there is going to
22 be inclement weather for an extended period of time.

23 Q What are the instructors instructed to do
24 with regard to waiting for customers to come?

25 A Are we talking about weather related issues

1 LAUREN CALLANAN

2 or are we talking about waiting for customers as per on
3 a schedule?

4 Q Let's talk about, first, waiting for
5 customers without weather related issues.

6 A We have a schedule. So, the instructors will
7 basically find out what time we have tandems coming in
8 or students coming, for that matter. Then they will be
9 there for the student's arrival. Typically, Ray would
10 like people there a half an hour prior.

11 Q You don't always know when someone is going
12 to show up, right?

13 A That is correct. People could show up, but
14 if we're not open or we have already called the day,
15 there is no guarantee that those people will be able to
16 jump.

17 Q If you have not called the day, is the
18 instructor expected to stay on the grounds?

19 A Not necessarily. It's depending on the day
20 and the time.

21 Q Explain how certain circumstances may vary.
22 Can you give me an example.

23 MR. ZABELL: Objection to the form of
24 the multiple questions. You may pick anyone
25 of those questions that were posed before you

60

1

LAUREN CALLANAN

2

and provide an answer.

3

4

5

6

7

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9

10

11

12

13

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16

17

18

19

20

21

22

23

24

25

A Sure, on a busy Saturday if we have a hundred people scheduled and you know, we basically will go until five o'clock. Five o'clock comes and we're done with work for the day. If we don't have anything scheduled, Ray will typically allow everyone to go home.

If people come in at seven o'clock, even though there is still daylight, unfortunately we're done for the day at that point. We're not going to call everyone back when Ray has let everyone go for the day. The work has been done.

Q When you say, let everyone go, what does that mean, just go home?

A We're done working for the day, you can go home. If more students come in and we are still able to fly and there is still daylight, then there is a possibility of calling instructors and seeing if they want to work. But, at that point, if people have gone, they're gone.

Q Is it fair to say that Ray wants them to stay on the grounds, during the day, until he calls the day?

MR. ZABELL: Objection to the form. You may answer.

1 LAUREN CALLANAN

2 A It depends on the weather. It depends on the
3 day.

4 Q If the weather is good?

5 A If the weather is good on a busy Saturday,
6 then yes. He would like people to be available to work
7 on a busy Saturday when the weather is good. If
8 they're scheduled to work and if the weather is bad,
9 then no. He doesn't expect them to be on property. If
10 it's raining outside and we're not able to jump, he
11 doesn't expect people to sit there.

12 Q What are his expectations?

13 A We put people usually on call. If all of a
14 sudden it starts raining and it doesn't look like we're
15 able to jump, then instructors are free. Staff, in
16 general, are free to go do whatever they would like to
17 do.

18 Then typically if they could be within a
19 twenty to thirty minute radius, we typically call it a
20 twenty minute call. That's basically what we put the
21 plane on, a twenty minute call. If you can be within
22 the vicinity and ready, that's what's expected.

23 Q Do you have an employee handbook now?

24 A There is an employee handbook that is in -- I
25 do not personally have an employee handbook, no.

62

1

LAUREN CALLANAN

2

Q Does Sky Dive Long Island have an employee

3

handbook?

4

A I believe so.

5

Q Have you ever seen it?

6

A I have seen an employee handbook. I,

7

unfortunately, do not know what is contained within it.

8

I do not know if it's an official handbook or not.

9

Q Where did you see this employee handbook?

10

A I saw the employee handbook at the office.

11

Q When? When was the first time you saw it?

12

MR. ZABELL: Objection to the form of

13

the multiple question.

14

MR. ANTOLLINO: Withdrawn. I'll ask it

15

again.

16

Q When was the first time you saw it?

17

MR. ZABELL: Objection to the form of

18

the question. If you understand what he is

19

asking you, you may answer.

20

A Saw the handbook?

21

MR. ZABELL: Let the record reflect that

22

counsel shook his head in the affirmative.

23

A I do believe last year.

24

Q In 2010?

25

A No. The first time I saw and held the

1 LAUREN CALLANAN

2 handbook or what may be the handbook would have been
3 in 2011.

4 Q Did someone tell you about the handbook?

5 A Ray told me that he wanted to make a
6 handbook.

7 Q When did he tell you that?

8 A We have been talking about having a handbook
9 for years. When was the first time that we talked
10 about it, I can't say for sure.

11 Q Was it shortly after you started working at
12 Sky Dive Long Island?

13 MR. ZABELL: Objection to the form. You
14 may answer.

15 A I do recall inquiring if we had any type of
16 employee or instructor contract, after I started
17 working at Sky Dive Long Island, Altitude Express, yes.
18 I do not believe, at that time, we did.

19 Q Did you discuss the possibility of the
20 handbook with Ray at the time you discussed this
21 contract?

22 A I do believe so. That probably would have
23 gone hand in hand.

24 Q Why did Ray say he wanted a handbook?

25 A Back when we first discussed it, I can't say

64

1

LAUREN CALLANAN

2 that he did say he wanted a handbook.

3 Q When was the first time Ray expressed that he
4 wanted a handbook?

5 MR. ZABELL: Objection to the question.

6 Objection to the form of the question. I'll
7 advise you that you can reveal that, to the
8 extent that it does not reveal the contents
9 of any communications between you and counsel
10 or Ray and counsel. You may answer.

11 A I don't know when the first time that Ray
12 expressed the desire for a handbook. I do believe it's
13 going back a number of years.

14 Q Why did he say he wanted a handbook?

15 MR. ZABELL: Objection, asked and
16 answered. You may answer.

17 A I, unfortunately, don't know exactly his
18 reasoning.

19 Q Did he tell you what his reasoning was?

20 A I don't recall, no. I recall asking him,
21 when I first started working for the company, whether
22 we had any type of contracts or anything in place.
23 But, I don't recall him saying any specific reason
24 behind him wanting a handbook.

25 Q What color is the handbook?

1 LAUREN CALLANAN

2 A I don't recall.

3 Q Is it in a spiral bound notebook or is it
4 bound on the sides like a book?

5 MR. ZABELL: Objection to the form of
6 the multiple questions. You can pick a
7 question and provide an answer.

8 A I do not believe it is a bound handbook.

9 Q How would you describe it?

10 A If it is an official handbook of the company,
11 which I do not know, the only thing that I can possibly
12 say might be the handbook was printed on regular
13 paper, I believe. I believe it was in some type of
14 folder. It might be slipped into a folder, but I can't
15 say for certain.

16 Q Is there only one or are there many copies?

17 A Many copies of whatever the document was were
18 made.

19 Q Did employees see them in 2011?

20 A At that time employees did see them, yes.

21 Q Did they have to sign that they would abide
22 by the employee handbook?

23 A They were asked to sign the handbook at that
24 time.

25 Q What does the signature signify?

66

1

LAUREN CALLANAN

2

A Unfortunately only a few people signed the

3

paper.

4

Q Not everyone?

5

A Not nearly half, I don't believe, signed the

6

paper.

7

Q Have you ever been injured?

8

A Injured how?

9

Q Were you ever in a wheelchair?

10

A Yes, I was.

11

Q Did you ever go to the drop zone in a

12

wheelchair?

13

A I did not.

14

Q Have you ever seen any other injured

15

skydivers at a drop zone?

16

A I have.

17

Q On how many occasions?

18

A I have been at a skydiving center for ten

19

years. I cannot really tell you how many occasions

20

specifically.

21

Q More than ten?

22

A I don't believe so.

23

Q Anyone other than Don?

24

A Have I seen anyone other than Don at a drop

25

zone that had been injured?

1 LAUREN CALLANAN

2 Q Yes.

3 A Yes, I'd have to say yes. I don't recall how
4 many people.

5 Q Do you remember Don owning a pink parachute?

6 A I do not.

7 Q You received a call from David Kengle. What
8 did you say to Ray?

9 MR. ZABELL: Objection to the form of
10 the question.

11 Q After receiving the call.

12 MR. ZABELL: Objection to the form. You
13 may answer.

14 A I recall going into Ray's office and
15 informing him that we had received a complaint. I gave
16 him David's name and phone number. It was basically
17 exactly what I said before, what I heard from what I
18 recall on the phone, from David.

19 Q Did Ray say anything in response?

20 A I do believe Ray said that he was going to
21 call him.

22 Q When you say him, you mean?

23 A David.

24 Q Did he say anything about Ray?

25 A I'm sorry, who?

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1

LAUREN CALLANAN

2

Q Did Ray say anything about Don, I should say.

3

MR. ZABELL: Are you withdrawing the

4

previous question?

5

MR. ANTOLLINO: Yes.

6

MR. ZABELL: Objection to the form. You

7

may answer.

8

A Did Ray say anything about Don in what

9

respect?

10

Q In anyway.

11

A I don't recall anything specifically, no.

12

Q How long was the conversation about David

13

Kengle's complaint?

14

A The conversation with Ray, are you asking?

15

Q Yes.

16

A It was enough time for me to tell him about

17

the phone call I received as well as give him the

18

information that I had for David.

19

Q So, one or two minutes at most?

20

A I'd say less than ten.

21

Q Well, do you remember anything Ray was saying

22

other than he was going to call David Kengle?

23

A I'm sorry, it's a very long time ago. I

24

don't remember specifically, no.

25

Q What did Ray do in response to David Kengle's

1 LAUREN CALLANAN

2 complaint?

3 A I don't know details of what Ray did in
4 response to the complaint.

5 Q You don't know anything about what Ray did in
6 response?

7 MR. ZABELL: Asked and answered.

8 A I don't recall.

9 Q Well, I mean were you present at the time
10 that Don was terminated?

11 A I was.

12 Q Would you agree that David Kengle's complaint
13 was a factor in terminating Don?

14 A I do believe that, yes.

15 Q Were there any actions taken by Ray before
16 the termination with regard to Don?

17 MR. ZABELL: Objection, asked and
18 answered multiple times. Objection to the
19 form of the question. You may answer.

20 A To the best of my knowledge, Don was
21 suspended before he was terminated.

22 Q Were you present at the moment when Don was
23 suspended?

24 A I don't recall.

25 Q Did you speak to Ray about why Don was

70

1

LAUREN CALLANAN

2

suspended?

3

A I don't recall.

4

Q Did you speak to Rich Winstock about why Don

5

was suspended?

6

A I don't recall.

7

Q Did you have any curiosity, at that time,

8

about why Don was suspended?

9

A I don't recall. I know I was notified that

10

Don was suspended and would not be working for the next

11

week. That was pretty much what had affected me, in

12

terms of the office, trying to run the office. We

13

were going to be down an instructor. Other than that,

14

I don't recall details of what was said.

15

Q Do you recall wondering why Don was

16

suspended?

17

A Sure, I was curious. But I can't say that

18

that was the only concern that I had on that day.

19

Q Did Ray dock Don's pay at the time that he

20

was suspended?

21

MR. ZABELL: Objection to the form of

22

question. You may answer.

23

A Dock his pay how?

24

MR. ZABELL: He is not under oath. You

25

don't have to ask him questions. For that

1 LAUREN CALLANAN

2 matter, if you do ask him questions, because
3 he is not under oath, you have no obligation
4 to believe him or that his words are
5 accurate. That's just a fancy way of saying,
6 don't ask him questions. Just answer the
7 question, if you can.

8 Q Would you like it read back?

9 A I can't answer the question in the format you
10 asked.

11 Q What is it that you didn't understand about
12 the question?

13 A You're asking me if Ray docked his pay. I
14 don't know, in what respect?

15 Q In any respect.

16 A Instructors are paid per jump. So, if an
17 instructor is not jumping, there is no money to be
18 made.

19 Q But there were jumps that Don had not been
20 paid for at the time that he was suspended, correct?

21 A I don't recall.

22 Q Do you do the payroll?

23 A I do.

24 Q Were you aware that Ray had taken the amount
25 that he had refunded to Mr. Kengle and Ms. Orlana, out

72

1

LAUREN CALLANAN

2 of Don's pay, that he had not been paid for?

3 A I do not specifically recall that. But I
4 remember him giving money back to Don. I believe that
5 that is what that was for. Specifically, no I cannot
6 say for certain. I do recall him giving Don money
7 back.

8 Q Do you think that was fair for Ray to take
9 that money away from Don for even a week?

10 MR. ZABELL: Objection to the form of
11 the question. You may answer.

12 A It's Ray's business. So, Ray has the
13 executive decision.

14 Q Therefore, the answer to the question is yes,
15 you think it was fair?

16 MR. ZABELL: Objection.

17 A I did not say that.

18 MR. ZABELL: That is not what she said.

19 Q I know it's Ray's decision. I'm asking you,
20 in your opinion, whether you thought it was fair?

21 MR. ZABELL: Objection, asked and
22 answered.

23 Q You can answer.

24 MR. ZABELL: You may answer. You may
25 simply say if it is appropriate. The same

1 LAUREN CALLANAN

2 way --

3 MR. ANTOLLINO: Don't direct her to
4 answer in a certain way.

5 MR. ZABELL: Counsel, stop. I will not
6 allow you to badger her. I will not allow
7 you to make unsupported comments to me. Ask
8 your questions like a human being and we'll
9 get through this. Are we clear?

10 MR. ANTOLLINO: Can you read the
11 question back.

12 MR. ZABELL: Are we clear, counselor?

13 MR. ANTOLLINO: Can you read the
14 question back, please.

15 (Whereupon, the above referred to
16 question was read back.)

17 A My opinion is irrelevant. It's not my
18 business. I don't make decisions.

19 * Q You're here pursuant to a Subpoena and your
20 under oath. I'm asking you to give your opinion, even
21 if it is irrelevant.

22 A Unfortunately, I don't feel that I can answer
23 that. Because, if it was my business I may have acted
24 differently. I'm not in that position.

25 Q Are you refusing to answer or --

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LAUREN CALLANAN

2

MR. ZABELL: She answered the question.

3

Don't ask if she is refusing to answer a

4

question when you have just asked a question.

5

Counsel, move on. If you want a

6

different answer, ask a different question.

7

This is not your first day at the rodeo.

8

Let's land this plane and get it over with.

9

MR. ANTOLLINO: I'd like an answer as to

10

what her opinion is.

11

MR. ZABELL: You just got the answer.

12

MR. ANTOLLINO: No, I didn't. Mark it

13

for a ruling.

14

Q Has Ray ever docked anyone else's pay for even

15

a week?

16

MR. ZABELL: Objection to the multiple

17

questions asked of you and to the form of the

18

questions. To the extent you can, you may

19

pick a question and provide an answer.

20

A I don't know what you mean. In what respect,

21

docking pay?

22

Q Do you know what it means to dock pay?

23

A I do believe I know what docking pay is, in

24

my own definition.

25

Q What would your definition be?

1 LAUREN CALLANAN

2 A To take money out of an employee's paycheck.

3 That, to me, would be docking pay.

4 Q Given that definition of docking pay, has Ray
5 ever docked anyone's pay, other than Don?

6 A I do not know.

7 Q I forgot if I asked this. Were you present
8 when Ray suspended Don?

9 MR. ZABELL: Objection, asked and
10 answered.

11 Q Remind me of your answer. You were not
12 present.

13 A I do not remember.

14 Q After Don was suspended, did you speak to Ray
15 about Don in between that time and the time of his
16 termination?

17 MR. ZABELL: Objection to the form. You
18 may answer.

19 A I had to have talked to Ray, yes. But I
20 don't recall what was talked about.

21 Q Do you recall if you spoke to Ray about Don
22 during that period?

23 MR. ZABELL: Objection, asked and
24 answered.

25 A I don't recall what we spoke about. But, I'm

76

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LAUREN CALLANAN

2

sure we had to have spoken about Don. He was an

3

instructor and I would have needed to know whether we

4

were going to be properly staffed.

5

Q Did you recommend to Ray that he get Don back

6

on staff?

7

A It was not my business to say. It was Ray's

8

decision.

9

Q I just asking you if you recommended it or

10

not?

11

MR. ZABELL: Objection, asked and

12

answered. You can answer it again.

13

A I couldn't make any recommendation. I was

14

not in that position.

15

Q Therefore, you didn't make a recommendation.

16

Is that fair to say?

17

A I can't say that one way or another. It was

18

not my position to make a recommendation.

19

Q I understand entirely that it was not your

20

position to make a recommendation. Are you saying that

21

you did or you did not make a recommendation to Ray

22

about whether he should put Don back on staff?

23

A I do not recall.

24

Q When Ray was firing Don, were you aware that

25

Don was recording the conversation?

1 LAUREN CALLANAN

2 MR. ZABELL: Objection to the form. You
3 may answer.

4 A I was not.

5 Q Did you learn that at a later time?

6 MR. ZABELL: Objection to the form. You
7 may answer.

8 A I did.

9 Q Have you listened to the tape?

10 A I have.

11 Q Do you remember, at the end of the tape, Don
12 asking you whether or not the complaining customers had
13 gotten video?

14 A I do recall.

15 Q Do you remember what your response was?

16 A I believe it was something along the lines
17 of, I was not able to release information or if any
18 information was to be released, it was to come from
19 Ray. Something along those lines.

20 Q Did you know, at that time, whether those
21 people had gotten video?

22 A I do not recall.

23 Q Did Ray tell you not to give him information
24 about the customers?

25 A No.

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1

LAUREN CALLANAN

2

3

Q Did you provide Don with a list of his jumps in the past week?

4

5

6

7

A I believe Don asked me for a printout of his jump log for the season. I believe I provided him with a jump log. Which I did on a regular basis for many instructors.

8

9

10

Q Why did you provide him information and not provide him information about whether or not there was video?

11

12

13

14

15

A Because the video was specific to something that should come from the owner. The jump log was the actual instructors log of jumps. They need to record their jumps, because their jumps are definitely important to their profession.

16

17

18

Q Is it fair to say that Don just wanted to find out if there was video at all at the end of the termination interview?

19

20

21

A I do not know.

22

23

Q Why not listen to a portion of the tape to see if it refreshes your recollection.

24

25

MR. ANTOLLINO: This does not need to be transcribed.

26

(At this time a recording was played.)

27

Q Does that refresh your recollection as to

1 LAUREN CALLANAN

2 whether Don was asking to see the video or whether or
3 not there was actual video?

4 A No, it does not. In what respect is the
5 question?

6 Q Did you hear your voice on the tape?

7 A Yes.

8 Q You heard Don's voice on the tape?

9 A I did.

10 Q Did you hear Don, twice, asking you to look
11 and see if these people got video?

12 A I do recall him asking that, yes.

13 Q Just asking to look if they had video,
14 correct?

15 A Correct.

16 Q You refused to do that, correct?

17 MR. ZABELL: Objection to the form.

18 A At that time Don had been terminated and I
19 could not give out any information unless it was
20 cleared with Ray.

21 Q You did not ask Ray, did you?

22 A At that time, no. Don very well could have
23 asked Ray as well.

24 Q Did Ray instruct you not to provide any
25 information to Don about the video?

80

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LAUREN CALLANAN

2

A He did not.

3

Q Do you remember when Don asked you twice

4

would you please look to see if these people got video,

5

you responded, Don it doesn't make a difference?

6

A I said Ray made a decision. It does not make

7

a difference. I have to go with what Ray has said.

8

Unfortunately, at that time, Don had already been

9

terminated. I could not give out any information.

10

Q Could not Don have learned more about the

11

jump and the complaint by knowing if there was a video?

12

MR. ZABELL: Objection to the form. You

13

can answer, if you can.

14

A There is a possibility. I don't know what

15

was contained on the tape that would be of importance.

16

It's not my place to say.

17

Q In between the time that this jump took place

18

and the time that Don was suspended, he had

19

approximately thirty jumps. Is that fair to say?

20

A I do not recall.

21

Q Would it be typical in a weekend for an

22

instructor to have twenty to thirty jumps?

23

A Yes, depending on the weather.

24

Q If you recall, the jump took place on a

25

Friday and the complaint was not made until Monday,

1 LAUREN CALLANAN

2 correct?

3 A I do not recall.

4 Q You did have the ability, at that moment, to
5 look up and see, simply yes or no, whether those
6 customers had video, correct?

7 MR. ZABELL: Objection to the form. If
8 you can, you may answer.

9 A It is a confidential system. But yes, I
10 could have looked it up.

11 Q Have you ever known Ray to fire an
12 instructor?

13 A It's not a regular practice, no. But yes, he
14 has fired an instructor in the past.

15 Q Other than Don?

16 A Yes.

17 Q Who?

18 A He fired Jerry Hannon, Gerard Hannon.

19 Q When?

20 A I don't recall the date.

21 Q Anyone else?

22 A I believe that he did not ask an instructor
23 back after a lapse of work over the winter.

24 Q Who was that?

25 A Specifically during the season, I don't

82

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LAUREN CALLANAN

2

remember him firing anyone while I was there.

3

Q Who was not asked back?

4

A There was a Michael Thamaras.

5

Q When was that?

6

A I do not recall the actual date.

7

Q What about Alex Allen?

8

MR. ZABELL: Objection to the form.

9

What about Alex Allen?

10

Q Has Alex Allen ever been fired?

11

MR. ZABELL: Are you withdrawing your

12

previous question?

13

Q You can answer.

14

MR. ZABELL: Are you withdrawing your

15

previous question?

16

Q You can answer.

17

A No, I cannot answer.

18

Q Why was Jerry Hannon fired?

19

A I don't know the specifics. I don't know the

20

specifics of why Jerry Hannon was fired. I can't

21

comment on that.

22

Q What do you believe Jerry Hannon was fired

23

for?

24

A I'm aware that Jerry Hannon assaulted

25

another employee.

1 LAUREN CALLANAN

2 Q Who?

3 A He had punched Duncan Shaw.

4 Q What about Michael Thamaras, why wasn't he
5 asked back?

6 MR. ZABELL: Asked and answered.

7 A I don't why he was not asked back.

8 Q Has Ray ever suspended an employee, other
9 than Don?

10 A I can't remember.

11 Q Do you ever remember a time that a group of
12 gay skydivers came to Sky Dive Long Island in the
13 summer of 2010?

14 A I don't know what you're referring to. I
15 can't answer.

16 Q That doesn't ring a bell, a group of about
17 twenty gay skydivers who came to Sky Dive Long Island
18 in 2010?

19 MR. ZABELL: Objection to the form of
20 the multiple questions. You may answer
21 questions such as whether it rang a bell or
22 the remainder of the question, either one.

23 A I can't comment on that. We have hundreds of
24 people skydiving on the weekend alone. I cannot
25 comment on a specific group of twenty individuals, no.

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LAUREN CALLANAN

2

Q Were you aware that one of your instructors

3

told a tandem customer that we used to have a gay

4

instructor here?

5

A Not that I recall, no.

6

Q Would that have been inappropriate in any

7

way?

8

MR. ZABELL: Objection to the form. You

9

may answer.

10

A I can't remember it being said. So, I can't

11

comment on it.

12

Q If it did happen, would it have been

13

inappropriate?

14

MR. ZABELL: Are you asking a

15

hypothetical, counselor?

16

Q You can answer.

17

MR. ZABELL: You don't have to answer

18

until he clarifies whether or not he is

19

asking a hypothetical question.

20

MR. ANTOLLINO: I asked a clear

21

question.

22

MR. ZABELL: Are you asking a

23

hypothetical question?

24

Q You can answer the question.

25

MR. ZABELL: Please don't.

1 LAUREN CALLANAN

2 MR. ANTOLLINO: Mark it for a ruling.

3 You're not allowed to limit my questions. If
4 you want to do it this way --

5 MR. ZABELL: I am not limiting the
6 questions.

7 MR. ANTOLLINO: I asked a very clear
8 question.

9 MR. ZABELL: You have. I just want to
10 clarify whether it's hypothetical or not.

11 MR. ANTOLLINO: I don't have to. Then
12 you'll come up with something else. I asked
13 a clear question. I'd like an answer. If
14 you don't want to, I'll just make it a part
15 of the discovery pile motion I'm going to
16 make.

17 MR. ZABELL: Identify whether the
18 question is hypothetical or not and I'll
19 allow her to answer it.

20 MR. ANTOLLINO: It's a clear question.
21 I don't have to ask it in your way. I have
22 asked it my way. I am not going to be
23 bullied by you. We'll just take it up for a
24 ruling. If you are directing the witness not
25 to answer the question, I'll take it up for a

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LAUREN CALLANAN

2

ruling.

3

MR. ZABELL: I'm directing you not to

4

answer the question, unless he clarifies

5

whether or not it is a hypothetical question.

6

Once he makes a clarification as to yes or

7

no, it is hypothetical, you are free to

8

answer.

9

MR. ANTOLLINO: It's clear on its face.

10

MR. ZABELL: What is clear on its face.

11

Question don't have faces.

12

Q Are you aware of the rules of conduct

13

governing instructors at Sky Dive Long Island?

14

A To the best of my knowledge, there is no

15

official written words. So, therefore no. I am not

16

aware of rules of conduct, no.

17

MR. ZABELL: You answered.

18

Q Do you ever remember Don bringing some of his

19

friends to Sky Dive Long Island and not being able to

20

jump because of weather?

21

A I do not recall.

22

Q Is Sky Dive Long Island an adult playground?

23

A You need to be eighteen years of age in order

24

to skydive. So, it is for adults, yes.

25

Q Have you ever seen a sign like that at a drop

1 LAUREN CALLANAN

2 zone?

3 A I have heard of drop zones referred to as
4 playgrounds in the past.

5 Q Have you seen them or referred to as an adult
6 playground?

7 A Not necessarily an adult playground. But as
8 I said, you have to be eighteen in order to skydive.

9 Q Are pets allowed at Sky Dive Long Island?

10 A Currently, not at this time.

11 Q Were there any times when pets have been
12 allowed?

13 A Previously, I would imagine so, yes.

14 Q Why?

15 A I previously brought my dog to the drop zone.

16 Q You're not allowed to bring your dog to the
17 drop zone anymore?

18 A No. My dog passed away.

19 Q I'm sorry. What about Ray?

20 MR. ZABELL: Ray is not a dog.

21 Q What about Ray, does Ray bring his dog to the
22 drop zone?

23 A Ray previously brought his dog to the drop
24 zone.

25 Q Does he no longer do that?

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LAUREN CALLANAN

2

A I have not seen his dog in a long time.

3

Q Did Ray ever instruct you that, from now on we're are not going to be able to bring our dogs to the drop zone?

5

6

A Ray has expressed yes, the desire to not have any pets at the drop zone.

7

8

Q Do you, in fact, have a sign at the drop zone, no pets allowed?

9

10

A There is a sign or there was a sign at the drop zone. There has been a sign for years at the drop zone, no dogs allowed or no pets allowed. I don't remember the exact terminology of the sign. There has probably been signs long before I got there.

11

12

13

14

15

Q Do you recall a time when Don's cat died?

16

A I do.

17

Q What do you remember about that?

18

A I recall Don being very upset.

19

Q In what way did you come to the conclusion that he was upset?

20

21

A Don came into the manifest office and sat there for a length of time expressing his sadness.

22

23

Q In what way was he expressing his sadness?

24

A He was talking about the passing of the cat.

25

Q Was he crying?

1 LAUREN CALLANAN

2 A I can't remember if he was actually crying.

3 I cannot say for sure.

4 Q Did he say he was unable to do tandems?

5 A I don't recall.

6 Q Did you commiserate with about that with him?

7 MR. ZABELL: Objection to the form.

8 A Of course I would sympathize with the loss of
9 a pet.

10 THE WITNESS: Can we take a break.

11 MR. ZABELL: Sure.

12 (Whereupon a pause in the proceeding was
13 taken.)

14 Q Your ex, Ben Lowe, was fired by Ray, wasn't
15 he?

16 MR. ZABELL: Objection to the form of
17 the question. If he is offending you, feel
18 free to tell me. If you think he is being
19 obnoxious, you may tell him that. You may
20 answer.

21 MR. ANTOLLINO: Withdrawn.

22 Q Did I just offend you?

23 A Well, I wouldn't say offended.

24 Q You described earlier that Ben Lowe was your
25 ex, didn't you?

90

1 LAUREN CALLANAN

2 A He was, yes.

3 Q I asked and I'll ask again, was your ex, Ben
4 Lowe, ever fired by Ray?

5 MR. ZABELL: Same objection. You may
6 answer.

7 A No. No, he was not fired, I don't believe.

8 Q Were you in a relationship with Ben when Ben
9 ended working for Ray?

10 A I was.

11 Q Do you know a Doug Smith?

12 A I do not know Doug Smith.

13 Q Did anyone call after Don was fired to find
14 out about Don's work?

15 A No, I do not know.

16 Q Has that ever happened before, where someone
17 has called to inquire about a previous employee?

18 MR. ZABELL: Objection to the form. You
19 may answer.

20 A Other employers may have called to verify
21 employment, sure.

22 Q What is the practice in responding to those
23 inquires?

24 MR. ZABELL: Objection to the form. You
25 may answer.

1 LAUREN CALLANAN

2 A It depends on the question.

3 Q Well, if a person was calling to verify
4 employment, would you answer the questions?

5 MR. ZABELL: Objection to the form. You
6 may answer.

7 A Yes.

8 Q If a person was calling to verify employment
9 and get an assessment of the instructor's ability,
10 would you answer the question?

11 MR. ZABELL: Objection to the form of
12 the question. You may answer.

13 A I personally would not be able to answer
14 that.

15 Q Do you know if Ray does and what his practice
16 is?

17 MR. ZABELL: Objection to the form of
18 the question. You may answer.

19 A I'm not aware of his practice in that
20 respect.

21 Q Do you ever do reference checks before hiring
22 your employees?

23 MR. ZABELL: Objection to the form. You
24 may answer.

25 A I'm not in charge of hiring employees.

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1

LAUREN CALLANAN

2

Q When did you learn that Don was suing Sky

3

Dive Long Island?

4

A I don't recall the exact time when I was

5

informed.

6

Q How were you informed?

7

A I believe I overheard people talking about

8

it.

9

Q Where?

10

A At the drop zone.

11

Q What people?

12

A Staff members.

13

Q What staff members?

14

A I said I don't remember.

15

Q What was said?

16

A I just recall that there was talk about a

17

lawsuit.

18

Q Do you remember what was said about the

19

lawsuit?

20

A No, I don't remember.

21

Q Were any opinions expressed about the

22

lawsuit, in anyway?

23

A I don't recall.

24

Q Did Ray say anything about the lawsuit?

25

A I do not recall.

1 LAUREN CALLANAN

2 Q Has Ray said anything to you about this
3 lawsuit from the day you learned about it at the drop
4 zone to the present?

5 A Other than that there was a lawsuit, I don't
6 recall what was said about anything pertaining to the
7 lawsuit.

8 Q Has he ever complained about Don since the
9 time the lawsuit was filed and the present?

10 A Not that I'm aware of. I don't remember.

11 Q Has he ever complained about how much he has
12 had to pay his attorney between the time the lawsuit
13 was filed and the present?

14 A Not that I can verify, no. I don't recall.

15 Q I don't want you to verify anything. I just
16 want you to testify to the best of your recollection.
17 To the best of your recollection, has Ray ever
18 complained about how much he has had to pay defending
19 this lawsuit?

20 MR. ZABELL: Objection, obnoxious
21 question asked and obnoxious question
22 answered. You can answer again.

23 A I don't recall specific to this case, no.

24 Q Has he complained about his legal bills in
25 general?

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1

LAUREN CALLANAN

2

MR. ZABELL: Same objection.

3

A I don't remember.

4

Q Ever?

5

A I can't say for certain.

6

Q Has Ray ever talked about his wife at the

7

work place?

8

A Yes.

9

Q Would you say that he has talked about his

10

wife on numerous occasions?

11

A I don't know to whom he talks to. But I have

12

talked to Ray about his wife on numerous occasions, his

13

ex-wife.

14

Q What have you talked to Ray about his ex-wife

15

about on numerous occasions in the past?

16

A On a personal level I have talked to Ray

17

about his ex-wife.

18

Q On what personal level?

19

A As a friend, I have talked about his past

20

relationships.

21

Q What advice have you offered him with regard

22

to his past relationships?

23

MR. ZABELL: Objection to the form of

24

the multiple question. You may answer.

25

A I do not recall specific advice.

1 LAUREN CALLANAN

2 Q Has he complained about his ex-wife to you?

3 A Yes, I have talked to him about complaints
4 about his ex-wife.

5 Q Has he told you things that she has said to
6 him?

7 A Previously, I'm sure he has. Specifically, I
8 don't recall.

9 Q On more than one occasion?

10 A Yes.

11 Q Would you agree that skydiving is not for
12 everyone?

13 MR. ZABELL: Objection to the form.

14 A I would.

15 Q What type of people should not consider
16 skydiving?

17 A General rules for skydiving, you must be at
18 least eighteen and in good general health.

19 Q Okay.

20 A There is a published weight limit, which is
21 very flexible, depending on how you compare the
22 weights.

23 Q So, say someone meets the weight limit, is
24 old enough and in good health, are there any people
25 that are not well suited for skydiving that fall within

96

1

LAUREN CALLANAN

2 those parameters?

3 A Those are the general qualifications. Beyond
4 that --

5 Q What about someone that is claustrophobic, do
6 you think that someone that is claustrophobic should go
7 skydiving?

8 A I'm claustrophobic and I skydive. I have
9 never been diagnosed.

10 Q What do you mean you have never been
11 diagnosed? Describe your claustrophobia?

12 MR. ZABELL: Objection.

13 MR. ANTOLLINO: Withdrawn.

14 MR. ZABELL: Which question?

15 MR. ANTOLLINO: Both.

16 Q Describe your claustrophobia?

17 A I don't enjoy being enclosed in small spaces.

18 Q How small?

19 A A room like this is not a problem. If I was
20 in a very small room, very small, where I could not
21 move, I would not be comfortable.

22 Q Like a closet?

23 MR. ZABELL: Objection.

24 Q Correct?

25 MR. ZABELL: Putting correct at the end

1 LAUREN CALLANAN

2 of a statement doesn't make it a question.
3 That is a statement to which no answer is
4 required.

5 Q You can answer.

6 MR. ZABELL: There is no question
7 pending before you.

8 MR. ANTOLLINO: Counselor, you're just
9 making this longer. It's so unnecessary.
10 Withdraw the question. I'll ask it like
11 this.

12 Q Like a closest, correct?

13 MR. ZABELL: That is not a question that
14 you can answer.

15 Q Would you answer the question.

16 MR. ZABELL: You need not answer the
17 question.

18 MR. ANTOLLINO: Counsel, you can't tell
19 me how to ask my questions. It's a follow up
20 question that is completely appropriate.
21 You're making speaking objections. You have
22 the right to object to the form. I am asking
23 you not to make this kind of objection.

24 MR. ZABELL: Ask big boy questions and
25 you'll get adult answers.

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1

LAUREN CALLANAN

2

Q Can you answer the question, please.

3

A I don't enjoy being confined in tight spaces,
4 such as a small closet. However, I couldn't say that
5 someone else that feels that they may be
6 claustrophobic, shouldn't go skydiving. Because, who
7 knows what they don't feel comfortable with.

8

Q There might be some people that feel
9 uncomfortable being in a room this size, correct?

10

A Sure.

11

Q This is about twelve by twenty,
12 approximately?

13

A Okay.

14

Q I'm asking you. Would that be a fair
15 estimate of how big this room is?

16

A I don't have a tape measure. It is a
17 conference room, yes. It's not a closet.

18

Q Okay. It's a conference room, not a closet.
19 What about someone that doesn't like being touched, is
20 that a good person that is well suited for skydiving?

21

MR. ZABELL: Objection to the form.

22

Q You can answer.

23

MR. ZABELL: If you can.

24

A People who are going skydiving for the first
25 time, are going tandem. They are going tandem under

LAUREN CALLANAN

1
2 the assumption that an instructor will be attached to
3 them. That is their own decision to make whether they
4 would like to partake in those activities. If they
5 don't like to be touched, then no, I wouldn't recommend
6 a tandem for them.

7 Q Have you ever heard sexually suggestive jokes
8 made at the drop zone?

9 A Specifically, no. But I cannot remember.

10 Q Have ever seen a situation where a boyfriend
11 and a girlfriend are getting strapped to different
12 instructors and one instructor says to the boyfriend, I
13 bet you didn't expect that your girlfriend is going to
14 be strapped to another guy?

15 A I'm in the office. So I, unfortunately, do
16 not see when people are getting geared up.

17 Q You have never heard that?

18 A Unfortunately, I cannot say that I have.

19 Q You have been up in a plane before?

20 A I have.

21 Q Other people have been tandem and you have
22 done some tandems too, correct?

23 A Yes, I have.

24 Q Have you ever heard jokes like that up in the
25 planes you have been in?

100

1

LAUREN CALLANAN

2

A No, not that I recall.

3

Q What kind of atmosphere is it up in the plane

4

before people exit the airplane?

5

MR. ZABELL: Objection to the form. You

6

may answer.

7

A There are multiple emotions going on until

8

the time of exit.

9

Q Explain that. What are some of the emotions

10

going on?

11

A The people are excited. There is lots of

12

adrenalin. People are scared. It's exhilarating.

13

Q Are there any ways that instructors loosen

14

the tension for tandem skydivers?

15

A I'm sure that there are.

16

Q Have you ever seen any evidence of that?

17

A Not that I can comment on.

18

Q Has Ray ever talked to you about his sister?

19

A Yes, I do talk about his sister.

20

Q When?

21

A I believe when she started getting ill, is

22

when I last recall speaking of her.

23

Q What about the first time, was that the first

24

time also?

25

A No. I believe I talked about her in the

1 LAUREN CALLANAN

2 past. I don't remember.

3 Q How would you characterize their
4 relationship, if you could?

5 A Unfortunately, I can't.

6 Q Did he attend her funeral.

7 A I believe so.

8 Q Are you sure?

9 A No, I'm not. But I don't know why he
10 wouldn't.

11 Q Has Ray ever said anything derogatory about
12 gay people in your presence?

13 A Not that I'm aware of.

14 Q Have you ever spoken to any particular
15 employees about Don since this lawsuit has been filed?

16 A Yes.

17 Q Who?

18 A I have spoken to Ray. I spoke to Rich
19 Winstock. I believe I spoke to Marco Marcovich.

20 Q Anyone else?

21 A Not that I can specifically recall.

22 Q When did you speak to Marco?

23 A Probably about a month ago.

24 Q What did you say to Marco?

25 A I don't recall specifically.

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1

LAUREN CALLANAN

2

Q Why were you calling Marco?

3

A I didn't call Marco.

4

Q Did Marco call you?

5

A No. I don't recall.

6

Q Do you remember any circumstances as to how

7

you spoke to Marco?

8

MR. ZABELL: Objection to the form of

9

the question.

10

A I can't remember. Unfortunately, I can't

11

recall. I can't say.

12

Q Do you remember what you asked Marco about

13

Don?

14

MR. ZABELL: Object to the form of the

15

question.

16

A I can't remember asking Marco anything about

17

Don. I recall asking Marco if he heard anything about

18

the court case or anything pertaining to a deposition.

19

Q What did he say?

20

A He said he had not.

21

Q Was there any further conversation?

22

A He was aware that Rich Winstock was scheduled

23

for a deposition.

24

Q Did you ask Marco to come in and meet with

25

anyone?

1 LAUREN CALLANAN

2 A I did not.

3 Q Why did you ask Marco that question about the
4 deposition?

5 A It was general conversation.

6 Q There was no reason to ask the question. You
7 just felt like it?

8 MR. ZABELL: Objection.

9 MR. ANTOLLINO: Withdrawn.

10 Q Why were you curious about what Marco knew
11 about this lawsuit?

12 A I was curious if I may have to come in for a
13 deposition.

14 Q Were you trying to find out if Marco was
15 going to have to come in for a deposition also?

16 A No. I was just curious if he had heard
17 anything.

18 Q Was there any further conversations, other
19 than what you just testified to?

20 MR. ZABELL: Object, asked and answered.
21 You may answer.

22 A Not that I recall.

23 Q What was Marco's relationship with Don?

24 A He was a co-worker.

25 Q Did they have any other aspect to their

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1

LAUREN CALLANAN

2 relationship?

3 A I know they had jumped together at least on
4 one base jumping trip. Which, I don't recall where
5 they went. I know they did go away. I believe
6 together. I don't know how they ended up in the same
7 place. But they were jumping together at another
8 location.

9 Q You don't know the extent of whether they are
10 just acquaintances or friends or jumping buddies or
11 anything like that?

12 A I don't know personal details, no.

13 Q Has Marco said anything negative about Don?

14 A Not that I recall.

15 Q What was your relationship with Don?

16 A Co-workers.

17 Q Well, would you characterize it as a good
18 relationship?

19 A I would say so.

20 Q Why?

21 A I never had any problems with Don on a
22 personal level or a professional level.

23 Q Do you think he's a nice guy?

24 A I do.

25 Q A good instructor?

1 LAUREN CALLANAN

2 A I have never received instructions. So, I
3 can't comment on the instructions.

4 Q Is it okay for an instructor to tell a
5 customer that he is married?

6 A That's an opinion. I can't unfortunately
7 comment on that. I would have to say that if a
8 customer asked the instructor, are you married, then it
9 would be an okay response.

10 Q Otherwise, not?

11 A I don't see how that would come up otherwise.

12 Q What about military status?

13 A We have a lot of military jumpers at the drop
14 zone. Again, if a student asked if an instructor was
15 in the military, I would expect the instructor to want
16 to talk about that, sure.

17 Q If they just offered the information, would
18 that be inappropriate?

19 A I don't know why they would offer that
20 information. There is really no need for it on a
21 professional level.

22 Q What about age, do instructors ever tell the
23 students their age?

24 A If the student asks, I'm sure they would.

25 Q Under any other circumstances?

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1

LAUREN CALLANAN

2

A I don't feel there would be a need to share

3

that.

4

Q Did you ever see Don flirt with any women at

5

the drop zone?

6

A Not that I recall, no.

7

Q Do you believe that Don has any interest in

8

women, whatsoever?

9

MR. ZABELL: Objection to the form. You

10

may answer.

11

A I don't know.

12

Q Were there any complaints about Don from

13

other employees at SDLI?

14

A I cannot recall specifically. I know I have

15

heard people say in passing that Don liked to talk a

16

lot, if you want to classify that as a complaint.

17

Q Anything else that you recall?

18

A There is nothing else that I can specifically

19

remember.

20

Q Did Ray ever make that complaint, that Don

21

liked to talk a lot?

22

A I don't recall.

23

Q After Don was fired he applied for

24

unemployment insurance, is that right?

25

A That is correct.

1 LAUREN CALLANAN

2 Q When did you find out about that application?

3 A When Ray received the letter in the mail?

4 Q Did you open that letter?

5 A No, I do not believe so.

6 Q Did Ray tell you about the letter?

7 A Correct, I do believe so. I can't say for
8 sure.

9 Q Did he show you the letter?

10 A I believe he did, yes.

11 Q What did he say to you in response to that
12 application for unemployment insurance?

13 A I believe, we're going back some time, that
14 he had asked me if I knew or had heard that Don may
15 have been working elsewhere or possibly owned another
16 business, while he was collecting unemployment or
17 attempting to collect unemployment.

18 Q Did he say anything else?

19 A He asked me to basically write back in
20 response.

21 Q What did he tell to write back in response?

22 A He asked me to basically look into whether
23 Don was working, as well as just drafting the letter.
24 Which I did. I basically showed it to him.

25 Q Did he review it?

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1

LAUREN CALLANAN

2

A He did.

3

Q Did he say this is accurate?

4

A He said, yes.

5

Q Is this the letter, Exhibit 1-A, that you

6

drafted in opposition to Don's unemployment insurance?

7

A Correct.

8

Q Did Ray ask you to make any changes in the

9

letter?

10

A Not that I recall.

11

Q That is your signature there, correct?

12

A Yes, that is my signature.

13

Q Whether or not he asked you to make any

14

changes, he definitely didn't ask you to make any

15

changes in this one, correct?

16

(Continued on the next page to include

17

the jurat and signature line.)

18

19

20

21

22

23

24

25

1 LAUREN CALLANAN

2 A I do not believe so.

3 MR. ANTOLLINO: I have nothing further.

4 Thank you very much.

5 (Whereupon, the examination of
6 this witness was concluded at 3:40 p.m.)

7 * * *

8

9 I have read the foregoing record of my testimony
10 taken at the time and place noted in the heading hereof
11 and I do hereby acknowledge it to be a true and correct
12 transcript of the same.

13

14

15 LAUREN CALLANAN

16

17 Subscribed and sworn to

18 before me this _____ day

19 of _____, 2012

20

21

22 NOTARY PUBLIC

23

24

25

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2

I N D E X

3

4	EXAMINATION OF	BY	PAGES
5	Lauren Callanan	Mr. Antollino	3-109

6

7 E X H I B I T S

8	CALLANAN EXHIBIT	DESCRIPTION	PAGE
9	1	Subpoena	4
10	1-A	Letter attached to Subpoena	8
11	2	E-mail	27
12	3	Photograph	47
13	4	Photograph	49

14

15 INFORMATION TO BE SUPPLIED

16	DESCRIPTION	PAGES
17	Other complaints	31-33-39

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19 RULINGS

20	PAGE	LINE
21	8	22
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C E R T I F I C A T I O N

I, Joseph J. Pontillo, a Notary Public of the State of New York do hereby certify:

That the testimony in the within hearing was held before me at the aforesaid time and place. That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS HEREOF, I have hereunto set my hand this 11th day of January, 2012.


JOSEPH J. PONTILLO

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LAWYER'S NOTES

[illegible]

Bee  Reporting Agency, Inc.
COURT REPORTERS

ERRATA SHEET

NAME OF CASE: _____

DATE OF DEPOSITION: _____

NAME OF DEPONENT: _____

The following corrections, additions or deletions are noted for the following reasons:

PAGE	LINE	CHANGE	REASON
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Subscribed and Sworn to Before Me
This ____ day of _____, 20__.

WITNESS' SIGNATURE

NOTARY PUBLIC

Commission Expires:

BEE REPORTING AGENCY, INC. (516) 485-2222 (212) 327-3500

EXHIBIT F

EXHIBIT E KENGLE DEP.

0001

1 1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT
5 -----X
6 DONALD ZARDA,
7 Plaintiff,
8 - against - INDEX NO.:
9 CV-10-4334
10 ALTITUDE EXPRESS, INC., d/b/a
11 SKYDIVE LONG ISLAND AND RAY MAYNARD,
12 Defendants,
13 -----X
14 Bee Reporting Agency, Inc.
15 800 Veterans Memorial Highway
16 Hauppauge, New York
17 November 9, 2011
18 3:39 P.M.

19 EXAMINATION BEFORE TRIAL OF DAVID
20 KENGLE, a non-party witness, taken by the
21 attorney for the Plaintiff, pursuant to Subpoena,
22 and held before Deborah Thier, a Notary Public of
23 the State of New York at the above-stated time and
24 place.
25

* * * *

0002

1 2
2 APPEARANCES:
3
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7 New York, New York 10010
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10 Attorneys for the Defendants
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12 Bohemia, New York 11716
13 BY: SAUL D. ZABELL, ESQ.
14
15 ALSO PRESENT:
16 JHON SANCHEZ, ESQ.
17 DONALD ZARDA
18
19
20
21
22
23
24
25

0003

1 3
2 FEDERAL STIPULATIONS
3
4 IT IS HEREBY STIPULATED AND AGREED,
5 by and between the parties hereto, through
6 their respective Counsel, that the certi-
7 fication, sealing and filing of the within
8 examination will be and the same are hereby
9 waived;
10
11 IT IS FURTHER STIPULATED AND AGREED
12 that all objections, except as to the form
13 of the question, will be reserved to the
14 time of the trial;
15
16 IT IS FURTHER STIPULATED AND AGREED
17 that the within examination may be signed
18 before any Notary Public with the same
19 force and effect as if signed and sworn to
20 before this Court.
21
22
23
24
25

0004

1 4
2 DAVID KENGLE,
3 The witness herein, having first been duly
4 sworn by Deborah Thier, a Notary Public in and
5 for the State of New York, was examined and
6 testified as follows:
7 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:
8 Q Please state your name for the record.
9 A David Kengle.
10 Q What is your address?
11 A 9 Garfield Place, East Northport, New
12 York, 11731.
13 Q Good afternoon, Mr. Kengle. My name is
14 Greg Antollino.
15 A Good afternoon.
16 Q I'm going to be asking you some
17 questions today.
18 MR. ZABELL: I should point out that
19 Mr. --
20 MR. ANTOLLINO: Would you not
21 interrupt.
22 MR. ZABELL: Mr. Kengle has agreed to
23 provide testimony as long as he's provided
24 with a copy of his deposition transcript to
25 review prior to signing it.

0005

1 David Kengle 5
 2 Q Did Mr. Zabell talk to you about that
 3 before this deposition?
 4 A He let me know that that was an option
 5 that I have.
 6 Q We'll certainly give you a copy of the
 7 deposition transcript.
 8 MR. ANTOLLINO: Before Mr. Zabell
 9 interrupted me, what did I say.
 10 (Whereupon, the requested section
 11 was read back by this reporter.)
 12 Q I represent Mr. Zarda.
 13 Have you ever been deposed before?
 14 A I was trying to remember. I don't
 15 believe so.
 16 Q Have you ever testified before?
 17 A I don't think so.
 18 Q Did you ever go to court and raise your
 19 right hand and --
 20 A I may have. When I was a teenager I --
 21 Q One of the rules of the deposition, and
 22 I'd like you to agree to, if you don't mind, is to
 23 wait for me to ask the question in its entirety
 24 before you give an answer.
 25 A Sure.

0006

1 David Kengle 6
 2 Q Will you agree if you don't understand
 3 the question, to tell me you don't understand a
 4 question?
 5 A Sure.
 6 Q Will you agree to tell me if you don't
 7 an answer to a question?
 8 A Sure.
 9 Q You were talking about something that
 10 happened when you were a teenager.
 11 A I was once -- when I was a teenager,
 12 one of the kids that we hung out with, he had like
 13 an unloaded gun or something like that, and I
 14 remember a couple of us had to answer some
 15 questions about it. I don't remember if we were
 16 actually deposed or anything like that. That was
 17 the only thing.
 18 Q So you went to court?
 19 A No, I said I don't believe so. I said
 20 I just remember having to answer questions to a --
 21 police or something like -- some kid we went to
 22 high school with -- I don't remember -- I don't
 23 even remember his name.
 24 Q So the police didn't say, raise your
 25 right hand?

0007

1 David Kengle 7
 2 A No, I don't think so.
 3 Q Do you understand what it means to
 4 swear under oath?
 5 A Do I, of course.
 6 Q Do you know false testimony under oath
 7 constitutes perjury, correct?
 8 A Yes.
 9 Q Do you know what perjury is?
 10 A I do.
 11 Q Are you employed at this time?
 12 A No.
 13 Q What were you employed last as?
 14 A I worked at Four Food Studio as a
 15 server.
 16 Q When was the last time you were
 17 employed?
 18 A June.
 19 Q When was the first time you spoke with
 20 Mr. Zabell?
 21 A The first time I spoke to Mr. Zabell
 22 would probably be, what, early this year. I think
 23 he notified me of -- maybe it could have been the
 24 end of last year, early this year. Actually, it
 25 was somebody in his office first that contacted us

0008

1 David Kengle 8
 2 and Mr. Zabell took up the case after, I guess,
 3 when he was no longer on it.
 4 Q Do you remember the names of any of
 5 these people?
 6 A What is his name, Tim? Tim, I believe,
 7 maybe. I don't really know.
 8 MR. ZABELL: I can't help you when
 9 you're answering.
 10 A Nobody who worked in his office.
 11 Q When was the first time you met Mr.
 12 Zabell?
 13 A He came by my apartment once. I think
 14 it was late spring, early summer.
 15 Q What happened?
 16 A You know, he just -- we had spoken on
 17 the phone first. He let us know everything that
 18 was going on and he said he needed to get my
 19 statements. So he came over and we gave him our
 20 statements.
 21 Q Did he write anything down?
 22 A I'm sure he did.
 23 Q You saw him writing something down?
 24 A I think he took notes. I could be
 25 mistaken. I just assumed that he did.

0009

1 David Kengle 9
 2 Q Was anyone else there?
 3 A My girlfriend, Rosana.
 4 Q That was at this location, 9 Garfield
 5 Place?
 6 A Correct.
 7 Q That was the first time you had met Mr.
 8 Zabell?
 9 A Right, met him, and we'd spoke once on
 10 the phone before that, I believe.
 11 Q What did you talk about when you spoke
 12 on the phone?
 13 A Like I said, he just gave us -- he let
 14 us know that there was a lawsuit going about and
 15 he needed our statement.
 16 Q What did he tell you about the lawsuit?
 17 A He mentioned that the skydiving
 18 instructor that we had made a complaint about --
 19 had been fired and that he was now suing the owner
 20 of Skydive Long Island I believe it's called, for,
 21 you know, wrongful termination based on his
 22 sexuality, whatever.
 23 Q Did he say anything else?
 24 A No, he just gave us the broad strokes.
 25 Q What did you say in response?

0010

1 David Kengle 10
 2 A What did I say in responses? I
 3 didn't --
 4 Q Yes.
 5 A I didn't really have a response. I was
 6 wondering why we were being contacted, and he
 7 asked for our statement, and so I gave a statement
 8 when he came over to the apartment.
 9 Q Did you sign anything at the time?
 10 A No.
 11 Q How long was the phone conversation?
 12 A Very brief. You know, just setting up
 13 a time where he could, you know, meet.
 14 Q That was in the early part of this year
 15 or the spring, the summer?
 16 A I'm gonna -- well, the phone
 17 conversation -- I feel like we were getting
 18 messages a couple of times before I really knew
 19 what it was about. You know, I remember getting a
 20 couple of messages like, you know, I'm an attorney
 21 representing Skydive Long Island, and I just
 22 remembered kind of not wanting to be bothered with
 23 it. So I let them call back a couple of times
 24 before I talked.
 25 I'm pretty sure it was after the new

0011

1 David Kengle 11
 2 year, because I had -- I kind of clear out my
 3 stuff toward the end of the year, and I don't
 4 remember that being there. So I'm sure it was
 5 early this year.
 6 Q How long after the phone conversation
 7 did Mr. Zabell come to your apartment?
 8 A Within a couple of weeks.
 9 Q Did he tell you anything about a
 10 subpoena?
 11 A I believe I asked him if we would be
 12 subpoenaed, or I asked him if we would have to go
 13 to court for any of this, and he said, yeah, you
 14 might, there might come a point.
 15 Q Did you tell him to accept subpoenas on
 16 your behalf?
 17 A No.
 18 Q Did you hear anything in the media
 19 about this case?
 20 A Did I hear anything in the media?
 21 Q Yes.
 22 A No, I didn't hear anything in the
 23 media.
 24 Q When you met Mr. Zabell, how long was
 25 he at your house, how long was the meeting?

0012

1 David Kengle 12
 2 A Couldn't have been more than a half
 3 hour.
 4 Q What did he say to you and what did you
 5 say to him?
 6 A Well, we did most of the talking. We,
 7 you know, gave our accounts. He kind of again --
 8 already filled us in on what was going on, so he
 9 needed our statements and we gave him our
 10 statements and we told him our story.
 11 I can give you the whole story, if you
 12 like.
 13 Q Sure, I'll ask you about that, but did
 14 he say anything about what happened?
 15 A Did he say anything about what
 16 happened?
 17 Q Yes.
 18 A He told me there was a lawsuit, what I
 19 told you the first time.
 20 Q Did he say anything about my client,
 21 Mr. Zarda?
 22 A No.
 23 Q Did he say anything about his client,
 24 Mr. Maynard?
 25 A No. I mean, I know that, you know, Ray

0013

1 David Kengle 13
 2 is the guy that owns Skydive Long Island and your
 3 guy was the skydiving instructor, and nothing more
 4 than that.
 5 Q When you say Ray, do you know him by
 6 his first name?
 7 A No, I just -- I heard it mentioned
 8 today.
 9 Q Have you ever met Ray or just spoken to
 10 him on the phone?
 11 A I've spoken to him on the phone. I've
 12 never met him.
 13 Q How many times have you spoken to him
 14 on the phone?
 15 A Just the one time. Right? Once was
 16 it, twice -- no, once.
 17 Q Now, in preparation for preparing for
 18 today's deposition, I sent you a subpoena that
 19 asked you to attend today, and you have attended.
 20 Thank you. But also there was a section in there
 21 for you to produce any documents or e-mails that
 22 you've received or sent to Mr. Zabell, any of his
 23 employees, Mr. Maynard, any of his employees.
 24 Do you remember that on the subpoena?
 25 A Yeah.

0014

1 David Kengle 14
 2 Q Is there anything that's responsive to
 3 that?
 4 A No, there are no documents.
 5 Q I just wanted to make sure.
 6 Q So let's go back to June 18th, 2010.
 7 MR. ANTOLLINO: We can mark this as
 8 Plaintiff's Exhibit, I guess we'll call this
 9 4.
 10 MR. ZABELL: Was there a 2 and a 3?
 11 MR. ANTOLLINO: Yes, the two videos.
 12 (Whereupon, the release was marked as
 13 Plaintiff's Exhibit 4 for identification, as
 14 of this date.)
 15 Q Do you recognize this document?
 16 A This looks like what we filled out.
 17 Yeah, that's my handwriting. It's what we filled
 18 out when we went skydiving.
 19 Q It appears to have your signature on --
 20 A Correct.
 21 Q Is there any handwriting here that's
 22 not yours?
 23 A You know, the notes, the identifying
 24 and stuff, but all the rest is mine.
 25 Q What about on the pages on the

0015

1 David Kengle 15
 2 left-hand side starting on page two, there are a
 3 lunch of initials under each paragraph, did you
 4 initial those?
 5 A Yes, I did.
 6 Q Did you fill out this document after
 7 watching a video?
 8 A Yeah, I believe we filled it out,
 9 actually, while we were watching the video. I
 10 think they gave it to you to fill out while
 11 watching.
 12 Q So you're filling this out and watching
 13 a video at the same time?
 14 A Yeah, I think so.
 15 Q Did you pay attention to the video?
 16 A Yeah, for the most part.
 17 Q Were you reading this carefully while
 18 you were watching the video?
 19 A For the most part, yeah.
 20 Q So you were reading this document and
 21 looking at the video at the same time?
 22 A Well, I mean, you watch and then maybe
 23 when there's silence or something, or maybe I
 24 waited until after. Somehow I paid attention,
 25 because I wanted to understand what, you know, the

0016

1 David Kengle 16
 2 deal was legally, and also what the deal was as
 3 far as safety.
 4 Q Did you talk to Rosana about it?
 5 A Did I talk to her about it, no. I
 6 mean, we just filled out our forms.
 7 Q Was she reading the document?
 8 A Yeah. I mean, she probably skimmed it.
 9 I don't think she read it as attentively as I did.
 10 Q She did not as attentively as you did
 11 is what you recall?
 12 A She may have. I don't know. Just
 13 knowing her, I would assume that, you know, she
 14 probably left it for me. She trusts my judgment,
 15 and I'm kind of a -- the brains of the operation,
 16 I guess. I'm the legal person, you know.
 17 Q What is the highest level of education
 18 you have --
 19 A I graduated from Hofstra University
 20 with a B.A. in liberal arts.
 21 Q So you signed this form, you filled out
 22 this form and you watched the video.
 23 What happened next?
 24 A Well, I mean, we got ready to go, make
 25 the jump. I think they -- you know, we went

0017

1 David Kengle 17
 2 outside. We had to wait a while. I think
 3 somebody else -- I think another group was going
 4 about their jump, so they set us up. You know,
 5 they put our chute on and they just -- you know,
 6 we got ready to go.
 7 Q They put your shoe gun on?
 8 A The chute.
 9 Q Oh, your chute?
 10 A Yeah, the harness.
 11 Q Was the chute on you or on the tandem
 12 instructor?
 13 A Oh, right. The chute is actually on
 14 the tandem. So we had the harness, the vest.
 15 Q How were you attached to the
 16 instructor?
 17 A My back was attached to his front.
 18 Q So were you attached inside the plane
 19 or outside the plane?
 20 A Inside the plane.
 21 Q How were you situated with regard to
 22 the instructor?
 23 A He was sitting behind me, I was
 24 sitting, you know, between his open legs and we
 25 attached by, I think G clips, I guess, they were,

0018

1 David Kengle 18
 2 whatever they use.
 3 Q You're motioning towards your hips?
 4 A Correct.
 5 Q So you say he clipped himself to two
 6 clips at your hips?
 7 A I don't know if there were two. How
 8 many -- whatever equipment they use, but he
 9 attached himself at the hip, maybe the chest too.
 10 Q Do you remember at how many points
 11 there were clips?
 12 A I don't.
 13 Q Was your body, you know, except for the
 14 clothes, physically touching him?
 15 A Yeah, fairly close. I mean, I don't
 16 know how -- there was definitely contact. I don't
 17 know how closely pressed we were, but there was --
 18 we were definitely -- yeah, in close proximity.
 19 Q Could you feel his clothing through
 20 your clothing?
 21 A I don't understand what you mean.
 22 Q Did you feel that there was someone
 23 behind you?
 24 A I can feel that there was a presence
 25 behind me. I don't know that -- I didn't feel his

0019

1 David Kengle 19
 2 body like on top of my body, but, yeah, he was
 3 close.
 4 Q Did you expect him to be close?
 5 A We were aware that there would be close
 6 proximity.
 7 Q How long were you up in the air?
 8 A I mean, it took a little while to get
 9 up there. I think at least, right, ten minutes.
 10 Q What was going on on the way up?
 11 A Well, there was a bunch of instructors
 12 and people, you know, getting ready to jump. It
 13 wasn't just the four of us, it was at least ten
 14 people. The -- you know, the crowd -- the
 15 instructors I feel like were mostly guys, so there
 16 was a lot of comrade and there was a joke, I
 17 think, that when we were actually harnessing --
 18 when Roxie -- I call Rosana Roxie -- when they
 19 were harnessing Don to Roxie, you know, there was
 20 a joke, you know, how do you feel about, you know,
 21 your girlfriend's getting strapped to another guy,
 22 you know, ha ha.
 23 So, you know, we took it in stride.
 24 I'm not really threatened by a joke, but as time
 25 went on, I felt like he was being a little

0020

1 David Kengle 20
 2 familiar with my girlfriend. That's the word I
 3 like to use, a familiar way of touching, and I
 4 took notice because I noticed that my guy was not
 5 touching me like that and I didn't see anybody
 6 else touching their students like that. So it
 7 kind of struck me as, you know, inappropriate.
 8 Q So who made this joke about, did you
 9 know that your girlfriend was going to be strapped
 10 to another guy?
 11 A I think it was a third instructor that
 12 was neither one of our instructors.
 13 Q So did everyone laugh?
 14 A I think it was the guy with the camera,
 15 actually.
 16 Q The guy with the camera?
 17 A Maybe.
 18 Q You're not a hundred --
 19 A I'm not a hundred percent sure, but I
 20 think.
 21 Q You recall there was about ten people?
 22 A I shouldn't throw out numbers, because
 23 I can't be exact. It could be eight, it could be
 24 twelve. I don't really know.
 25 Q You got video in this case, right, you

0021

1 David Kengle 21
 2 got a video of your jump?
 3 A I got a video.
 4 Q Who have you shown that to?
 5 A You know, randomly to my family, my
 6 parents, grandparents. I don't know. You know,
 7 it hasn't really -- big a deal that we make a big
 8 mental note of it that we show it to somebody. If
 9 somebody asks us about it, we show it. It might
 10 just be my family.
 11 Q So you saw it about five or six times,
 12 would that be fair?
 13 A Yeah, five times.
 14 Q How many times --
 15 A We also watched it ourselves when --
 16 ourselves when we got home that night, you know.
 17 Q Let's talk about this inappropriate
 18 touching.
 19 What was inappropriate about what Don
 20 was doing?
 21 MR. ZABELL: Objection to form. You
 22 may answer.
 23 A There's a certain way that you, you
 24 know, touch a female, you know, especially
 25 someone's girlfriend. It's almost like dancing.

0022

1 David Kengle 22
 2 You put your hands on their hips and you put, you
 3 know, your chin on their shoulder like in a very
 4 casual cavalier way.
 5 When I noticed that he's talking, you
 6 know, he's touching his lips in like a -- it's a
 7 provocative way of doing things. I mean, I'm not
 8 -- I don't know if that's a matter of opinion or
 9 not, but if you ask most people, they would feel
 10 uncomfortable with them acting like that with
 11 their significant other.
 12 Q Let's break it up one by one.
 13 Where were you situated in the plane
 14 that you could see Don touching his lips?
 15 A Let's see. If I was in the plane -- if
 16 we entered the plane and now, let's say, I'm
 17 facing forward, I'm on the left side of the plane,
 18 and I believe I was in the very last seat. So I'm
 19 pretty sure Roxie was just slightly to my
 20 right-hand corner. I don't believe she was
 21 directly next to me, I believe there was somebody
 22 there, and she was right in front of that person.
 23 So it's kind of like -- it was slightly
 24 to my left-hand corner, but not so much the
 25 corner. I couldn't see her front as well, just at

0023

1 David Kengle 23
 2 a little bit of an angle.
 3 Q What did you see Don do?
 4 A Well, the first thing I noticed was
 5 that he had his hands on her hips. Now, I
 6 understand that you have to harness, it requires,
 7 you know, clipping, but that's it. I mean, I sat
 8 there for the entire time with my guy and he
 9 didn't put his hands on me. He didn't have to
 10 hold me like this. It was just an unnecessary
 11 thing. So you're thinking to yourself, why is he
 12 touching her like this.
 13 MR. ZABELL: Let the record reflect
 14 when the deponent said, like this, he had
 15 both hands on his hips.
 16 Q So you saw Don putting his hands on
 17 Rosana's hips --
 18 A Right.
 19 Q -- from where you were situated?
 20 A Right.
 21 Q How long were they there for?
 22 A I mean, I felt practically the whole
 23 time he was just holding her. It was like he was
 24 holding her, that's what I mean. It wasn't like I
 25 with my instructor. He was sitting behind me and

0024

1 David Kengle 24
 2 I was sitting in front of him, but he wasn't
 3 holding me. We happened to be latched together,
 4 but with him, with Don and my girlfriend, he was
 5 holding her the entire time.
 6 Q Did you say anything?
 7 A No, I didn't. Normally that would be
 8 -- you know, I mean, I'm very vocal. I'm used to
 9 -- my girlfriend is a very beautiful girl. I'm
 10 used to her getting attention. So I wouldn't feel
 11 uncomfortable voicing myself, but under this
 12 particular set of circumstances, getting ready to
 13 jump out of a plane, it's not something I can deal
 14 with at the time.
 15 Q Why?
 16 A Because I'm about to jump out of a
 17 plane. I didn't feel comfortable -- I mean,
 18 you're a little nervous about the actual jump the
 19 first time you're doing it, and also your
 20 instructors, you have to trust them. I mean, they
 21 aren't the type of people you want to have a
 22 confrontation with right before you're about to
 23 jump out of a plane. I mean, he wasn't my
 24 instructor, but it didn't seem like the time and
 25 place.

0025

1 David Kengle 25
 2 Q Had you ever been up in a plane before?
 3 A Plane skydiving, no.
 4 Q Had you ever taken any course in how
 5 it's appropriate to touch a person who's tandem
 6 skydiving?
 7 A Have I ever taken a course, no. I
 8 think common sense plays a big role.
 9 Q What does common sense tell you?
 10 A I mean, because I understand the video
 11 tells you there's going to be contact and the form
 12 tells you there's going to be contact, but all
 13 contact doesn't mean it's legitimate touching.
 14 But he can't grab her chest or breast and say --
 15 I'm not saying he did that, but there's definitely
 16 a line in the sand, as far as what's appropriate
 17 and not. Just because there's contact involved
 18 doesn't mean all contact, anything goes.
 19 Q So it depends on the circumstances?
 20 A Yeah, of course.
 21 Q If your girlfriend's safety were at
 22 issue, you'd want him to hold her breast?
 23 A If it meant saving her life, yes.
 24 MR. ZABELL: Don't answer his questions
 25 like you're having a conversation.

0026

1 David Kengle 26
 2 THE WITNESS: Sure.
 3 Q What did you see Don doing with his
 4 lips?
 5 A I noticed he was putting his finger
 6 kind of in his mouth. He was talking kind of like
 7 this to me. It's a little provocative. I mean,
 8 it's a form of flirting, if you ask me, and that's
 9 my opinion, and I noticed on the video, I guess
 10 maybe I couldn't see his eyes, you know, the angle
 11 as well, but when I was watching the video, we
 12 noticed that not only was he doing that into the
 13 camera for a brief second, but he was also kind of
 14 going like this to the camera guy like this, as if
 15 to say, you know, check it out. So I think that
 16 added to my feelings of being uncomfortable with
 17 it.
 18 MR. ZABELL: Let record reflect the
 19 deponent was shaking his head in a gesturing
 20 manner.
 21 Q You felt that what he did was sexually
 22 harassing of Rosana?
 23 A Well, I mean, I don't know the legal
 24 definition of sexual harassment, if it's a
 25 textbook -- you know, if it qualifies for that

0027

1 David Kengle 27
 2 extreme a term, but it was -- made us feel
 3 uncomfortable enough to complain about it and it
 4 was inappropriate.
 5 So, I mean, is everything inappropriate
 6 sexual harassment, I don't know, but it was
 7 definitely inappropriate in my opinion, and being
 8 that I was a paying customer, I felt that I should
 9 complain about it.
 10 Q You say he was touching his lips. Was
 11 there anything else other than touching his lips
 12 or touching your girlfriend's hips that you felt
 13 was inappropriate?
 14 A And he rested his chin on her shoulder
 15 at a certain point, again, in a very familiar way
 16 of interacting with somebody you just met, and
 17 again, my instructor did not at any point put his
 18 chin on my shoulder. He did not put his hands on
 19 my lips and he did not touch his lips and wiggle
 20 his tongue around when he was talking to me, and
 21 he was, my impression in the camera, you know,
 22 look at this, guy. It was very unique what I was
 23 seeing going on between Zarda and my girlfriend.
 24 Q So you thought that he was flirting
 25 with Rosana?

0028

1 David Kengle 28
 2 A Yes.
 3 Q Did you think he was sexually
 4 attractive to Rosana?
 5 A I don't know. I can't testify as to
 6 how he felt.
 7 Q Well, did it appear that he was
 8 sexually attracted to Rosana?
 9 A I honestly don't know.
 10 Q Based on what it appeared, not what he
 11 was actually feeling, what did it appear to you?
 12 A It appeared like he was being flirty.
 13 Now, one, he could have been flirty
 14 because he was sexually attracted to her, he could
 15 have been flirty just because he was showing off
 16 in front of his co-instructors, or he could have
 17 just been a flirty person. Some people are just
 18 flirty. I don't know why he was being like that,
 19 but that was the way he was --
 20 Q Was there anything --
 21 MR. ZABELL: Wait a minute, Counsel,
 22 you have to let him finish answering.
 23 MR. ANTOLLINO: You know what, I
 24 thought he was finished.
 25 A It was my fault.

0029

1 David Kengle 29
 2 Q Do you have anything more to say?
 3 A I assume that he motioned -- the way
 4 that he motioned in the video was if to say that's
 5 usually the way -- I mean, I know guys, that's a
 6 group of guys, you know, motioning, oh, check this
 7 girl out, she's attractive. So the fact he's
 8 motioning, kind of signaling she's attractive, I
 9 would assume that he found her attractive.
 10 Q How did you learn about Skydive Long
 11 Island?
 12 A I think I Googled Skydive Long Island.
 13 I wanted to go skydiving on Long Island.
 14 Q Did you pay cash or credit?
 15 A Cash I'm pretty sure. Yeah, it must
 16 have been cash.
 17 Q You jump out of the plane and you land
 18 on the ground. What happened then?
 19 A Well, I landed first because I jumped
 20 first. So there was a -- you know, I was waiting
 21 for Rosana to land. She finally landed. We, you
 22 know, finished up.
 23 We were both a little taken aback with
 24 the whole thing. We handed in our equipment. We,
 25 you know, got our stuff and we left.

0030

1 David Kengle 30
 2 When we were driving home, I asked her,
 3 you know, what did you think, how was your
 4 experience. The experience was mostly for her, it
 5 was her birthday, it was something she wanted to
 6 do. I mean, I kind of wanted to skydive myself,
 7 but it was mostly for her.
 8 The first thing she said was, I would
 9 have liked it better if I had a different
 10 instructor, and I said, I noticed, he made me feel
 11 uncomfortable too, and she said, yeah, after we
 12 jumped, when he pulled the chute and we were
 13 floating down, we were talking about different
 14 things, and I was like, what do you mean, and he
 15 just kept mentioning his personal life -- I mean,
 16 his sex life. I don't think he got graphic.
 17 He mentioned -- I think he was
 18 apologizing about whatever, because -- he claimed
 19 that, you know, I hope I didn't make you feel
 20 uncomfortable, you know, like reassuring, and I
 21 think he was talking about his boyfriend or
 22 ex-boyfriend and like -- I don't know. This is
 23 what she said.
 24 So then I felt, you know, extra
 25 uncomfortable, because it added to what I had

0031

1 David Kengle 31
 2 already felt was inappropriate. So now you're
 3 talking about extra inappropriate behavior here.
 4 We went about the rest of our day.
 5 Like I said, it was her birthday. We went out for
 6 dinner, we went out for the night, and the more I
 7 thought about it -- and especially we paid
 8 whatever it was, eight, nine hundred dollars to go
 9 skydiving, and I felt it was not -- you know, that
 10 that was inappropriate for what we were paying for
 11 it. You know, the overall experience I felt was
 12 tainted because of the incidents described.
 13 So after thinking about it for a day, I
 14 decided to make a phone call, and I called Skydive
 15 Long Island. I believe I talked to a female
 16 worker there that took my story and let me know
 17 that she would pass the information along, and she
 18 was very upset about what I was telling her.
 19 She then, I guess, told the owner,
 20 because the owner contacted me by that day -- by
 21 the end of the day and, you know, he told me that
 22 he was very unhappy to hear -- you know, I told
 23 him the story pretty much as I just told you and,
 24 you know, he -- I'm trying to remember if he --
 25 'cause I answered you before that I only talked to

0032

1 David Kengle 32
 2 him once, but I'm trying to remember if we only
 3 had the one conversation or if he told me he was
 4 going to look into it and get back to me. I'm not
 5 a hundred percent. But by that day he had
 6 basically let me know, you know, that he was
 7 really sorry.
 8 At first he said if we are ever
 9 interested in coming back for a second jump, he'd
 10 make sure we had a better experience. I told him
 11 we weren't really interested in -- we just kind of
 12 planned it for a special occasion, it's not the
 13 type of thing we're going to do every weekend or
 14 -- at that point he offered to refund our money
 15 because he was so upset with the fact that we had
 16 such a horrible experience.
 17 Q What did you say?
 18 A I told him that, you know, I appreciate
 19 that. I mean, I've worked -- I worked in customer
 20 services and I've seen that done. I definitely
 21 didn't think that was, you know, the wrong
 22 decision for him to make. I understand. Did he
 23 have to do that, no. I mean, I just -- it said a
 24 lot about his character, the fact he was willing
 25 to refund our whole money just because of the

0033

1 David Kengle 33
2 experience. I felt that that was appropriate.
3 Q So he refunded your money?
4 A Yes.
5 Q Why did you take it? You felt it was
6 appropriate for you to get your money back?
7 A I felt that it was appropriate, yeah.
8 Like I said, we paid close to a thousand dollars
9 and, I mean, for the experience that we had -- I
10 mean, you know, you're paying for an experience.
11 It's just like you're going to Disney
12 World, going here, there. If you have an
13 experience like that, they're going to say they
14 want you to have that experience. That's what
15 you're paying for, the experience. So if you're
16 not getting the experience -- I'm not paying to
17 meet the people there, I'm paying for the
18 experience.
19 Q Did you ask for a refund?
20 A No, I did not.
21 Q So he just offered it to you?
22 A Yes.
23 Q Did he offer you another free jump?
24 A In other words, he said in order to
25 make up for the, you know, bad experience that we

0034

1 David Kengle 34
2 had, he would, you know, take us up free of charge
3 again to give us the experience the way it was
4 supposed to be. So we'd get one free jump. It
5 wasn't so specific. You know, he was trying to
6 ease the situation.
7 Q But instead he gave you the money back
8 so you --
9 A But we declined.
10 Q So you declined the free jump and he
11 offered you the refund?
12 A Right.
13 Q Did he ask to speak to Rosana?
14 A I don't remember. I mean, I think he
15 told me to apologize on his behalf.
16 Q Did he say what he was gonna do?
17 A What do you mean?
18 Q Did Ray say what he was gonna do?
19 A Like as far as what?
20 Q As far as what he's going to do in
21 response to your complaint.
22 A He refunded our money.
23 Q Did he say he was gonna do anything
24 else?
25 A As far as Mr. Zarda?

0035

1 David Kengle 35
2 Q Yes.
3 A He just said he would handle the
4 situation. I mean, I wasn't really interested, to
5 be honest with you. I mean, I was calling to
6 complain about the instructor, but it wasn't like,
7 you know, I was calling because I was so
8 interested, you know, in him getting punished. I
9 didn't really ask.
10 Q So you had no intention of Don getting
11 fired as a result of this?
12 A No. I mean, I don't want anybody to,
13 you know -- it was -- definitely a complaint was
14 warranted and it needed to be voiced because it
15 was inappropriate. Again, it was something that
16 -- the experience to me is important in that it's
17 a -- it's not an everyday thing that you jump out
18 of a plane, it's something you need to feel very
19 comfortable doing.
20 If that's going to be your career,
21 profession, you can't make people feel
22 uncomfortable when you jump, and the second thing
23 is the cost. You go out for dinner for a hundred
24 dollars and, you know, if the server or whoever --
25 if you don't like the attitude, people find no

0036

1 David Kengle 36
2 problem complaining, or the bartender or somebody
3 who works in a movie theater.
4 So to me this is even more amplified,
5 because it's, as I said, something that's way more
6 expensive and something way more extreme.
7 Q Has a customer ever complained about
8 your service as a server?
9 A I'm sure they have.
10 Q It's never been brought to your
11 attention?
12 A Sure it has. Anyone who has been a
13 server in some way, shape or form has been
14 complained about.
15 Q That includes Rosana?
16 A I don't know. I'm sure. It's almost
17 impossible to interact with that many customers to
18 not get a complaint unless you're just starting
19 the business or something.
20 Q You said something earlier about that
21 you said Don was mentioning something about his
22 sex life.
23 A Well, his sexual preference.
24 Q That's not the same as sex life?
25 A Well, he mentioned his boyfriend. I

0037

1 David Kengle 37
2 don't remember. Yeah, I guess not.
3 Q What if he had mentioned his wife,
4 would that be just as bad?
5 A It's more the way it was -- I think it
6 should not have even come up, first of all, the
7 sentence, I hope you don't feel uncomfortable
8 because, you know, I'm gay. The fact that she had
9 anything to feel uncomfortable in the beginning,
10 the fact that he was aware of that, it's evident
11 that there was something inappropriate. Why else
12 would she feel inappropriate?
13 Q What was it you understood Don was
14 referring to when asking about her feeling of
15 discomfort, was it the statements made or
16 something else?
17 A I don't know what he thought because,
18 first of all, I wasn't the one talking to him.
19 Second of all, I'm not him. But, I mean, I would
20 just -- from my perspective -- I mean, it just
21 seemed like he was covering his bases, it seemed
22 like -- you know, it seemed to me like I can kind
23 of get away with this because I'm gay. That's
24 what he was implying to me.
25 I've had a similar situation another

0038

1 David Kengle 38
2 time with somebody that kind of made the -- a
3 similar statement like somebody that was gay, I
4 witnessed them kind of, you know, being a little
5 -- having a lot of contact with a girl and they
6 were like, oh, I can get away with that kind of
7 thing.
8 Q When was that?
9 A I don't know. At some point in time.
10 I can't remember an exact instance. I've noticed
11 that's kind of -- it's almost like some people
12 feel that is accepted because, you know, there's
13 nothing you have to worry about. It's kind of
14 like I can get away with a little bit of contact
15 because it's not like I would sleep with her or
16 anything like that. I don't agree with that.
17 Q So you've observed that attitude on a
18 number of occasions, haven't you?
19 A I'm not saying that I've experienced
20 it, I said I feel like I've noticed that that is,
21 you know, an idea that exists to some people.
22 Q So there have been a number of people
23 who have expressed this belief, a number of gay
24 people who have expressed this belief to you that
25 they can get away with a little flirting with

0039

1 David Kengle 39
2 women because they're gay?
3 MR. ZABELL: Objection to the form.
4 Q You can answer. You may answer.
5 A I'm not saying that I've had a number
6 of people express to me, I'm saying that I've
7 noticed this idea has been floated around from
8 time to time.
9 Q Well, I just want to know when it's
10 been floated around.
11 A Specifically I don't have an answer for
12 you.
13 Q This is you personally hearing other
14 people, watching T.V., in what circumstance?
15 A No, more, you know, my own experience,
16 you know, social interactions, you know, going
17 out, and it's like you saying, the economy is bad,
18 how do you know the economy is bad, you know, it's
19 just an idea that exists. Like when did you find
20 out, I don't remember a specific answer, but I've
21 encountered that idea.
22 Q Have you ever complained about it
23 before?
24 A No.
25 If I may, I'm not saying that I have

0040

1 David Kengle 40
2 had experience on a personal level with this, I'm
3 just saying I've encountered the idea. This is
4 the first time a situation warranted my reacting
5 to this.
6 Q When you encountered the idea, I want
7 to get as much information as possible how you
8 encountered the idea. It must have been people
9 talking.
10 A Well, I've been -- socially I've been
11 around people. I don't remember who -- you know,
12 I've been around gay people, to be honest with
13 you. I mean, I went to college. I've had gay
14 people interact with me and other people I'm with
15 and, you know, gay associates, acquaintances. I
16 was in an R.A. staff. There were gay people in my
17 R.A. staff. So it's not like I've never been
18 around gay people.
19 Q So somewhere along in these
20 interactions someone has expressed --
21 A I've worked with gay people.
22 Q Have you ever had gay friends?
23 A Like are my best friends gay? I have a
24 handful of people that I call friends, but none of
25 them are gay. But I definitely have had people --

0041

1 David Kengle 41
2 I worked with R.A. staff, and when you're on an
3 R.A., it's a very -- you tend to have people
4 on --
5 Q Does Rosana have any gay friends?
6 MR. ZABELL: You have to let him
7 finish.
8 A You know, I remember her having people
9 that she worked with -- she's a little more --
10 she's worked at her job for a decent number of
11 years, that the people that she works with she's
12 very friendly with.
13 One girl that she's worked with for a
14 number of years, I think she doesn't work there
15 anymore, but did work there for a number of years
16 she's very friendly with, her name was Fran, she
17 was a lesbian. There was another gentleman, Mike,
18 another gentleman she worked with who she was very
19 friendly with who she worked with.
20 Q You used the phrase earlier sexual
21 preference. Do you remember that?
22 A Yes.
23 Q What does that mean?
24 A It means your sexual preference. I
25 mean what does that mean?

0042

1 David Kengle 42
2 Q Yes.
3 A It means what your sexual preference
4 is.
5 Q You're kind of using the phrase to
6 define the phrase.
7 A Because, I mean, what you're asking me
8 -- you're asking me for a textbook definition.
9 Q No, I want you to explain it in your
10 own words what you mean by sexual preference.
11 A In my own words?
12 Q Yes.
13 A It's my basic understanding of the term
14 that it's what or whom you prefer sexually, hence
15 the name.
16 Q Do you believe that being gay is a
17 choice?
18 A I don't have -- I really don't know.
19 You know, that is -- you're asking me something
20 that is, you know, a question that I can't answer
21 because I've never experienced it. I never felt
22 it.
23 Q Who made the joke about being strapped
24 to your girlfriend, was that Don or someone else?
25 MR. ZABELL: Objection to the form of

0043

1 David Kengle 43
2 the multiple questions. You may answer.
3 A It was definitely somebody else because
4 it was -- I remember it being, how do you feel
5 about this guy getting strapped, you know, to your
6 girlfriend. I don't remember exactly which of the
7 other instructors it was, but it was definitely
8 not Don.
9 Q How did that make you feel?
10 A You know, I can take a joke. I would
11 -- as I said, my girlfriend is a very beautiful
12 girl, she gets a lot of attention. It's natural.
13 Like I never had anybody joke around
14 with me before, to be honest. If that was the
15 joke -- there was no complaint if that was the
16 only thing that happened.
17 Q Did you mention that when you called
18 Ray?
19 A I'm sure I did. I'm pretty good at
20 giving a whole sweep of a narrative.
21 Q Did you tell Ray it was somebody other
22 than Don who made that joke initially?
23 A I really don't remember what, you know,
24 -- I don't think he asked. I don't think that it
25 was -- the story just kind of flowed out. I

0044

1 David Kengle 44
2 probably told it that way, but, I mean, do I
3 remember verbatim what I said, I probably just
4 said somebody made a joke. So did he take it that
5 somebody was Don or somebody other than Don, I
6 don't know.
7 Q What else did you say in this
8 conversation with Ray?
9 A Pretty much the exact story that I gave
10 you. Again, you know, that was the story that I
11 gave him. I told him that I thought it was
12 inappropriate what I witnessed and what she told
13 me. I thought it was inappropriate and I used the
14 metaphor again of what you're paying for, the
15 experience, you know, what the experience is, and,
16 you know, there's a certain level of satisfaction
17 you expected, you know, to be had from this kind
18 of experience.
19 It's an exciting thing. It's something
20 that you think is gonna be a special kind of
21 experience and you don't expect it to kind of be
22 deflated with this kind of behavior.
23 Q Did you tell Ray that Rosana's birthday
24 had been ruined?
25 A Well, I mean, it was -- I mean, did I

0045

1 David Kengle 45
2 say it like that -- I mean, did we go home and
3 cry, no. I don't know if I said it that
4 extremely, but I said it was on her birthday, it
5 was the activity we chose, it was definitely --
6 you know, the experience was, you know, ruined to
7 an extent. It was not as good as it should have
8 been.
9 Q The experience was ruined or her
10 birthday was --
11 A I mean, I'm sure that we didn't harp on
12 it indefinitely, but it tainted the day. It did.
13 Q So it tainted the day, but it didn't
14 ruin it?
15 A Ruin? I mean, it wasn't like somebody
16 dying. You know, it wasn't like a plane crash.
17 When you say the word ruined, I'm not gonna use
18 that extreme a word just because -- I feel tainted
19 would be a better word.
20 Q I'm going to show you what we
21 previously marked as Plaintiff's Exhibit 3, and if
22 you don't mind, I'm going to come over to your
23 side.
24 Do you recognize this video?
25 A Yes.

0046

1 David Kengle 46
2 Q Am I standing too close to you?
3 A No.
4 Q Is this the video of jumping out of a
5 plane?
6 A Yes.
7 Q Is this your video or Rosana's?
8 A I really don't know, because the only
9 -- you can't distinguish until before and after.
10 Q Let's go back to the beginning and
11 let's see if you can tell.
12 We've gone to the second marker for
13 you, and it appears the video begins with you and
14 someone talking to you.
15 Is this what you recall being your
16 video as opposed to Rosana's?
17 A I really don't remember, to be honest
18 with you.
19 Q Well, I'm going to have you watch the
20 entire video, it's about a minute and a half or
21 something like that, and I want you to raise your
22 hand when you see something that you think is
23 inappropriate.
24 A Sure.
25 Can I answer your question that you

0047

1 David Kengle 47
2 asked before?
3 Q What's that?
4 A The videos they gave you, there's a lot
5 of footage that overlaps, so you can't give me
6 certain periods of time and me be able to
7 distinguish, because the way to distinguish is
8 when you're dropping out of the plane. There's an
9 inch short -- I don't remember which one -- which
10 one they're -- where the video overlaps. So the
11 way to show me is by showing me who is jumping out
12 of the plane.
13 Q We'll talk about that later, but for
14 now I want you to raise your hand if you see
15 anything inappropriate happening, and we're going
16 to stop right there.
17 All right. We've watched the whole
18 tape and I see you haven't raised your hand at any
19 point, is that correct?
20 A That's right.
21 Q So we didn't see anything
22 inappropriate?
23 A Yeah.
24 Q Would you like to watch it again?
25 A No. She was only in the video ten

0048

1 David Kengle 48
2 seconds, and she was -- we were in the plane ten,
3 fifteen minutes. We were definitely in the plane
4 for longer than two minutes, and when you add the
5 jump time in it, the footage covers less than ten
6 percent of the time we were in the plane, and she
7 was in the video twenty seconds, and I see there's
8 no --
9 MR. ANTOLLINO: Motion to strike.
10 MR. ZABELL: Counsel, to the extent I
11 can, your motion is denied.
12 MR. ANTOLLINO: Thanks, Counsel.
13 Q I'm just looking for an answer. I want
14 to make it clear you didn't see anything
15 inappropriate in that video?
16 A No.
17 Q I see at some point at the very end you
18 were asked how your experience was, and what was
19 your exact words?
20 MR. ZABELL: Objection to form. You
21 can answer.
22 A Awesome.
23 Q Was it really more than that?
24 A I'm sorry?
25 Q Was it something awesome or an

0049

1 David Kengle 49
2 adjective to describe awesome?
3 A Fucking awesome I believe it was.
4 Q Was that true at the time?
5 A Jumping out of the plane, yeah, it was
6 pretty fucking awesome.
7 Q Did they ask you specifically what was
8 awesome or just how it was?
9 A They asked me how it was. To me it was
10 jumping out the plane. That's the question I was
11 answering.
12 Q At the time you didn't look upset, did
13 you?
14 A No. I probably felt uncomfortable in
15 the plane, but, I mean, you're jumping out of a
16 plane and your mind switches gears kind of
17 quickly. So at that point I'm sure I was just
18 thinking about the adrenaline rush.
19 I don't know if you ever experienced an
20 adrenaline rush, but it kind of takes over what's
21 going on.
22 As I said, what really amplified the
23 situation was -- in my book, was the conversation
24 we had on the way home. So, I mean, maybe I felt
25 uncomfortable on the plane and something I took

0050

1 David Kengle 50
2 notice of and felt a little uncomfortable about,
3 but it was amplified by the fact that even after
4 he jumped out the plane, he was still talking
5 about -- he turned her experience into the Don
6 Zarda experience. You know, it was all about him.
7 I remember my guy's name. When I just
8 heard the guy's name, Duncan, and he had an
9 accent, I asked where he was from. Other than
10 that, we had no conversation. He was giving me
11 instructions, one, two, he was telling me about
12 where we were, pointing out certain things.
13 He was very involved in the experience,
14 that you're here to skydive, and I asked him, just
15 because I noticed he had an accent, because I was
16 curious, because I noticed his accent. That was
17 the only information he gave on himself, and I
18 don't think --
19 Q Do you feel like you're defending
20 yourself in this --
21 A No, I'm being vindicated.
22 Q You said something about you asked
23 Duncan where he was from. At what point was that?
24 A When I noticed his accent.
25 Q When was that?

0051

1 David Kengle 51
2 A In the plane.
3 Q That was while you were jumping or on
4 the way out?
5 A No, as I said, it takes a while for the
6 plane to get up to whatever altitude. So I was
7 making conversation.
8 Q So while you were on the plane?
9 A I was making conversation, just because
10 I was curious.
11 Q And he told you he was from where?
12 A I think it was Switzerland or
13 Australian.
14 Q That's personal information, right?
15 A Yeah, sure.
16 Q But that was appropriate for him to
17 say?
18 A Well, I asked him.
19 Q What if he had just told you I'm from
20 New Zealand, would that have been inappropriate?
21 A No.
22 Q Let's look at what's previously been
23 marked as Exhibit 2, which is Rosana's skydive,
24 and I'll just let you watch this and --
25 MR. ZABELL: I'm going to object,

0052

1 David Kengle 52
2 because I don't think anything was identified
3 or labeled as Exhibit 2.
4 MR. ANTOLLINO: Well, the record will
5 speak for itself.
6 MR. ZABELL: Records don't speak,
7 Counselor.
8 Q I'm just pausing not.
9 Do you recognize Don and Rosana on that
10 video?
11 A Yes.
12 Q Does that refresh your recollection as
13 to this being the video that was taken of Rosana's
14 skydive?
15 A Yes.
16 Q We'll go frame by frame, but I want you
17 to raise your hand when you think that you see
18 something that's inappropriate. We're going to
19 start from the beginning again.
20 A See, that.
21 Q Let's stop.
22 So we stopped at one minute and you
23 actually raised your hand a little bit before that
24 and we're at like fifty-six seconds and Don has
25 his finger in his teeth?

0053

1 David Kengle 53
2 A Right.
3 Q And you think that's inappropriate?
4 A Well, when you play it in motion, the
5 overall --
6 Q Is that picture inappropriate, just
7 that picture right now?
8 A Well, in my opinion, to be completely
9 honest with you, I don't think you should have
10 your fingers in your mouth when you have contact
11 with a human being that you're -- you know, it's
12 your job to kind of interact with them.
13 Is that inappropriate in the way I'm
14 describing? I mean, it adds to it. My opinion is
15 I don't think he should have his fingers in his
16 mouth.
17 Q Is it a sanitary issue or sexual
18 harassment issue or flirting, or all of the above?
19 A This particular frame, I mean, it looks
20 kind of gross that he has his fingers in his
21 mouth. When you play the next three seconds of
22 the clip and you see it in motion, it seems
23 inappropriate in a flirty motion because he's
24 motioning to her right now.
25 Q Let's play it.

0054

1 David Kengle 54
2 A See, there.
3 Q So in that three seconds or actually
4 five seconds between fifty-six seconds and 101, he
5 looked at Rosana, he rolled his eyes and he went
6 with his finger like this and you thought that was
7 being flirtatious?
8 A In the context of the situation, based
9 on what I witnessed and, you know, I know, being
10 that I was there, and I understand the context of
11 the situation, yes, because had I -- if I was a
12 person that was not there and never seen this,
13 would I understand that to be inappropriate, maybe
14 not, because maybe it's something you can pass
15 over. But being I was there and I understand the
16 situation and I understand how that added to
17 everything I was witnessing, yes, I do think it
18 was inappropriate.
19 Q Let's keep going.
20 So you didn't raise your hand for any
21 of the other video. So I take from that you
22 didn't see anything else that you thought was
23 inappropriate?
24 A No.
25 Q There were a few times, though, where

0055

1 David Kengle 55
2 Don had his chin right next to your girlfriend's
3 -- the nape of her neck. Did you see that?
4 MR. ZABELL: Objection to the form of
5 the question and the characterization of the
6 video, and I advise you, Mr. Kengle, that Mr.
7 Antollino's not under oath, so you're under
8 no obligation to believe anything he says.
9 A Okay, I'll --
10 Q The question is --
11 A I'll answer the question.
12 Did I notice his chin being in the
13 vicinity of her neck?
14 Q Yes.
15 A Did I notice him placing his chin on
16 her neck, no, which is what I witnessed on the
17 plane.
18 Q So there's nothing inappropriate about
19 it being near her neck, it's the placing of the
20 chin on the neck that's inappropriate?
21 A It's the context of the contact. You
22 know, there's contact -- I noticed there was
23 contact with people, you know, touching hands and,
24 you know, touching arms. You know, it's the
25 context of the, you know, contact.

0056

1 David Kengle 56
2 I can shake your hand right now or I
3 could grab your thigh right now, and two different
4 forms of contact are not equal, they have
5 different meanings and have different forms of
6 contact. So I don't understand what you're asking
7 me.
8 Q We're talking about the chin being on
9 your girlfriend's neck. Did you see in that video
10 Don's chin next to the nape of her neck, yes or
11 no?
12 MR. ZABELL: Objection. Asked and
13 answered.
14 A I noticed it being in the vicinity of
15 my girlfriend's neck.
16 Q What did she say at the very end of the
17 event when asked how was it?
18 A Verbatim, I kind of put it out of my
19 head.
20 Q So she was asked, pretty intense, ha.
21 Did you hear that?
22 A Yes.
23 Q What was her response?
24 A It was awesome.
25 Q So she didn't ask, how was it, correct?

0057

1 David Kengle 57
2 A She didn't ask, how was it.
3 Q Someone didn't ask her how was it,
4 correct?
5 A Right, they asked her if it was
6 intense.
7 Q And her response was spontaneous, it
8 was awesome?
9 A Yes.
10 Q Did she say anything about the touching
11 there?
12 A No.
13 Q At the very end of the frame she moves
14 her face in close to Mr. Zarda's to take a
15 picture, right?
16 A Yes.
17 Q Did anyone force her to do that?
18 A No.
19 Q You went in and took a picture too?
20 A Sure.
21 Q Do you still have that?
22 A Well, I mean, it's whatever is included
23 with the DVD. I think they're in the -- on the
24 same disk. We don't have anything else other than
25 the DVD.

0058

1 David Kengle 58
2 Q So the DVD came with pictures as well
3 as a video?
4 A Yeah, I think so. I think there's two
5 disks, actually. When you get each case, it has a
6 set of stills and a DVD.
7 Q You still have those?
8 A Correct.
9 Q I'm going to send you a copy of this
10 transcript and I'm also going to send you another
11 subpoena with an empty disk.
12 Would you mind copying those pictures
13 onto the disk, because we never got those
14 pictures?
15 A If I have it, yeah.
16 Q You said you have it.
17 A Yeah, I'm saying --
18 Q You're not going to throw them away
19 when you get home, are you?
20 A No.
21 MR. ANTOLLINO: I just have a few other
22 questions.
23 Q Is Rosana claustrophobic a little?
24 A Well, I mean, are you asking like in a
25 clinical sense or is it like --

0059

1 David Kengle 59
2 Q In any way.
3 A People use terms like that to describe,
4 you know, everyday quirks. So like in a quirky
5 sense, she doesn't like to be boxed in sometimes,
6 but she's not claustrophobic in that we can sleep
7 with the bedroom door closed and she doesn't have
8 breathing -- she doesn't hyperventilate.
9 MR. ANTOLLINO: Let me go over my notes
10 and speak to my client, and I think we're
11 almost done. We'll just take a break now,
12 okay.
13 (Whereupon, a short break was taken.)
14 Q Do you belong to any organizations?
15 A Do I belong to any organizations?
16 Q Yes.
17 A I mean, off the top of my head, you
18 know, I'm a member of Barnes and Noble. I don't
19 know what that means.
20 Q Do you belong to any political
21 organizations?
22 A No.
23 Q Are you a member of a church?
24 A Am I a member, no. My family is a
25 member, but --

0060

1 David Kengle 60
2 Q So you don't practice any religion?
3 A I read religious texts, if that's what
4 you're asking, but I don't pray every Sunday
5 morning, if that's what you mean.
6 Q What religious texts do you read?
7 A I've read Nome (phonetics), ancient
8 literature and that kind -- I don't really do it
9 for a religious perspective, but history.
10 Q Do you have an opinion as to whether
11 homosexuality is a sin?
12 A No, I don't really get into all the
13 sinning and like that. It's not my -- I don't
14 really have an opinion on that. I don't really
15 believe in the doctrine of, you know, the church
16 in that sense that like, you know, what's a sin,
17 what's not a sin.
18 I'm more of a historian when it comes
19 to religion. I just look at the history of it,
20 and that's all that's of importance.
21 Q When Rosana said Don said, you don't
22 have to worry about me because I'm gay, did you
23 interpret that as the possibility that Don was
24 apologizing for the jokes for being strapped to
25 another guy?

0061

1 David Kengle 61
2 A Well, as I said the first time you
3 asked me this, I believe that he was covering his
4 bases in the fact that he thought there was
5 something inappropriate in the plane. It could
6 have been the jokes or the contacts or a
7 combination of two, but he was aware there was
8 something inappropriate and he felt it was
9 justified because he was gay. That's what I get.
10 Q Do you understand what is inappropriate
11 in terms of what an instructor is to do to strap
12 in or in terms of how to maintain proximity?
13 A I understand.
14 Q Do you understand anything about what's
15 appropriate in terms of a tandem instructor in
16 terms of how to strap a person in and how to
17 maintain proximity?
18 A Do I understand how to strap persons in
19 in terms of proximity? I don't have an
20 understanding of the procedures they're trained
21 in, as far as attaching gear or a harnessing or
22 what their physical actions are supposed to be in
23 terms of protocol, no, I don't have an
24 understanding of that.
25 I do have an understanding of proper

0062

1 David Kengle 62
2 behavior in, you know, an ethical sense of any
3 situation as far as -- you know, I mean, if
4 somebody kisses my girlfriend, is it because I
5 don't have an understanding of skydiving protocol
6 that's not inappropriate or grabbed her backside.
7 Like I said before, I have an understanding of
8 what I believe is inappropriate for any situation
9 in terms of that.
10 Q Is there any allegation that my client
11 kissed your girlfriend?
12 A No. I was using a metaphor.
13 Q Is there any allegation that my client
14 touched your girlfriend's backside?
15 A No.
16 Q For all you know, it could be a
17 procedure for instructors to remain attached by
18 the hands to the client's hips, for all you know,
19 correct?
20 A For all I know, but from what I
21 witnessed on the plane, the other instructors,
22 nobody else was doing it except him. So, I mean,
23 am I inclined to believe that he was the only one
24 following the correct procedure or am I inclined
25 to believe everybody else was doing it the right

0063

1 David Kengle 63
2 way and he was not doing it the correct way?
3 Q How many instructors were on the plane?
4 A Off the top of my head, at least five,
5 six, seven.
6 Q You don't know how much experience any
7 of those instructors had, correct?
8 A Well, I remember asking an instructor,
9 I don't think it was my instructor, I think it was
10 while we were waiting outside for our jump and we
11 had time to kill, I believe I was asking somebody
12 that worked there how much experience you had to
13 have in order to be an instructor or even just
14 jump without a tandem. So they gave me the
15 answer. You know, ten jumps before you can jump
16 alone and ten thousand hours to be an instructor.
17 Q So you don't know how many hours any of
18 those instructors had, correct?
19 A No.
20 Q You don't know how many jumps any of
21 those instructors had done, correct?
22 A Right, including your client, no.
23 Q So you don't know if the other
24 instructors you saw other than my client were
25 acting appropriately or not according to

0064

1 David Kengle 64
2 procedures for tandem instructors, correct?
3 A I'm sorry?
4 MR. ANTOLLINO: Could you read it back.
5 (Whereupon, the requested section was
6 read back by this reporter.)
7 A I feel like you're asking me do I know
8 whether or not my instructor not touching me by
9 the hips or the other instructors not instructing
10 him -- not putting their clips on their students
11 -- I feel like you're asking me whether or not
12 that was correct protocol. I don't know if --
13 Q I asked you a question and she read it
14 back.
15 A I don't understand your question.
16 Q Doesn't matter what the meaning is.
17 A I feel its meaning is not -- the
18 question is not clear.
19 Q You don't know if any of those four
20 instructors other than my client followed proper
21 procedure at all?
22 MR. ZABELL: Objection to the question.
23 Q You can answer.
24 A From what I experienced and what I saw,
25 based on the video -- they were moving in sync

0065

1 David Kengle 65
2 with what I saw in the video. They were following
3 the procedures outlined in the video.
4 Did I know anything more than that, no.
5 In the video I watched, I didn't see anything
6 necessarily about it's necessary to hold hands on
7 her hip, and the -- put your chin on the neck and
8 touch your lips and roll it around your tongue. I
9 didn't see any of that on the video.
10 Q We're talking about the chin and hips,
11 and you don't know if that was according to
12 protocol or not, correct?
13 A No.
14 Q And you don't know whether the hands on
15 the hips were according to protocol or not, I
16 correct?
17 A No.
18 MR. ANTOLLINO: No further questions.
19 MR. ZABELL: I have a few questions.
20 EXAMINATION BY SAUL D. ZABELL, ESQ.:
21 Q Did your diving instructor rest his
22 chin on your shoulder?
23 A No.
24 Q Did you happen to observe Mr. Zarda
25 resting his chin on Ms. Orellana's shoulder?

0066

1 David Kengle 66
2 A Yes.
3 Q Did it look as if he was nuzzling her?
4 A I don't know about -- I mean, nuzzling
5 I think implies movement. I don't think that
6 there was movement. I think it was, you know,
7 resting more like I'm kind of doing right now in a
8 more familiar way. It was more than just leaning
9 over to whisper instructions or something like
10 that. I don't even think he was talking. I think
11 it was just a very casual cavalier movement to
12 kind of rest your chin on my girlfriend's
13 shoulder. I don't think I would call it nuzzling,
14 I think I would just call it resting.
15 Q Did you happen to recall any other
16 instructors resting their chin on the shoulder of
17 their jumping partner?
18 A No.
19 Q Did you happen to notice any of the
20 other instructors pulling on their lips and
21 motioning towards their dive partners?
22 A No.
23 Q Did your instructor rub his lips and
24 then motion to you?
25 A Not that I recall, no.

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1 David Kengle 67
2 Q I think you were trying to say it
3 before, before you were rudely interrupted, that
4 the video only showed a fraction of the actual
5 time that you were on the plane.
6 Is that correct?
7 A Correct.
8 Q And it only showed a fraction of the
9 time that you were descending from the plane, is
10 that correct?
11 A Correct.
12 Q Were there acts that you observed that
13 were inappropriate that were not on the video?
14 A Yes.
15 Q So there was much more contact than
16 just the brief part of the video that you were
17 shown, is that correct?
18 A Yes.
19 Q Did you complain about Mr. Zarda's
20 behavior?
21 A Yes.
22 Q What exactly did you complain about?
23 A I complained that -- I mean, it's like
24 I said, the experience that, you know, we had
25 planned, that we had thought about doing, it was

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1 David Kengle 68
2 supposed to be a special kind of experience. It's
3 not something you do everyday. I haven't gone
4 skydiving since, I'd never gone before.
5 This was -- we considered this to be a
6 special kind of thing and a thing we expected to
7 be an expense, so we expected a certain level of
8 quality with the experience, and I think
9 inappropriate behavior affected the quality of the
10 experience.
11 I also understand that, you know, it's
12 not to say that, you know, if the experience was
13 an hour and, you know, fifty-eight minutes of it
14 are -- there's nothing inappropriate, the two
15 minutes that are inappropriate are important, and
16 I feel like me getting subpoenaed here and me
17 having to go through all this when I'm being asked
18 to defend myself, I feel like the fact that I have
19 to explain all this, it seems very common sense to
20 me this is an inappropriate thing, and this is
21 something I wouldn't think twice about complaining
22 about a second time.
23 Q Did you complain because of Mr. Zarda's
24 sexual orientation?
25 A No.

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1 David Kengle 69
2 Q Did Mr. Zarda's sexual orientation have
3 anything to do with your complaint?
4 A No, because -- to be honest, I don't
5 know his sexual orientation. I don't anything
6 about him. I know what he said, but how do I
7 know? People can say whatever they want.
8 The fact of the matter is what I
9 witnessed didn't seem like -- I didn't think he
10 was gay, homosexual, whatever term you want to
11 use. I didn't think that from the acts I saw and
12 the fact that he had to re-enforce it almost like
13 a defense on his way going down just shows this is
14 something that shouldn't have been a topic of
15 conversation. It's something that shouldn't have
16 been referenced. There should have been no call
17 for it, in my opinion, when you're jumping out of
18 a plane for nine hundred dollars and trying to
19 feel as comfortable as possible.
20 Q What do you mean when you say the
21 behavior he was exhibiting did not seem like --
22 A Again, I thought he was being very
23 flirty, and usually people that are flirty are
24 interested in the person they're flirting with.
25 Q Did you get a sense from your

0070

1 David Kengle 70
2 observations that he was interested in Ms.
3 Orellana?
4 A Yeah, whether for -- I mean, yes. I
5 mean, I don't know that he was interested in the
6 extent of like, you know, I want to try to get her
7 number, you know, when her boyfriend -- when he's
8 not looking, but I think he was interested in
9 engaging in flirtatious behavior, yes.
10 MR. ZABELL: Thank you. I have no
11 further questions.
12 MR. ANTOLLINO: I have at least one
13 further question.
14 Part of your complaint about Mr. Zarda
15 was that he told Ms. Orellana that he was
16 gay, correct?
17 THE WITNESS: Say it again?
18 (Whereupon, the requested section was
19 read back.)
20 THE WITNESS: Part of my complaint is
21 that you're talking to my girlfriend about
22 your sexual preference, sex life, your -- the
23 fact that sex is a topic of conversation when
24 you're talking to another person's girlfriend
25 or significant other is an issue, yes.

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1 David Kengle 71
2 MR. ANTOLLINO: No further questions.
3 I'll be sending you a copy of your
4 transcript with the exhibits and a subpoena
5 for the pictures. So just get those for me.
6 Thank you.
7 (Whereupon, the examination of
8 this witness was concluded at 4:55 P.M.)
9 * * * *
10 STATE OF NEW YORK)
11)ss.:
12 COUNTY OF)
13 I have read the foregoing record of my
14 testimony taken at the time and place noted in the
15 heading hereof and I do hereby acknowledge it to
16 be a true and correct transcript of same.
17
18
19 DAVID KENGLE
20 Subscribed and sworn to
21 before me on this ____ day
22 of _____, 2011.
23
24
25 NOTARY PUBLIC

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1 72
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CERTIFICATION

4 I, Deborah Thier, a Notary Public

6 That the testimony in the within

8 time and place. That said witness was duly sworn

10 the testimony was taken stenographically by me,

12 the within transcript is a true record of the

14 I further certify that I am not related

16 marriage, that I am not interested directly or

18 in the employ of any of the counsel.

20 my hand this 28th day of November, 2011.

22

24

23

EXHIBIT G

EXHIBIT D ORELLANA DEP.

Page 1 1 2 UNITED STATES DISTRICT COURT EASTERN DISTRICT 3 -----X 4 DONALD ZARDA, 5 Plaintiff, 6 - against - INDEX NO.: CV-10-4334 7 ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND AND RAY MAYNARD, 8 Defendants, 9 -----X 10 Bee Reporting Agency, Inc. 800 Veterans Memorial Highway 12 Hauppauge, New York November 9, 2011 1:30 P.M. 13 14 15 16 EXAMINATION BEFORE TRIAL OF ROSANA 17 ORELLANA, a non-party witness, taken by the 18 attorney for the Plaintiff, pursuant to Subpoena, 19 and held before Deborah Thier, a Notary Public of 20 the State of New York at the above-stated time and 21 place. 22 23 * * * * 24 25	Page 3 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 3 FEDERAL STIPULATIONS IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their respective Counsel, that the certifi- cation, sealing and filing of the within examination will be and the same are hereby waived; IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, will be reserved to the time of the trial; IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed before any Notary Public with the same force and effect as if signed and sworn to before this Court.
Page 2 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 2 APPEARANCES: GREGORY ANTOLLINO, ESQ. Attorney for the Plaintiff 18-20 West 21st Street - Suite 802 New York, New York 10010 ZABELL & ASSOCIATES, P.C. Attorneys for the Defendants 4875 Sunrise Highway - Suite 300 Bohemia, New York 11716 BY: SAUL D. ZABELL, ESQ. ALSO PRESENT: JOHN SANCHEZ, ESQ. DONALD ZARDA	Page 4 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 4 (At this time, a ruling was sought from Judge Joseph Bianco via conference call.) COURT CLERK: Please state your appearances. MR. ANTOLLINO: Gregory Antollino, counsel for the plaintiff, Donald Zarda. Good afternoon, Your Honor. JUDGE BIANCO: Good afternoon. MR. ZABELL: For the defendants, Saul Zabell, from the law firm of Zabell and Associates, attorneys for the defendants. Good afternoon, Your Honor. JUDGE BIANCO: Good afternoon. My understanding is the issue is regarding a deposition? MR. ANTOLLINO: Yes, Judge. JUDGE BIANCO: What's the issue? MR. ANTOLLINO: The issue is this. I have two non-party witnesses who I have subpoenaed. Both have information about the same transaction and occurrence, and I don't want the first witness listening to the second witness' testimony or vice versa. Rule 615 specifically applies to this, the

1 (Pages 1 to 4)

Page 5 1 Rosana Orellana 5 2 exclusion of witnesses. 3 I don't want one witness' testimony 4 jogging the memory or tainting the testimony 5 of another witness, so I've asked that the 6 witness we noticed for three o'clock wait 7 outside. This deposition shouldn't take that 8 long and the witnesses are appearing here 9 unrepresented. 10 The non-party witnesses are boyfriend 11 and girlfriend and they both want to be 12 together in this deposition, but I think that 13 the evidentiary issues are more important and 14 that there's no risk to the deponent being 15 here by herself and answering questions 16 without her boyfriend being here. 17 JUDGE BIANCO: Mr. Zabell? 18 MR. ZABELL: Your Honor, this really 19 isn't my issue. I'm here representing the 20 defendants, although I can say that the 21 third-party deponent, Rosana Orellana, has 22 expressed some concern to me with being in a 23 rather small room with certain people. 24 She already feels harassed by being 25 forced to appear at this deposition by	Page 7 1 Rosana Orellana 7 2 the deposition of Ms. Orellana and her 3 answers is going to inform how I proceed with 4 Mr. Kengle's deposition, and I might not even 5 want to take it. I might want to take it for 6 five minutes. 7 So I thought about that solution and 8 that's not gonna work. What I don't want to 9 happen is have Ms. Orellana's testimony 10 tainting the second witness, and that's just 11 that simple. 12 If it's a small room, then having one 13 more person here is not going to help 14 anything. 15 You know, I tried very hard to get this 16 deposition before today. It could have been 17 under circumstances that would be more 18 comfortable to Ms. Orellana, but she didn't 19 want to give out her address to plaintiff 20 until the court ordered it. So I don't 21 really have much sympathy for her, and it's 22 not going to be any hardship for her to be in 23 a room for an hour without her boyfriend by 24 her side to give truthful testimony. 25 MR. ZABELL: This is Saul Zabell.
Page 6 1 Rosana Orellana 6 2 subpoena, and her boyfriend, Mr. Kengle, has 3 expressed an interest in being here in this 4 deposition. 5 I am aware of the federal deposition 6 rules that depositions may be attended by any 7 person, and I guess the reality appears that 8 plaintiff's counsel is seeking an exclusion 9 order from Your Honor to exclude one or the 10 other while they're giving testimony. 11 JUDGE BIANCO: Okay. The two witnesses 12 are David Kengle and Ms. Orellana? 13 MR. ANTOLLINO: Yes. 14 MR. ZABELL: Your Honor, if I may, it 15 seems there's an easy way around this. 16 If Mr. Kengle was to be deposed in the 17 room first while Ms. Orellana is outside and 18 at the conclusion of his deposition Ms. 19 Orellana can come inside, and this way 20 nobody's testimony is tainted and nobody will 21 feel harassed or intimidated in any way. 22 MR. ANTOLLINO: Your Honor, I thought 23 about that, but there's information that Ms. 24 Orellana might have me that will give me 25 questions to have for Mr. Kengle. So really	Page 8 1 Rosana Orellana 8 2 JUDGE BIANCO: Are they able to hear 3 me? 4 MR. ZABELL: Yes. 5 JUDGE BIANCO: Mr. Kengle, Ms. 6 Orellana, this is Judge Bianco. Good 7 afternoon. 8 The court's ruling is as follows, and 9 just so you understand, it is a standard rule 10 that witnesses, whether it be in a trial or 11 in this case with respect to a deposition, 12 that witnesses not sit in and listen to 13 another witness' testimony, because it could 14 potentially taint their own testimony in a 15 way that the court likes to avoid. There's a 16 different rule if a party is involved, but 17 that's not the situation we have here. 18 Both of you are simply non-party 19 witnesses. So under the rules of Civil 20 Procedure, I have the authority pursuant to 21 section 261CE to designate who may be present 22 in a particular case. 23 It's my ruling that the depositions 24 should be separate and that Mr. Antollino 25 should be able to take them in the order that

2 (Pages 5 to 8)

Page 9 1 Rosana Orellana 9 2 he wishes to and that the other person will 3 need to wait outside the room. 4 I understand it may be more comfortable 5 to have, you know, both people in the room, 6 you know, I understand that depositions are 7 not things people are accustomed to, but the 8 overriding interest is that the testimony not 9 be tainted in any way by having multiple 10 people present. So I'm going to direct that 11 you be separated during the depositions. 12 Do you understand? 13 MR. KENGLE: I do. 14 If I may, this is David Kengle, it's 15 just a little uncomfortable in the fact that 16 the plaintiff is here and the original issue 17 with the -- you know, the entire case is that 18 it was a case of harassment and -- 19 JUDGE BIANCO: Who is speaking? 20 MR. KENGLE: This is David Kengle. 21 MR. ZABELL: I'm sorry, this is Saul 22 Zabell. It appears that you had spoken over 23 each other for a moment. I'm going to ask, 24 Your Honor, if you may indulge me and repeat 25 the last thing that you said.	Page 11 1 Rosana Orellana 11 2 participate and assist in the case that they 3 have brought or that they have been sued in. 4 So the situation is different with 5 respect to non-party witnesses. I understand 6 why it may be uncomfortable, but that's just 7 a fact of the situation. 8 In terms of the conduct of the 9 deposition, as was just said, this is being 10 transcribed, there's going to be a record of 11 this, and if there are any issues of any 12 improper, you know, questioning or anything 13 like that or behavior of any type during the 14 deposition, it's something certainly that it 15 will be brought to my attention. If there 16 are any problems of that nature, you know, I 17 can be contacted again, but I don't expect 18 that, because the lawyers, obviously, know 19 that that is not a permissible way to conduct 20 a deposition, and so I expect to it to be 21 civilized and that the questioning will be in 22 a civilized professional manner. Okay. 23 MR. KENGLE: Okay, Your Honor. Thank 24 you. 25 MR. ANTOLLINO: Thank you.
Page 10 1 Rosana Orellana 10 2 JUDGE BIANCO: I didn't understand what 3 he said. 4 He said it's a little uncomfortable 5 because the plaintiff is present? 6 MR. ZABELL: Yes. 7 Basically, if Your Honor recalls from 8 the facts, Mr. Antollino wants to depose Ms. 9 Orellana and Mr. Kengle because they had made 10 complaints to the owner of Skydive, the 11 defendant, my client, regarding the behavior 12 of the plaintiff. So I think that's what Mr. 13 Kengle is expressing to Your Honor. 14 MR. ANTOLLINO: Judge, he has nothing 15 to worry about. My client is going to be 16 sitting next to me and Ms. Orellana is going 17 to be on the other side of the table. She 18 has nothing to worry about it. 19 MR. KENGLE: It's a little 20 intimidating. 21 JUDGE BIANCO: First of all, as I said, 22 the rule is different, Mr. Kengle, when it 23 relates to a party. A party does have a 24 right to be present during the questioning of 25 witnesses so that they can meaningfully	Page 12 1 Rosana Orellana 12 2 MR. ZABELL: Thank you, Your Honor. 3 ROSANA ORELLANA, 4 The witness herein, having first been duly 5 sworn by Deborah Thier, a Notary Public in and 6 for the State of New York, was examined and 7 testified as follows: 8 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.: 9 Q Please state your name. 10 A Rosana Orellana. 11 Q What is your address? 12 A 9 Garfield Place, East Northport, New 13 York, 11731. 14 MR. ZABELL: I have been advised by Ms. 15 Orellana that she is sitting for this 16 deposition subject to being supplied with a 17 copy of this transcript for her review and 18 signature. 19 Mr. Antollino, by your silence, I 20 assume you are consenting to that? 21 MR. ANTOLLINO: I'll send her a copy, 22 sure. 23 Q Good afternoon, Ms. Orellana. I'm Greg 24 Antollino. You've gotten some communications from 25 me in the mail and I represent Mr. Zarda.

