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April 16, 2020

**VIA ELECTRONIC MAIL: Failla\_NYSDChambers@nysd.uscourts.gov &  
VIA ELECTRONIC CASE FILING**

The Honorable Katherine Polk Failla  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, New York 11722

**MEMO ENDORSED**

**Re: Kaplan v. NYS Dep't. of Labor  
Case No.: 18-CV-3629 (KPF)**

Your Honor:

This firm is counsel to Plaintiff in the above-referenced matter. Pursuant to Your Honor's Order of April 13, 2020 [ECF Doc. No. 97], please find enclosed a copy of the deposition transcript of Kathleen Dix, Esq.

Although we welcome the Court's review of the transcript in its entirety, we respectfully refer Your Honor to excerpts pertinent to both Plaintiff's pending application [ECF Doc. No. 95], and the opposition of Ms. Dix [ECF Doc. No. 96]. Accordingly, relevant portions can be found at 55:2-16; 69:13-71:19; 75:15-79:14; 113:7-115:22; 121:7-122:10; and 164:10-171:18. As can be seen, the record supports the events as described in Plaintiff's pending application.

Accordingly, Plaintiff respectfully reaffirms his request for the Court to compel Kathleen Dix, Esq. to submit for the continuation of her deposition pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P") 30(d)(1). As a result of Mr. Luibrand's representations and behavior, Plaintiff further requests the costs incurred with having the deposition transcript expedited, as well as the complete costs of any continuation of her deposition, be born by Ms. Dix and her counsel and awarded to Plaintiff pursuant to Fed. R. Civ. P. Rules 30(d)(3)(C) and 37(a)(5).

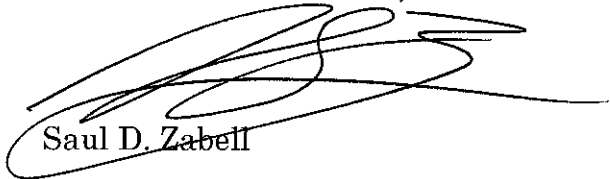


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We thank the Court for its continued time and attention to this matter. Counsel remains available should Your Honor so require.

Respectfully submitted,

**ZABELL & COLLOTTA, P.C.**



Saul D. Zabell

Encl.

cc: Client  
Michael Berg, Esq. (via Electronic Mail: Michael.Berg@ag.ny.gov)  
Kevin Luibrand, Esq. (via Electronic Mail: Kluibrand@Luibrandlaw.com)

The Court has reviewed the entirety of the transcript, which, while frequently disturbing, does not substantiate one of counsel for Ms. Dix's principal arguments – that Plaintiff's counsel referred to Ms. Dix as Hitler.

That said, the Court observes that Plaintiff's counsel assumed the role not only of questioner, but of Greek Chorus as to many of Ms. Dix's answers, thereby unnecessarily prolonging her deposition. Counsel's treatment of the witness was also unnecessarily rude, and by the end of the deposition, counsel appeared unwilling or unable to let Ms. Dix complete her answers to his questions. Accordingly, the Court sees no reason to order the continuation of Ms. Dix's deposition, and no reason to impose costs on her or her counsel. Application DENIED.

Dated: April 17, 2020  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE