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March 31, 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. We respectfully submit the foregoing pursuant to Federal Rule of Civil Procedure 60(b)(6) in response to the Court's March 30, 2020 Order [ECF Doc. No. 89].

While of course bound by Your Honor's Order, we are concerned it may fail to fully consider the scope of my auditory limitations. The sensory deprivation experienced in a remote situation deprives me the ability to fully and fairly examine witnesses. By virtue of my limitations I rely on visual cues more than most. To that end, video clouds body language. This lack of interpersonal contact during the deposition represents a tangible disadvantage to me. And, as stated under prior cover, Defendant is acutely aware of my disability, itself accommodating requests for in-person hearings.

We note for the Court that Plaintiff has filed a State Court action (Index No. 619183/209) against three (3) of the deponents: Messrs. Ben-Amotz, Paglialonga, and Ms. Dix. The Court's March 30, 2020 Order necessitates that each anticipated deponent will now need to appear for an in-person re-examination to cure the inevitable deficiencies stemming from remote depositions.

We therefore respectfully request the Court reconsider its Order directing that the depositions of this matter occur through video conference. In so doing, we

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also respectfully ask the Court reconsider extending the deadline of April 17, 2020 to May 17, 2020. This proposed date incorporates the anticipated curtailment of social distancing guidelines through the end of April 2020. *See* <https://www.nytimes.com/2020/03/29/world/coronavirus-live-news-updates.html>.

We thank the Court for its continued time and attention to this matter. Counsel remain available should the Court require.

Respectfully submitted,

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



Saul D. Zabell

cc: Client  
All Counsel of Record (*via* Electronic Case Filing)

Application DENIED. The Court has personally observed counsel's auditory abilities in numerous court appearances, both in-person and telephonic, and continues to believe that depositions by video conference strike the best balance between counsel's needs and everyone's health concerns.

Dated: March 31, 2020  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE