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April 12, 2018

Judge Joseph F. Bianco
U.S. District Judge
100 Federal Plaza
Central Islip, NY 11722

RE; Zarda v. Altitude Express, et al.

Dear Judge Bianco,

Mr. Zabell indicates there is no action pending against Mr. Maynard. This may or may not be true; there are limitations on individual liability under Title VII, but Maynard owned and transferred his major asset that is still a defendant. Further, we should use this hiatus for limited discovery. Mr. Zabell came to me to ask for a demand. The case could settle before certiorari is filed, as he apparently anticipated. The mandate is not stayed, nor has the defense moved for one (which would have to be made to the Circuit Justice). Moreover, if there is a certiorari petition, and the case returns to this court, we would certainly be entitled to discover the proper defendant, even if discovery is over. The transfer of Altitude Express, Inc. to Skydive Long Island, Inc. occurred after discovery was closed, thus there are new and extraordinary circumstances for plaintiff to seek discovery on this limited question, which is based on a multi-part test. *EEOC v. MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086, 1094 (6th Cir. 1974), cited by *Battino v. Cornelia Fifth Ave., LLC*, 861 F. Supp. 2d 392, 404 (S.D.N.Y. 2012) (Oetken, J.).

Plaintiff is not asking for a trial date, just to know who is the proper defendant. We are entitled to know this, especially in a civil rights case. *See generally MacMillan.* We should not be held in the dark just because the date for a petition for certiorari has not expired. Proportionally, we are not asking for much, and with no stay, the equities are on plaintiff's side.

Sincerely,

Greg S. Antollino

Gregory Antollino

Cc: Saul Zabell, Stephen Bergstein