3 (Pages 9 to 12)

Page 13 1 Rosana Orellana 13 2 A Okay. 3 Q Have you ever been deposed before? 4 A No. 5 Q Have you ever testified under oath? 6 A No. 7 Q Well, this is a judicial proceeding, 8 even though we're here in the basement someplace 9 in Hauppauge, that's being transcribed, and we're 10 going to seek information about some things that 11 happened on June 18th of 2010, I believe, and you 12 have to listen to my question before you give an 13 answer. 14 A Okay. 15 Q So when you said okay, you kind of 16 spoke over me just a little. It's kind of not 17 like a conversation that way. 18 You've gotta wait for the question to 19 be asked entirely before you give an answer, 20 because she's writing down my information and then 21 she's gonna write down your information. 22 When you start speaking, you have to 23 say a yes or a no. A nod of the head or uh-uh 24 will not answer the question appropriately, 25 because we don't know what that means in the	Page 15 1 Rosana Orellana 15 2 A No. 3 Q Were there any documents that were 4 responsive to that subpoena? 5 A No. 6 Q I believe that in that subpoena I asked 7 you for any communications, any written 8 communications that you had had with Mr. Saul 9 Zabell or anyone at Altitude Express; is that 10 correct? 11 A I don't know -- Can you rephrase your 12 question? I don't understand what you're asking. 13 Q The subpoena asked you to bring in any 14 written communications -- 15 A Okay. 16 Q -- among a bunch of people. 17 One of them was Saul Zabell and another 18 one was Altitude Express, and another one was any 19 employees of Altitude Express, in other words, any 20 employees of Zabell and Associates. 21 Do you remember that request? 22 A No. 23 Q Do you have any documents that are 24 responsive to that request? 25 A No.
Page 14 1 Rosana Orellana 14 2 transcript. You have to say yes or no or I don't 3 know. 4 If you don't understand one of my 5 questions, will you agree to tell me to rephrase 6 it? 7 A Yes. 8 MR. ZABELL: I object to the form of 9 the lecture. There's no reason why we 10 shouldn't continue. 11 Q Are you presently employed? 12 A Yes. 13 Q Who are you employed by? 14 A Besito, B-E-S-I-T-O. It's a 15 restaurant. 16 Q And you are a server there? 17 A That's correct. 18 Q What is your highest level of 19 education? 20 A High school. 21 Q Did you receive a subpoena to testify 22 here today? 23 A Yes. 24 Q Did you bring any documents in response 25 to that subpoena?	Page 16 1 Rosana Orellana 16 2 Q Let's go down the list. 3 You have no written documents that 4 you've received from Mr. Saul Zabell? 5 A No. 6 Q You have no written documents you've 7 received from Altitude Express? 8 A No. 9 Q You have no written documents from Ray 10 Maynard? 11 A No. 12 Q Do you know who Ray Maynard is? 13 A Yes. 14 Q And you have no written documents from 15 any employees at Zabell and Associates? 16 A No. 17 Q Do you have any e-mails from any of 18 those entities? 19 A No. 20 Q Have you ever had any conversations 21 with Mr. Zabell? 22 A Yes. 23 Q When was the first conversation you had 24 with Mr. Zabell? 25 A I don't exactly remember the date, but

4 (Pages 13 to 16)

Page 17 1 Rosana Orellana 17 2 we did discuss the issue, he let us know what was 3 going on, and that was it. 4 Q Approximately, when was that? 5 A Five, six months ago. I really don't 6 -- It's not accurate. I don't remember the time 7 honestly. I don't remember the month. I remember 8 it was summertime, though. 9 Q It was summertime? 10 A Yes, it was warm outside. 11 Q It was warm outside? 12 A Yes. 13 Q It was in 2011? 14 A Yes. 15 Q You received a call? 16 A From who? 17 Q From Mr. Zabell? 18 A I didn't receive a call, my boyfriend 19 received a call. 20 Q Did you ever speak to Mr. Zabell 21 yourself? 22 A When he went to my apartment. 23 Q When was that? 24 A The same day. 25 Q Who was he with when he showed up at	Page 19 1 Rosana Orellana 19 2 sorry. 3 Q So you're not sure if it was the summer 4 of 2010 or 2011? 5 A No. 6 Q So he met with you, and what did he say 7 in that conversation? 8 A He just wanted to know what happened. 9 I mean, we did most of the talking. We explained 10 what happened and he just listened. 11 Q Did he offer to represent you in any 12 way? 13 A No. 14 Q Did he say that you might be a witness 15 in this case? 16 A He said there was a possibility. 17 Q What was your response to that? 18 A I really didn't want to deal with it. 19 I really had put it behind me. It happened, you 20 know, a long time ago. 21 To me, it wasn't something that I 22 wanted to think about it. So I didn't respond in 23 a positive way. I guess I just didn't want to go 24 through it. 25 Q Who else was there?
Page 18 1 Rosana Orellana 18 2 your apartment? 3 A By himself. 4 Q How long did he stay at the apartment? 5 A Twenty-five minutes, approximately. 6 Q What did you talk about with Mr. 7 Zabell? 8 A Just the whole issue. You know, he 9 asked me to explain the story to him and we 10 explained the story to him. 11 Q Are you sure that was this last summer 12 of 2011 or maybe that was 2010? 13 MR. ZABELL: Object to the form of the 14 question. 15 Q When he objects to the form, he's just 16 preserving the record so he can go to the judge 17 later and say the way I asked the question was 18 lousy, but if you want to answer the question, you 19 can go ahead and answer it. 20 A Well, the incident was about a year and 21 a half -- 22 Q The incident I believe happened about a 23 year and a half ago. 24 A A year and a half ago. So, I mean, I 25 don't really -- don't remember the exact time, I'm	Page 20 1 Rosana Orellana 20 2 A Where? 3 Q At this meeting with Mr. Zabell. 4 A It was my boyfriend. 5 Q So just the three of you? 6 A Yes. 7 Q This was at your home in North Babylon? 8 A No, East Northport. 9 Q That is where you lived with Mr. 10 Kengle? 11 A Yes. 12 Q How long have you lived there? 13 A A year and a couple of months. 14 Q When did you learn about a subpoena in 15 this lawsuit? 16 A When did I learn about it? 17 Q Yes. 18 A I guess whenever my boyfriend received 19 the phone call, he let me know -- I mean, 20 everything went through my boyfriend, I didn't 21 really do too much of the -- I didn't really get a 22 phone call. So that was a couple of months ago, 23 like three months ago, two months ago. 24 Q It was a couple of months ago that you 25 heard about the subpoena?

5 (Pages 17 to 20)

Page 21 1 Rosana Orellana 21 2 A I mean, he said there was a possibility 3 that there would be a subpoena, so I was kind of 4 expecting it, but I didn't know about the exact 5 date until a couple of -- maybe a week or two ago 6 when he gave us the letter. Somebody sent us a 7 letter. 8 Q I think that was me who sent you a 9 letter. 10 A Yes. So that was the first time. 11 Q So that was the first time you learned 12 about a subpoena? 13 A Yes. 14 Q Did you ever tell Mr. Zabell that you 15 would allow him to accept a subpoena for you? 16 A Did I ever tell him? 17 Q Yes. 18 A I didn't think I had a choice. I think 19 when you're subpoenaed, it's a mandatory thing. 20 Q Well, that's true, but what I'm asking 21 is this. 22 Did you sell Mr. Zabell, I want you to 23 accept subpoenas for me in this case? 24 A No, I didn't want to -- I didn't want 25 the subpoena.	Page 23 1 Rosana Orellana 23 2 A No. 3 Q Was it a weekday? 4 A I don't remember. 5 Q Was it a day that you had off of work? 6 A Yes. 7 Q What are your usual work days? 8 A I work in a restaurant business, so it 9 changes all the time. There is no set schedule. 10 Q Was Mr. Kengle working at the time? 11 A I don't know if he was unemployed or if 12 he was employed at the time. 13 Q Did you read anything about this 14 lawsuit in the media? 15 A No. 16 Q So you met Mr. Zabell for the first 17 time you believe in the summer of 2011, -- 18 A Yes. 19 Q -- correct? 20 A Yes. 21 Q When was the next time you met with Mr. 22 Zabell? 23 A We had lunch before we got here. 24 Q Where did you go for lunch? 25 A Paces Steakhouse.
Page 22 1 Rosana Orellana 22 2 Q I know you didn't want the subpoena. 3 Most people don't. 4 Did you ever say to Mr. Zabell, if 5 there is going to be a subpoena, they can send it 6 to you? 7 A No, I never said that. 8 Q How did you learn about this lawsuit? 9 A Through Mr. Zabell. 10 Q That was the day -- 11 A That was the day. 12 Q -- when he came -- 13 A Yeah. 14 Q Again, you have to let me finish. 15 That was either 2010 or 2011? 16 A Yes. 17 MR. ZABELL: Objection to the form. 18 A Yes, I believe it's 2011. 19 Q Last summer? 20 A Yeah, last summer. That's when it 21 happened. 22 Q When Mr. Zabell came to your home? 23 A Yes. 24 Q Do you remember what day of the week it 25 was?	Page 24 1 Rosana Orellana 24 2 Q Who paid? 3 A Mr. Zabell. 4 Q How long were you there for? 5 A An hour. 6 Q What did you order? 7 A I had scallops in a seafood bisque. 8 Q What did Mr. Kengle order? 9 A He ordered steak. 10 Q Where is Paces Steakhouse? 11 A I don't know the exact -- I mean, it's 12 around the corner somewhere close. 13 Q Somewhere nearby? 14 A Yeah, somewhere nearby. 15 Q Did he call me at some point during 16 that lunch? 17 A He excused himself. I don't know if he 18 was calling you or -- 19 Q Was there any alcohol served at this 20 lunch? 21 A No. 22 Q So you didn't see how much the check 23 was? 24 A No. 25 Q What did Mr. Zabell talk about at this

6 (Pages 21 to 24)

Page 25 1 Rosana Orellana 25 2 lunch? 3 A Well, we were just talking about -- you 4 know, he was just asking us about the incident and 5 we just spoke about it again. 6 Q Did he say anything about the lawsuit? 7 A Well, I mean, we know the lawsuit is 8 going on, so, I mean, that's what we were 9 discussing. 10 Q So what did he say about the lawsuit? 11 A To be honest. 12 Q Did he say anything about the lawsuit? 13 A Itself, no. 14 Q Yes. 15 A I mean, even if he did, I don't really 16 know about lawsuits, so he said to be honest. 17 Q Did he say anything about Mr. Zarda? 18 A Mr. Zarda? 19 Q Yes. 20 A He just asked us if I knew who he was, 21 and I know who he is. 22 Q And you see him sitting across from me 23 today? 24 A Yes. 25 Q Did he say anything at all? Did he	Page 27 1 Rosana Orellana 27 2 A Yes. 3 Q What did he say? 4 A What? 5 Q What did Mr. Zabell say? 6 A He didn't really have an opinion on it. 7 He just asked me if I would be more comfortable. 8 You know, I don't deal well with stressful 9 situations, so it would make me more comfortable 10 for my boyfriend to be here. So it's not a big 11 deal. He didn't really have an opinion on it. 12 Q Did you feel it was a big deal to have 13 your boyfriend here? 14 A I would feel more comfortable if I had 15 my boyfriend. 16 Q Why? 17 A Just more comfortable. 18 Q Did you feel threatened in any way? 19 A No. 20 Q Other than that lunch that you had 21 today and that meeting with Mr. Zabell in the 22 summer of 2011, did you have any other meetings 23 with Mr. Zabell? 24 A No. 25 Q Did you have any phone calls with Mr.
Page 26 1 Rosana Orellana 26 2 give you information about Mr. Zarda? 3 A No. 4 Q What about Mr. Zarda's attorney? 5 A No. 6 Q Did he say anything about the judge in 7 the case? 8 A No. 9 Q Did he say anything about Mr. Maynard? 10 A Who's Mr. Maynard? 11 Q Ray Maynard. 12 A Oh, yes. 13 Q Do you know Mr. Ray Maynard? 14 A I know who he is. I don't know him 15 personally. 16 Q And you met Ray Maynard before? 17 A I don't know. I don't know if we met 18 him at the skydive. I wouldn't remember, 19 honestly. 20 Q Let me ask you this. 21 Did you talk about before you came here 22 whether Mr. Kengle would be able to accompany you 23 in the deposition room? 24 MR. ZABELL: Objection to the form. 25 Q You can answer.	Page 28 1 Rosana Orellana 28 2 Zabell? 3 A I personally didn't. I did not, did 4 not. 5 Q Did Mr. Kengle? 6 A I don't know. 7 Q Did Mr. Kengle talk to you about any 8 phone calls he had with Mr. Zabell? 9 A I don't know. I mean, he didn't speak 10 to me, and if he did, I didn't really think about 11 it, so.... 12 Q I want you to think back to June 18th 13 of 2010. 14 A Okay. 15 Q Did you go skydiving on that day? 16 A Yes. 17 Q Why did you go skydiving? 18 A Something I always wanted to do. I'm 19 really into extreme stuff, so just, you know, one 20 of those things you do in a lifetime, I guess. 21 Q What do you mean you're really into 22 extreme stuff? 23 A You know, like I like -- I'd always 24 wanted to go bungee-jumping. It's one of those 25 things that I'd always wanted to do.

7 (Pages 25 to 28)

Page 29 1 Rosana Orellana 29 2 Q Had you been bungee-jumping before? 3 A No. 4 Q What other extreme things have you 5 done? 6 A Not too much, because I'm still young. 7 It's one of the things on my list. 8 Q How old are you? 9 A I am twenty. 10 Q In 2010 you were how old? 11 A In 2010 I was probably nineteen, just 12 turned nineteen. 13 Q So you haven't done any extreme things 14 other than skydiving? 15 A No. 16 Q So you want to go bungee-jumping? 17 A Yes. 18 Q Any other extreme things that you can 19 think of that you'd like to do? 20 A I don't know. 21 Q Have you been back to skydiving -- 22 A No. 23 Q -- since? 24 A No. 25 Q Do you want to do it again?	Page 31 1 Rosana Orellana 31 2 so.... 3 Q Were you showing off to her that you 4 had done it? 5 MR. ZABELL: Objection to the form. 6 You may answer. 7 Q You can answer. 8 A No, we were just showing her the 9 skydiving video. 10 Q Were you proud that you had done it? 11 A It's a big deal to jump out of a plane. 12 So, I mean, I wasn't proud that I had done it. It 13 was just something that I did. 14 Q So you were bragging to her in a way? 15 MR. ZABELL: Objection to form. 16 Q You may answer. 17 MR. ZABELL: You may answer. 18 A I wasn't bragging, no. 19 Q What did she think of it? 20 A She almost had a heart attack. She 21 thought it was crazy that we did it. 22 Q So the last time you saw it was this 23 summer. 24 Did you buy the videotape? 25 A Yes.
Page 30 1 Rosana Orellana 30 2 A Not -- not really. It's just one of 3 those things that I wanted to do once. I mean, if 4 it happens again, it happens. If it doesn't, it's 5 not important. 6 Q Have you seen any of the documents in 7 this case? 8 A No. 9 Q Have you listened to any videos or 10 audio tapes? 11 A Of what? 12 Q Involving this lawsuit. 13 A No. 14 Q Have you seen the video of you jumping 15 out of the plane? 16 A Yes. 17 Q When did you see that? 18 A When did I see the video? 19 Q Yes. 20 A The last time I saw it was like over 21 the summer when I was showing my boyfriend's 22 grandma. 23 Q Why were you showing your boyfriend's 24 grandma? 25 A Because she didn't know we'd skydived,	Page 32 1 Rosana Orellana 32 2 Q So you've always had it in your 3 possession since 6-18 of 2010? 4 A Yes. 5 Q So how long at that point had you 6 wanted to go skydiving? 7 A I don't know. I mean, -- 8 Q Who made the decision to go skydiving 9 on that day? 10 A I did. 11 Q How long had you planned it in advance? 12 A I don't know. I mean, it's not 13 something -- I don't know, like a few months or -- 14 I really don't know. 15 Q Did you make an appointment or did you 16 go on that day? 17 A My boyfriend wanted to surprise me, so 18 he made the appointment. 19 Q When did you learn that you would be 20 going? 21 A I don't remember. 22 Q Why did you go to Skydive Long Island? 23 MR. ZABELL: Objection to the form. 24 You may answer. 25 A It was the closest location on Long

8 (Pages 29 to 32)

Page 33

1 Rosana Orellana 33
2 Island, I believe.
3 Q Where did you learn about Skydive Long
4 Island?
5 A What did I learn?
6 Q No, where did you learn about it.
7 A My boyfriend learned about it, so he
8 told me about it.
9 Q So you were excited to go on that day?
10 A Yes.
11 Q What's the first thing you remember
12 when you got to Skydive Long Island?
13 A The first thing I remember, being very
14 excited, it was a very hot day outside, and a lot
15 of people walking around.
16 Q Do you remember how much it cost?
17 A Altogether with the videos, I'd say
18 almost a thousand, about. I don't know the exact
19 price. My boyfriend paid for it.
20 Q Explain to me when you arrived on the
21 grounds of Skydive Long Island, you drove up, you
22 parked your car. Tell me what happened next.
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A We walked over to the bench --

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1 Rosana Orellana 34
2 actually, no, we had to watch a video, I think.
3 Just like a video just to let us know what we were
4 doing, and then -- we watched the video and then
5 after that we just sat outside until, you know, it
6 was our turn to go up, and I don't remember if we
7 were harnessed at that point or not, like we had
8 the harness on. I really don't remember.
9 Q Let's talk about the video. Was this a
10 video with an instruction on it, was it a video
11 with a lawyer warning you? What was on that
12 video?
13 MR. ZABELL: Objection to the form.
14 You may answer the question.
15 A The video was just, you know, an --
16 yeah, you know, an instruction video on how you
17 should jump out of the plane. I guess just
18 getting you excited. I don't remember what was on
19 the video really, but I feel like it was an
20 instruction video.
21 Q Was there a lawyer on that video? Do
22 you remember there being a lawyer?
23 A I don't remember.
24 Q Do you remember someone telling you
25 that there's risk of death?

Page 35

1 Rosana Orellana 35
2 A Yes.
3 Q Did you sign any documents?
4 A I believe so, yes.
5 Q So I'm going to hand you what I'll have
6 the court reporter mark as Plaintiff's 1.
7 (Whereupon, the release was marked as
8 Plaintiff's Exhibit 1 for identification, as
9 of this date.)
10 MR. ZABELL: Just make sure you look
11 through all the pages so you know exactly
12 what the document is.
13 Q Do you recognize this, and take your
14 time?
15 A Yes.
16 Q What is it?
17 A An agreement for when you go skydiving.
18 Q I want you to look at the first page
19 only and tell me if that's your handwriting?
20 A Yes.
21 Q Is it all your handwriting or is some
22 of it someone else's handwriting?
23 A It looks like all of my handwriting,
24 except for this number over here. I didn't write
25 that, but everything on the line is my writing.

Page 36

1 Rosana Orellana 36
2 Q What about on the second through last
3 pages, there are a bunch of initials and there's a
4 signature on the last page. Are those all of your
5 handwritings?
6 MR. ZABELL: Objection to the form.
7 You may answer.
8 A Yes.
9 Q It looks like each paragraph starting
10 on page two or the unnumbered page two has
11 initials next to it.
12 Do you see that?
13 A Yes.
14 Q Did someone tell you that you needed to
15 do that?
16 A Yes, it's a requirement.
17 Q Did you read this document?
18 A Probably not.
19 Q Why not?
20 A I don't know. I mean, you think
21 skydiving -- you know, I'm not -- I didn't sit
22 there and read the whole packet.
23 Q Did you read any of it?
24 A I probably read the first page, but I
25 probably didn't read the whole thing.

Page 37 1 Rosana Orellana 37 2 Q Why not? 3 A I'm not gonna read a packet when I go 4 skydiving. 5 Q As best you can recall, you read the 6 first page, but not the rest? 7 A Yes. 8 Q After you signed this document and saw 9 the video, what's the next thing that happened? 10 What's in the accident thing you remember? 11 A After the video we sat outside for a 12 while. I don't remember how long we sat out 13 there. Then we met our instructors and they kind 14 of explained everything to us, and then we went on 15 the plane. 16 Q Was one of those instructors Don? 17 A I don't remember my boyfriend's 18 instructor. 19 Is this Don? 20 Q Yes. 21 A Okay. I'm sorry. 22 Then, yes. 23 Q So one of the instructors was Don? 24 MR. ZABELL: Let the record reflect 25 that the plaintiff raised his hand and waved.	Page 39 1 Rosana Orellana 39 2 A Yes. 3 Q Was that person's name Duncan, do you 4 recall? 5 A I don't remember. 6 Q Did they both give you instructions? 7 MR. ZABELL: I object to the form of 8 the question. You may answer. 9 A Yes. I remember meeting the other 10 gentleman first, but -- yes, I believe they both 11 gave us instructions. 12 Q When you say the other gentleman, you 13 mean the person who was not Don Zarda, correct? 14 A Yes. 15 Q So you met the other instructor first 16 and then you met John, correct? 17 A Yes. 18 Q At some point they both gave you 19 instructions? 20 A Yes. 21 Q Were they both friendly? 22 A Yes. 23 Q Do you feel that you were instructed 24 adequately? 25 A Yes. At that point, yes.
Page 38 1 Rosana Orellana 38 2 Counselor, do you agree with that 3 characterization of the physical events of 4 this deposition? 5 Q So one of those instructors was Don? 6 MR. ZABELL: By your silence I'll take 7 it as a yes. 8 MR. ANTOLLINO: I'm not engaging in -- 9 MR. ZABELL: I'm not asking you to. I 10 would just like the record to reflect certain 11 physical things at this deposition that are 12 not necessarily verbal, and if you are 13 refusing to acknowledge them, then I'll go 14 ahead and place my observations on the 15 record, where I believe it's appropriate. 16 MR. ANTOLLINO: Are you finished? 17 MR. ZABELL: Now I am, yes. 18 Q One of the instructors was Don and you 19 don't remember the other instructor's name? 20 A No. 21 Q Do you remember what he looked like? 22 A Medium-sized. I remember dark hair, I 23 think, and skinnier gentleman. 24 Q When you say skinnier, you mean 25 skinnier than John?	Page 40 1 Rosana Orellana 40 2 Q What did they instruct you? How did 3 they instruct you? 4 MR. ZABELL: Objection to the form. 5 You may answer. 6 A They just told us about the harness and 7 just let us know where we were supposed to place 8 our, you know, arms and our legs whenever we 9 jumped out of the plane, you know, so we wouldn't 10 get hurt. 11 Q Do you remember specifically how they 12 said you should place your arms and legs when you 13 jumped out of the plane? 14 A No. 15 Q Do you remember anything in particular 16 that Don said to you at that point? 17 A Before we entered the plane, no. 18 Q When you entered the plane, were you 19 fastened to Don? 20 A No. 21 MR. ZABELL: Objection to the form. 22 You may answer. 23 Q At some point did you get fastened? 24 A At some point I did, yes. 25 Q Do you remember whether that was in the

Page 41 1 Rosana Orellana 41 2 plane, outside of the plane? 3 A In the plane. 4 Q How was it that you got fastened to -- 5 Well, Don was your instructor, correct? 6 MR. ZABELL: Objection to form. 7 A Yes. 8 MR. ZABELL: Just slow down and give me 9 an opportunity to object. 10 THE WITNESS: Sorry. 11 MR. ZABELL: That's all right. 12 Q How was it that you were attached to 13 Don? 14 A I really couldn't see behind me, but I 15 think there were hooks or clasps or -- I don't 16 know, but we had a harness, so.... 17 Q So you had a harness and Don did 18 something to attach your harness to his, is that 19 what you recall? 20 A Yes. 21 Q But you don't remember exactly what it 22 was? 23 A No. 24 Q Did you expect that he knew how to 25 attach the harness to you?	Page 43 1 Rosana Orellana 43 2 A I had a harness, I believe he had the 3 harness and parachute, and then we were attached 4 by a hook or a clip or something. I don't know. 5 Q Were you sitting on him? 6 A No. 7 Q How were you attached to him? Were you 8 standing? 9 MR. ZABELL: Objection to the form of 10 the multiple questions pending before you. 11 Q You can answer. 12 MR. ZABELL: Either one. 13 A We were sitting, but I wasn't on top of 14 him. We were sitting very close together, but I 15 was not on top of him. 16 Q Were you sitting side by side? 17 A Yes. I was sitting in front and he was 18 sitting behind me. 19 Q But you were not on top of him? 20 MR. ZABELL: Objection. Asked and 21 answered. You may answer. 22 A When we were sitting, I was not on top 23 of him, no. 24 Q So you were both on, what was it, a 25 chair?
Page 42 1 Rosana Orellana 42 2 A Yes. 3 Q So what happened next? 4 How were you feeling at that point? 5 MR. ZABELL: Objection to the form of 6 the multiple questions asked. 7 MR. ANTOLLINO: Withdrawn. 8 Q What happened next and -- Withdrawn. 9 How were you feeling at that point? 10 MR. ZABELL: Objection to the form. 11 You may answer. 12 A At that point I was feeling excited 13 that I was about to jump out of a plane. 14 Q Could you feel that you were on top of 15 someone? 16 A No, I didn't feel like I was on top of 17 someone. 18 Q How were you attached to Don? 19 A With the harness. 20 Q Well, just describe it. When you say 21 the harness, I mean, what do you mean by that? 22 MR. ZABELL: Objection to the form. 23 Q You can answer. 24 MR. ZABELL: You may answer either of 25 the two questions that are before you.	Page 44 1 Rosana Orellana 44 2 A It was like a chair, almost like a 3 bench, and we had to sit with our legs, you know, 4 open, I guess. I don't really remember, but we 5 were sitting. 6 Q Was your back touching his chest in any 7 way? 8 A I don't remember. 9 Q What happened next? 10 A We were on the plane and the guys were 11 joking around, the other instructors were joking 12 around. I guess, you know, they made a joke like, 13 you know, to my boyfriend. They were like, you 14 know, how does it feel to have your girlfriend 15 strapped onto another man, and he laughed about it 16 because, you know, it was funny, and just jokes 17 like that were occurring at the moment. 18 Q Can you remember any other jokes? 19 A I can't remember any other jokes, no, 20 but there were some jokes. 21 Q Did you laugh at that? 22 A Yes. 23 Q Did that loosen the tension? 24 MR. ZABELL: Objection to the form. 25 You may answer.

11 (Pages 41 to 44)

Page 45 1 Rosana Orellana 45 2 A It didn't loosen the tension, but we're 3 not -- but me and my boyfriend aren't -- we can 4 take a joke. 5 Q Did you both laugh at that? 6 A Yes. 7 Q Did you have a response or did you just 8 laugh? 9 A I probably just laughed, yes. 10 Q Did your boyfriend laugh? 11 A Yes, he laughed. 12 Q So who went out of the plane first, was 13 it your boyfriend and his instructor or was it you 14 and -- 15 A My boyfriend and his instructor. 16 Q So you saw him descend from the plane, 17 and how soon after did you descend from the plane? 18 A I don't remember. 19 Q Was it more than a minute? 20 A Roughly a minute. You know, we have to 21 give them some time, you know, I guess to fall, 22 so.... 23 Q Certainly no more than five minutes? 24 A I'd say no. 25 Q So at some point you descended from the	Page 47 1 Rosana Orellana 47 2 A Yes. 3 Q What was the incident on the 4 plane? 5 A He had his hand on my hip, I remember 6 that, and I remember him resting his chin on my 7 shoulder, and he was being a little flirtatious. 8 Q Don was being flirtatious? 9 A Yes. 10 Q In what way? 11 A Like I said, he had his hand on my hip, 12 and I felt a little uncomfortable, and he was 13 resting his chin on my shoulder. 14 Q Anything else? 15 A That's all I remember. 16 Q Did you tell him that you felt 17 uncomfortable? 18 A No. 19 Q Why not? 20 A Because I'm about to throw myself out 21 of a plane, so I don't think it's the appropriate 22 time. 23 Q So he had his hand on your hip and his 24 chin on your shoulder? 25 A Yes.
Page 46 1 Rosana Orellana 46 2 open plane, correct? 3 A Yes. 4 Q How did that feel? 5 MR. ZABELL: Objection to the form. 6 You may answer. 7 A How did it feel? 8 Q Yes. 9 A As far as my feelings or on my body 10 or -- 11 Q Let's start with physical feelings. 12 How did it feel physically? 13 A Physically, couldn't breathe. I mean, 14 there is a lot of air up there. 15 Q Was that something that you thought 16 that Don was doing wrong or you just thought 17 that it was the way that worked? 18 A It's probably the way that it worked. 19 Q Emotionally how did you feel? 20 A Emotionally -- well, at that point we 21 had -- I'd felt -- we had an incident on the 22 plane, so, I mean, I didn't really think about it, 23 you know, emotionally. 24 Q Wait a minute. You had an incident on 25 the plane?	Page 48 1 Rosana Orellana 48 2 Q And you didn't say anything, but you 3 felt uncomfortable? 4 A Yes. 5 Q Was there anything else that made you 6 feel uncomfortable? 7 A That was it that made me feel 8 uncomfortable. 9 Q When you said he was being flirtatious, 10 what do you mean by that? 11 A He was kind of putting his finger on 12 his lip, you know, just the way -- I'm sure you 13 know what flirtatious is. He was kind of like 14 being flirtatious. 15 What really bothered me was just really 16 the hand on my hip, which I felt he shouldn't put 17 -- rest put his hand on my hip, and resting his 18 chin on my shoulder. 19 Q So really it was the hand on the hip 20 and the chin on the shoulder? 21 A Yes. 22 Q And you said he was touching his lips? 23 A Yes. 24 Q And you felt that -- 25 A He was -- you know, I feel like you

12 (Pages 45 to 48)

Page 49 1 Rosana Orellana 49 2 should maintain some sort of professionalism when 3 you're -- I didn't mind the jokes, I just felt 4 like he should have been a little more 5 professional. 6 Q In what way was touching his lips 7 unprofessional? 8 A His face is very close to mine, so, I 9 mean, if he's doing that, it just makes me feel a 10 little awkward when I'm strapped to him. 11 Q I thought you had some distance between 12 you. 13 A I was sitting in front of him, he was 14 sitting right behind me. I wasn't sitting on him, 15 but there was very little distance. But if he 16 could reach and rest his chin on my shoulder, he 17 must have been close enough. 18 Q Out of the corner of your eye you 19 remember seeing him touch his lips? 20 A Yes. And he was resting his chin on my 21 shoulder. If he was resting his chin on my 22 shoulder, he was close. 23 Q Did you mention anything to him about 24 touching his lips and that you thought that was 25 unprofessional?	Page 51 1 Rosana Orellana 51 2 make you feel uncomfortable on the plane, and I 3 just broke up with my boyfriend, something like 4 that? 5 A Yes. 6 Q Why is it you remember that? 7 A Because I felt uncomfortable when he 8 said it, so it just stuck to my -- you know, just 9 stuck with me. 10 Q There's basically three things he said. 11 He said first, I hope I didn't make you feel 12 uncomfortable, second, I'm gay, and third, I 13 recently broke up with my boyfriend. 14 Would you agree with that? 15 A Yes. 16 Q The first thing he said, I hope I 17 didn't -- 18 A That was one line, I hope I didn't make 19 you feel uncomfortable, because I'm gay. It was 20 all in one sentence. 21 Q So it was kind of pushed together? 22 A Yes. 23 Q Did that make you feel uncomfortable, I 24 hope I didn't make you feel uncomfortable, I'm 25 gay?
Page 50 1 Rosana Orellana 50 2 A No. 3 Q Why not? 4 A Because I am about to throw myself out 5 of a plane. I don't think it's the appropriate 6 time. 7 Q Was there anything else that Don did 8 that made you feel uncomfortable? 9 A Yes, when we were free falling. 10 Q Yes? 11 A There's a point where when you let the 12 chute go out, you have time to talk and, you know, 13 he -- I remember him telling me two things. 14 I remember him telling me, I hope I 15 didn't make you uncomfortable on the plane, I'm 16 gay, and I remember him telling me that he had 17 recently broken up with his boyfriend, and that's 18 all I remember from that conversation. 19 Q Let me just get a picture of this in my 20 mind. 21 This is before he pulled the parachute 22 to go up or after? 23 A After. 24 Q So he pulled the parachute, it went up, 25 and you remember him saying, one, I hope I didn't	Page 52 1 Rosana Orellana 52 2 A It made me uncomfortable because -- the 3 statement itself didn't -- it made me feel 4 uncomfortable because I wanted to learn about the 5 scenery, I wanted him to speak about what was 6 going on around us. I didn't want to hear about 7 his personal life. 8 Q How long were you up for when the 9 parachute went up? 10 A How long? 11 Q Yes. 12 A I mean, it's a couple of minutes -- I 13 mean, we we're falling for a long time. I don't 14 remember how long it was. 15 Q And you expected him to point out 16 certain sceneries to you? 17 A Absolutely. 18 Q Did he point anything out at all? 19 A No. 20 Q So you felt uncomfortable because -- 21 not because -- So are -- 22 MR. ZABELL: Are you going to finish 23 that question or are you abandoning it? 24 MR. ANTOLLINO: Don't interrupt. 25 MR. ZABELL: I'm going to object to the

13 (Pages 49 to 52)

Page 53 1 Rosana Orellana 53 2 half-ass question. I'm assuming he doesn't 3 want you to respond to it if he's not 4 finished. 5 MR. ANTOLLINO: I withdraw the question 6 I hadn't finished and will ask it again. 7 Q So the only thing that made you feel 8 uncomfortable is, I hope I didn't make you feel 9 uncomfortable, I'm gay, is because he wasn't 10 talking about the scenery? 11 A Yeah, and because I didn't want to hear 12 about his personal life. I did not care. 13 Q His recently breaking up with his 14 boyfriend, is that something that made you feel 15 uncomfortable? 16 A I just didn't care. 17 Q Is there a difference between not 18 caring and making you feel uncomfortable? 19 MR. ZABELL: Objection to the form of 20 the multiple questions. 21 Q You can answer. 22 MR. ZABELL: You can pick a question 23 and answer it. 24 MR. ANTOLLINO: Listen, don't give 25 instructions to the witness and don't make	Page 55 1 Rosana Orellana 55 2 Q Did the fact that -- If he had told 3 you, I'm a German, if he had said something like 4 that, would that have been just the same, just as 5 bad? 6 A Yeah, because I don't care. I'm here 7 to skydive. I want to know about what's going on. 8 I don't care who you are, where you're -- I mean, 9 it just wasn't my problem. 10 Q Did you have any conversation with him? 11 A Did I have any conversation with him? 12 Q Yes. 13 A I don't remember. 14 Q You don't remember if you said anything 15 to him at all? 16 A About me myself, I don't remember. I 17 probably didn't. 18 Q Did you ask him to point out any 19 scenery or anything like that? 20 A No. I think that's his job, or it is 21 his job to point out scenery. 22 Q How do you know? 23 A I'm imagining, right. 24 Q So you're not sure if that's part of 25 his job description, to point out scenery?
Page 54 1 Rosana Orellana 54 2 speaking objections. 3 MR. ZABELL: I'm doing neither. 4 Q You can answer. 5 MR. ZABELL: Can you repeat the 6 question, please. 7 (Whereupon, the requested section was 8 read back.) 9 Q You can answer. 10 A It has to do with -- yes, there's a 11 difference, but I'm not -- I paid money, I'm not 12 enjoying what I'm doing because he is telling me 13 about his like. You know, I don't care. I do not 14 care. I think it was inappropriate for him to -- 15 you know, we don't know each other, it's something 16 I didn't want to hear. 17 So I felt like it was inappropriate and 18 I felt like I didn't care to hear what he said, 19 and that's why I felt uncomfortable. 20 Q Did this ruin the whole jump for you? 21 A Yes. 22 Q The fact he gave you this personal 23 information or the fact that he didn't point out 24 the scenery? 25 A Both.	Page 56 1 Rosana Orellana 56 2 A I'm sure it's not part of his job 3 description to tell me about his personal life. 4 Q Well, I'm just asking about the 5 scenery. 6 MR. ZABELL: There's no question. 7 A I would imagine, I would imagine it was 8 part of the job. 9 Q What scenery did you see? What did you 10 remember seeing up there? 11 A Trees, water, people landing. 12 Q Did you recognize any geographic 13 characteristics from where you were? 14 A I don't remember. 15 Q How long was it that you were going up? 16 A I don't remember. 17 Q How long was that that you were going 18 down? 19 A Couple of minutes. 20 Q Going up was between zero and five 21 minutes? 22 A I don't remember a time. It definitely 23 took longer to fall with the parachute. When you 24 go up with the parachute, it didn't take that 25 long, but you fall for a couple of minutes.

14 (Pages 53 to 56)

Page 57 1 Rosana Orellana 57 2 Q So when you got up, when you say -- 3 when you fell out of the plane, that was about how 4 long? 5 A When I'm falling? 6 Q Yes, falling. 7 A Very short. 8 Q When you went up after he pulled the 9 cord, how long was that? 10 A It was a short moment too, and then you 11 just fall. I just remember falling for a long 12 time. 13 Q Did he make you feel uncomfortable in 14 any way other than when he said these things about 15 how I hope you didn't feel uncomfortable on the 16 plane, I'm gay? 17 A Did he do anything? 18 Q Yes. 19 A The touching on the plane, and then the 20 phrases that I let you know. 21 Q What did you think he was referring to 22 when he said, I hope I didn't make you feel 23 uncomfortable? 24 A What did I think? 25 Q Yes.	Page 59 1 Rosana Orellana 59 2 A No, not really. It was -- all of them 3 were joking, and we can take jokes. You know, 4 we're young people too, I can take a joke. 5 Q Well then, why, can't you take 6 information about his personal life when you're 7 free falling? 8 A Because that doesn't concern me. 9 Q Well, does your relationship with your 10 boyfriend concern him? 11 A Probably not. 12 Q So what's the difference between the 13 two? 14 A I wasn't -- he is on the job, he is 15 working, he is customer service. He has to make 16 people happy, and I'm sure people don't want to 17 hear about his personal life. 18 Q But they were joking about your 19 personal life. Isn't there a chance that that 20 made you unhappy? 21 A I'm not working, they are working. 22 Q But it was them joking about your 23 personal life up in the plane, isn't that correct? 24 A Everyone was joking, it was funny, and 25 then they crossed the line.
Page 58 1 Rosana Orellana 58 2 A Probably the jokes and probably the way 3 he was acting. 4 Q So the joke was something, according to 5 what you believe -- Withdrawn. 6 You believed that -- 7 MR. ZABELL: Are you taking down -- 8 MR. ANTOLLINO: Withdrawn. 9 Counsel, stop interrupting. 10 MR. ZABELL: You don't have a right to 11 withdraw things that are in the deposition. 12 You can say, I would like to withdraw that 13 question, but it still gets written in the 14 record that you're withdrawing that. But I'm 15 just confirming that in the record. 16 Q You said the jokes were something you 17 might be -- 18 A I wasn't personally upset about the 19 jokes, I was upset about the touching and my free 20 fall. 21 Q Why didn't you get upset about the 22 jokes? 23 A Because I can take a joke. 24 Q But wasn't that about your personal 25 life?	Page 60 1 Rosana Orellana 60 2 Q And the crossing of the line was 3 mentioning that he was gay? 4 A The crossing of the line was when he 5 put his hand on my hip and his chin on my 6 shoulder, and then talking about his personal 7 life. Not necessarily that he was gay, it was 8 just talking about his life. 9 Q Talking about his life was not okay, 10 but talking about your life was okay? 11 A I wasn't talking about my life, they 12 were talking about my life. 13 Q But that was okay? 14 A It wasn't that it was okay, it's just 15 that I can take a joke. 16 Q I don't understand what's the 17 difference between it not being okay and being 18 able to take a joke. 19 A Because I am not working there. 20 Q But they are the ones who are making 21 the jokes, right? 22 A What could I do? 23 Q So was it okay or not okay for them 24 making jokes about your personal life? 25 A It was --

15 (Pages 57 to 60)

Page 61 1 Rosana Orellana 61 2 MR. ZABELL: Objection. Asked and 3 answered. 4 Q You can answer. 5 MR. ZABELL: Now the answers to the 6 questions are going a little quick, and I'm 7 having a hard time and I'm sure the court 8 reporter is. 9 MR. ANTOLLINO: The court reporter 10 shook her head no. 11 MR. ZABELL: I'm going to ask Ms. 12 Orellana to slow down. It's okay. It's not 13 a conversation, it's a formal deposition, and 14 I just want to make sure that the record is 15 accurate and complete. 16 MR. ANTOLLINO: Could you read it back. 17 (Whereupon, the requested section was 18 read back by this reporter.) 19 Q Can you answer the question? 20 A Is it appropriate? 21 Q No, is it okay. 22 A Is it okay? 23 Q Right. 24 A It's not okay. 25 Q Who was making jokes about your	Page 63 1 Rosana Orellana 63 2 anything like that? 3 A No. 4 Q Have you ever mentioned your boyfriend 5 to any customers you've ever served? 6 A Not unless they've known my boyfriend 7 or I know the people that I'm serving. But 8 otherwise, no. 9 Q So in some cases you have mentioned 10 your boyfriend to people you're serving? 11 A If I know them. 12 Q But in that instance you've been 13 serving them and they were your customers, 14 correct? 15 A Right, and I knew them. 16 Q And you knew them? 17 A Yes. 18 Q In that case, was it appropriate? 19 A Because I knew them, yes. 20 Q Have you known many gay people in your 21 life? 22 A Yes. 23 Q How many? 24 A In my life? 25 Q Yes.
Page 62 1 Rosana Orellana 62 2 personal life in the plane? 3 A It was the instructors on the plane. 4 Q It was Don and the other instructor, 5 right? 6 A Yes. 7 Q Did you ever have a -- You're a server, 8 right? 9 A Yes. 10 Q Do you ever joke with your clients? 11 A Do I joke with my clients? 12 Q With your customers, I should say. 13 A Yes. 14 Q You ever joke about your personal life? 15 A No. 16 Q Do you ever joke about their personal 17 life? 18 A No. 19 Q What kind of things do you joke about? 20 A Food related jokes, drink related 21 jokes, and that's it. 22 Q Anything else? 23 A No. 24 Q Did you ever joke about, you know, when 25 I go home to my boyfriend, blah, blah, blah,	Page 64 1 Rosana Orellana 64 2 A I really can't say. A couple, though. 3 Q Were they friends of yours? 4 A Yes. 5 Q Are they still your friends? 6 A Yes. 7 Q Do you agree with their lifestyle? 8 A Absolutely. 9 Q Do you believe that being gay is a 10 choice? 11 A Yes, it's a choice -- I'm sorry, is it 12 a choice for them or -- I didn't understand that 13 question. 14 Q Is it a choice for them? 15 A They have a choice -- yeah, they have a 16 choice if they want to.... 17 Q Be gay or not? 18 A I believe that's the way they're born. 19 It's the way they're born. It's, you know, being 20 straight, it's what you are, who you are. 21 Q So it's not a choice? 22 A It's not a choice, no. 23 Q Do you believe that gay people should 24 be protected from discrimination? 25 A Sure.

16 (Pages 61 to 64)

Page 65

1 Rosana Orellana 65
2 Q What's your opinion on gay marriage?
3 A Love is love, you know.
4 Q So you agree with gay marriage?
5 A I agree with it.
6 MR. ZABELL: That's sweet.
7 THE WITNESS: Thank you.
8 Q So what happened after you landed?
9 A After I landed?
10 Q Yes.
11 A We unharnessed each other and I went
12 home.
13 Q Was there anything else that happened?
14 A No. After that it's very -- you know,
15 you're kind of frazzled at the moment, because,
16 you know, you just landed and the whole experience
17 was crazy and exhilarating. But after that you
18 don't really stick around, you just pretty much go
19 home.
20 Q Did you --
21 A I believe they give you the videos, the
22 DVDs.
23 Q When was the first time you watched the
24 DVD?
25 A Probably as soon as I got home.

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1 Rosana Orellana 66
2 Q Did you notice posing for a picture
3 with Don?
4 A Yes.
5 Q Do you remember when you went up with
6 the parachute, was there any improper touching at
7 that point that you believed happened?
8 A No.
9 Q So you went home and you watched the
10 video.
11 At some point did you mention to your
12 boyfriend why you were upset on the plane?
13 A Yes.
14 Q When was that?
15 A As soon as we got -- on the car ride
16 home, actually.
17 Q What did you say to him?
18 A Well, he mentioned to me that he wasn't
19 too happy with the plane. He said that he felt
20 like my instructor was inappropriate and he wasn't
21 happy.
22 Then I -- he was -- you know, he
23 wouldn't have been too upset after that, but then
24 I told him I was really unhappy when I was free
25 falling and he was telling me about his personal

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1 Rosana Orellana 67
2 life instead of the scenery, and then he was
3 telling me what his instructor was telling him,
4 you know, his instructor was pointing out scenery,
5 letting him know where people are landing, having
6 a, you know, different conversation than I was
7 having.
8 Q So what did your boyfriend say he felt
9 was inappropriate about your instructor, that
10 being Don?
11 A He felt the way he was acting on the
12 plane.
13 Q Was what?
14 A The hand and chin.
15 Q Are you saying that he noticed that the
16 hand was on your hip and the chin was on your
17 shoulder?
18 A Yes.
19 Q Was there anything else that he noticed
20 that he felt was inappropriate?
21 A Well, he was on the plane, so that's
22 all he saw, and then I told him afterwards, but he
23 only saw what was on the plane.
24 Q Okay. So what did he say specifically
25 about the hand?

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1 Rosana Orellana 68
2 A What did he say specifically?
3 Q Yes.
4 A I don't remember at that point.
5 Q What did he say specifically about the
6 chin?
7 A He just told me that he thought
8 everything was inappropriate. He thought that his
9 instructor didn't have his hand on his hip and,
10 you know, his instructor didn't have his chin on
11 his shoulder, and he thought that was
12 inappropriate.
13 Q Was there anything about his instructor
14 that he thought was inappropriate?
15 A No.
16 Q What about the joking?
17 A He can take a joke. He thought it was
18 funny.
19 Q So he thought that was okay?
20 A He didn't -- he can take a joke. We're
21 young people, like I said, and he can take a joke.
22 Q So when you told your boyfriend, Dave
23 is his name, right?
24 A David.
25 Q When you told David about what Don had

17 (Pages 65 to 68)

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1 Rosana Orellana 69
2 said to you when you were free falling, what did
3 he say?
4 A He was angry.
5 Q How did he express his anger?
6 A He just told me he thought that was
7 inappropriate.
8 Q Did he raise his voice?
9 A No.
10 Q What happened next?
11 A Couple of days went by, and then -- I
12 had no idea that he had made the phone call to --
13 I can't remember his name -- Ray.
14 Q So you didn't call Ray?
15 A I did not call Ray.
16 Q Did you have any intention to call
17 Ray?
18 A I personally did not.
19 Q Why not?
20 A Because I don't like confrontations.
21 Q So in between the time that you spoke
22 about what Don said to you falling and the time
23 that your boyfriend said that he had called Ray,
24 did your boyfriend talk about the jump at all?
25 A Yes. He told me that he was upset. He

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1 Rosana Orellana 70
2 thought that our experience was ruined and we
3 didn't really -- you know, it was my birthday, I
4 was excited, and it kind of ruined the experience
5 for me a little.
6 Q It ruined the experience for you a
7 little or entirely?
8 A Entirely.
9 Q So how long did you continue to talk
10 about it?
11 A Not that long.
12 Q So it's just in the car?
13 A In the car, when we got home, after the
14 video, and then he made the phone call. I don't
15 remember when exactly he made the phone call.
16 Q What did he say about the phone call?
17 A I wasn't there. I don't know.
18 Q Well, what did David say to you about
19 the phone call?
20 A He told me he was upset, so he called
21 Skydive and complained.
22 Q What did he tell you he said to
23 Skydive?
24 A He didn't tell me.
25 Q He didn't tell you who he spoke to?

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1 Rosana Orellana 71
2 A He told me he spoke to Ray, but that
3 was it.
4 Q Did he tell you what Ray said?
5 A No.
6 Q Did Ray call you shortly thereafter?
7 A No.
8 Q Did you call Ray?
9 A No.
10 Q Have you ever spoken to Ray?
11 A No.
12 Q I want you to take a look at Exhibit 1
13 and turn to the second to last page.
14 Do you see paragraph thirteen there?
15 A Yes.
16 Q I'm going to read that aloud.
17 If I'm making a student jump, I
18 understand that I will be wearing a harness which
19 would need to be adjusted by the jump master and
20 my jump is a tandem jump. I understand that the
21 tandem master will attach my harness to his and
22 that this will put my body in close proximity to
23 tandem master. I specifically agree to this
24 physical conduct between the tandem master and
25 myself.

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1 Rosana Orellana 72
2 Now, you said earlier that you only
3 read the first page of this document, correct?
4 A Okay.
5 Q Is that correct?
6 A Yes.
7 Q So it would appear that you hadn't read
8 the page that includes paragraph thirteen,
9 correct?
10 A Yes.
11 Q Yes, you did not read it, correct?
12 A Yes.
13 Q Just to clear it up for the record.
14 A I did not read it.
15 Q This was a tandem jump, yes?
16 A Yes.
17 Q When your boyfriend called, what did
18 you think Ray was gonna do in response to this?
19 MR. ZABELL: Objection. You may
20 answer, if you can.
21 A I don't know. I didn't think about it.
22 Q Did you have any expectations as to
23 what might happen?
24 A No.
25 Q Did you think that maybe, you know, you

Page 73 1 Rosana Orellana 73 2 could get another jump? 3 A No. 4 Q Did you expect that Ray would get -- 5 that Don would get fired? 6 A No. 7 Q Did you think that it was what you 8 wanted to happen? 9 A No. 10 Q Let's take a look at the video of your 11 jump. 12 MR. ZABELL: Are you planning on 13 introducing the video as an exhibit? 14 MR. ANTOLLINO: You know, I don't have 15 a disk, and we're just going to have to deem 16 this thing as an exhibit. 17 MR. ZABELL: I can't deem it as an 18 exhibit unless I have an exact copy of 19 what -- 20 MR. ANTOLLINO: All right. I'll mail 21 it to you then. 22 (Whereupon, the DVD was deemed marked 23 as Plaintiff's Exhibit 2 for identification, 24 as of this date.) 25 MR. ANTOLLINO: For the record, I'm	Page 75 1 Rosana Orellana 75 2 It'll lose -- All right, that's better. 3 Q All right. I just showed a picture of 4 you. There's a screen shot at timer number 5 twenty-five. 6 Is there anything in here that Don is 7 doing that's inappropriate? 8 A No. 9 Q Let's go back. I'm at screen 10 twenty-five and there's nothing at twenty-five 11 that's inappropriate. 12 What about twenty-six? 13 A No. 14 Q It appears that his chin is very close 15 to your shoulder, is that right? 16 A Fairly close. 17 Q Was his hand on your hip at this time? 18 A I don't remember, but I don't think so, 19 because I see his hand on the side. 20 Q It appears that everyone is having a 21 good time in this video, right? 22 A Yes. 23 Q So is this before or after you felt 24 uncomfortable? 25 A Probably before.
Page 74 1 Rosana Orellana 74 2 looking at a file called Skydive AVI.AVI, and 3 this is -- I'm trying to get more information 4 on it -- this is on my laptop right now, and 5 I'll burn a disk or send an e-mail to Mr. 6 Zabell and I'll attach this to the transcript 7 that I send to Ms. Orellana. 8 Q All right. I'm going to show you what 9 we're watching on the computer, Skydive AVI.AVI. 10 So we're watching this. Right now we're just 11 seeing a shadow. Just tell me when you recognize 12 this. 13 Is that you? 14 A Yes. 15 Q In that scene you were right next to 16 Don. This is at or about .08 of the video. 17 Did Don do anything inappropriate at 18 that moment? 19 A No. 20 MR. ZABELL: Why don't you make it 21 larger, Counsel. 22 MR. ANTOLLINO: I'm sorry? 23 MR. ZABELL: Why don't you make it 24 larger. 25 MR. ANTOLLINO: I don't think so.	Page 76 1 Rosana Orellana 76 2 Q We've moved to here. We're at marker 3 number fifty. Let's start this again. 4 MR. ZABELL: It's just skipping, the 5 disk. It's twenty-six, right? 6 MR. ANTOLLINO: Yes, I'm sorry. 7 MR. ZABELL: You're just skipping the 8 footage? 9 MR. ANTOLLINO: Yes. That was just 10 footage of the airplane. 11 MR. ZABELL: I don't necessarily agree 12 with that. 13 MR. ANTOLLINO: We can go back and look 14 at it frame by frame if you want, but I don't 15 think there was anything -- 16 MR. ZABELL: If you have no interest in 17 going through frame by frame, that's fine. 18 Q We're looking at frame fifty-three. Is 19 Don doing anything inappropriate here? 20 A No. 21 Q What is it that you're seeing right 22 now? 23 Let me just go back a second. 24 I saw that Don was putting his hand in 25 his mouth and smiling. Was that inappropriate?

