

Arlene Smoler

From: William Collins [collinsw@assembly.state.ny.us]
Sent: Tuesday, May 29, 2012 5:08 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us
Subject: draft settlement agreement and releases
Attachments: [REDACTED] SETTLEMENT AGREEMENT.doc

CONFIDENTIAL SETTLEMENT DOCUMENT

Arlene and Nancy,

After several conversations with both of you and extensive mediation/negotiations, we appear to have successfully concluded our negotiations with both complainants for a total cash outlay for damages and attorney's fees of \$135,080 (\$103,080 from the Assembly and \$32,000 from the Assemblyman). Note that complainants initially sought \$1.2M and reduced their settlement number only once (to \$600,000) before we drew a hard-and-fast line at salary/benefits from their continuing employment to May 30 (they have both actually been working) and damages (not frontpay) as noted.

I have drafted the attached and forwarded it around internally and to the Assemblyman's counsel. Note that it does not provided liquidated damages for a breach of confidentiality by us (I suspect the complainant's counsel will seek this), I'm expecting the distribution breakdown from complainant's counsel imminently and we'll to pro-rata Assembly/Assemblyman contributions, the releases are to be executed in relation to their receipt of the cash, and it's all cash (so we'll do 1099's).

I'd appreciate any thoughts either of you might have on this draft.

Bill

8/29/2012

DRAFT SETTLEMENT AGREEMENT

THIS AGREEMENT, made by and between the following parties: the Assembly of the State of New York and Member of Assembly Vito Lopez (who may, hereinafter, be referred to collectively as the "Employer"), and [REDACTED] residing at [REDACTED] and [REDACTED] residing at [REDACTED] (who may, hereinafter, be referred to collectively as the "Employees").

WHEREAS, a dispute has arisen concerning the employment of the Employees in the office of the Member of Assembly Vito Lopez and,

WHEREAS, the parties desire to resolve this matter without resort to litigation or any administrative proceeding of any sort;

NOW, THEREFORE, it is agreed between the Employer and the Employees, individually and collectively, that:

1. The Employer agrees to pay [REDACTED] the lump sum [REDACTED] as damages in lieu of any other form of compensation in complete resolution of this dispute including but not limited to any form of wages, benefits or other potential frontpay or backpay liability. The payment of this amount is to be allocated between the Assembly of the State of New York and Member of Assembly Vito Lopez as follows: Upon receipt of such payment, [REDACTED] hereby agrees to execute the Release attached hereto as Exhibit "A".
2. The Employer agrees to pay [REDACTED] the lump sum of [REDACTED] as damages in lieu of any other form of compensation in complete resolution of this dispute including but not limited to any form of wages, benefits or other potential frontpay or backpay liability. The payment of this amount is to be allocated between the Assembly of the State of New York and Member of Assembly Vito Lopez as follows: Upon receipt of such payment, [REDACTED] hereby agrees to execute the Release attached hereto as Exhibit "B".
3. The Employer agrees to pay the lump sum of [REDACTED], collectively, to the law firms of Cutti Hecker Wang LLP and Allred Maroko Goldberg in complete resolution of any and all attorney fee obligations or liabilities in relation to any legal work performed in their representation, individually or

collectively, of the Employees in relation to this dispute. The payment of this amount is to be allocated between the Assembly of the State of New York and Member of Assembly Vito Lopez as follows:

4. Both [REDACTED] and [REDACTED] will resign from Assembly employment effective close of business May 31, 2012.
5. Upon execution of this Agreement, [REDACTED] will receive the attached "to whom it may concern", generic positive recommendation (Exhibit "C") concerning the performance of her tasks and duties assigned to her during her Assembly employment. In accordance with Assembly practice, inquiries from any potential employer, potential landlord, potential creditor, or other such person or entity will receive a response indicating [REDACTED]'s last job title, duration of Assembly employment, and annual salary.
6. Upon execution of this Agreement, [REDACTED] will receive the attached "to whom it may concern", generic positive recommendation (Exhibit "D") concerning the performance of her tasks and duties assigned to her during her Assembly employment. In accordance with Assembly practice, inquiries from any potential employer, potential landlord, potential creditor, or other such person or entity will receive a response indicating [REDACTED]'s last job title, duration of Assembly employment, and annual salary.
7. Member of Assembly Vito Lopez and the entire staff of the office of Member of Assembly Vito Lopez will, within 90 days of the execution of this Agreement receive supplementary instruction – in addition to that which is biennially provided to Members of the Assembly and staff – concerning the identification and avoidance of sex discrimination and sexual harassment in the workplace. This training may be conducted in separate sessions.
8. Except in response to a court order or in response to a valid subpoena, neither any party to this Agreement, nor any representative, heir, assign or other person affiliated with any party to this Agreement will discuss or make any statement of any sort concerning the underlying circumstances of the dispute which has given rise to this Agreement or any terms of this Agreement with any other person or entity. Each of the Employees and their representatives agree that the Employer shall be entitled to liquidated damages of five thousand dollars (\$5,000) or actual damages, whichever is greater, from the person or entity breaching the terms of this paragraph for each breach of this paragraph, and any breach of this paragraph by either Employee or their representative shall be considered a material breach.
9. Nothing contained herein shall be deemed to imply or to constitute an admission of any sort that any party to this Agreement acted improperly or unlawfully.

IN WITNESS WHEREOF, the parties and their representatives have hereunto set their hands.

Date:

NEW YORK STATE ASSEMBLY

By: _____
(Print Name)

TITLE: Counsel to the Majority

Date:

Date:

CUTTI HECKER WANG LLP

By: _____
(Print Name)

Date:

MEMBER OF ASSEMBLY VITO LOPEZ

Date:

ALLRED MROKO GOLDBERG

By: _____

Date:

Exhibit "A"

RELEASE

██████████, residing at _____, on behalf of herself, her heirs, estate, executors, administrators, successors and assigns, in consideration of receipt of the lump sum of _____ received, in toto, from the Assembly of the State of New York and Member of Assembly Vito Lopez collectively, and in consideration of the other promises and covenants set forth in the attached Agreement releases and discharges the State of New York and Member of Assembly Vito Lopez from any and all actions, causes of action, suits, agreements, promises, damages, judgment, complaints, claims and demands in law or equity, whether arising under the laws of the State of New York or any other jurisdiction, arising out of or relating to the employment of ██████████ by the Assembly of the State of New York and/or Member of Assembly Vito Lopez.

IN WITNESS WHEREOF, ██████████ has hereunto set her hand on this ____ day of ____, 2012.

██████████

STATE OF NEW YORK
COUNTY OF _____

On the ____ day of _____, 2012, before me personally came ██████████, to me known, and known to me to be the individual described in, and who executed the foregoing Release, and duly acknowledged to me that she executed the same.

██████████

Exhibit "B"

RELEASE

██████████, residing at _____, on behalf of herself, her heirs, estate, executors, administrators, successors and assigns, in consideration of receipt of the lump sum of _____ received, in toto, from the Assembly of the State of New York and Member of Assembly Vito Lopez collectively, and in consideration of the other promises and covenants set forth in the attached Agreement releases and discharges the State of New York and Member of Assembly Vito Lopez from any and all actions, causes of action, suits, agreements, promises, damages, judgment, complaints, claims and demands in law or equity, whether arising under the laws of the State of New York or any other jurisdiction, arising out of or relating to the employment of ██████████ by the Assembly of the State of New York and/or Member of Assembly Vito Lopez.

IN WITNESS WHEREOF, ██████████ has hereunto set her hand on this ____ day of ____, 2012.

STATE OF NEW YORK
COUNTY OF _____

On the ____ day of _____, 2012, before me personally came ██████████, to me known, and known to me to be the individual described in, and who executed the foregoing Release, and duly acknowledged to me that she executed the same.

Arlene Smoler

From: William Collins [collinsw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 12:08 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: SECOND draft settlement agreement

Arlene and Nancy,

I have recieved recommended changes from Assemblyman Lopez' counsels and our outside employment law consultant and amended our draft accordingly. This has not been shared with complainants counsels. If you have time (we probably will end up keeping thes two folks on until the end of the payroll period - 6/6/12 - as we negotiate the terms), we'd appreciate your identification of anything you see as particularly problematic.

Bill

Arlene Smoler

From: Arlene Smoler
Sent: Wednesday, May 30, 2012 12:49 PM
To: 'William Collins'; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement
Bill- I don't see an attachment of the SECOND draft. Am I missing something?

Arlene

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From: William Collins [collinsw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 1:02 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement
Attachments: [REDACTED] SETTLEMENT AGREEMENT.doc

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Bill

DRAFT SETTLEMENT AGREEMENT

THIS AGREEMENT, made by and between the following parties: the New York State Assembly (or, "Assembly") and Member of Assembly Vito Lopez (who may, hereinafter, be referred to collectively as the "Employer"); [REDACTED] residing at [REDACTED] and [REDACTED] residing at [REDACTED] (who may, hereinafter, be referred to collectively as the "Employees"); and Cuti Hecker Wang, LLP, and Allred Maroko & Goldberg (who may, hereinafter, be referred to collectively the "Law Firms").

WHEREAS, a dispute has arisen concerning the employment of the Employees in the office of the Member of Assembly Vito Lopez and,

WHEREAS, the parties desire to resolve this matter without resort to litigation or any administrative proceeding of any sort;

NOW, THEREFORE, it is agreed between the Employer and the Employees, individually and collectively, that:

1. The New York State Assembly will pay to the law firm of Cuti Hecker Wang LLP a lump sum of one hundred three thousand, eighty dollars (\$103,080), as soon as is reasonably possible, for distribution as prescribed by the terms of this Agreement.
2. Member of Assembly Vito Lopez will pay to the law firm of Cuti Hecker Wang LLP a lump sum of thirty-two thousand dollars (\$32,000), as soon as is reasonably possible, for distribution as prescribed by the terms of this Agreement.
3. Upon signing and execution of this Agreement by each of the Employees, each shall also sign and execute the respective Releases attached hereto as Exhibits "A" and "B". Such Releases shall be held in escrow by the law firm of Cuti Hecker Wang LLP until payment of the amounts prescribed by paragraphs 1 and 2 of this Agreement have been made.
4. Upon receipt of the payments identified in paragraphs 1 and 2 of this Agreement, Cuti Hecker Wang LLP unconditionally agrees to immediately deliver to the New York State Assembly the original, signed Releases held in escrow by them pursuant to the provisions of paragraph 3 of this Agreement. Cuti Hecker Wang LLP further agrees that there shall be no distribution or retention of any funds pursuant to paragraphs 5, 6, 7 and 8 of

this Agreement until such time as both Releases are delivered to the New York State Assembly.

5. From the amounts identified in paragraphs 1 and 2 of this Agreement, a total amount of sixty thousand, seven hundred and eighty-six dollars (\$60,786) shall be paid to [REDACTED] as damages in lieu of any other form of compensation in complete resolution of this dispute including but not limited to any form of wages, benefits or other potential frontpay or backpay liability. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, [REDACTED] shall be paid forty-six thousand three hundred and eighty-six dollars (\$46,386), and from the amount paid pursuant to paragraph 2 of this Agreement, [REDACTED] shall be paid fourteen thousand, four hundred dollars (\$14,400).
6. From the amounts identified in paragraphs 1 and 2 of this Agreement, a total amount of twenty thousand, two hundred and sixty-two dollars (\$20,262) shall be paid to [REDACTED] as damages in lieu of any other form of compensation in complete resolution of this dispute including but not limited to any form of wages, benefits or other potential frontpay or backpay liability. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, [REDACTED] shall be paid fifteen thousand four hundred and sixty-two dollars (\$15,462), and from the amount paid pursuant to paragraph 2 of this Agreement, [REDACTED] shall be paid four thousand, eight hundred dollars (\$4,800).
7. From the amounts identified in paragraphs 1 and 2 of this Agreement, the law firm of Cuti Hecker Wang LLP shall retain a total amount of twenty-seven thousand, six hundred and sixteen dollars (\$27,016) in complete resolution of any and all attorney fee obligations or liabilities in relation to any legal work performed in their representation, individually or collectively, of the Employees in relation to this dispute. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, Cuti Hecker Wang LLP shall retain the amount of twenty thousand six hundred and sixteen dollars (\$20,616), and from the amount paid pursuant to paragraph 2 of this Agreement, Cuti Hecker Wang, LLP shall retain the amount of six thousand, four hundred dollars (\$6,400).
8. From the amounts identified in paragraphs 1 and 2 of this Agreement, the law firm of Allred Maroko & Goldberg shall be paid a total amount of

twenty-seven thousand, six hundred and sixteen dollars (\$27,016) in complete resolution of any and all attorney fee obligations or liabilities in relation to any legal work performed in their representation, individually or collectively, of the Employees in relation to this dispute. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, Allred Maroko & Goldberg shall be paid the amount of twenty thousand six hundred and sixteen dollars (\$20,616), and from the amount paid pursuant to paragraph 2 of this Agreement, Allred Maroko & Goldberg shall be paid the amount of six thousand, four hundred dollars (\$6,400).

9. The Employer is not responsible for and shall be indemnified against any and all federal, state or local tax liabilities accruing to any of the Employees or Law Firms in relation to receipt of monies pursuant to paragraphs 5, 6, 7 or 8 of this Agreement.
10. The tender and acceptance of employment by each of the Employees with the New York State Assembly during the period January 1, 2012 through May 31, 2012 and payment of wages and all benefits of employment to each of the Employees during such period shall be deemed as a portion of the consideration received by them in the settlement evidenced by this Agreement.
11. Both [REDACTED] and [REDACTED] will resign from New York State Assembly employment effective close of business May 31, 2012. No further salary or other benefits of employment with the New York State Assembly shall be due, owed, or paid to either of the Employees except as payments of any sort earned for services provided during the period January 1, 2012 through May 31, 2012. Each of the Employees agrees not to reapply for future employment in any offices of the New York State Assembly or any Member thereof.
12. Upon execution of this Agreement, [REDACTED] will receive the attached "to whom it may concern", generic positive recommendation (Exhibit "C") concerning the performance of her tasks and duties assigned to her during her Assembly employment. In accordance with Assembly practice, inquiries from any potential employer, potential landlord, potential creditor, or other such person or entity will receive a response indicating [REDACTED]'s last job title, duration of Assembly employment, and annual salary.
13. Upon execution of this Agreement, [REDACTED] will receive the attached "to whom it may concern", generic positive recommendation (Exhibit "D") concerning the performance of her tasks and duties assigned to her during her Assembly employment. In accordance with Assembly practice, inquiries

from any potential employer, potential landlord, potential creditor, or other such person or entity will receive a response indicating [REDACTED]'s last job title, duration of Assembly employment, and annual salary.

14. Member of Assembly Vito Lopez and the staff of the office of Member of Assembly Vito Lopez will, within 90 days of the execution of this Agreement receive supplementary instruction – in addition to that which is biennially provided to Members of the Assembly and staff – concerning the Assembly Affirmative Action Policy, the Assembly Sexual Harassment/Retaliation Policy, and identification and avoidance of sex discrimination and sexual harassment in the workplace. A record concerning the dates and nature of this training shall be created and maintained by the New York State Assembly. This training may be conducted in separate sessions.
15. Except in response to a court order or in response to a valid subpoena, neither any party to this Agreement, nor any representative, heir, assign or other person affiliated with any party to this Agreement will discuss or make any statement of any sort concerning the underlying circumstances of the dispute which has given rise to this Agreement or any terms of this Agreement with any other person or entity. Each of the Employees and their representatives agree that the Employer shall be entitled to liquidated damages of ten thousand dollars (\$10,000) or actual damages, whichever is greater, from the person or entity breaching the terms of paragraph 15 or 16 of this Agreement for each breach of this paragraph, and any breach of paragraphs 15 or 16 of this Agreement by either Employee or their representative shall be considered a material breach.
16. The Employees hereby agree, individually and collectively, that they shall not communicate or publish, or cause to be communicated or published, any disparaging remarks, comments or statements in any form concerning any aspect, circumstance or incident involving their employment in the office of Member of Assembly Vito Lopez or any office(s) of the New York State Assembly.
17. Each of the Employees and their representatives agree that the Employer shall be entitled to liquidated damages of ten thousand dollars (\$10,000) or actual damages, whichever is greater, from the person or entity breaching the terms of paragraph 15 or 16 of this Agreement for each breach of such terms, and any breach of paragraphs 15 or 16 of this Agreement by either Employee or their representative shall be considered a material breach.
18. Any claim, action, suit or other dispute relating to any terms of this Agreement or the Releases entered into pursuant to this Agreement shall be

commenced in the City of New York and governed by the provisions of the laws of the State of New York.

19. The Employees hereby expressly acknowledge, individually and collectively, that they are signing this Agreement knowingly and voluntarily and upon the advice of the Law Firms by which they are and have been represented.
20. This Agreement may be signed in counterparts and any telefaxed or electronically transmitted signed copy of this Agreement will be equally as valid for all purposes as an original signed copy.
21. Nothing contained herein shall be deemed to imply or to constitute an admission of any sort that any party to this Agreement acted improperly or unlawfully.

IN WITNESS WHEREOF, the parties and their representatives have hereunto set their hands.

Date:

NEW YORK STATE ASSEMBLY

By: _____
(Print Name)

TITLE: Counsel to the Majority

Date:

Date:

CUTTI HECKER WANG LLP

By: _____
(Print Name)

Date:

MEMBER OF ASSEMBLY VITO LOPEZ

Date:

ALLRED MAROKO & GOLDBERG

By: _____

Date:

Exhibit "A"

RELEASE

_____, residing at _____, on behalf of herself, her heirs, estate, executors, administrators, successors and assigns, in consideration of receipt of the lump sum of sixty thousand, seven hundred and eighty-six dollars (\$60,786) received, in toto, from the New York State Assembly and Member of Assembly Vito Lopez collectively, and in consideration of the other promises and covenants set forth in the attached Agreement releases and discharges the State of New York and Member of Assembly Vito Lopez from any and all actions, causes of action, suits, agreements, promises, damages, judgment, complaints, claims and demands under Title VII of the Civil Rights Act of 1964, the New York State Executive Law, or the New York City Human Rights Act including but not limited to claims for gender, sex, race, age, religious and any other protected characteristics, sexual harassment, retaliation as well as any other actions, causes of action, suits, agreements, promises, damages, judgment, complaints, and demands of any sort under any other statutes, contract or tort law in law or equity, whether arising under the laws of the State of New York or any other jurisdiction, arising out of or relating to the employment of _____ by the Assembly of the State of New York and/or Member of Assembly Vito Lopez.

IN WITNESS WHEREOF, _____ has hereunto set her hand on this ____ day of ___, 2012.

STATE OF NEW YORK
COUNTY OF _____

On the ____ day of _____, 2012, before me personally came _____, to me known, and known to me to be the individual described in, and who executed the foregoing Release, and duly acknowledged to me that she executed the same.

Exhibit "B"

RELEASE

_____, residing at _____, on behalf of herself, her heirs, estate, executors, administrators, successors and assigns, in consideration of receipt of the lump sum of fifteen thousand, four hundred and sixty-two dollars (\$15,462) received, in toto, from the New York State Assembly and Member of Assembly Vito Lopez collectively, and in consideration of the other promises and covenants set forth in the attached Agreement releases and discharges the State of New York and Member of Assembly Vito Lopez from any and all actions, causes of action, suits, agreements, promises, damages, judgment, complaints, claims and demands under Title VII of the Civil Rights Act of 1964, the New York State Executive Law, or the New York City Human Rights Act including but not limited to claims for gender, sex, race, age, religious and any other protected characteristics, sexual harassment, retaliation as well as any other actions, causes of action, suits, agreements, promises, damages, judgment, complaints, and demands of any sort under any other statutes, contract or tort law in law or equity, whether arising under the laws of the State of New York or any other jurisdiction, arising out of or

relating to the employment of [REDACTED] by the New York State Assembly
and/or Member of Assembly Vito Lopez.

IN WITNESS WHEREOF, [REDACTED] has hereunto set her hand on this ____
day of ____, 2012.

[REDACTED]

STATE OF NEW YORK
COUNTY OF _____

On the ____ day of _____, 2012, before me personally came [REDACTED], to me
known, and known to me to be the individual described in, and who executed the
foregoing Release, and duly acknowledged to me that she executed the same.

[REDACTED]

Arlene Smoler

From: Arlene Smoler
Sent: Wednesday, May 30, 2012 1:06 PM
To: 'William Collins'
Subject: RE: SECOND draft settlement agreement
got it. thanks

From: William Collins [mailto:collinsw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 1:02 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement

No, you are accurately assessing that I frequently forget to "attach" attachments. How about this time?

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To: 'William Collins'; NGroenwegen@osc.state.ny.us
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Bill

Arlene Smoler

From: Arlene Smoler
Sent: Wednesday, May 30, 2012 2:31 PM
To: 'William Collins'; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement- other suggested provisions
Attachments: Lopez.doc

In addition to modifying the agreement so that the Assemblyman is not described or identified as an "employer," I'm attaching a sample pre-litigation settlement agreement (with names and agency deleted) which contains most of the provisions that I would include if I had negotiated a pre-litigation settlement agreement. This doesn't include any provisions regarding money but this addresses other concerns that I prefer to cover. Please feel free to call me if you have any questions about why I would typically use these types of provisions.

Arlene

Arlene R. Smoler
Deputy Attorney General
Division of State Counsel
Office of the Attorney General
State of New York
120 Broadway, 25th Floor
New York, New York 10271-0332
Tel.: (212) 416-8972
E-Mail: Arlene.Smoler@ag.ny.gov

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Bill

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This is an agreement by and between _____ and

_____ ("_____").

WHEREAS, the parties wish to resolve the differences they have, and have had all of the terms and conditions of this Agreement clearly explained, and now freely consent to enter into this Agreement, such consent not having been induced by fraud, duress or any other undue influence; and

NOW, THEREFORE in consideration of the mutual undertakings and promises contained in this Agreement, and solely by way of compromise and in full settlement of any dispute they have or may have, the parties hereby stipulate and agree as follows:

1. **Resignation-** _____ resigns from her position with _____ effective close of business on Wednesday, June __, 2012, and the official date of her separation from New York State service shall be on the same date, Wednesday, June __, 2012. A copy of _____ irrevocable letter of resignation from _____ dated May __, 2012 is annexed as Exhibit A.

2. **Return and Deletion of Documents by** _____ - To the extent she has retained any within her possession, custody or control, _____ agrees to (a) return to _____ "hard copies" of all documents that concern, refer, and/or relate to her employment by _____, including all such documents she may have provided to any third parties, including counsel, and (b) permanently delete all copies of any such documents she has retained in electronic form in any computer, including her personal computer(s), as well as arrange for the deletion of all copies of any such documents she may have provided in electronic form to

any third parties, included counsel.

3. **Accruals**- After this Agreement has been fully executed by both parties, within two business days of the effective date of _____ resignation, _____ shall send notification to the Office of the Comptroller of the State of New York ("OSC") that _____ has resigned from _____. To the extent that _____ has accrued any unused annual leave time, payable upon separation, the OSC will be notified of this fact at the time it is notified of _____'s resignation.

4. **Release of Withheld Salary**- Effective upon this Agreement being fully executed by both parties, in accordance with the regulations of the OSC, two full pay periods after _____ has been separated from New York State service, _____ shall notify the OSC that the five days of salary withheld from _____ when she commenced working for _____ should be released to her.

5. **Future Employment by _____** - _____ agrees that she will not seek, apply for or accept employment or contracted work at _____ at any time in the future, and hereby waives any claims that may accrue to her from rejection of any application for employment or contracted work at the _____. _____ acknowledges that the _____ has no obligation, contractual or otherwise, to hire, employ or contract her in the future. Should _____, in violation of this provision, seek, apply for, or accept employment or contracted work at the _____ and initiate any form of legal claim or action based thereupon against _____, the parties agree that said claim or action will be subject to dismissal with prejudice pursuant to this paragraph.

6. **Letter Confirming Dates of OAG Employment:** _____ shall provide _____ with a letter on _____ letterhead signed by the Director of Human

Resources addressed "To Whom It May Concern" which specifies only _____'s title, salary, and dates of employment.

7. **Requests for Employment References-** _____ agrees that all prospective employers seeking a job reference for her shall be directed by her to the _____'s Director of Human Resources Management Bureau (currently _____), who will be the only individual authorized by _____ to provide information to prospective employers regarding _____'s employment by _____. Upon being contacted by any prospective employers of _____, the _____'s Director of Human Resources shall provide no information regarding _____'s employment at the _____ other than to state that she resigned voluntarily and to identify her title, salary, and dates of employment. Neither the _____ nor any of it's current or former agents or employees shall be liable for any breach of this provision if any current or former employees of the _____ other than it's Director of Human Resources are asked for, and provide, any information or opinions about _____ and/or her job performance at the _____ to a prospective employer of _____.

8. **No Other Action Commenced.** _____ represents that she has not commenced, maintained, prosecuted or participated in any action, charge, complaint or proceeding of any kind, including any administrative proceeding, against the State of New York or _____, including, but not limited to, all its subdivisions and components, and any individual or official employed by or affiliated with _____ in their individual and official capacities, that currently is pending in any court, or before any administrative or investigative body or agency, and acknowledges that this representation constitutes a material inducement for the _____ to enter into this Settlement Agreement and General

Release.

9. **General Release**- For and in consideration of good and valuable consideration, the sufficiency of which is hereby acknowledged, and except for the rights and obligations set forth in this Agreement, _____ voluntarily, and after having the opportunity to consult with an attorney of her own choosing, on behalf of herself, her heirs, executors, administrators, successors and assigns (collectively "the Releasing Parties"), hereby releases and forever discharges the _____ and all of its present and former principals, employees, agents, attorneys, insurers, subdivisions, heirs, administrators and assigns (collectively "the Released Parties"), from all manner of actions, injuries, proceedings, causes of action, grievances, suits, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands whatsoever, direct or indirect, known or unknown, discovered or undiscovered, that the Releasing Parties ever had, now have, or shall or may have in the future against some, any or all of the Released Parties, for or by reason of any act, transaction, occurrence, omission, cause, matter or thing whatsoever up to and including the date of this Agreement, including but not limited to any and all claims arising under 42 U.S.C. § 1983; Titles I and II the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621 et seq.; N.Y. Executive Law ("the New York State Human Rights Law") §§292 et seq.; the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et seq.; N.Y. Civil Service Law §75-b; the United States Constitution; and the New York State Constitution.

10. **Successors and Assigns**- The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each party hereto.

11. **Authority**- Each signatory to this Agreement hereby represents and warrants that he, she or it has the requisite authority to enter into this Agreement and has not previously assigned or transferred any rights or interests with respect to the matters covered by this Agreement.

12. **Voluntary Agreement**- Each of the parties hereto executes and delivers this Agreement voluntarily after being fully informed of its terms, contents and effect, and acknowledges that he, she or it understands its terms, contents and effect. Each of the parties hereto acknowledges that he, she or it is aware, and is advised, of his, her or its right to seek the, advice of an attorney and that he, she or it has been represented by counsel of his, her or its own choosing before agreeing to any settlement or release, and no promise or representation of any kind, other than as set forth or referred to herein, has been made to any party hereto or anyone acting on behalf of such party.

13. **Entire Agreement**- This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes and embodies, merges and integrates all prior and current agreements and understandings of the parties hereto with respect to the subject matter of this Agreement, and may not be clarified, modified, changed or amended except in a writing duly executed by the parties hereto or an authorized representative of the parties hereto.

14. **Governing Law**- The terms of this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts

to be performed wholly within the State of New York, except to the extent that federal law applies to [REDACTED]'s release and waiver of federal claims pursuant to paragraph 4 of this Agreement.

15. **Severability**- If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or unenforceable in whole or in part, such decision shall not invalidate the remaining portion or affect its validity.

16. **Implementation**- The parties shall take such other and further steps as are necessary to implement the terms of this Agreement.

Dated: _____

Dated: _____ By: _____

Director of Human Resources

Arlene Smoler

From: William Collins [collinsw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 3:13 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us; jdalton@osc.state.ny.us
Cc: 'James Yates'; 'Carolyn Kearns'
Subject: THIRD DRAFT SETTLEMENT AGREEMENT

Arlene, Nancy and John,

Attached is my third effort at getting this thing right. I hope it works - at least, as our initial position. We have not shared this with complainants' counsel yet so, it may be that we'll have these folks on our payroll until the end of the payroll period (6/6/12) as we try to work the language out. we will certainly run any material change by you before we agree to it.

Thank you all for your help, Bill

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Cc: 'James Yates'; 'Carolyn Kearns'
Subject: RE: THIRD DRAFT SETTLEMENT AGREEMENT
Attachments: [REDACTED] SETTLEMENT AGREEMENT.doc

AGAIN, no freakin' attachment (I am starting to feel brain-dead!!)

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Thank you all for your help, Bill

THIRD DRAFT SETTLEMENT AGREEMENT

THIS AGREEMENT, made by and between the following parties: the New York State Assembly (or, "Assembly") and Member of Assembly Vito Lopez; [REDACTED] residing at ____ and [REDACTED] residing at ____ (who may, hereinafter, be referred to collectively as the "Employees"); and Cuti Hecker Wang, LLP, and Allred Maroko & Goldberg (who may, hereinafter, be referred to collectively the "Law Firms").

WHEREAS, a dispute has arisen concerning the employment of the Employees in the office of the Member of Assembly Vito Lopez and,

WHEREAS, the parties desire to resolve this matter without resort to litigation or any administrative proceeding of any sort, have had all of the terms and conditions of this Agreement clearly explained, and now freely consent to enter this Agreement, such consent not having been induced by fraud, duress or any other undue influence;

NOW, THEREFORE, it is agreed between the New York State Assembly, Member of Assembly Vito Lopez, the Employees, and the Law Firms, individually and collectively, that:

1. The New York State Assembly will pay to the law firm of Cuti Hecker Wang LLP a lump sum of one hundred three thousand, eighty dollars (\$103,080), as soon as is reasonably possible, for distribution as prescribed by the terms of this Agreement.
2. Member of Assembly Vito Lopez will pay to the law firm of Cuti Hecker Wang LLP a lump sum of thirty-two thousand dollars (\$32,000), as soon as is reasonably possible, for distribution as prescribed by the terms of this Agreement.
3. Upon signing and execution of this Agreement by each of the Employees, each shall also sign and execute the respective Releases attached hereto as Exhibits "A" and "B". Such Releases shall be held in escrow by the law firm of Cuti Hecker Wang LLP until payment of the amounts prescribed by paragraphs 1 and 2 of this Agreement have been made.
4. Upon receipt of the payments identified in paragraphs 1 and 2 of this Agreement, Cuti Hecker Wang LLP unconditionally agrees to immediately

deliver to the New York State Assembly the original, signed Releases held in escrow by them pursuant to the provisions of paragraph 3 of this Agreement. Cuti Hecker Wang LLP further agrees that there shall be no distribution or retention of any funds pursuant to paragraphs 5, 6, 7 and 8 of this Agreement until such time as both Releases are delivered to the New York State Assembly.

5. From the amounts identified in paragraphs 1 and 2 of this Agreement, a total amount of sixty thousand, seven hundred and eighty-six dollars (\$60,786) shall be paid to [REDACTED] for alleged damages for pain and suffering in lieu of any other form of compensation in complete resolution of this dispute including but not limited to any form of wages, benefits or other potential frontpay or backpay liability. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, [REDACTED] shall be paid forty-six thousand three hundred and eighty-six dollars (\$46,386), and from the amount paid pursuant to paragraph 2 of this Agreement, [REDACTED] shall be paid fourteen thousand, four hundred dollars (\$14,400).
6. From the amounts identified in paragraphs 1 and 2 of this Agreement, a total amount of twenty thousand, two hundred and sixty-two dollars (\$20,262) shall be paid to [REDACTED] for alleged damages for pain and suffering in lieu of any other form of compensation in complete resolution of this dispute including but not limited to any form of wages, benefits or other potential frontpay or backpay liability. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, [REDACTED] shall be paid fifteen thousand four hundred and sixty-two dollars (\$15,462), and from the amount paid pursuant to paragraph 2 of this Agreement, [REDACTED] shall be paid four thousand, eight hundred dollars (\$4,800).
7. From the amounts identified in paragraphs 1 and 2 of this Agreement, the law firm of Cuti Hecker Wang LLP shall retain a total amount of twenty-seven thousand, six hundred and sixteen dollars (\$27,016) in complete resolution of any and all attorney fee obligations or liabilities in relation to any legal work performed in their representation, individually or collectively, of the Employees in relation to this dispute. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, Cuti Hecker Wang LLP shall retain the amount of twenty thousand six hundred and sixteen dollars (\$20,616), and

from the amount paid pursuant to paragraph 2 of this Agreement, Cuti Hecker Wang, LLP shall retain the amount of six thousand, four hundred dollars (\$6,400).

8. From the amounts identified in paragraphs 1 and 2 of this Agreement, the law firm of Allred Maroko & Goldberg shall be paid a total amount of twenty-seven thousand, six hundred and sixteen dollars (\$27,016) in complete resolution of any and all attorney fee obligations or liabilities in relation to any legal work performed in their representation, individually or collectively, of the Employees in relation to this dispute. The payment of this amount is to be allocated between the New York State Assembly and Member of Assembly Vito Lopez as follows: from the amount paid pursuant to paragraph 1 of this Agreement, Allred Maroko & Goldberg shall be paid the amount of twenty thousand six hundred and sixteen dollars (\$20,616), and from the amount paid pursuant to paragraph 2 of this Agreement, Allred Maroko & Goldberg shall be paid the amount of six thousand, four hundred dollars (\$6,400).
9. The Employees and Law Firms agree to indemnify the New York State Assembly and/or Member of Assembly Vito Lopez and hold them harmless from any and all taxes, penalties, and interest imposed and any and all expenses incurred due to lack of withholding from the payments made and received pursuant to paragraphs 5,6,7 or 8 of this Agreement
10. The tender and acceptance of employment by each of the Employees with the New York State Assembly during the period January 1, 2012 through May 31, 2012 and payment of wages and all benefits of employment to each of the Employees during such period shall be deemed as a portion of the consideration received by them in the settlement evidenced by this Agreement.
11. Both [REDACTED] and [REDACTED] will resign from New York State Assembly employment effective close of business May 31, 2012 by submitting separate irrevocable letters of resignation using the language specified in Exhibit "E". No further salary or other benefits of employment with the New York State Assembly shall be due, owed, or paid to either of the Employees except as payments of any sort earned for services provided during the period January 1, 2012 through May 31, 2012. Each of the Employees agrees not to reapply for future employment in any offices of the New York State Assembly or any Member thereof.
12. Upon delivery to the New York State Assembly of a signed and notarized copy of the Release in Exhibit "A", [REDACTED] will receive the attached "to whom it may concern", generic positive recommendation (Exhibit "C") concerning the performance of her tasks and duties assigned to her during

her Assembly employment. In accordance with Assembly practice, inquiries from any potential employer, potential landlord, potential creditor, or other such person or entity will receive a response indicating [REDACTED]'s voluntary resignation, last job title, duration of Assembly employment, and annual salary.

13. Upon delivery to the New York State Assembly of a signed and notarized copy of the Release in Exhibit "B", [REDACTED] will receive the attached "to whom it may concern", generic positive recommendation (Exhibit "D") concerning the performance of her tasks and duties assigned to her during her Assembly employment. In accordance with Assembly practice, inquiries from any potential employer, potential landlord, potential creditor, or other such person or entity will receive a response indicating [REDACTED]'s voluntary resignation, last job title, duration of Assembly employment, and annual salary.
14. Member of Assembly Vito Lopez and the staff of the office of Member of Assembly Vito Lopez will, within 90 days of the execution of this Agreement receive supplementary instruction – in addition to that which is biennially provided to Members of the Assembly and staff – concerning the Assembly Affirmative Action Policy, the Assembly Sexual Harassment/Retaliation Policy, and identification and avoidance of sex discrimination and sexual harassment in the workplace. This training may be conducted in separate sessions.
15. Except in response to a court order or in response to a valid subpoena, neither any party to this Agreement, nor any representative, heir, assign or other person affiliated with any party to this Agreement will discuss or make any statement of any sort concerning the underlying circumstances of the dispute which has given rise to this Agreement or any terms of this Agreement with any other person or entity.
16. The Employees hereby agree, individually and collectively, that they shall not communicate or publish, or cause to be communicated or published, any disparaging remarks, comments or statements in any form concerning any aspect, circumstance or incident involving their employment in the office of Member of Assembly Vito Lopez or any office(s) of the New York State Assembly.
17. Each of the Employees and their representatives agree that the New York State Assembly shall be entitled to liquidated damages of ten thousand dollars (\$10,000) or actual damages, whichever is greater, from the person or entity breaching the terms of paragraph 15 or 16 of this Agreement for each breach of such terms, and any breach of paragraphs 15 or 16 of this

Agreement by either Employee or their representative shall be considered a material breach.

18. Any claim, action, suit or other dispute relating to any terms of this Agreement or the Releases entered into pursuant to this Agreement shall be commenced in the City of New York and governed by the provisions of the laws of the State of New York.
19. Any document required by this Agreement to be delivered to the New York State Assembly shall be delivered to William F. Collins, Counsel to the Majority, New York State assembly, Room 448M, Capitol, Albany, New York 12248; e-mail collinsw@assembly.state.ny.us; and/or telefax 518-455-4103.
20. The Employees hereby expressly acknowledge, individually and collectively, that they are signing this Agreement knowingly and voluntarily and upon the advice of the Law Firms by which they are and have been represented.
21. This Agreement may be signed in counterparts and any telefaxed or electronically transmitted signed copy of this Agreement will be equally as valid for all purposes as an original signed copy.
22. Nothing contained herein shall be deemed to imply or to constitute an admission of any sort that any party to this Agreement acted improperly or unlawfully.
23. The parties shall take such other and further steps as are necessary to implement the terms of this Agreement including, but not limited to, the approval of the Office of the State Comptroller.

IN WITNESS WHEREOF, the parties and their representatives have hereunto set their hands.

Date:

NEW YORK STATE ASSEMBLY

By: _____
(Print Name)

TITLE: Counsel to the Majority

Date:

Date:

CUTTI HECKER WANG LLP

MEMBER OF ASSEMBLY VITO LOPEZ

By: _____
(Print Name)

Date:

Date:

ALLRED MAROKO & GOLDBERG

By: _____

Date:

Exhibit "A"

RELEASE

██████████, residing at _____, on behalf of herself, her heirs, estate, executors, administrators, successors and assigns, in consideration of receipt of the lump sum of sixty thousand, seven hundred and eighty-six dollars (\$60,786) received, in toto, from the New York State Assembly and Member of Assembly Vito Lopez collectively, and in consideration of the other promises and covenants set forth in the attached Agreement releases and discharges the State of New York and Member of Assembly Vito Lopez from any and all actions, causes of action, suits, agreements, promises, damages, judgment, complaints, claims and demands

under Title VII of the Civil Rights Act of 1964, the New York State Executive Law, or the New York City Human Rights Act including but not limited to claims for gender, sex, race, age, religious and any other protected characteristics, sexual harassment, retaliation as well as any other actions, causes of action, suits, agreements, promises, damages, judgment, complaints, and demands of any sort under any other statutes, contract or tort law in law or equity, whether arising under the laws of the State of New York or any other jurisdiction, arising out of or relating to the employment of [REDACTED] by the Assembly of the State of New York and/or Member of Assembly Vito Lopez.

IN WITNESS WHEREOF, [REDACTED] has hereunto set her hand on this ____ day of ____, 2012.

[REDACTED]

STATE OF NEW YORK
COUNTY OF _____

On the ____ day of _____, 2012, before me personally came [REDACTED], to me known, and known to me to be the individual described in, and who executed the foregoing Release, and duly acknowledged to me that she executed the same.

[REDACTED]

Exhibit "B"

RELEASE

[REDACTED], residing at _____, on behalf of herself, her heirs, estate, executors, administrators, successors and assigns, in consideration of receipt of the lump sum of fifteen thousand, four hundred and sixty-two dollars (\$15,462)

received, in toto, from the New York State Assembly and Member of Assembly Vito Lopez collectively, and in consideration of the other promises and covenants set forth in the attached Agreement releases and discharges the State of New York and Member of Assembly Vito Lopez from any and all actions, causes of action, suits, agreements, promises, damages, judgment, complaints, claims and demands under Title VII of the Civil Rights Act of 1964, the New York State Executive Law, or the New York City Human Rights Act including but not limited to claims for gender, sex, race, age, religious and any other protected characteristics, sexual harassment, retaliation as well as any other actions, causes of action, suits, agreements, promises, damages, judgment, complaints, and demands of any sort under any other statutes, contract or tort law in law or equity, whether arising under the laws of the State of New York or any other jurisdiction, arising out of or relating to the employment of [REDACTED] by the New York State Assembly and/or Member of Assembly Vito Lopez.

IN WITNESS WHEREOF, [REDACTED] has hereunto set her hand on this ____ day of ____, 2012.

[REDACTED]

STATE OF NEW YORK
COUNTY OF _____

On the ____ day of _____, 2012, before me personally came [REDACTED] to me known, and known to me to be the individual described in, and who executed the foregoing Release, and duly acknowledged to me that she executed the same.

[REDACTED]

EXHIBITS "C" and "D" positive recommendation letters to be drafted.

EXHIBIT "E" :

Ms. Suzanne Gold
Director of Human Resources
New York State Assembly
Concourse, Room 104
Albany, New York 12248

Dear Ms. Gold:

Effective close of business on May 31, 2012, I hereby voluntarily resign my position with the New York State Assembly.

Very truly yours,

Arlene Smoler

From: Arlene Smoler
Sent: Wednesday, May 30, 2012 3:22 PM
To: 'William Collins'
Subject: RE: THIRD DRAFT SETTLEMENT AGREEMENT

When it happens to me, I call it "a senior moment," which I've been having since I was about 23...

From: William Collins [mailto:collinsw@assembly.state.ny.us]
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