

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DONALD ZARDA,

Plaintiff,

-against-

**ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,**

Defendants.

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PLAINTIFF'S 56.1
STATEMENT
IN SUPPORT AND
FURTHER OPPOSITION

10-cv-04334-JFB

Plaintiff makes the following statement under local rule 56.1 a in support of his motion for partial summary judgment, under Rule 56.1(a), and in further opposition to defendants' motion under Rule 56.1(b).

1. Skydiving is an inherently dangerous activity. Maynard deposition (hereinafter MD at 65).
2. Skydiving is not for everyone. Maynard deposition (hereinafter MD at 11-12). Maynard's opinion is that you have to be a little bit crazy to do it. Id. at 31-32
3. A person who doesn't like to be touched should not skydive. MD 17; Callanan dep. at 99. The aircraft is a fairly small aircraft area, filled with many people. Id. 13-16.

4. Not only because of the cramped aircraft, but also because they instructor and passenger are strapped together, tandem skydiving, by the nature of the activity, is a sport where the instructor by necessity violates the passenger's personal space. Winstock deposition at 82-83.
5. If a person chose to go skydiving and complained about being touched inappropriately, Maynard testified at his deposition that would investigate further. MD at 20.
6. However, in plaintiff's case, Maynard's "investigation," if you could call it that, before he fired plaintiff, consisted solely of watching the video of Orellana's (the complainant's) jump, which shows no inappropriate touching. See defendants' 56.1 statement (hereinafter "D56" at ¶ 77 (investigation limited to reviewing exculpatory video) attached to Antollino Dec., (hereinafter "AD") at Exhibit B.
7. Ray did not call Rosanna and say what it was about the hips that made her feel uncomfortable. *Id.*; MD at 249.
8. Rosana, who found the experience "crazy and exhilarating," did not want to complain. Orellana dep. at 65, 69.
9. What Rosanna felt might well have been something like he was adjusting the straps as required. MD at 249-50.

10. And if what she felt was simply Don's adjusting the straps, that would not be a legitimate complaint. Id. at 250.
11. Maynard did not look at the photographs of the jump at the time, but they show nothing inappropriate either. Id.; MD at 323-25.
12. Maynard did not even speak to Orellana; he credited entirely the allegations of her boyfriend, David Kengle. MD at 185, 199.
13. According to Ray, Kengle said he didn't want his money back, but Maynard refunded it anyway, and Kengle cashed the check. Id. at 186-87; Kengle dep. at 31.
14. Kengle, who is depicted at page 30 of the Sanchez declaration Exhibit A, was at the time of the jump an unemployed waiter. He rents a \$150,000 home and leases a decade-old car, an upgrade from a 1988 car he drove as recently as a few years ago. See AD at Exhibit Q (TLO Asset Report).
15. This is not to denigrate the lower middle class, or the poor, but to demonstrate that that Kengle had a motive to complain. And he noted that the cost of the jump was \$900, thus it "is even more amplified, because it's . . . something that's way more expensive and [therefore] something way more extreme. Id. at 31, 35.

16. A complaint is a common thing for Kengle; if you don't like someone's attitude, a complaint is appropriate. *Id.* at 35-36.
17. But the contemporary photo and video evidence shows Don with a perfectly cheerful attitude. AD at Exhibit B.
18. Kengle admits that he does not "have an understanding of the procedures they're training in, as far as attaching gear or a harnessing or what their physical actions are suppose to be in terms of protocol[.]" Kengle dep. at 62.
19. Kengle admitted that he does not know that putting hands on hips and chins on shoulder was according to protocol. Kengle dep. at 31.
20. For Don, it was his normal way of protecting the safety and comfort of every single passenger. Zarda Dec. at ¶ 24.
21. Don, who has some 20 years of experience in the sport and has done some 5800 jumps, is a creature of habit and procedure because to experiment could lead to injury or fatality. *Id.* and *id.* ¶ 1 and at Exhibit C (warning from United Parachute Technologies about safe use of equipment).
22. Although once Don injured himself for reasons that were not the result of any negligence on his part, he has never had as much as

an injury in an inherently dangerous activity. MD at 152; Zarda Dec. at ¶ 24.

23. Kengle considers his girlfriend Rosanna “beautiful,” and is upset with the way that men hit on her, especially gay men, who think they can get away with it. Kengle dep. at 24 and 38.
24. It is undisputed that this was a gift for Orellana’s birthday. Kengle Dep. at 45.
25. Being an unemployed server, and relatively poor, however, a \$900 jump probably made that a little bit hard financially on Kengle. See Antollino dec. at Exhibit Q; Kengle Dep. at 6.
26. Despite Maynard’s saying that ruining Rosana’s birthday was the reason for his suspension, MD at 229 “You were suspended for completely ruining somebody’s birthday because of you talking about your personal life to them.” Kengle did not think that anything Don did “ruined” the day; he characterized it as a “taint.” Kengle dep. at 45.
27. Rosana did not believe the day was ruined, but defined it as “crazy and exhilarating.” Orellana Dep. at 65.

28. "Exhilarate" is defined as "to make cheerful and excited : to enliven, to elate." See Webster's Online at <http://www.merriam-webster.com/dictionary/exhilarate>.
29. According to Ray, craziness goes hand in hand with skydiving: You don't have to be crazy to do it, but it helps. MD at 31.
30. Because skydiving is an inherently dangerous activity, and among other reasons, Skydive Long Island requires all passengers to sign a detailed waiver setting forth what they will experience in the skydive including, for example, that they will go as high as 13,500 feet. AD at Exhibit 1.
31. If a passenger did happen to go as high as 12,000 feet, and later complained that would not be a legitimate complaint. MD at 31
32. Lots of complaints that people can make are illegitimate.
33. If a person dies while skydiving, and his estate later complains, that is not a legitimate complaint, even if the instructor is negligent. See AD at Exhibit 1. MD deposition at 22.
34. The waiver in paragraph 13 specifically states, "if I am making a student jump, I understand that I will be wearing a harness which will need to be adjusted by the jump master. Is my jump is a tandem jump, I understand that the tandem master will attach my

- hardest to his and that this will put my body in close proximity to that of the tandem master. I specifically agree to this physical contact between the tandem master and myself. Antollino declaration, exhibit A, paragraph 13. Rosanna initialed that release, but did not bother to read the waiver. Orellana Dep. at 72.
35. Rosana did not read past the first page of the waiver, therefore she did not get to ¶ 13. Orellana Dep. at 36-37. Kengle read the waiver for her, because, according to him, he is the “brains of the operation.” Kengle deposition at 16.
36. But, according to Ray, that was wrong because every passenger should carefully read the waiver him or herself. MD at 53-54.
37. There are several points of attachment they did the tandem instructor has to be attached to the passenger. MD at 19-20. Two of the attachments are approximately at the hips. *Id.* at 27. Exhibit 4 to the MD, attached to AD at Exhibit T depicts the apparatus to which the passenger is strapped to the instructor. MD at 26-27.
38. Ray presumably used the waiver to defend himself in a lawsuit where a passenger died, because the lawsuit was dismissed. MD at 22.

39. Ray did not refund the money to the family of the passenger who died, and his family's complaint was illegitimate. MD at 22.
40. Thus Ray used the waiver to defend himself against a lawsuit for someone who died, but was unwilling to use it to protect the integrity of Don Zarda, whom he characterized as a good, safe instructor and good guy. MD at 134, 149.
41. When in the air, all the points of attachment need to be adjusted for the safety and comfort of the passenger. MD at 27-28.
42. Maynard agrees that safety is more important than comfort. MD 28.
43. Rosanna agrees that she would rather be safe than comfortable on a skydive. Orellana deposition at 98.
44. She does not remember Don whispering in her ear. *Id.* at 99.
45. She does not believe that plaintiff crossed the line by touching her in a sexual manner. Orellana dep. at 101.
46. Even jealous Kengle would want Zarda to touch her breast "if it meant saving her life." Kengle Dep. at 25.
47. There have been lots of complaints about skydive Long Island for example on yelp.com, one reviewer said "customer service does not exist here!!!! What ever you do DO NOT go to this place.... I

- repeat DO NOT waste your money on these people.... Skydive Long Island sucks. Stay away.” AD at Exhibit F.
48. Another yelp.com customer had five complaints including misrepresentations about the prices on the website; the low production values of their videos; frame by frame shots that don't show anything interesting; the interminable wait; the rude “ladies” in the office. AD at exhibit F.
49. There have been complaints about Sky Dive Long Island, complaints having nothing to do with plaintiff. See MD at 55, referring a website called wegoplaces.com. MD at 60.
50. All of these complaints, in Maynard’s opinion, are illegitimate. MD at 62-63.
51. According to Maynard, the person who complained about the “ladies in the office” being rude is only telling one side of the story, so how does he know that it's true? MD at 64.
52. Yet Maynard would not let plaintiff see the video of the person who made a complaint against him, so that plaintiff could tell his side of the story. MD at 184. Zarda dec. at ¶¶ 4, 28, 29, 35, 42.
53. An irritating complaint to Maynard was one made on the “Ripoff Report” AD at exhibit K. This complaint is dated October 2009, at

- a time when plaintiff was contemplating coming back to skydive Long Island and therefore had no incentive to say anything bad about the place. Zarda declaration at ¶ 19.
54. The complainant in the Ripoff Report alleged that “once in the plane the tandem instructor was feeling up my girlfriend and her friends as well.” AD exhibit K, page 1. The complainant also goes on to say that SDLI is unsafe, and, like a complainant on yelp.com, that the customer service is very poor. Id.
55. The complainant also noted that one of the passengers this summer had broken his ankle. Id.
56. Maynard finally at the second day of his deposition had to admit that he wrote the response on the Ripoff Report, which starts at page 2 of AD exhibit K. He identifies himself as the owner and defends his operation.
57. Ray admits that indeed a passenger did break his ankle, but he blamed the passenger for not picking up his feet as instructed. Id.
58. Thus, not matter the merit of the complaints, defendant’s 56.1 statement, ¶ 78, wherein it indicates the only complaint was against Don is a lie.

59. Presumably, unlike plaintiff's situation, Maynard did something of an investigation pertaining to the passenger broke his leg, and Maynard came to the conclusion that his employee was not at fault. Page 2 of AD exhibit K.
60. But Ray did no investigation whatsoever for plaintiff other than to review the exculpatory video, which is no investigation at all, since Orellana's and Kengle's recollection of the incident differ in material respects. Additionally, Ray had every reason to believe plaintiff was simply being safe and had no interest in Rosana given that he is gay. Zarda Dep. at 254-55. The video shows nothing inappropriate. AD Exhibit B.
61. Plaintiff was not even allowed to see the video, to defend himself and answer the allegations that he had touched a passenger inappropriately. Zarda dec. at ¶¶ 4, 28, 29, 35, 42.
62. Plaintiff has more experience in terms of actual jumps than Maynard. MD at 249.
63. Maynard saw the jump video and rated it eight or nine out of 10; Richard Winstock, the chief instructor, gave it a 97 out of 100. Winstock thought that the landing was superb. MD at 280-81; Winstock dep. at 75.

64. Although on criticism that Ray had was that Ray wasn't touching Rosana enough during the pre-jump. Md. at 280.
65. Yet despite the evidence that the jump was excellent if not close to perfect, plaintiff was not given an opportunity to know who complained against him; Maynard did not speak to the actual complainant, only her unemployed boyfriend. Maynard did not speak to anyone in the plane. See citations to the evidence, supra.
66. Rosanna, for her part, did not want to file a complaint; only her unemployed boyfriend, who skillfully got a complete refund without seeming to ask for one. Orellana Dep. at 69; MD at 186-87.
67. In response to the complaint in the ripoff report Maynard noted quite obviously," personally if someone was feeling up my girlfriend, I would do something on the spot to defend her dignity-unless of course I am [a] fourth-grader." AD Exh. K, p.3.
68. Ray noted that "it is a shame in today's world something like this can actually be put out there for all to see with no proof, and I have to respond to these lies and accusations." Id.
69. Yet he credited the secondhand story of the unemployed boyfriend of Rosanna without so much as an investigation.

70. At his deposition he was shown the photographs taken at Rosana's jump, and had to admit that he did not see anything inappropriate. MD 323-25.
71. Lauren Callanan, the former office manager Skydive Long Island said that she'd responded to the complaints on the ripoff report. Callanan deposition at 40.
72. Donald Zarda is 100% gay. Zarda Dec. ¶ 10.
73. He has never been with a woman and is repulsed by the thought of being with a woman. Id.
74. Rosanna didn't read passed the first page the waiver, see dep. at 13, at so she didn't know she probably didn't know she was consenting to being in very close proximity to the instructor.
75. Yet for safety purposes she needs to be touched at various points on her body, and two of these points are at the hips. MD at 28.
76. There are stripes at the hips that need to be manipulated. MD at 27-28.
77. That is why a person doesn't like to be touched should not skydive. MD 17.
78. If a person goes out in the sky dive and makes the complaint that your instructor was adjusting straps around her body and she felt uncomfortable about it that would not be a legitimate complaint. MD at 20

79. Since the overwhelming majority of tandem instructors are men, when heterosexual couples stop at the drop zone, a tired joke is often made to the effect of, "I bet you didn't think year girlfriend was going to get strapped up two another guy." Maynard Dep. At 39, 40.
80. Maynard has never fired someone for making a statement like that. MD at 40-41.
81. He has never fired an instructor where a passenger has had an injury. MD at 41.
82. On June 21, 2010, plaintiff was called in to meet with Maynard who suspended plaintiff on the spot as a result of the complaint made by Kengle. Zarda Dec. at 28.
83. Maynard also took out of plaintiff's paycheck to reimburse himself for the refund that he gave to Kengle. MD at 188.
84. Although he gave it back, it's no different than stealing something then giving it back and therefore wrong. MD at 190.
85. Logically, Zarda lost the beneficial use of that money during the week it was taken away from him.
86. Maynard told plaintiff two things had come up in Kengle's complaint: (1) that plaintiff had said to a female passenger words to the effect that, "don't

- worry about how close we are because I'm gay.” The woman also made the allegation that plaintiff said he just broke up with his boyfriend. MD at 182
87. In fact that's not factually true, but plaintiff may have said “and I have the ex-husband to prove it.” Zarda Dec. at 23.
88. Zarda tried to get Richard Winstock to speak to Ray and let him come back to the drop zone, Zarda dec. at ¶ 36, and Winstock believed that plaintiff was an excellent instructor and should return. See Winstock Dep. at 24-25, 83.
89. Richard didn't know what the complaint was about but in order to stave off plaintiff's termination, he strongly recommended that plaintiff be given a letter of reprimand for what ever happened. Winstock deposition at 83.
90. Later Winstock would quit SDLI to Maynard's dissatisfaction. MD at 347. But unbeknownst to Maynard, id., Winstock could no longer stand working with Ray and quit. He sent plaintiff an email telling him that his termination had been wrong. Zarda Dec. at Exhibit E, p.2.
91. Winstock had been unsuccessful in convincing Maynard not to fire Ray, and when Zarda returned on June 28, an enraged Maynard terminated him. Antollino Dec. Exhibit B.
92. The tone of his voice, in parts, is of anger, perhaps rage. Id.

93. He stated words to the effect that plaintiff was not being fired because it was “a gay issue.” MD at 226. He noted that the offense was the sharing of personal information, and that if Rich Winstock was talking about his “chicks” to passengers, he too would be fired. Id.
94. But in fact at his deposition Winstock testified that it is on rare occasion appropriate to describe his sexuality in order to allay the fears of a passenger, particularly an older female passenger. Winstock dep. at 109-110.
95. Maynard assumed this to be true at his deposition, and contrary to what he told Zarda, he said there was nothing wrong with it, and did not fire Winstock; rather, he was very unhappy when Winstock left him. MD at 220, 347.
96. Plaintiff believed that it was appropriate to announce to Rosanna his sexual orientation for two reasons. First, he believed that the joke to the effect “hey I bet you didn't think your girlfriend was get a get strapped to another guy” had made her feel uncomfortable, and he wanted her to know that he had no inappropriate ideas about being so close to her. Zarda Dec. at ¶ 23.
97. Zarda’s experience with women is that they are cool about homosexuality. Id. at ¶¶ 8, 23.
98. Further, Zarda wanted to remove himself from the insinuation that he was heterosexual or was being strapped to the woman for his gratification. Id.

- Even Maynard thought that might be an appropriate thing to do under the circumstances. MD at 161-62.
99. Don tired of the boy-girl joke about “being strapped to another guy,” and does not believe that just because he is a man he must acquiesce into the assumption that he is heterosexual, despite that he appears very athletic and masculine. Defendant’s 56.1 statement at § 31 and Zarda Dec at ¶¶ 8, 23.
100. Don used his judgment to make the passenger more comfortable in that one situation just as Rich Winstock uses his judgment to make the passenger more comfortable in certain situations. Id.
101. Nevertheless, Don’s judgment call, just like the strategy that Winstock uses in a heterosexual context, backfired. Even though Rosana didn't want to complain, her boyfriend a waiter was unemployed at the time and complained. Ray credited his second-hand account so immediately and was so offended he jumped on the allegation without even conducting an investigation except to review a video that contain only exculpatory information, or at least information that did not lead to the conclusion that plaintiff was doing anything inappropriate. MD at 203.
102. Additionally, Maynard brought up the second-hand allegation that Rosanna, who didn't read the waiver, and whom he didn't talk to, felt uncomfortable at the hips. MD at 247.

103. Maynard, though his sister was gay, has never been to a gay establishment and knows no other gay people than his sister's widow. MD at 100, 114.
104. Ray believes that being gay is an "after hours" affair, consisting of "escapades" that Zarda was "notorious for. MD at 139, 226, Defendants' 56.1 statement at ¶ 38.
105. Plaintiff never gave Maynard that inclination of an idea that he was sexually gratified by women, and in fact repeated at the suspension interview that he was gay. Zarda Dec. at ¶ 33.
106. Maynard hired Zarda in 2009 and 2010 knowing he was gay.¹
107. Don's being gay was acceptable up to a point - as long as he didn't "flaunt" his after-hours, notorious escapades. 139, 226, Defendants' 56.1 statement at ¶ 38.
108. Obviously, Ray has an old fashioned notion of what it means to be gay, and didn't want to offend Kengle's bigotry. See, e.g., Kengle dep. at 24 and 38.
109. On several occasions when plaintiff did anything that was beyond the norm of masculinity, Maynard would make a derisive comment. First, when plaintiff returned from an injury in 2009 with a pink cast, he demanded that

¹ Plaintiff denies that he ever told Ray he was gay, and certainly not in 2001 when he was first hired. Zarda Dec. at ¶ 6. Nevertheless, this dispute is irrelevant insofar as homosexuals had no legal protections in 2001 and that statute of limitations to any other cause of action would have long ago expired.

- plaintiff paint the cast black in order to remain at the drop zone. Zarda Dec. at ¶ 17.
110. Defendants allege that plaintiff was asked not to paint the cast black, but to put a sock over it so as not to scare customers that injury could occur. Defendants' rule 56.1 statement at ¶ 25.
111. But the Ray safety video, Antollino Dec. at Exhibit B, talks about the possibility of injury and death from skydiving. So does the waiver. Id. at Exhibit A. So the possibility of injury is affirmatively mentioned to all passengers.
112. Furthermore, the cast Don wore is large, Zarda Dec. at Exhibit A, and it is probably not feasible to find a sock that would fit over it.
113. Furthermore, assuming plaintiff had placed a huge sock on the cast, he still would have been on crutches, and it would have looked like he had a cast with a sock on it, fooling no customers. Zarda Dec. at Exhibit A and ¶ 17.
114. Pink is the color of gay liberation, and that is why plaintiff chose that color for his cast. Zarda Dec. at 15. Ray wanted him to paint it black and erase the color of the pink triangle. Id. at 111.
115. Sometime later after the cast was taken off, plaintiff was at the drop zone in a boot. Zarda Dec. at 18. He took the boot off near the Coke machines, and

- exposed his pink painted toenails. Ray's reaction was to say, "That's Gay!" in a derisive tone. Id.
116. During the termination discussion, Ray describes plaintiff's homosexuality as an "escapade." Termination audio at Exhibit B.
117. In fact, escapade is a derisive term to describe one's sexuality. Webster's defines escapade as "a usually adventurous action that runs counter to approved or conventional conduct." It offers the following synonyms: "antic, caper, capriccio, dido, prank, frolic, gag, jest, knavery, monkeyshine(s), practical joke, roguery, trick, waggery." See Webster's Online <http://www.merriam-webster.com/dictionary/escapade?show=0&t=1365475292>. This is disrespectful way of discussing a person's being.
118. In their 56.1 statement, defendants describe plaintiff's acknowledgment of his sexuality as "notorious." See Defendant's 56.1 statement at ¶ 38.
119. In fact, the word notorious is another derisive term used to describe a person's identity. Notorious is defined by Webster's as "widely and unfavorably known" and describes as synonyms as "discreditable, disgraceful, dishonorable, ignominious, infamous, louche, disreputable, opprobrious, shady, shameful, shoddy, shy, unrespectable." See <http://www.merriam-webster.com/dictionary/notorious>.

120. Ray discredited plaintiff for discussing “personal issues” personal issues as one of the alleged reasons for firing him. MD at 226; termination audio, AD at Exh. B.
121. While admittedly being gay is a personal issue, there are numerous personal issues that Ray would not fire an employee for discussing at work. 256-57. The only personal issue that Ray testified he admonish or discipline in employee is for discussing homosexuality. MD at 256-57. Although he said at the termination meeting that he would fire Rich Winstock for talk about heterosexuality, when he learned it happened – or assumed it did – he did not fire Rich. See ¶ 97, supra.
122. The Human Rights Campaign (HRC) is the largest gay rights organization in the country and has an annual dinner where the president speaks. See <http://www.whitehouse.gov/the-press-office/remarks-president-human-rights-campaign-dinner>.
123. The HRC has a famous T-shirt called “Legalize Gay.” See Antollino Dec. at Exhibit X. Ray would not allow an employee to wear such a T-shirt at his drop zone because it is not a platform for any political issues, yet on his Facebook page he made a tribute to the veterans. Id. at Y. This is not to denigrate veterans, but one's veteran status is personal information as well,

- and political to some extent; an employee can discuss veteran's status at the drop zone, along with a host of other things. Id. and MD at 256-57.
124. Yet mentioning one's sexual orientation to a customer is a no no, because it might be offensive to customers. MD at 252-53.
125. Defendants push hard in their 56.1 statement to suggest that the allegation that plaintiff groped Rosanna for his personal gratification is true. See generally defendant's 56.1 statement and e.g. at ¶ 94.
126. However, they have no proof whatsoever that plaintiff is *not* 100% gay, has *never* been with a woman, and only did some pretend to date of women before he came out of the closet. Zarda Dec. at ¶ 10.
127. Ray had every reason to disbelieve that plaintiff had in any way sexually harassed a woman. First, he is openly and, according to defendants, "notoriously" gay; second, touching Rosana at the thighs was professionally justified to protect her safety; and, third, the contemporaneous evidence overwhelmingly shows no impropriety on plaintiff's part. See AD Exhibit B.
128. As to the allegation that plaintiff "whispered" into Rosana's ear, Maynard knows that this is normal, because otherwise the instructors mouth or teeth might hit the back of the passengers and crack your teeth. Winstock dep. at 50; Zarda Dec. at 25; MD at 259.

129. Finally, where Maynard had the financial incentive to allege that plaintiff sexually harassed a customer-unemployment-he backed off the stronger allegation that might save his premiums from being increased. Antollino Dec. at Exhibit O; Maynard Dep. at 343.

130. Maynard immediately credited Kengle's harassment allegation without interviewing the alleged victim of harassment by immediately suspending plaintiff and taking away from him \$660 *that he had earned*. MD at 188.

131. However, by the time a couple of months had gone by Maynard couldn't bring himself to mention this allegation even though it was in his financial incentive to do so. Antollino Dec. at Exhibit O; Maynard Dep. at 343.

132. Likely by then, Maynard realized how ridiculous the allegation was.

A few points about wages:

133. Although expected to be on the premises that STLI approximately 12 hours per day, plaintiff was only paid per job. Compare amended complaint at ¶ 15 with admission answer to amended complaint at ¶ 15.

134. Some days went by when plaintiff would be there all day and not make a dime, not even minimum-wage for the hours he spent at work at his employers insistence. Compare amended complaint at ¶ 16 with admission in answer to amended complaint at ¶ 16.

135. Maynard kept no sign in sheets or other records of employees comings or goings. Zarda Wage Aff. at Exhibit A.
136. Nevertheless plaintiff's altimeter – the device that records every single jump – showed that while employed at SDLI he worked 24 days over the course of 2009 & 2010 and received no pay because he did no jumps. Zarda Wage Dec. at ¶ 10.
137. This means that for those days plaintiff worked many hours for no minimum wage.
138. The drop zone is near nothing. See AD at Exhibit V, being twenty minutes on call is of no benefit when you're basically in a desert with an airport and a delicatessen.
139. Don is owed \$1757.22, Zarda Wage Aff. at ¶ 10. plus costs, attorneys' fees and penalties available under the New York Labor Law to be determined at a later time.

A few points about the defendant's defect electronic search:

140. First, Ray has no idea what Lauren did in her electronic search. MD at 352.
141. Lauren was the one who performed the electronic search mentioned in the affidavit of Raymond Maynard, see Zarda Dec. Exhibit G but she admitted that, number one, they have multiple

computers, and at the time of the search there was no server. Dep.
at 13.

142. She also admitted, “I cannot confirm whether I went to each individual station to perform any type of comprehensive search. Therefore, I can't say whether I performed a comprehensive search or not.”

143. Plaintiff turned up an electronic document – praise from a customer – that was given to him by Lauren. Zarda Dec. at Exhibit F.

144. It is clear, that despite Ray’s conclusory affidavit, the defendants’ electronic search was defective and insufficient, despite court orders. See ¶¶ 139-142.

Dated: New York, New York
April 9, 2013

_____/s/_____
Gregory Antollino, Esq.