19 (Pages 73 to 76)

Page 77 1 Rosana Orellana 77 2 A No. 3 Q At that point you said that it's great, 4 you can't wait to jump, correct? 5 A Yes. 6 Q So was there anything inappropriate up 7 to that point? 8 A Up to that point, no. 9 Q So here at frame 107, and Don is 10 attached to you it appears, and is that an 11 inappropriate use of his proximity to you? 12 A I can't really see from here, I'm 13 sorry. It's fairly blurry. 14 Q We're just at 107. What can you see? 15 A It's blurry. 16 Q Do you see yourself and Don in 17 here? 18 A I can see myself and Don. 19 Q Do you see his chin in there? 20 A I can't. It's blurry. 21 Q All right. Let's start again. 22 All right. You see that we're at 107 23 again. Can you see that? 24 You can't? 25 A It's blurry. I can see him, I can see	Page 79 1 Rosana Orellana 79 2 Q You're saying you did it differently 3 than your boyfriend? 4 A No, I did it the same. 5 Q Does it appear to you that -- Well, 6 let's go back a little. 7 A It's very blurry. I'm sorry, I can't 8 see. 9 Q Do you wear glasses? 10 A No. 11 Q What is your vision? 12 A Twenty/twenty. 13 Q Hold on one second. 14 You see that right there? Does that 15 not appear to you as if David is on the lap of the 16 other instructor? 17 A No. 18 Q So you're saying they're front to 19 front? 20 A Yes. As it appears. 21 Q All right. Here's a picture at second 22 marker 133. 23 Is Don doing anything inappropriate 24 here? 25 A No.
Page 78 1 Rosana Orellana 78 2 myself. I can't tell where his chin is. It's 3 dark, I have a harness. 4 Q You see you're smiling in there? 5 A Yes. 6 Q Is that a fake smile? 7 A No. 8 MR. ZABELL: This must be a good 9 looking record. 10 Q Describe how you go out of the 11 airplane. 12 A Like he's going out -- I go first. I 13 don't remember. I think I went first. 14 Q We're at 119 now. It appears that the 15 instructor is on the bottom and he has the student 16 on his lap basically, is that correct? 17 A I was never on his lap, no. Only on 18 his lap when he harnessed me. I wasn't on his 19 lap, I was sitting right in front of him. 20 Q Do you see those two people there? 21 A Yes. 22 Q And they're going out of an airplane? 23 A Yes. 24 Q Is that your boyfriend right there? 25 A Yes, it is.	Page 80 1 Rosana Orellana 80 2 Q It appears that you're smiling there? 3 A Yes. 4 Q It appears that his chin is very close 5 to yours, doesn't it? 6 A Yes. 7 Q Do you want him to be as close as 8 possible to protect you in that circumstance? 9 MR. ZABELL: Objection to the form. 10 You may answer. 11 A I said -- I didn't finish my sentence. 12 Q Go ahead. 13 A Did I want him to be as close to me so 14 he could protect me? We are strapped together, so 15 I didn't necessarily want him to be as close to me 16 so he can protect me, but we are strapped 17 together. 18 Q You wanted him to do whatever needed to 19 be done in order to protect you, correct? 20 A Yes. 21 Q You're falling out of the plane now. 22 We're at marker number 135. 23 Is Don doing anything inappropriate 24 here? 25 A No.

20 (Pages 77 to 80)

Page 81 1 Rosana Orellana 81 2 Q We've just watched 135 to 143. 3 Did you see all that? 4 A Yes. 5 Q Did Don do anything inappropriate 6 during that section? 7 A No. 8 Q We're now at 146 and you watched 1431 9 to 146 and Don touched your arms. 10 Was that inappropriate? 11 A No. 12 Q You just grabbed someone's hands. 13 We're now at 150. 14 Do you know whose hands those were? 15 A No. 16 Q You just watched from whatever the last 17 marker was to 211 -- I'm sorry, to 221, and Don 18 just pulled the ripcord. 19 Was there anything we watched in that 20 last section where Don was inappropriate? 21 A No. 22 Q We've gone from the last marker number 23 to 241. 24 Is that you landing with Don? 25 A Yes.	Page 83 1 Rosana Orellana 83 2 Q How were you feeling at that time? 3 A Probably nice. 4 Q Don just said, I think she's doing 5 better than you, man. 6 Do you know who he was talking to? 7 A No. 8 Q Was there anything inappropriate in 9 that conversation? 10 A No. 11 Q What did you just say it was? 12 A It was awesome. 13 Q Were you lying? 14 A The falling out of the plane was 15 awesome. The free fall wasn't awesome. 16 Q So wait a minute. You just said it was 17 awesome and you gave a high five. 18 A Yes. 19 Q When you said it was awesome, you were 20 just referring to part of the experience? 21 A Yes. 22 Q Oh, wait, that's you posing right 23 there, that's at the three minute marker, is that 24 correct? 25 MR. ZABELL: Objection to the form.
Page 82 1 Rosana Orellana 82 2 Q Did he land you safely? 3 A Yes. 4 Q Did you suffer any injury? 5 A No. 6 Q Was there any physical pain that you 7 suffered as a result of the jump? 8 A No. 9 Q Was there any stomach upset or anything 10 like that? 11 A No. 12 Q That is you landing with Don right now 13 at 241, correct? 14 A Yes. 15 Q I just stopped at 245. Someone said, 16 nice. Do you know who that was? 17 A No. 18 Q So I just stopped it at 249 and someone 19 said -- you're taking off your goggles and someone 20 said, you feeling all right, and what was your 21 response? 22 MR. ZABELL: Objection to the form of 23 the question. You may answer. 24 Q You can answer. 25 A Nice.	Page 84 1 Rosana Orellana 84 2 You may answer. 3 A Yes. 4 Q It appears that you walked close to him 5 and put your face close to him to take a picture 6 with him, is that correct? 7 MR. ZABELL: Objection to form. You 8 may answer. 9 A It was an instruction. 10 Q Who instructed you? 11 A One of the instructors there. 12 Q So did you feel that you had to follow 13 that instruction to pose with someone? 14 A Absolutely. 15 Q So you did it involuntarily? 16 A I didn't do it involuntarily, but they 17 said, pose, and I posed. 18 Q So you voluntarily posed with Don, 19 correct? 20 A Yes. 21 Q And you put your face close to his, 22 right? 23 A Yes. 24 Q And you're smiling in that picture, 25 correct?

21 (Pages 81 to 84)

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1 Rosana Orellana 85

2 A Yes.

3 Q And you just put up your hand.

4 What did that mean when you put up your

5 hand?

6 A I don't know.

7 Q Let's go back and look at that again.

8 Is that Mr. Kengle there?

9 A Yes.

10 Q You put up your hand. Did you see

11 that, again, --

12 A Yes.

13 Q -- that little hand signal?

14 A Yes.

15 Q What does that mean?

16 A I don't know.

17 MR. ZABELL: If I may make an

18 observation, I always termed that the surf

19 naked sign.

20 MR. ANTOLLINO: I believe it's hang

21 loose.

22 Q Do you know if that -- Have you ever

23 heard of hang loose?

24 A No.

25 Q Is it an expression of happiness, or

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1 Rosana Orellana 86

2 what kind of expression is it?

3 A I don't know. It's something I did. I

4 don't think it had any meaning behind it.

5 Q Let me ask you this. If you give

6 someone the middle finger, does that have a

7 meaning behind it?

8 A Yes.

9 Q But if you give someone the hang loose

10 signal we'll call it, does that have a meaning

11 behind it?

12 A I'm sure it does.

13 Q What would you say is the difference

14 between the middle finger and the hang loose sign?

15 A Middle finger has a bad meaning and

16 hang loose can have a -- many feelings, you're

17 happy, something you did because you felt like

18 doing it. To me it doesn't have a meaning.

19 Q Did Don tell you anything about his

20 personal escapades while you were in the airplane

21 or falling out of the airplane?

22 MR. ZABELL: Objection to the form.

23 You may answer.

24 A By escapades, what do you mean?

25 Q Do you understand what the word

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1 Rosana Orellana 87

2 escapades to mean?

3 A I don't know. I don't know the word.

4 Q You never heard the word escapade?

5 A No.

6 Q Have you ever used that word before?

7 A No.

8 Q Let's see if I can find a definition of

9 escapade.

10 Have you ever heard the word before?

11 MR. ZABELL: Objection. Just asked and

12 just answered.

13 Q You've never heard the word escapade

14 before?

15 MR. ZABELL: Objection. Just asked and

16 just answered.

17 A No.

18 Q You understand you're under oath?

19 A Yes.

20 MR. ZARDA: Dictionary.com.

21 MR. ZABELL: Let the record reflect

22 that we're waiting while counsel plays with

23 his phone for the definition of escapade.

24 MR. ANTOLLINO: The definition of

25 escapade is an adventurous action that runs

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1 Rosana Orellana 88

2 counter to approved or a conventional

3 conduct.

4 MR. ZABELL: Ms. Orellana, I'm advising

5 you that Mr. Antollino is not under oath, so

6 you have no obligation to believe anything he

7 says.

8 MR. ANTOLLINO: She asked for a

9 definition. I'm giving it to her.

10 MR. ZABELL: No, I don't believe she

11 did.

12 MR. ANTOLLINO: Can you read back where

13 she said, what does escapade means.

14 MR. ZABELL: Please.

15 (Whereupon, the requested section was

16 read back by this reporter.)

17 Q So the court reporter just read back

18 when you had asked, what do you mean by escapade,

19 correct?

20 A Yes.

21 Q So we're going to define escapade as an

22 adventurous action that runs counter to approved

23 conduct.

24 Did using --

25 MR. ZABELL: I repeat my direction.

Page 89 1 Rosana Orellana 89 2 Q Using that definition, did Don tell you 3 anything about his personal escapades that you can 4 recall? Did Don tell you about any action that 5 runs counter to approved conduct? 6 A No. The only thing he told me was that 7 he had recently broken up with his boyfriend and 8 he said he hoped he didn't offend me on the plane. 9 Q When you said that Don was flirting 10 with you, did you think he was trying to come on 11 to you? 12 A No. 13 Q Was he sexually harassing you? 14 A It's a form of sexual harassing. Yes. 15 Q In what way? 16 A He has his hip on my -- his chin on my 17 shoulder and his hand on my hip. 18 Q That was sexual harassment in what way? 19 A I didn't give him permission to do 20 that. 21 Q Well, you signed this agreement, didn't 22 you? You signed this agreement, correct? 23 A That says we are going to be in close 24 proximity, but it doesn't mean that somebody is 25 going to rest their chin on my shoulder.	Page 91 1 Rosana Orellana 91 2 MR. ANTOLLINO: Let me just go outside 3 with Don and we'll go over some things, and 4 we're almost done. 5 (Whereupon, a short break was taken.) 6 MR. ANTOLLINO: So I'm going to deem 7 marked file VTS_01_1 -- Are you on the phone, 8 Counselor? 9 MR. ZABELL: No. 10 MR. ANTOLLINO: I can hear your 11 phone -- 12 MR. ZABELL: I'm not on the phone, 13 Counselor. 14 MR. ANTOLLINO: Are you done? 15 MR. ZABELL: Go ahead. 16 MR. ANTOLLINO: I'm deeming marked 17 VTS_01_1.VOB dated February 19th, 2011, 171.1 18 megabytes, as Plaintiff's Exhibit 3. 19 (Whereupon, the DVD was deemed marked 20 as Plaintiff's Exhibit 3 for identification, 21 as of this date.) 22 MR. ZABELL: I just ask that you 23 prepare a copy for me of what is being 24 admitted into evidence here. 25 MR. ANTOLLINO: The problem with that
Page 90 1 Rosana Orellana 90 2 Q Were you aware that close proximity of 3 the harness has a hip attachment point that 4 required him to attach his harness to yours at the 5 hip? 6 A At the hip? 7 Q Yes. 8 A Yes. 9 Q In fact, the briefing video that you 10 saw before you went on the jump showed you that 11 you would be attached at the hip, correct? 12 A Yes. 13 MR. ZARDA: Can I ask you a question? 14 MR. ANTOLLINO: No. Shut up. 15 MR. ZABELL: You can excuse yourself if 16 you like. 17 MR. ANTOLLINO: We will in a second. 18 MR. ZABELL: You don't have to tell 19 your client to shut up. 20 MR. ANTOLLINO: I know him well enough 21 that I can say that. 22 Q Did Don say anything to you regarding, 23 don't worry about how close I am because I'm gay? 24 Did he say something like that? 25 A I don't remember.	Page 92 1 Rosana Orellana 92 2 is I tried it with this, but I have the 3 transferred file. 4 MR. ZABELL: Just as long as you send 5 me a copy of the transferred file so we all 6 know we're looking at the same thing. 7 MR. ANTOLLINO: I'm looking at this 8 file and making it bigger. I tried several 9 times to make it bigger. I can't make it 10 bigger. 11 I'm going to go on the other side to 12 look at the video with you. 13 MR. ZABELL: Counsel, you have to make 14 sure you don't lean over the deponent. 15 If he makes you feel uncomfortable, 16 just move closer to me. 17 Q Is that Mr. Kengle you see? 18 A Yes. 19 Q It appears that he is at Skydive Long 20 Island? 21 A Yes. 22 Q Am I making you uncomfortable? 23 A A little bit. 24 Q How far would you like me to get from 25 you?

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2 A Just a little bit.

3 MR. ANTOLLINO: So let the record

4 reflect we're about twelve inches away from

5 each other and you've moved another foot

6 away.

7 Q Is that correct?

8 A Yes.

9 Q And the reason we're this close is

10 we're trying to look at the video.

11 You're three inches from Mr. Zabell.

12 A Yes.

13 Q Do you feel I'm going to harm you in

14 some way?

15 A No.

16 Q Why is it that you feel uncomfortable?

17 A Because you're reaching over and I'm

18 claustrophobic, I need my own space.

19 Q But you're very close to Mr. Zabell,

20 though.

21 A Facing away from him.

22 Q That's you. Is that the same jump

23 we're at?

24 A Yes.

25 Q We're just going to watch it the whole

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2 way through, and I want you to just raise your

3 hand if you see something inappropriate that's

4 happening, okay, and if so, I'll stop it and we'll

5 make a record of it.

6 All right. So we've watched the whole

7 tape and you didn't raise your hand.

8 Do you want to watch it again?

9 A No.

10 Q Did you feel that there was anything

11 there that was inappropriate?

12 A No.

13 Q So the answer is, just to make sure we

14 don't have any double negatives, --

15 MR. ZABELL: Counsel, you can sit down.

16 MR. ANTOLLINO: Counsel, no, I'm going

17 to use this again. You don't tell me what to

18 do.

19 MR. ZABELL: I didn't.

20 MR. ANTOLLINO: You don't own the

21 place.

22 MR. ZABELL: I didn't say I owned the

23 place. I don't think there's anything in the

24 place that says I own it.

25 MR. ANTOLLINO: Quit acting like you

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2 own --

3 MR. ZABELL: I'm saying so you don't

4 question the deponent in an intimidating

5 manner, you sit down.

6 MR. ANTOLLINO: I'm going to use the

7 video again.

8 MR. ZABELL: Okay. Go ahead.

9 Q Do you remember there was a point when

10 the video was right on you? Do you remember that

11 point?

12 A In the previous video?

13 Q No, in this video.

14 Let's see if we can fast forward to

15 that point.

16 I'm trying to fast forward, but it's

17 not working.

18 MR. ZABELL: You just started it over

19 again.

20 MR. ANTOLLINO: I'm trying to fast

21 forward. Thanks.

22 Q Did you just see that?

23 A Yes.

24 Q What was your expression there?

25 A I smiled.

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2 Q Do you know why you smiled?

3 A Because I was excited.

4 Q There was another expression. What was

5 that?

6 MR. ZABELL: Objection to the form of

7 the question. You may answer.

8 A I smiled.

9 Q Was that more like a kiss?

10 MR. ZABELL: Objection to the form of

11 the question.

12 A A smile.

13 Q Well, you pursed your lips, right?

14 A Yes.

15 Q Someone might have interpreted that as

16 a kiss.

17 A Someone might have.

18 Q We're at or just before 118.

19 All right, I just have a few more

20 questions.

21 It was pretty loud up in the airplane,

22 wasn't it?

23 A Yes.

24 Q Were there instructions that you were

25 supposed to follow when you were doing this jump?

Page 97 1 Rosana Orellana 97 2 A Certain instructions? 3 Q Yes. 4 A Yes. 5 Q Did you want those instructions to be 6 clearly understood by you? 7 A Yes. 8 Q Did you want Don to make sure that you 9 clearly heard the instructions? 10 A Yes. 11 Q Did you want him to yell the 12 instructions at you? 13 A Loud enough so I could hear them. 14 Q Did you show anyone your video? 15 A Anyone else? 16 Q Yes. Other than your boyfriend's 17 grandmother. 18 A His parents. I believe I showed his 19 parents. 20 Q When was that? 21 A I don't remember the exact date. 22 Q Did you show anyone else? 23 A I believe that's it. I'm not sure if I 24 showed anybody else. 25 Q Do you know if Mr. Kengle asked for his	Page 99 1 Rosana Orellana 99 2 A I don't remember. 3 Q You talked earlier about being 4 claustrophobic. Have you ever been diagnosed with 5 claustrophobia? 6 A No. 7 Q When you say you are, is it just -- I 8 mean, when did you learn that you were 9 claustrophobic? 10 A I'm not -- I haven't been diagnosed 11 that I'm claustrophobic, I just don't like being 12 in small spaces, you know. 13 Q This airplane was a very small space, 14 correct? 15 A Yes. 16 Q And you were strapped very tightly to 17 someone you had never met before, correct? 18 A Yes. 19 MR. ANTOLLINO: Nothing further. 20 MR. ZABELL: I have a few questions. 21 EXAMINATION BY SAUL D. ZABELL, ESQ.: 22 Q How are you, Ms. Orellana? 23 A Very good. 24 Q Ms. Orellana, did you have any issue 25 with Don Zarda's sexuality once he disclosed it to
Page 98 1 Rosana Orellana 98 2 money back from Mr. Maynard? 3 A No. 4 Q Did Mr. Maynard offer him a free jump? 5 A I -- No, he didn't. 6 Q How do you know that? 7 A He didn't tell me about it, so I'm 8 assuming. 9 Q If Don had yelled at you in the 10 airplane, do you think that would have been 11 professional? 12 A If it's loud and it's for my safety, 13 yes. 14 Q Would you want him to use his judgment 15 as to how you can best understand his 16 instructions? 17 A Yes. 18 Q Did you get all of the instructions 19 that you needed to get in order to complete the 20 dive safely? 21 A Yes. 22 Q Were there any times that Mr. Zarda 23 moved closer to you to whisper into your ear or to 24 speak clearly into your ear in giving those 25 instructions?	Page 100 1 Rosana Orellana 100 2 you? 3 A No. 4 Q Did you have an issue with the fact 5 that he disclosed it to you? 6 A Yes. 7 Q Why is that? 8 A Because I didn't care. You know, I 9 didn't care if he was straight or gay or -- I 10 didn't care about his personal life. 11 Q Now, you were shown a video of your 12 jump, is that correct? 13 A Yes. 14 Q Did that video contain every minute 15 that you were strapped to Mr. Zarda? 16 A No. 17 Q Did you care that you were strapped to 18 Mr. Zarda? 19 A No. 20 Q Did you care that you were close to Mr. 21 Zarda? 22 A No. 23 Q Well, what was it about contact with 24 Mr. Zarda that bothered you? 25 A His hand on my hip, it was resting on

25 (Pages 97 to 100)

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2 my hip, and he put his chin on my shoulder.

3 Q Could you describe how he put his chin

4 on your shoulder?

5 A Yes. It was resting on my shoulder.

6 MR. ZABELL: Let the record reflect Ms.

7 Orellana moved in about six to eight inches

8 with her chin indicating that it was his chin

9 moved forward.

10 Q Did you find anything inappropriate

11 about him resting his chin on your shoulder?

12 A Yes.

13 Q What was that?

14 A It was unnecessary.

15 Q Did you find anything inappropriate

16 with Mr. Zarda putting his hand on your hip?

17 A Yes.

18 Q What was that?

19 A It was unnecessary. I mean, he didn't

20 have to rest his hand on my hip. Once you're

21 fastened, you're fastened and you can put your

22 hands on your side.

23 Q Did there come a time that it appears

24 that Mr. Zarda had crossed the line to you?

25 A No.

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2 Q Did there come a time where he

3 apologized for his conduct?

4 A Yes.

5 Q When was that?

6 A When we were free falling.

7 Q What did he say to you?

8 A He apologized for -- he said, don't

9 worry, I hope you didn't get offended, because I'm

10 gay, what happened on the plane.

11 Q Before he disclosed to you his

12 sexuality, did you know what his sexuality was?

13 A No.

14 Q Did you care what his sexuality was?

15 A No.

16 MR. ZABELL: Thank you. I have no

17 further questions.

18 MR. ANTOLLINO: When you say he

19 apologized for his conduct, do you know if he

20 was referring to the comments that were made

21 or these allegations that you've made about

22 the chin and the hips?

23 THE WITNESS: I don't know.

24 MR. ANTOLLINO: Nothing further.

25 MR. ZABELL: Would you like to conclude

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2 today's deposition?

3 MR. ANTOLLINO: Yes.

4 MR. ZABELL: Just put so we're assured

5 a plain simple statement on the record

6 concluding today's deposition.

7 MR. ANTOLLINO: I have no further

8 questions. I said that already.

9

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11

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13 (Continued on following page to

14 allow for signature and jurat.)

15

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2 MR. ZABELL: Very well. Then it

3 appears as if the deposition of Ms. Orellana

4 is concluded.

5 (Whereupon, the examination of

6 this witness was concluded at 3:35 P.M.)

7

8 * * * *

9

10 STATE OF NEW YORK)

11)ss.:

12 COUNTY OF)

13 I have read the foregoing record of my

14 testimony taken at the time and place noted in the

15 heading hereof and I do hereby acknowledge it to

16 be a true and correct transcript of same.

17

18

19 ROSANA ORELLANA

20 Subscribed and sworn to

21 before me on this _____ day

22 of _____, 2011.

23

24

25 NOTARY PUBLIC

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4	C E R T I F I C A T I O N	
5		
6	I, Deborah Thier, a Notary Public	
7	of the State of New York do hereby certify:	
8	That the testimony in the within	
9	proceeding was held before me at the aforesaid	
10	time and place. That said witness was duly sworn	
11	before the commencement of the testimony, and that	
12	the testimony was taken stenographically by me,	
13	then transcribed under my supervision, and that	
14	the within transcript is a true record of the	
15	testimony of said witness.	
16	I further certify that I am not related	
17	to any of the parties to this action by blood or	
18	marriage, that I am not interested directly or	
19	indirectly in the matter in controversy, nor am I	
20	in the employ of any of the counsel.	
21	IN WITNESS WHEREOF, I have hereunto set	
22	my hand this 28th day of November, 2011.	
23		
24	DEBORAH THIER	
25		

