

0001

1
 2 UNITED STATES DISTRICT COURT
 3 EASTERN DISTRICT
 4 -----X
 5 DONALD ZARDA,
 6 Plaintiff,
 7 - against - INDEX NO.:
 8 CV-10-4334
 9 ALTITUDE EXPRESS, INC., d/b/a
 10 SKYDIVE LONG ISLAND AND RAY MAYNARD,
 11 Defendants,
 12 -----X
 13 Bee Reporting Agency, Inc.
 14 800 Veterans Memorial Highway
 15 Hauppauge, New York
 16 November 9, 2011
 17 1:30 P.M.

EXAMINATION BEFORE TRIAL OF ROSANA

18 ORELLANA, a non-party witness, taken by the
 19 attorney for the Plaintiff, pursuant to Subpoena,
 20 and held before Deborah Thier, a Notary Public of
 21 the State of New York at the above-stated time and
 22 place.

* * * *

0003

1
 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 certifi-
 7 cation, 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
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 23
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0002

1
 2 APPEARANCES:
 3
 4 GREGORY ANTOLLINO, ESQ.
 5 Attorney for the Plaintiff
 6 18-20 West 21st Street - Suite 802
 7 New York, New York 10010
 8
 9 ZABELL & ASSOCIATES, P.C.
 10 Attorneys for the Defendants
 11 4875 Sunrise Highway - Suite 300
 12 Bohemia, New York 11716
 13 BY: SAUL D. ZABELL, ESQ.
 14
 15 ALSO PRESENT:
 16 JOHN SANCHEZ, ESQ.
 17 DONALD ZARDA
 18
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0004

1
 2 (At this time, a ruling was sought from
 3 Judge Joseph Bianco via conference call.)
 4 COURT CLERK: Please state your
 5 appearances.
 6 MR. ANTOLLINO: Gregory Antollino,
 7 counsel for the plaintiff, Donald Zarda.
 8 Good afternoon, Your Honor.
 9 JUDGE BIANCO: Good afternoon.
 10 MR. ZABELL: For the defendants, Saul
 11 Zabell, from the law firm of Zabell and
 12 Associates, attorneys for the defendants.
 13 Good afternoon, Your Honor.
 14 JUDGE BIANCO: Good afternoon.
 15 My understanding is the issue is
 16 regarding a deposition?
 17 MR. ANTOLLINO: Yes, Judge.
 18 JUDGE BIANCO: What's the issue?
 19 MR. ANTOLLINO: The issue is this. I
 20 have two non-party witnesses who I have
 21 subpoenaed. Both have information about the
 22 same transaction and occurrence, and I don't
 23 want the first witness listening to the
 24 second witness' testimony or vice versa.
 25 Rule 615 specifically applies to this, the

0005

1 Rosana Orellana 5
2 exclusion of witnesses.
3 I don't want one witness' testimony
4 joggng 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

0007

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.

0006

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

0008

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

0009

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.

0011

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.

0010

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

0012

1 Rosana Orellana 12
2 MR. ZABELL: Thank you, Your Honor.
3 R O S A N A O R E L L A N A,
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.

0013

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

0015

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.

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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?

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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

0017

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

0018

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

0019

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?

0020

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?

0021

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.

0023

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.

0022

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?

0024

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

0025
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

0026
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.

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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.

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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.

0029

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?

0031

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.

0030

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,

0032

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

0033

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 --

0035

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.

0034

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?

0036

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.

0037

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 is the 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.

0038

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?

0039

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.

0040

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

0041

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?

0043

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?

0042

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.

0044

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.

0045

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

0047

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.

0046

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?

0048

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

0049

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?

0051

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?

0050

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

0052

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'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

0053

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

0054

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.

0055

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?

0056

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.

0057

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.

0059

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.

0058

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?

0060

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 --

0061
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

0062
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,

0063
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.

0064
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.

0065

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.

0066

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

0067

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?

0068

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

0069

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

0070

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?

0071

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.

0072

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

0073
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

0075
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.

0074
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.

0076
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?

0077

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

0078

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.

0079

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.

0080

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.

0081

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.

0083

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.

0082

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.

0084

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?

0085
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

0086
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

0087
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

0088
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.

0089
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.

0091
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 Counsel?
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

0090
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.

0092
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?

0093
1 Rosana Orellana 93
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

0094
1 Rosana Orellana 94
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

0095
1 Rosana Orellana 95
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.

0096
1 Rosana Orellana 96
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?

0097
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

0098
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?

0099
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

0100
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

0101
 1 Rosana Orellana 101
 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.

0103
 1 Rosana Orellana 103
 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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 13 (Continued on following page to
 14 allow for signature and jurat.)
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0102
 1 Rosana Orellana 102
 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

0104
 1 Rosana Orellana 104
 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 _____
 20 ROSANA ORELLANA
 21 Subscribed and sworn to
 22 before me on this ____ day
 23 of _____, 2011.
 24
 25 _____
 26 NOTARY PUBLIC

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1 106
2 CERTIFICATION
3

4 I, Deborah Thier, a Notary Public
5 of the State of New York do hereby certify:
6 That the testimony in the within
7 proceeding was held before me at the aforesaid
8 time and place. That said witness was duly sworn
9 before the commencement of the testimony, and that
10 the testimony was taken stenographically by me,
11 then transcribed under my supervision, and that
12 the within transcript is a true record of the
13 testimony of said witness.

14 I further certify that I am not related
15 to any of the parties to this action by blood or
16 marriage, that I am not interested directly or
17 indirectly in the matter in controversy, nor am I
18 in the employ of any of the counsel.

19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this 28th day of November, 2011.

21
22
23
24
25

DEBORAH THIER

ERRATA SHEET

NAME OF CASE: Zarda v Altitude Express

DATE OF DEPOSITION: n/a/n

NAME OF DEPONENT: Rosana Orrellana

The following corrections, additions or deletions are noted for the following reasons:

PAGE	LINE	CHANGE	REASON
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	
 	 	 	

Subscribed and Sworn to Before Me
This ___ day of _____, 20__.

Rosana Orrellana
WITNESS' SIGNATURE

NOTARY PUBLIC Commission Expires: