

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

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IN RE JCOPE No. 127
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**SUBMISSION OF HON. VITO LOPEZ
TO NOTICE OF SUBSTANTIAL BASIS INVESTIGATION**

Hon. Vito Lopez, Member of the New York State Assembly, submits the following in response to the Notice of Substantial Basis Investigation dated September 21, 2012 (“Substantial Invest. Notice” or “Notice”) by the Joint Commission on Public Ethics (“JCOPE”). As set forth in the Notice, JCOPE has limited Mr. Lopez’s response to a written submission.

Mr. Lopez has not been given notice of the evidence that may be considered by JCOPE in support of the claims, nor has he been given discovery, the right to call witnesses, or the right to cross-examine witnesses. He objects to the refusal to allow him to confront the evidence and once again asks that JCOPE engage in a process that is adversarial (and not inquisitorial) in nature and which comports with the minimum standards of due process enshrined in the United States Constitution, explicitly recognized by the Supreme Court, and imposed on the State by the Fourteenth Amendment. He denies any wrongdoing.

Background

Vito Lopez, who is 71, has been the elected representative of the people of the 53d Assembly District in Brooklyn since 1984. In his 28 years in the Assembly, he has spearheaded significant legislation, particularly in the areas of services to the aging and affordable housing.

A social worker by training as well as by inclination, he has spent his entire career in the struggle to assure that a fair measure of the resources of New York State be allocated to those most in need. He has been returned to the Assembly 13 times.

The Substantial Invest. Notice asserts that JCOPE seeks to determine, as a matter of fact and law, whether a substantial basis exists to conclude that Mr. Lopez violated §§74(3)(d), (f) and (h) of the Public Officers Law. The first two of those sections generally prohibit a public official from using his official position, or suggesting that he would use his official position, to obtain benefits to which he is not entitled. The third of those sections prohibits a public official from violating his trust. The Notice lists the following more specific ways in which Mr. Lopez is being investigated for violation of the Public Officers Law:

- Whether, per Public Officers Law §74(3)(d), in violation of the obligation not to use or attempt to use one's official position to secure unwarranted privileges and exemptions, he misappropriated property or services or other resources of the state by
 - compelling or attempting to compel others to comply with inappropriate demands or requests;
 - requiring legislative employees to travel for no legitimate governmental purpose; and
 - improperly influencing the manner and process by which allegations of sexual harassment and other inappropriate conduct were handled, investigated and resolved.
- Whether, per Public Officers Law §74(3)(h), in violation of his trust, he
 - subjected female employees to inappropriate actions, offensive comments and unwelcome physical contact of a sexual nature; and
 - received unwarranted privileges and exemptions by the manner in which allegations of sexual harassment and other inappropriate conduct were handled, investigated and resolved.

- No violation of Public Officers Law §74(3)(f) is specified though the section is referenced in the Notice.

Unfortunately, the Notice makes no factual assertions and therefore provides no information as to what acts he is alleged to have committed that might constitute a violation of any cited section. Because of a fundamental unfairness in this process, it is left to him to suggesting ways in which conduct that he has been alleged by others to have engaged in might violate the provisions. For that reason, he shall use as his basis for responding the two letters of complaint referenced below. Copies of these letters have previously been produced to you in response to a subpoena.¹

The Initial Claims – by [REDACTED]

In or around January 12, 2012, Mr. Lopez received a letter from Mariann Wang, Esq., who purported to represent two Lopez staff members, [REDACTED] [REDACTED] came onto the staff in March 2011 but only began to interact directly with Mr. Lopez when she became co-chief of staff in October 2011. [REDACTED] was a difficult employee who never got the hang of the job. In December 2011, she was asked by Mr. Lopez to decide whether she would make a full time commitment to the full time job and apply herself to the tasks assigned or leave. After several days of claiming to be ill she stopped showing up for work in December 2011, followed by a letter of resignation.

[REDACTED] an attorney employed as a legislative assistant, while an able employee, had expressed considerable disappointment in her situation, which she considered to be beneath her, and was known to be looking for another job. She did not work with Mr. Lopez directly. [REDACTED]

[REDACTED] came onto staff in late October 2011 and stopped working in January 2012.

¹ By subpoena dated September 21, 2012, replaced by a subpoena dated September 24, 2012, JCOPE requested documents from Mr. Lopez. Documents bearing production numbers VL JCOPE 1 through VL JCOPE 415 were produced timely on October 4, 2012.

The Wang letter asserted that the women were of the view that Mr. Lopez created and maintained a "hostile work environment" that objectified women employees and subjected them to comments about their appearance and personal conduct and lives. In addition, both contended that they and other staff were required to attend what the letter referred to as "social functions".

The attorney went further with respect to [REDACTED]. The principal claim of [REDACTED] was that while she "undertook every effort to keep the relationship professional, Lopez repeatedly attempted to turn it into a sexual one". Wang letter at 3 (VL JCOPE 3). Yet, as is readily apparent, it was [REDACTED] who persisted in making the most extraordinarily inappropriate statements to Mr. Lopez. All but daily, she sent sexualized messages which showed that it was she who failed to maintain a professional mien. These include [REDACTED] telling Mr. Lopez, "I had a really good time with you tonight"; "I really enjoy hearing you laugh and smile"; "I miss you and I can't wait until next Sunday"; "I can't wait until this week is over so I can see you"; and "I really love waking up and going to work just to be able to see you".²

The investigation immediately undertaken by Mr. Lopez's counsel led to the conclusions both that the Wang letter's description of the office as well as Ms. [REDACTED] role therein were materially at odds with the testimony numerous witnesses would offer.

The Wang letter conveyed, in unmistakable terms, that if Mr. Lopez (and the Assembly) were prepared to engage in "confidential private mediation" leading to a monetary settlement, the matter would be kept entirely confidential and no lawsuit would be filed. The value of the offer was underscored by the fact that Gloria Allred, an attorney well known to use the press to bludgeon public figures into doing her bidding (*i.e.*, paying her money), was listed as co-counsel.

² These text messages are all cited in the hard copy of the PowerPoint presentation made to the mediator and produced as VL JCOPE 6-32. While the hard copy of the presentation does not reflect the full animated sequence of slides, it contains the substance. It is annexed at Tab 1.

Indeed, the letter itself made clear its intentions: it was marked by its sender with the legend “Privileged and Confidential, For Settlement Purposes Only”.

The message was not lost on Mr. Lopez. In an e-mail to Ms. Wang from Mr. Lopez’s counsel, Mr. Lopez’s counsel acknowledged that he understood what was in the offing - in exchange for a sum of money, Mr. Lopez would not have to bear the distraction and costs of defending himself against legal claims or the press:

The little work I have been able to do certainly leads me to believe that any dollar value this matter may have to your clients (and you) is based solely on whether we wish to avoid being pilloried in the press and not because the claims are true. I think it would be stating the obvious that if you conclude that your clients simply cannot hold back and need to make their assertions public, the complaint will have zero value to them or to you. They only have settlement value.

E-mail from Gerald B. Lefcourt to Mariann Wang, 1/29/12 (VL JCOPE 42).

Participation in the “confidential mediation” would allow Mr. Lopez to determine just how much, or little, it would cost to avoid not only a press storm, but the monetary, physical and time expenditures of litigation, baseless though it would be.

The Mediation Process and Settlement

On April 9, 2012, all parties appeared before a JAMS mediator. Each of the Assembly and Mr. Lopez, through counsel, made a presentation to the mediator. The presentation by the Assembly, no doubt provided to JCOPE in greater detail, traced the Assembly’s complaint procedure, and more specifically that the women both declined repeatedly to invoke the procedure, as well as the fact that Mr. Lopez had no history of complaints lodged against him. Mr. Lopez’s presentation (Tab 1), focused on the ways in which the facts exposed the lack of substance to the claims. In particular, [REDACTED] own words were cited to counter, in every material respect, the claims she was asserting.

Though the two women initially sought a payment in excess of \$1 million, they took what was offered: a letter of reference for each and just enough money to get their lawyers to go away - \$103,080 from the Assembly and \$32,000 from Mr. Lopez. To avoid the cost and distraction of litigation, it was a bargain.³

The settlement agreement itself provided for the two things of value that the women and their attorneys had to sell – that the spurious claims would not be fed to the press and that no legal fees would be incurred defending against a spurious suit. That is what Mr. Lopez bought.

Because [REDACTED] had never actually articulated any comment made to her other than a request that she not bring her boyfriend to work, Mr. Lopez was particularly loathe to give her any money. He was persuaded, however, for the same reason he was persuaded to pay Ms. [REDACTED] the relatively small sum of \$32,000 avoided defense costs were a civil complaint to be filed. Moreover, he assumed that the sum was largely going to counsel, not to the two women, and for that reason had to be sufficient to satisfy the attorneys.

The [REDACTED] Complaint

Though the fact of, and the terms of, the [REDACTED] settlement were to be kept confidential, “rumors” began immediately to circulate that [REDACTED] was paid \$1million. Not surprisingly, shortly thereafter, Mr. Lopez was notified by letter dated July 26, 2012, from Kevin Mintzer, Esq., that two other Lopez staff members, [REDACTED] and [REDACTED] were invoking the Assembly’s complaint procedures (unlike [REDACTED] or [REDACTED]). Echoing the claims made in the Wang letter, the Mintzer letter set forth a number of general claims that Mr. Lopez made inappropriate personal remarks to staff members. It also alleged, with respect to

³ Without belaboring the point, Mr. Lopez has profound health problems (*see infra* n. 9). Avoiding the emotional strain of both a press feeding frenzy on a juicy story and litigation itself was certainly on his mind in considering whether to fight or settle.

██████████, certain specific claims relating to a trip to Atlantic City which was alleged to have had no business purpose. The full defense to the claims is set forth in Mr. Lopez's submission to the Assembly Standing Committee on Ethics and Guidance and is incorporated herein. See VL JCOPE 115-133 (annexed at Tab 2).

The Assembly Standing Committee on Ethics and Guidance/The Public Censure

As a result of the complaint filed by Misses ██████████, and pursuant to established Assembly procedure, the matter was referred to the Assembly Standing Committee on Ethics and Guidance, co-chaired by Assembly Member Daniel O'Donnell (who is also the co-chair of the Legislative Ethics Commission). Though the Assembly Standing Committee had no published adjudicative process, it used an inquisitorial model in which Mr. Lopez was invited to make a blind submission to the Committee where, as here, he would not be allowed to see any evidence, call his own witnesses or question any witnesses.

As noted above, by cover letter dated August 15, 2012, Mr. Lopez made a submission that rebutted the allegations in the Mintzer letter. Tab 2. In a procedure that we understand broke the land speed record of the Assembly Committee, in just nine days, including Saturdays and Sundays, and at a time the Assembly was not in session and the members presumably scattered, the Assembly Standing Committee conducted an investigation, resolved all factual questions, reached its conclusions and produced a report. On August 24, 2012, the Standing Committee sent a report to the Speaker in which it rejected Mr. Lopez's factual response to each of the claims.

Mr. Lopez was not given a copy of the report or any opportunity to comment on the report (or to have participated in the process that led to the report). Nevertheless, on that same day, the Speaker credited the secret report, prepared after a secret process, and imposed sentence:

Mr. Lopez was publicly censured; stripped of the chairmanship of the Assembly Committee on Housing; stripped of the annual stipend associated therewith; prohibited from replacing staff until it reduced through attrition to that of a freshman member; stripped of seniority, which deprives him of the benefits of having been returned to office repeatedly, from the location of his office to his parking space; and banned from employing interns under the age of 21 – though at no time was he accused of any inappropriate conduct towards anyone even near that age. Because of the censure, Mr. Lopez was also compelled to step down as the Kings County Democratic leader, a position he had held since 2006. The penalties imposed were the harshest possible penalties short of expulsion available to the Speaker and extraordinarily out of proportion to the treatment of other legislative members who were demonstrated to have engaged in far more serious conduct than any of the conduct alleged against Mr. Lopez.⁴

Following announcement of the censure, both the fact of and details concerning the [REDACTED] settlement were leaked to the press by the Assembly, with details filled in, obligingly, if inaccurately, by Ms. Allred, who falsely claimed that she had never advocated

⁴ By way of contrast, in 1992, a staff member of Assembly Member Mark Alan Siegel claimed she was being pressured by Siegel into a sexual relationship. The matter was settled by a confidential payment approved by the Speaker, but no action was taken against the Member.

In approximately 1995, Assembly Member Peter J. Abbate, Jr. (for whom [REDACTED] currently works), was rumored to have fathered the child of a young staff member. There is no record of any action being taken against him.

In 2004, Assembly Member Adam Clayton Powell IV was accused of raping a 19-year-old female intern (the Member said it was consensual). No action was taken against him, though the Speaker was reported to be “deeply troubled” by it.

In 2007, Assembly Member Michael Cole admitted to having sex with a 21 year old intern. He was censured but not removed.

In 2008, Assembly Member Sam Hoyt was accused of having an extra-marital affair starting in 2003 with a then 23 year old intern working on his staff. The matter was referred to the Assembly Ethics Commission and the sole sanction imposed on him was that he was barred from employing interns.

confidentiality. A firestorm ensued, in particular why it was that the Speaker determined to settle the first complaint without public disclosure.

The Current Proceeding

By letter dated August 30, 2012, JCOPE served on Mr. Lopez a so-called "15 day notice" pursuant to Executive Law §94(13)(a). At the same time, the Speaker instigated a criminal investigation of Mr. Lopez (and perhaps to his surprise, of himself). The District Attorney of Kings County recused himself and the District Attorney of Richmond County was appointed to conduct the investigation.

In response to the August 30th Notice, Mr. Lopez asked JCOPE not to put him in the impossible position of having to choose between defending himself against the imposition of civil sanctions that could be imposed through the JCOPE process and defending himself against the imposition of criminal charges. *See* letter dated September 6, 2012, to Ellen N. Biben, Esq. He argued that a delay, pending resolution of the criminal investigation, was (and remains) particularly appropriate given that Mr. Lopez had already received punishment far in excess of what has been imposed in the past for far worse conduct. That request was ignored.

Thus, JCOPE continues to pursue an investigation that is not only duplicative of the one conducted by the Assembly Standing Committee and as a result of which harsh sanctions were imposed on him by the Speaker,⁵ but one that forces him to choose between his Constitutional rights under the Fifth Amendment and preservation of his elected position and the benefits thereof. It also potentially deprives the residents of the 53d Assembly District unfairly of their elected representative without due process.

⁵ Needless to say, in determining to censure Mr. Lopez and impose the full range of penalties, the Speaker was well aware of the prior allegations and no doubt took those into account when deciding how best to proceed with respect to the Assembly Ethics Committee report.

As noted, rather than agree to the entirely reasonable delay, JCOPE pushed forward and a Notice of Substantial Investigation was served. Unfortunately, Mr. Lopez's ability to participate in the determination of the facts and application of the statute has been limited to one written submission. He has no right to call witnesses in his defense or to cross-examine witnesses. He has no right to be present when the witnesses are questioned. He has no right to see either a transcript of their testimony or, since JCOPE has decided to proceed largely by "informal office interview" and thereby avoid preservation of testimony, to see the notes of those interviews.

Oddly, the Notice purports to inform Mr. Lopez that sanctions may be imposed upon him only after a "hearing" and only upon a finding that he knowingly and intentionally violated Public Officers Law §74. Yet neither the JCOPE rules, nor the rules of the Legislative Ethics Commission to which body JCOPE will submit its findings of fact and conclusions of law for imposition of sanctions, appears to allow for any "hearing". Instead, the findings by JCOPE – again, reached without allowing Mr. Lopez any opportunity to examine witnesses or to argue the evidence to the triers of fact – will be passed onto the Legislative Ethics Commission (co-chaired, no less, by the same co-chair as the Assembly Standing Committee, that already made its findings), which will either accept them or reject them. There will be **no** adjudicative process at any stage in which Mr. Lopez may participate.⁶

It is a fundamental right under the Constitution of the United States and pursuant to the 14th Amendment that the State not deprive a person of his rights without due process of law. The Supreme Court's observation over fifty years ago in *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959), is particularly pertinent here:

⁶ A third option available to the LEC is to ask JCOPE to conduct a further investigation, but that provides no additional due process and just leads back to the same unfair process.

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the *Sixth Amendment* This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.

And as the Supreme Court noted in *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970): “. . . in almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”

Certainly, New York has not been remiss in affording its citizens the full measure of due process due in a wide variety of contexts. *See, e.g., Felix v. N.Y. City Dep't of Citywide Admin. Servs.*, 3 N.Y.3d 498, 504 (2004) (municipal employee must be afforded procedural due process before he or she is dismissed from employment for violating New York City's residency requirement); *People ex rel. McGee v. Walters*, 62 N.Y.2d 317, 321-323 (1984) (right to confront witnesses in parole revocation hearing). These cases all stand for the bedrock proposition that the **minimum requirement for a fair adjudicative process** is that it include the right to confront the evidence. The procedure that has been set up here to “try” Mr. Lopez entirely fails to afford him the minimum rights required for a lawful adjudication in this country. The notion that the facts attendant to highly controversial (and controverted) claims will be resolved without any opportunity to confront and to cross-examine the witnesses is just wrong.

A fair procedure, rather than the inquisition this is, would afford Mr. Lopez (i) specific notice of what he is alleged to have done; (ii) discovery, including of witness statements; (iii) an opportunity to cross-examine the witnesses; and (iv) the chance to call witnesses on his own behalf. It is difficult to imagine that, when each of the commissioners agreed to serve on a public body devoted to **ethics**, each understood that the procedures to be employed would be so flawed that the commissioners would be sitting in judgment without affording the accused any of these bedrock components of due process. We ask that each Commissioner consider whether he or she can ethically participate in a process that is so wholly devoid of the standards upon which our system of justice is based. The pretense that Mr. Lopez will be afforded a hearing **by others** is just that, a rationalization to soothe whatever disquietude each Commissioner should feel at the prospect of furthering such a process.

Substantive Defense to the Potential Claims

Because Mr. Lopez has not been given any access to what the witnesses are saying or been given notice of what factual allegations are being investigated, an attempt is being made herein to match the stated potential claims of violation of Public Officers Law §74 with the allegations made in the two letters of complaint referred to above. While, as noted above, it is perverse for Mr. Lopez to be in the position of suggesting what conduct, if credited, may have been a violation of which section of the Public Officers Law, the process imposed leaves him no choice.

1. The Atlantic City Trip

The most significant accusations are those made by ██████████ in connection with a trip to Atlantic City in July 2012. It appears that ██████████ claims that the trip was unrelated to legislative business. It is assumed that she is therefore contending that notwithstanding a lack of

legislative purpose, she nevertheless was required to accompany Mr. Lopez on the trip. If so, that would arguably support the claim that Mr. Lopez "compelled others to comply with inappropriate demands, as well as required employees to travel for no legitimate purpose" (Notice at 1).

Two further claims are being made concerning this trip, and are the only claims by any of the women that Mr. Lopez ever touched anyone inappropriately [REDACTED] claims that while in New Jersey, Mr. Lopez sought to kiss her and she repulsed him. Additionally, she claims that Mr. Lopez put his hand between her legs while on the drive back to New York. Each of these touching claims is presumably being looked at as possible a "violation of his trust, in that he subjected female employees to unwelcome physical contact of a sexual nature". *Id.*

The Assembly Standing Committee was told and it is reiterated here: the trip to Atlantic City was for a legislative purpose. Mr. Lopez traveled to Atlantic City to meet with a constituent who sought to raise legislative interest in a practice relating to insurance, a practice Mr. Lopez thought was potentially troublesome both to individual and to commercial purchasers of insurance.

The constituent, who is a very successful insurance broker with significant commercial insurance business, was concerned about insurers routinely providing notice of impending policy cancellation accompanied by a notice of an increase in the cost of renewal and consistently doing so on Friday afternoons, leaving the consumer little choice but to re-up at whatever cost the insurer named. The meeting did, in fact occur, as planned. Not only was there discussion of this at the Atlantic City meeting, as intended, but there were numerous follow-ups after the trip. In fact, [REDACTED] was instructed to follow-up, though she left her job without ever having done so.

That is not to say that Mr. Lopez was not looking forward to a day out of the office. Indeed, in that he was not alone. Though [REDACTED] was the staff person who would have been more likely have attended the meeting in Atlantic City because the constituent was in her assigned area, [REDACTED] went out of her way to assure that it was she who was permitted to staff the meeting.⁷

The plan was to meet the constituent in Atlantic City for dinner, discuss the matter with the goal of establishing a working relationship, and leave that evening. [REDACTED] excitement in anticipation of the trip could not be contained:

Good morning Vito! I'm looking forward to today! I have the lucky coin ready to go!

[REDACTED] [REDACTED] 7/10/2012 9:18:43 AM.

Mr. Lopez and [REDACTED] left Brooklyn at about 1 p.m. and arrived in Atlantic City shortly after 4 p.m. Upon arrival, plans were finalized as to where to meet the constituent for dinner. While waiting to meet for dinner, [REDACTED] disclosed that she was an experienced gambler, a claim that was confirmed when over the course of approximately two hours she won what appeared to be at least \$1,000 playing blackjack and craps.

In setting a firm time for dinner, Mr. Lopez learned that his constituent had arranged for him to have access to a hospitality room which he could use to freshen up. He and [REDACTED] visited the room for the sole purpose of using the bathroom. Mr. Lopez denies that he arranged a room, denies he was "comped", and denies absolutely that he in any way made any improper, aggressive or sexual approach to [REDACTED] in the ten to fifteen minutes they were in the room, or at any other time. While Mr. Lopez denies that there is any substance to the claim that he tried

⁷ In fact, [REDACTED] was so miffed that she missed out on the opportunity to travel to Atlantic City with Mr. Lopez that she thereafter pressed for a second trip on which she could accompany Mr. Lopez.

(unsuccessfully) to kiss [REDACTED] and or put his hand on her thigh while driving,⁸ as JCOPE is fully aware, these claims are being investigated by the District Attorney of Staten Island on behalf of the District Attorney of Kings County. Given the pendency of a criminal investigation, it is highly inappropriate for JCOPE to involve itself in a parallel investigation of the same conduct.⁹

After freshening up, the two proceeded to the place they were to meet their dinner companion. He was late and the two ordered dinner without him. When he did arrive, the three went to the casino, where [REDACTED] inexplicably wandered off and Mr. Lopez had the planned discussion. Sometime before 11 p.m., Mr. Lopez and [REDACTED] started back to Brooklyn, as planned. Mr. Lopez was not only not drunk, as alleged, but he had had no alcohol at all. He rarely drinks.

The morning after this entirely uneventful day [REDACTED] sent Mr. Lopez the following text:

Good morning Vito! I was just thinking what a nice night we had being high rollers! I hope you found a little respite last night and also got home safely! See you in the office, we have the 2pm REBNY meeting to go over!

[REDACTED] 7/11/2012 10:16:48 AM (*emphasis added*). Put starkly, JCOPE is to determine whether someone who, after learning (falsely) that another employee had been paid \$1 million, claims that she was subjected to unwanted touching (or any other unwanted conduct)

⁸ It is unclear whether [REDACTED] claims that Mr. Lopez did this once, on the drive back to New York, or on that occasion and other occasions. In any event, she never mentioned any such actions contemporaneously and Mr. Lopez denies that he ever touched her in this manner.

⁹ We do note that it is no secret that in 1993, Mr. Lopez was diagnosed with leukemia. Though he was successfully treated, the cancer returned in 2010. In the past two years, he has undergone both chemo and radiation therapy which treatments have often left him debilitated and unable to work, and exhausted even when able to work. He has at the same time suffered repeatedly from related illnesses, ranging from pneumonia to gum disease. The notion that this 71 year old ailing man could alarm a 26 year old with his ability to overpower her is not believable. Anyone who has seen Mr. Lopez knows he looks frail.

would send that e-mail hours after the incident, or whether that e-mail, and the many that follow, reflect that the claims are made-up. Perhaps it is not necessary to say that it is not possible to reconcile a claim that Mr. Lopez made unwanted advances with the fact that [REDACTED] sent messages that entirely belie that *anything* untoward occurred.

One day later, she sent the following:

We had our staff meeting and I just wanted you to know that I'm here to support you and I'll have your back. I'm excited and love this job, I'm going to show you that.

[REDACTED] 7/12/2012 11:19:24 AM.

And there were other texts thereafter:

. . . I'm excited and love this job.

[REDACTED] 7/12/2012 11:19:24 AM.

. . . I love this job.

[REDACTED] 7/14/2012 1:19:09 AM.

As suggested above, it may be that this trip is being looked at for several possible violations. First, if the trip were unrelated to work, as [REDACTED] contends, and [REDACTED] were paid by the Assembly for the time she was traveling to and while she was in Atlantic City, those facts might support a claim that Mr. Lopez "misappropriated to himself the services of the state", specifically, [REDACTED]'s Assembly-compensated time. That will not fly.

We understand that [REDACTED] never submitted on a timely basis any time sheet for this period. Instead, within the last two weeks of the date of this submission, the Assembly's Human Resources Department sought to have someone on Mr. Lopez's staff, a person with no knowledge of the facts, sign [REDACTED]'s time sheet for that day. Though he refused to do so,

we further understand that the time sheet claims she worked only until noon that day, an hour *before* she and Mr. Lopez left for Atlantic City.

Little need be said about what appears to be a desperate after-the-fact effort to generate evidence to support the claims. What is quizzical is that, if indeed [REDACTED] was not paid for her time, then it cannot be that Mr. Lopez “misappropriated” her time from the Assembly.

Alternatively, if it were so that [REDACTED] was asked to accompany Mr. Lopez on a non-work trip “after” hours (*i.e.*, not on Assembly time), there is certainly no evidence she did not go willingly. Her text messages quoted above show no signs whatever of the slightest reluctance to join him on the trip, whether for business or for pleasure.

Thus, either way – the trip was part of the job or it was not part of the job – no aspect of it violates the Public Officers Law.

Nor would evidence of unwanted physical contact be credible. It is assumed that the only evidence of such is Ms. [REDACTED] current words. But were Mr. Lopez able to cross-examine the witness in order to expose the truth, it would soon become clear that her present claims cannot hold up to her contemporaneous account of how much she enjoyed the trip.

A Note About the Text Messages

It is anticipated that evidence of the contemporaneous text messages of, in particular, [REDACTED] and [REDACTED], are being “explained” by a claim that Mr. Lopez insisted that they write such messages. That is not sustainable.

It may be that the investigation has uncovered the unremarkable fact that Mr. Lopez encourages his staff to communicate with him what they accomplished that day, and to do so in positive terms. But, other than pursuant to an effort to avoid the inescapable conclusion that the texts of [REDACTED] (and of [REDACTED]) gut their claims, there is no evidence that Mr. Lopez

forced these women to write sexually explicit and highly inappropriate messages to him. Indeed, as [REDACTED] notes in a July 5, 2012, text to Mr. Lopez:

I know you said you didn't like texts but I just thought I'd check in and say goodnight.

Any trier of fact (as you are) must realize that it is not consistent with what we know of human nature that a person, even an employee, who is supposedly assaulted thanks her assaulter for a great evening, dwelling on the fun had – as [REDACTED] did. Nor is it consistent with normal human experience that [REDACTED] can possibly not have known that her messages were inconsistent with her claim she that she tried to keep the relationships professional, including: “I play to win” or “I wish I could have been there” or “I had a really good time with you tonight – As much as you like seeing me smile I like seeing your more. . . even if it means being crazy every once in a while” or “I really enjoy hearing you laugh and smile” or “I miss you and I can’t wait until next Sunday” or “I can’t wait until this week is over so I can see you” or “I really love waking up and going to work just to be able to see you”.

2. Other “Unreasonable Demands”

The Atlantic City trip is of a piece of the claim that “. . .once hired, all of the women, and none of the men, are repeatedly instructed by Lopez that they must attend social functions”. Wang letter at 2. This is incorrect in every material way.

First of all, if by “social function” the complaint means fun event with no business purpose, then [REDACTED] and [REDACTED] are confirming that they really did not understand their jobs. These are not “social functions” – they are work. Like many other legislators, Mr. Lopez uses these occasions to further his legislative agenda – by connecting with people he has been trying to see, by giving access to others who have been looking for an opportunity to chat, by being in a position to talk about work. His staff, male and female, are expected to attend,

with specific instructions to follow him, to hand out and to collect cards, to note with whom he has made arrangements for calls and meetings, whom he wants to be sure to call, and who wants what, when and why.

Indeed, it is for this reason that he admonished [REDACTED] when she brought her boyfriend to an event – she just did not get why she was there. She was not getting paid to enjoy herself.

Moreover, it is difficult to understand how, for example, [REDACTED] can be complaining about “having” to attend “social events” when her messages over and over again are nothing short of exuberant about being included: “Vito, . . .you taking me to [Gracie] mansion was very significant but mostly because I got to go with you”; “Vito [,] I had a really good time with you tonight;” and “It sounds like you had a good time, I wish I could have been there”. Where is the evidence that anyone made her be excited about attending these events? And if there was a “gun to her head”, why is [REDACTED] not also [falsely] jumping for joy? In short, these so-called social events are work. Mr. Lopez required his staff – male and female - to attend these events. Job applicants were told this was part of the job and it is. While it may be that Mr. Lopez expects more work from his staff than do other Assembly members, that is not what is being investigated. Certainly, until he was stripped of his authority, he got a lot of his legislative agenda done.

The remaining claims in this regard are that he is alleged to have demanded that his staff dress in certain ways. Interestingly, there is no evidence whatever that anyone ever actually took seriously the remarks he is alleged to have made. Not one of the complainants contends that she actually wore low cut blouses, short skirts and high heels in order to comply with these alleged unreasonable demands, or, for that matter, anyone came to work naked, as one claimant contends

he suggested. Thus, while he denies that he made any such suggestions, let alone demands, none carries a claim that he made any employment decisions based on compliance with these alleged demands or that anyone ever took them seriously enough to comply with even one of them.

3. The Exacting of Unwarranted Privileges

Other claims also fall into the category of allegedly “exacting unwarranted privileges”. We see no claims by [REDACTED] or [REDACTED] that Mr. Lopez either offered to extend any benefits or threatened to withdraw any benefits. However, the Wang letter makes that claim repeatedly. Thus, among the claims that might come under this category are the claim by Ms. [REDACTED] that her job appeared to depend on whether she agreed to comply with Mr. Lopez’s suggestions of a personal relationship, and by [REDACTED] that she was threatened with firing because, she alleges, Mr. Lopez learned that she had backed up [REDACTED] complaint. (As to the latter, the Assembly has denied that it ever informed Mr. Lopez that [REDACTED] had spoken to Assembly counsel. Therefore, there is no factual basis for her assertion.)

As to [REDACTED], as exhaustively set out in the presentation made to the mediator, Ms. [REDACTED] was a terrible employee. [REDACTED] was initially hired as a legislative assistant to focus on the needs of loft tenants and Mr. Lopez found her work to be acceptable. In the fall of 2011, however, she was asked to become co-chief of staff in the Brooklyn office. She agreed to do so but asked nevertheless to work part-time in order to study for the LSATs. Mr. Lopez agreed to limp along while she did that. To encourage her, when her position changed to co-chief of staff, he approved pay raises (for both co-chiefs). However, [REDACTED] by her own admission, left the exam without completing it. She returned to work unable to get anything done and then wanted additional time to study anew. By that time, Mr. Lopez had “had it” with her and told

her that she needed to decide whether she was Chief of Staff or not: her failure to engage the job was unacceptable.

Because he denies that he sought to have a personal relationship with her, he denies that any employment decisions concerning her were based on any willingness on her part to have such a relationship. Indeed, it is difficult to read [REDACTED] texts without it crossing one's mind that it was [REDACTED] who, aware of the limitations of her skills as an employee, sought to entangle Mr. Lopez so that he could not let her go or he would have to pay for the privilege of doing so.

4. The Settlement of the [REDACTED] Complaint

The final way in which JCOPE might consider Mr. Lopez to have violated his obligation not to use or attempt to use one's official position to secure unwarranted privileges and exemptions, or that he misappropriated property or services or other resources of the state, is whether he improperly influenced the manner and process by which allegations of sexual harassment and other inappropriate conduct were handled, investigated and resolved – as set forth in the Notice.

By now, JCOPE must surely know this is false. At no time did Mr. Lopez seek to influence the manner in which any of the claims were handled, investigated or resolved. We assume this refers to the first set of claims, made by [REDACTED] and [REDACTED]. Not only did Mr. Lopez not seek to “pressure” the State to come up with funds to settle the matter, but the Assembly had to urge Mr. Lopez to come to the table. Certainly, at all times, the State determined for its own reasons to resolve the claims. And, while he was not privy to the

Assembly's thinking as to all of the reasons why the claims should be resolved,¹⁰ we submit it was entirely reasonable to do so.

Here, not only did the women not make formal complaints, but they declined to do so. Instead, it was *they* who insisted on handling the matter confidentially. And they did so in order to assure that their baseless complaints retained value. Had the complaints been exposed to the light of day, under any fair adjudicative process, *i.e.*, where the complainants could be questioned, the claims would have been exposed for what they were – a demand that they be given money or they would expose Mr. Lopez and the Assembly to a costly litigation process while the tabloid press had its usual distracting field day(s). For Mr. Lopez, the choice was clear: he could face expensive litigation even if he were vindicated in the end, or he could get rid of the matter for nuisance value. The choice was not difficult for him.

Investigation that JCOPE Ought to be Doing

There are a number of questions that Mr. Lopez believes JCOPE ought to be investigating that would certainly shed light on what occurred here. For instance, the relationship between the attorneys for the first set of complainants and the attorney for the second set. Second, all of the complainants appear to be tied into political opponents of Mr. Lopez, in particular, Lincoln Restler and the New Kings Democrats. When did those ties begin to form and what are those relationships. Third, Mr. Lopez endeavored to find out whether Ms. [REDACTED] and [REDACTED] intend to bring a civil action, presumably in their quest for their

¹⁰ For example, it may well be that the Speaker sought to avoid press attention on the claims [REDACTED] and [REDACTED] were making lest the press eventually come to focus on the actual goings on in Albany, in particular, those of the Speaker. It is no secret, except perhaps from the public, that stories of the Speaker's serial and sometimes overlapping personal relationships with his own staff have long circulated in Albany. Whether that was one of the motives for the Speaker deciding to settle the matter is not known to Mr. Lopez.

\$1million. Though their attorney refused to say when asked, their intentions with respect to a civil matter are highly relevant to their credibility.

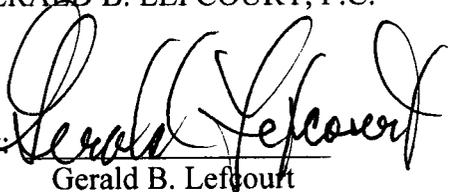
Conclusion

For all of these reasons, JCOPE should (i) delay this proceeding until the criminal investigation has concluded; (ii) allow Mr. Lopez to confront the evidence against him before any findings of fact and conclusions of law are reached; and (iii) conclude that there is not a substantial basis to believe that Mr. Lopez violated Public Officers Law §74.

October 23, 2012

Respectfully submitted,

GERALD B. LEFCOURT, P.C.

By: 

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Sheryl E. Reich

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1

CLAIM

Sexual advances made to [REDACTED] and others

CLAIM

Lopez instructs women to dress a certain way

CLAIM

Female staff must attend all social functions but not males

CLAIM

Lopez treats women as sexualized objects

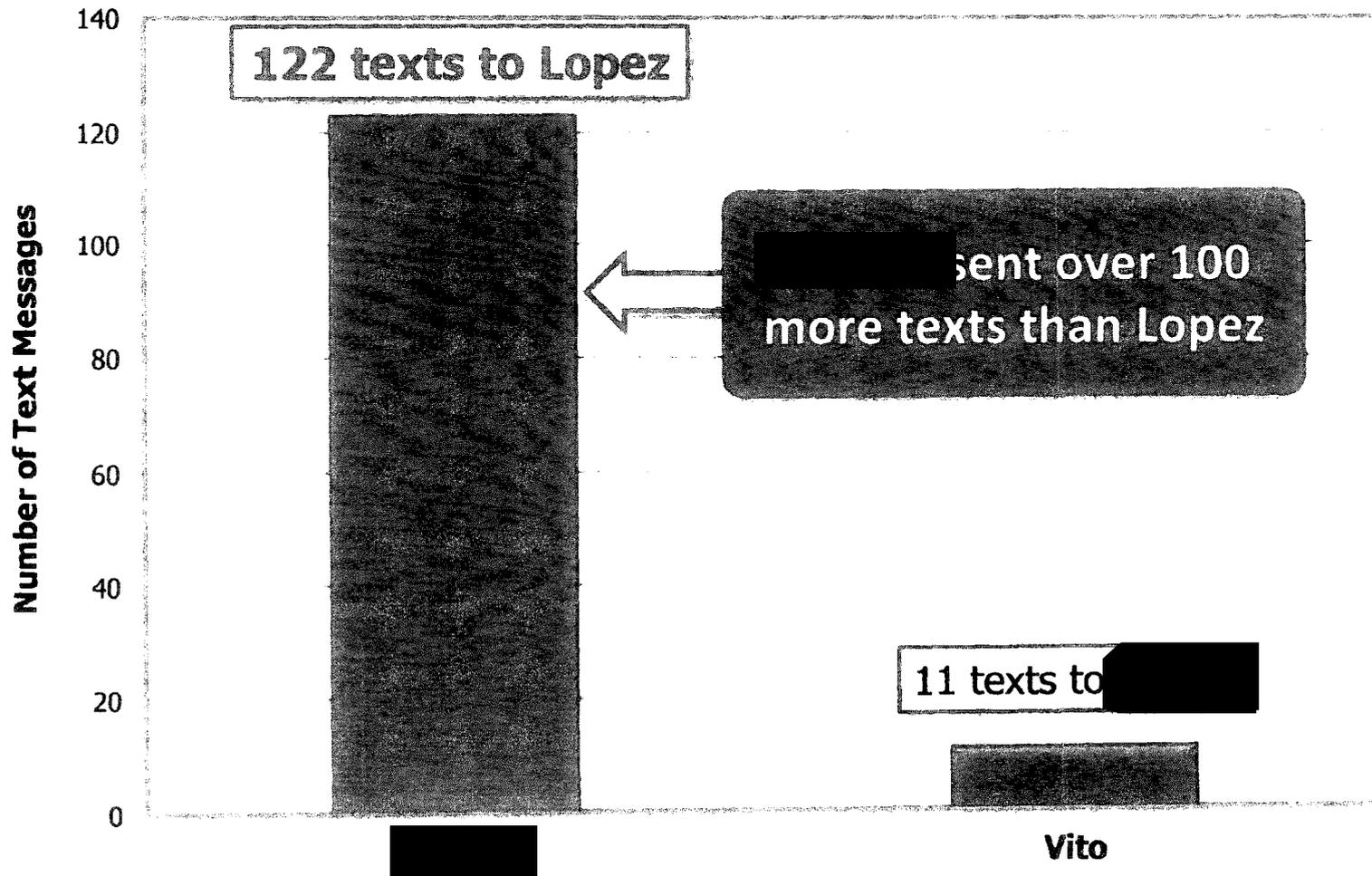
CLAIM

(Communicated
Verbally)

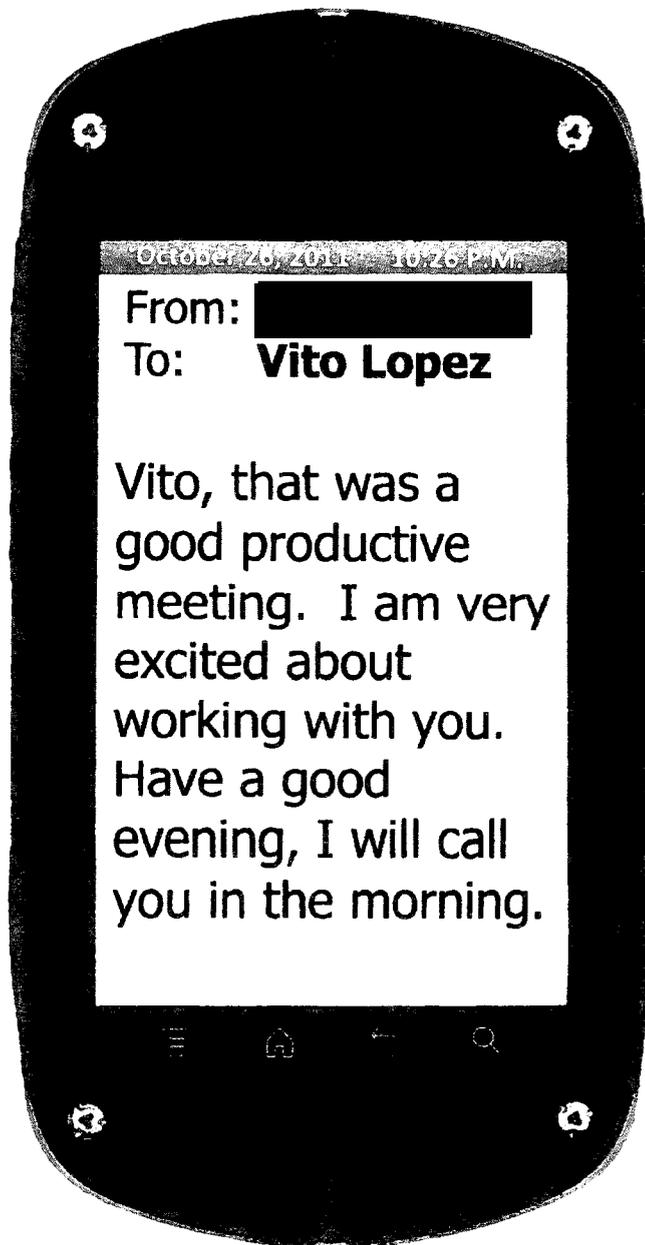
Lopez pressuring [REDACTED] to share Albany apartment

Lopez vs. [REDACTED] Text Messages

October 26th to December 13, 2011



VLIJCOPE000007



October 26, 2011 10:26 PM

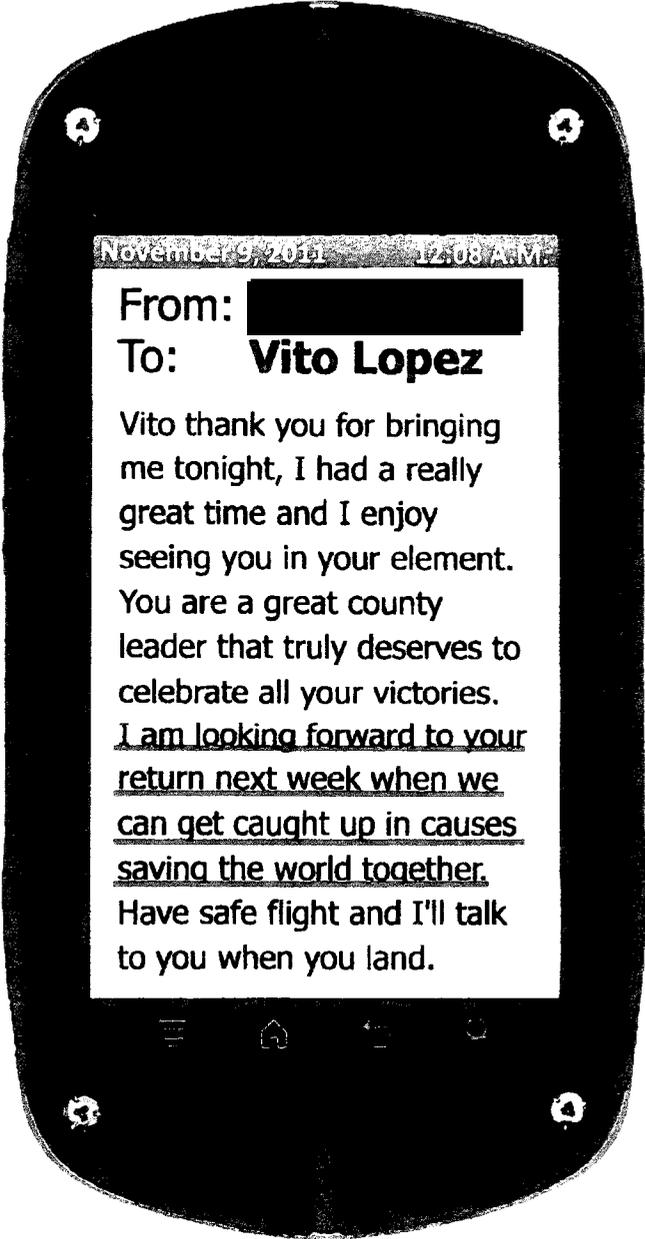
From: [REDACTED]

To: **Vito Lopez**

Vito, that was a good productive meeting. I am very excited about working with you. Have a good evening, I will call you in the morning.

VLJCOPE000008

CLAIM:
Sexual advances made
to [redacted] and others



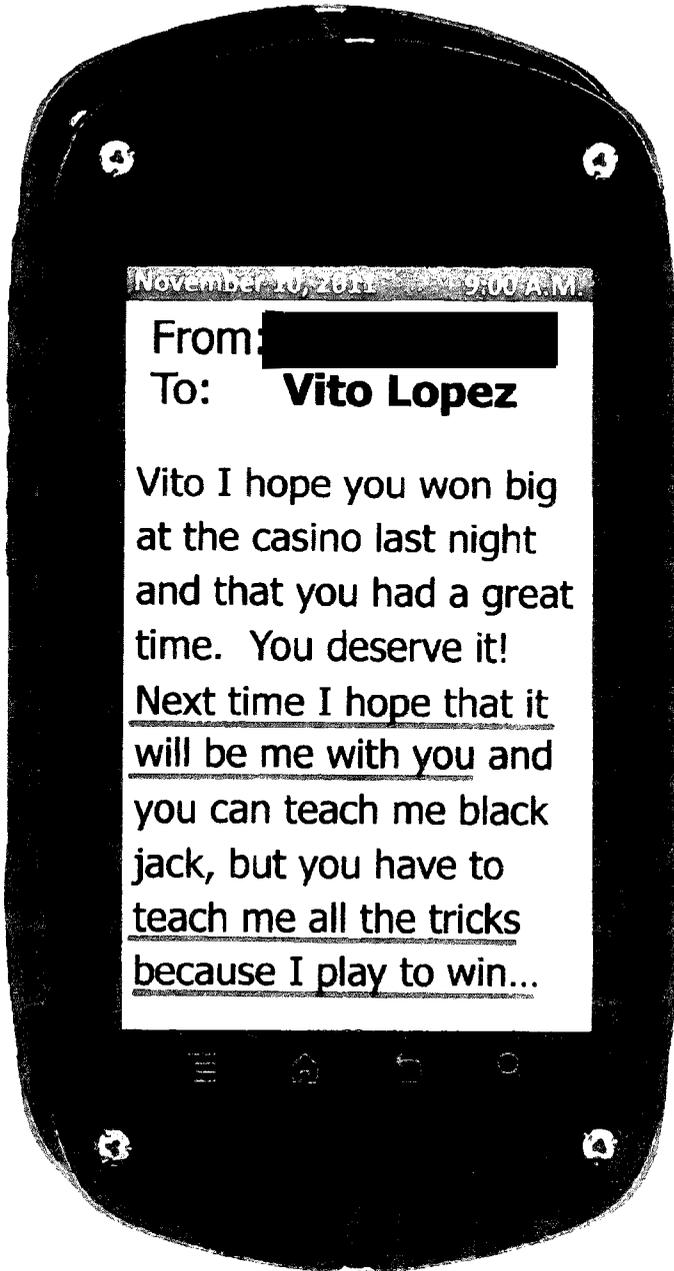
November 9, 2011 12:08 AM

From: [redacted]

To: **Vito Lopez**

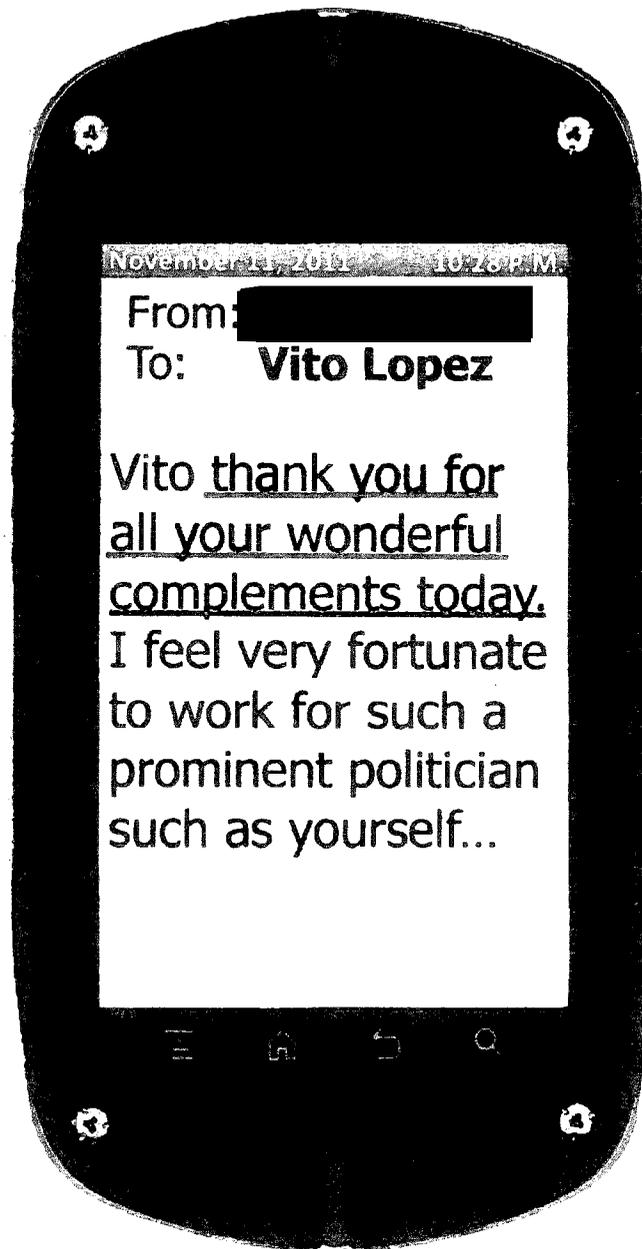
Vito thank you for bringing me tonight, I had a really great time and I enjoy seeing you in your element. You are a great county leader that truly deserves to celebrate all your victories. I am looking forward to your return next week when we can get caught up in causes saving the world together. Have safe flight and I'll talk to you when you land.

CLAIM:
Sexual advances made
to [redacted] and others

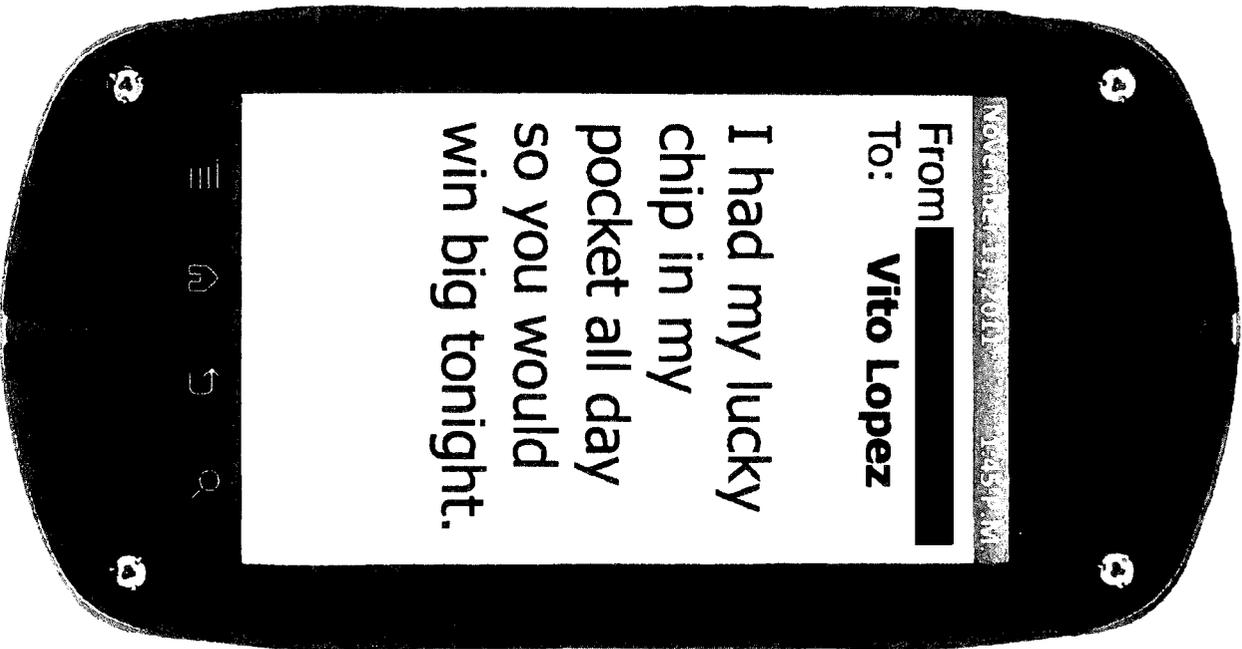


VLJCOPE000010

CLAIM:
Lopez instructs women to
dress a certain way

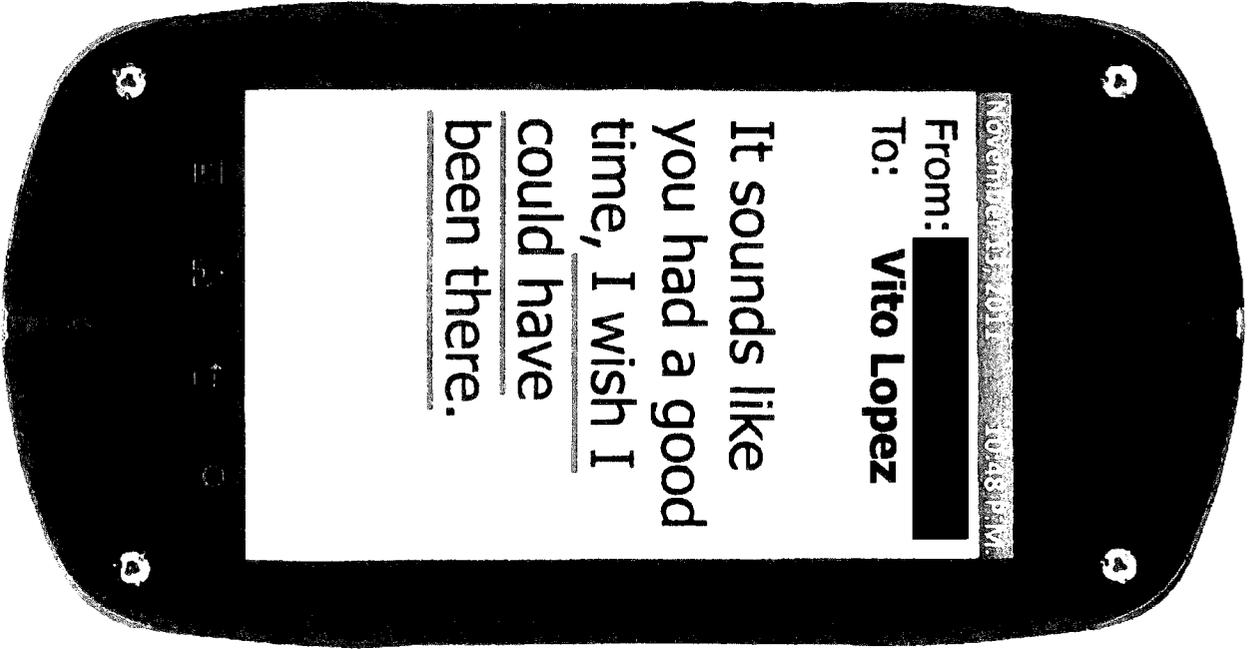


CLAIM:
Sexual advances made
to [redacted] and others



November 17, 2013 1:51 PM
From [redacted]
To: **Vito Lopez**
I had my lucky
chip in my
pocket all day
so you would
win big tonight.

CLAIM:
Sexual advances made
to [REDACTED] and others



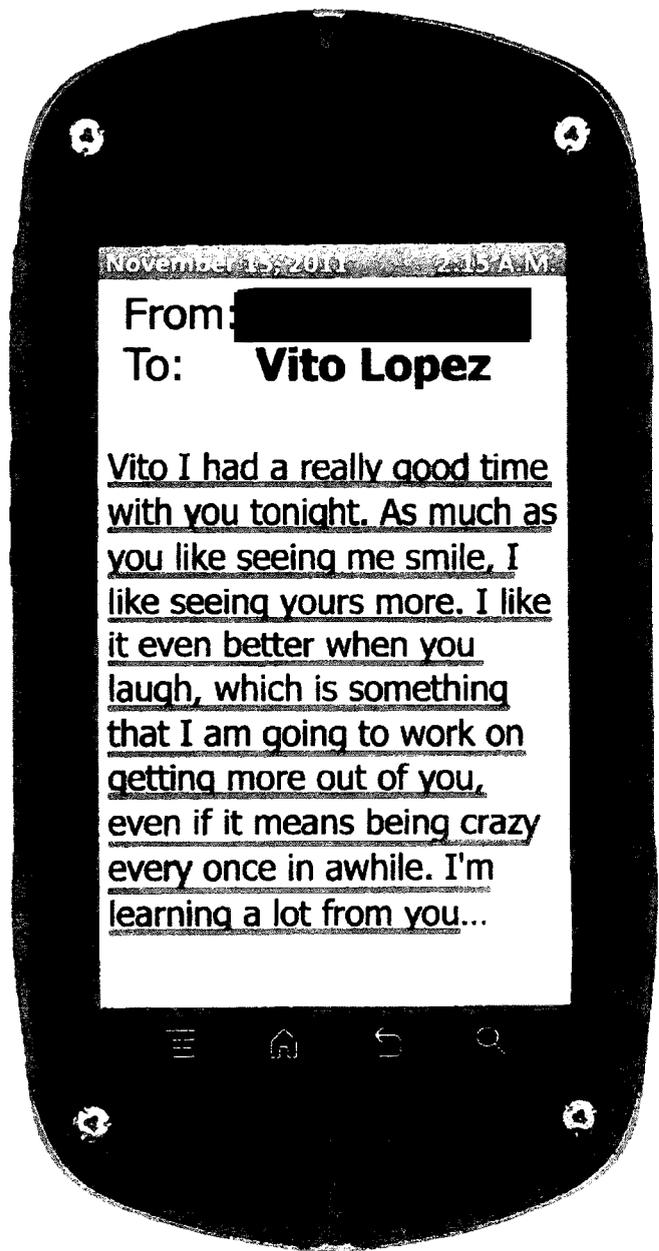
November 15, 2011 10:48 AM

From: [REDACTED]

To: **Vito Lopez**

It sounds like
you had a good
time, I wish I
could have
been there.

CLAIM:
Sexual advances made
to [redacted] and others



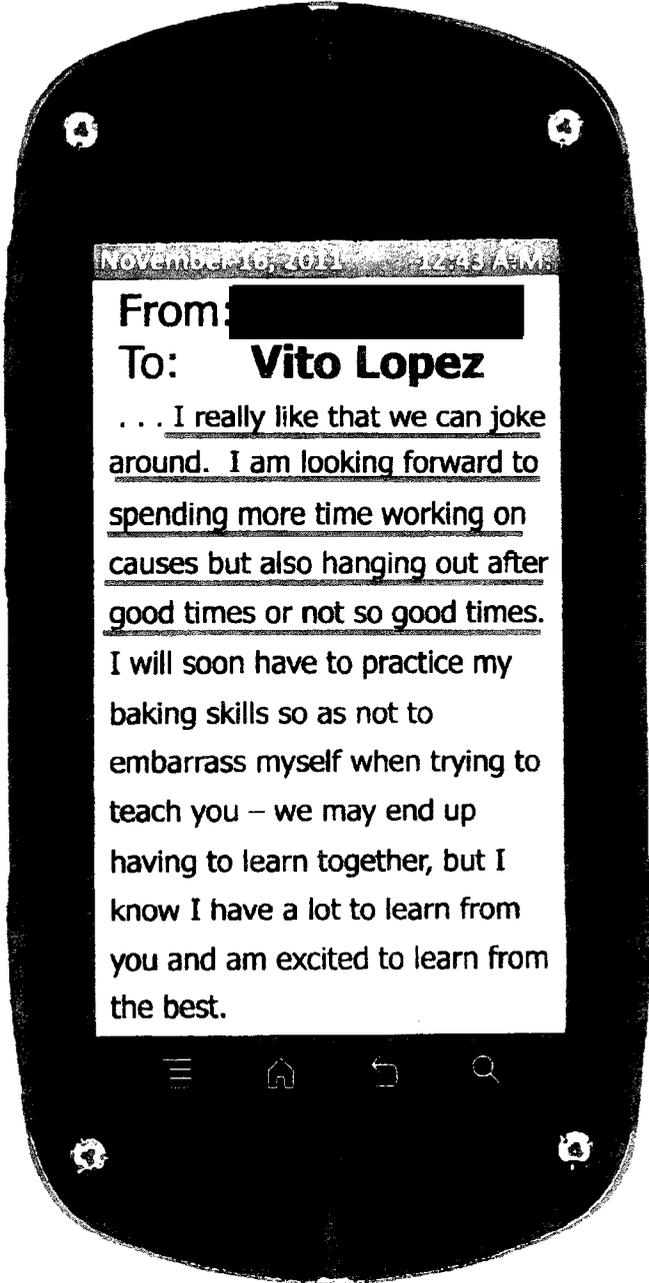
November 15, 2011 2:15 AM

From: [redacted]
To: **Vito Lopez**

Vito I had a really good time with you tonight. As much as you like seeing me smile, I like seeing yours more. I like it even better when you laugh, which is something that I am going to work on getting more out of you, even if it means being crazy every once in awhile. I'm learning a lot from you...

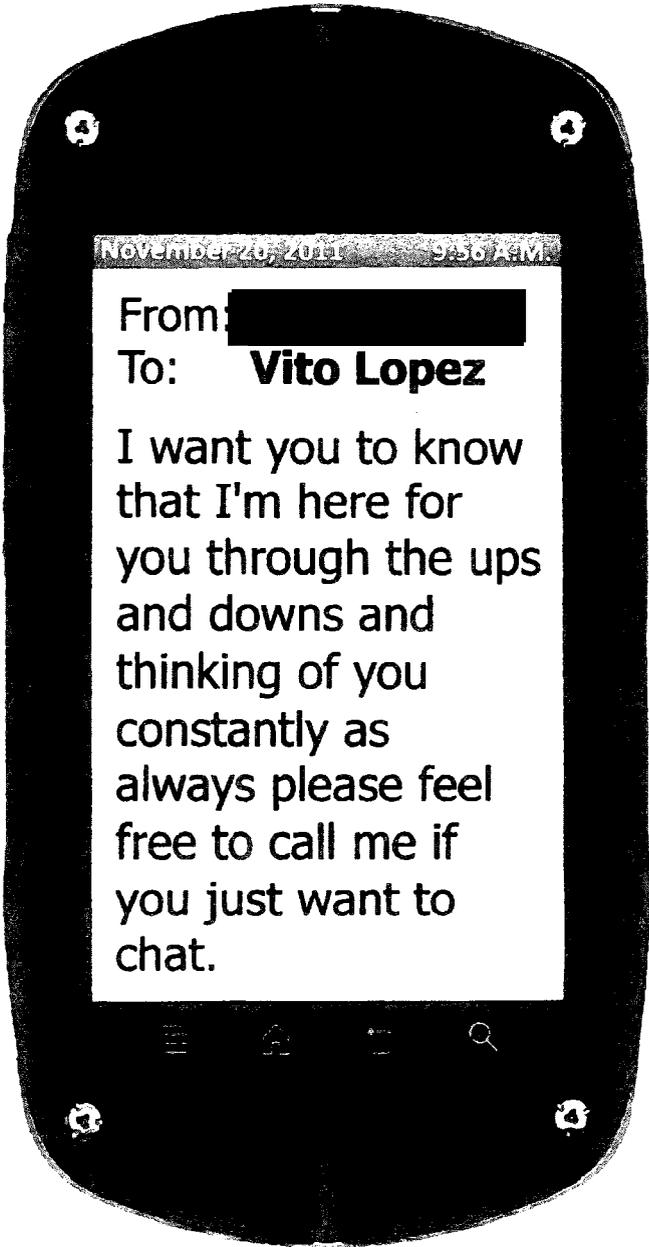
VLIJCOPE000014

CLAIM:
Sexual advances made
to [redacted] and others



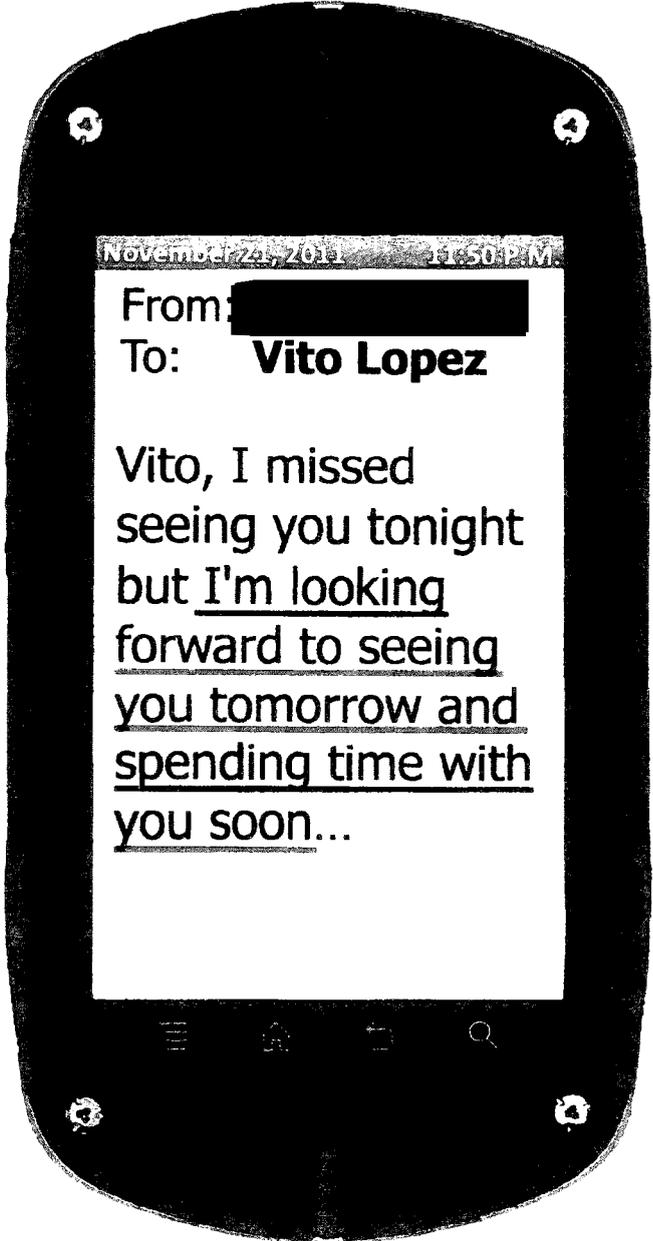
VLJCOPE000015

CLAIM:
Sexual advances made
to [redacted] and others



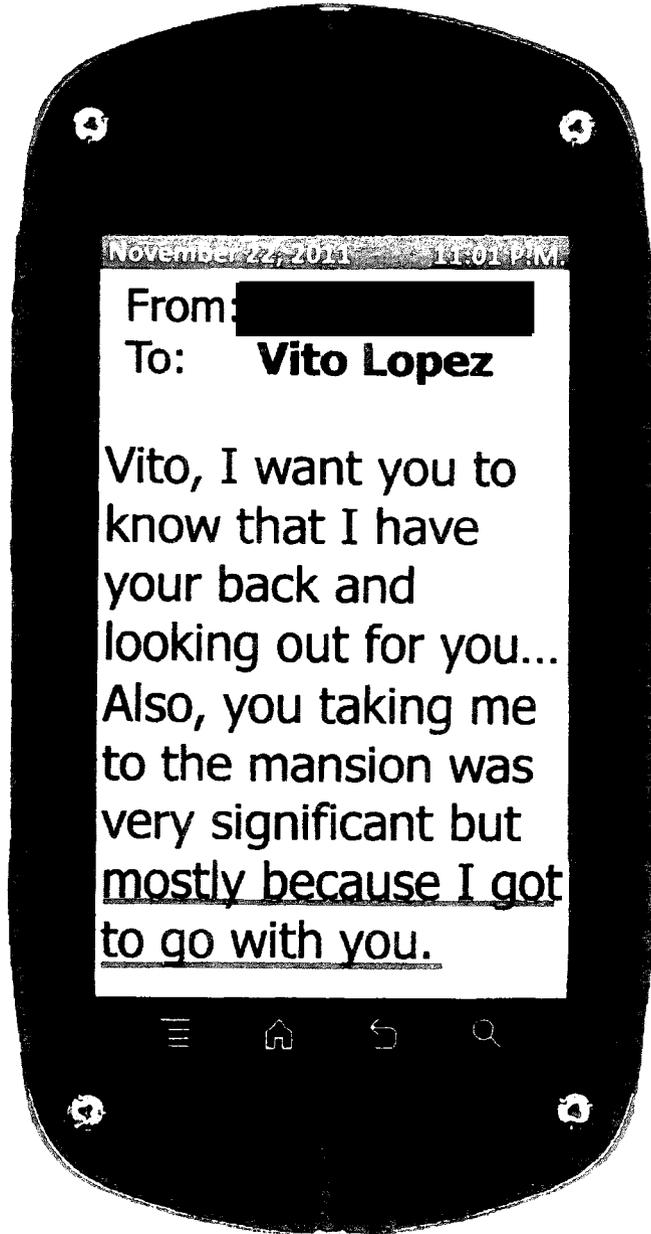
VLICOPPE0000016

CLAIM:
Sexual advances made
to [redacted] and others



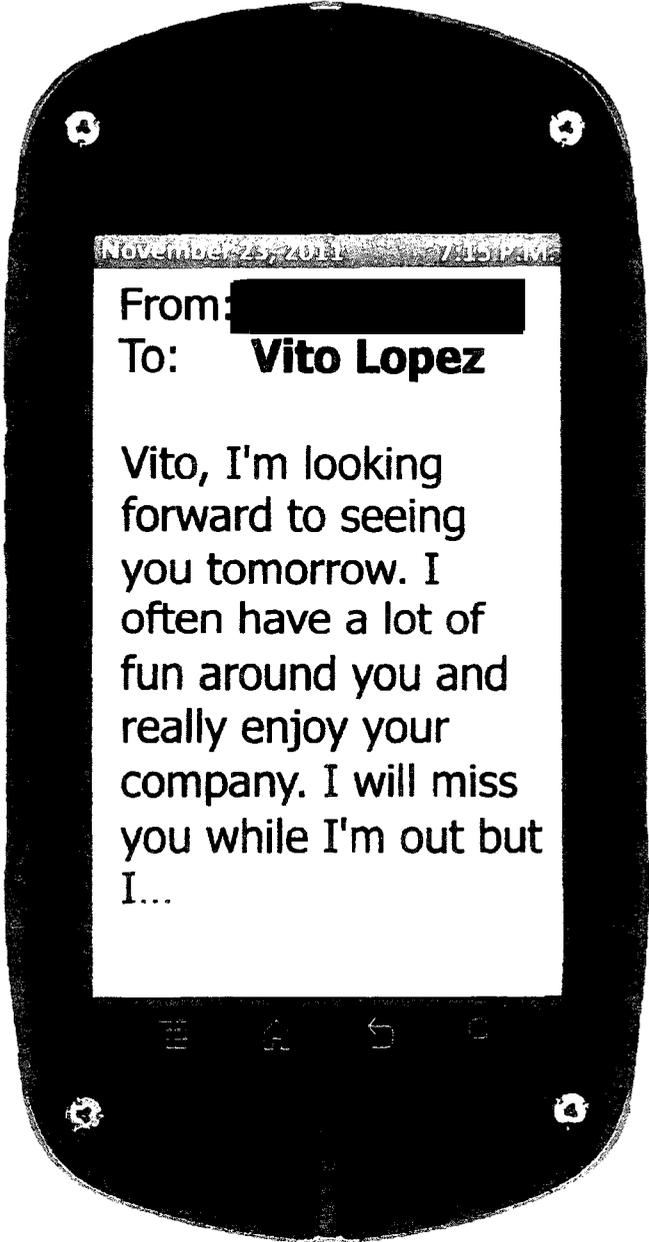
VLJCOPE000017

CLAIM:
Sexual advances made
to [redacted] and others

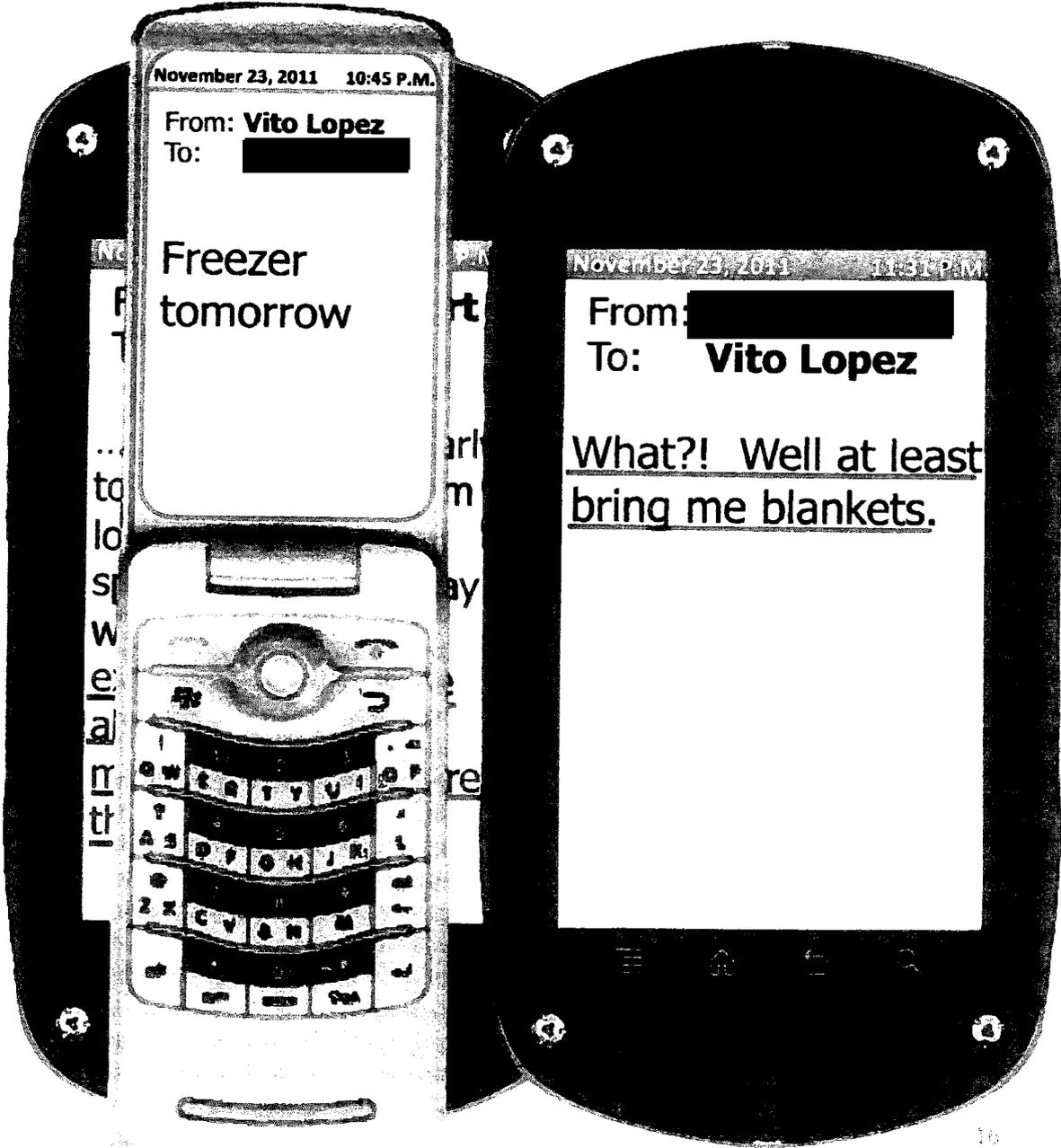


VJICOPPE000018

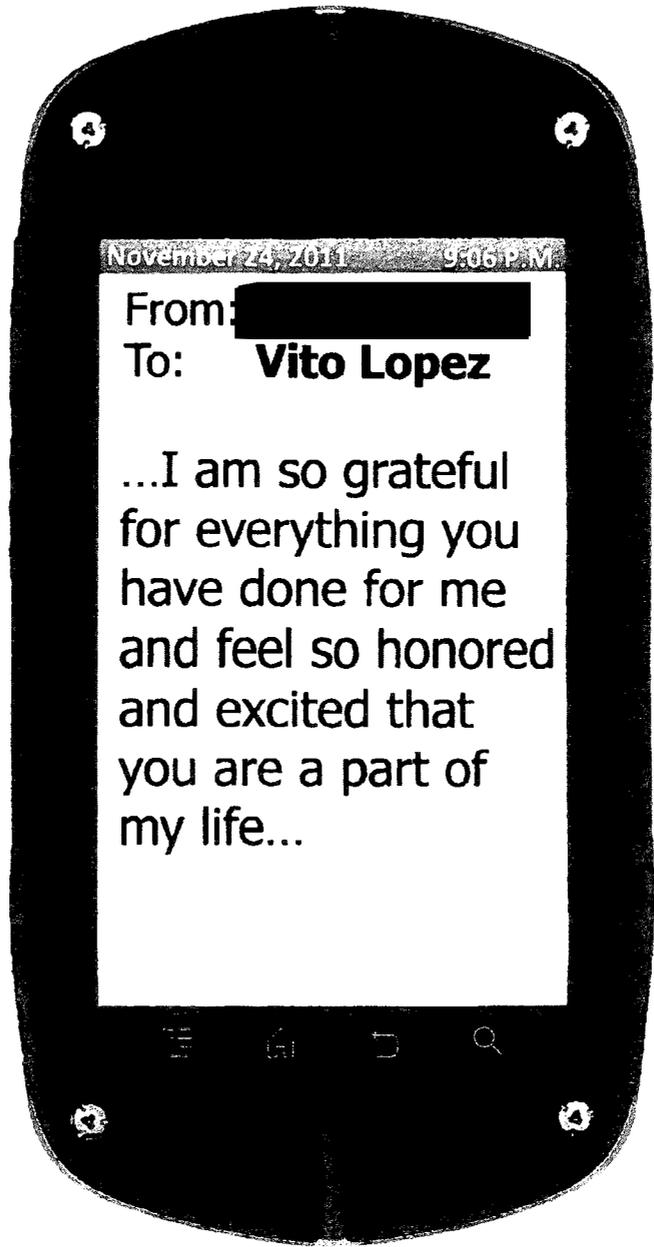
CLAIM:
Sexual advances made
to [REDACTED] and others



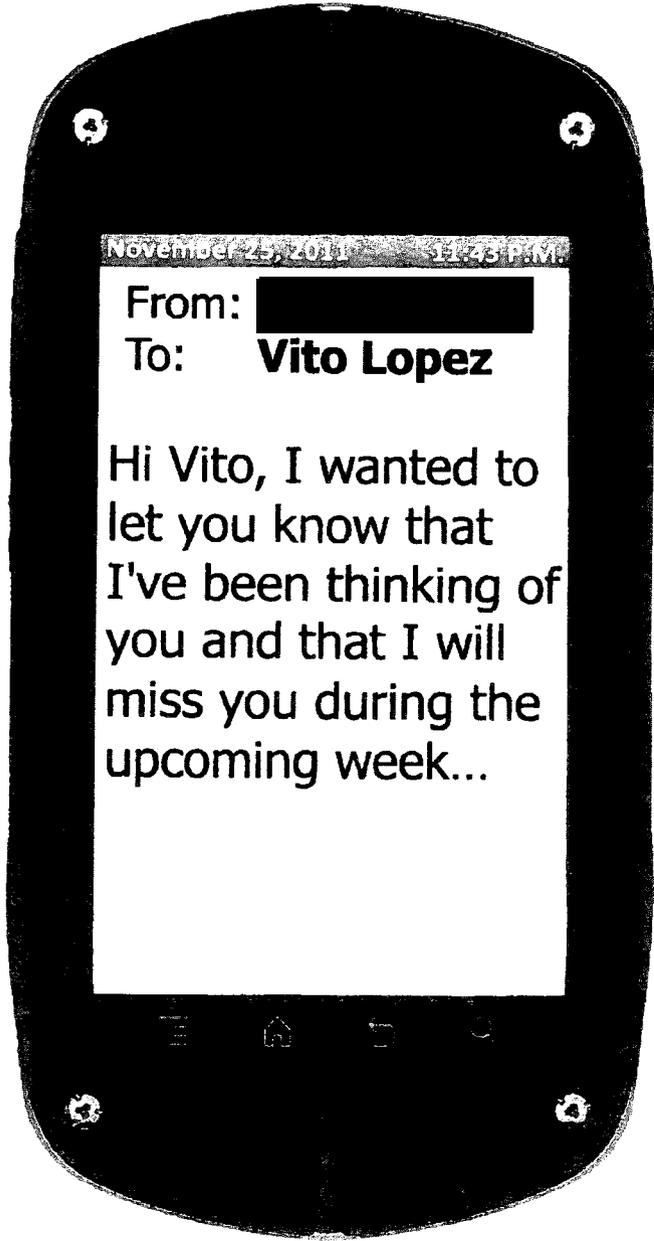
CLAIM:
Sexual advances made
to [redacted] and others



CLAIM:
Sexual advances made
to [redacted] and others

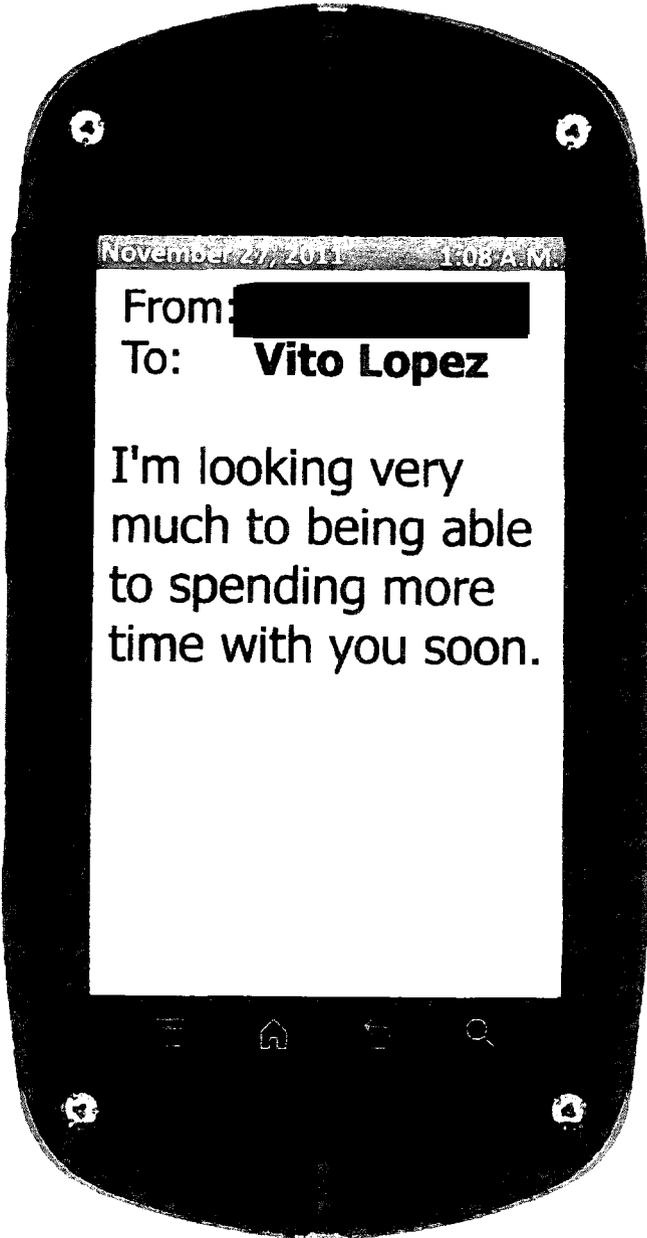


CLAIM:
Sexual advances made
to [redacted] and others

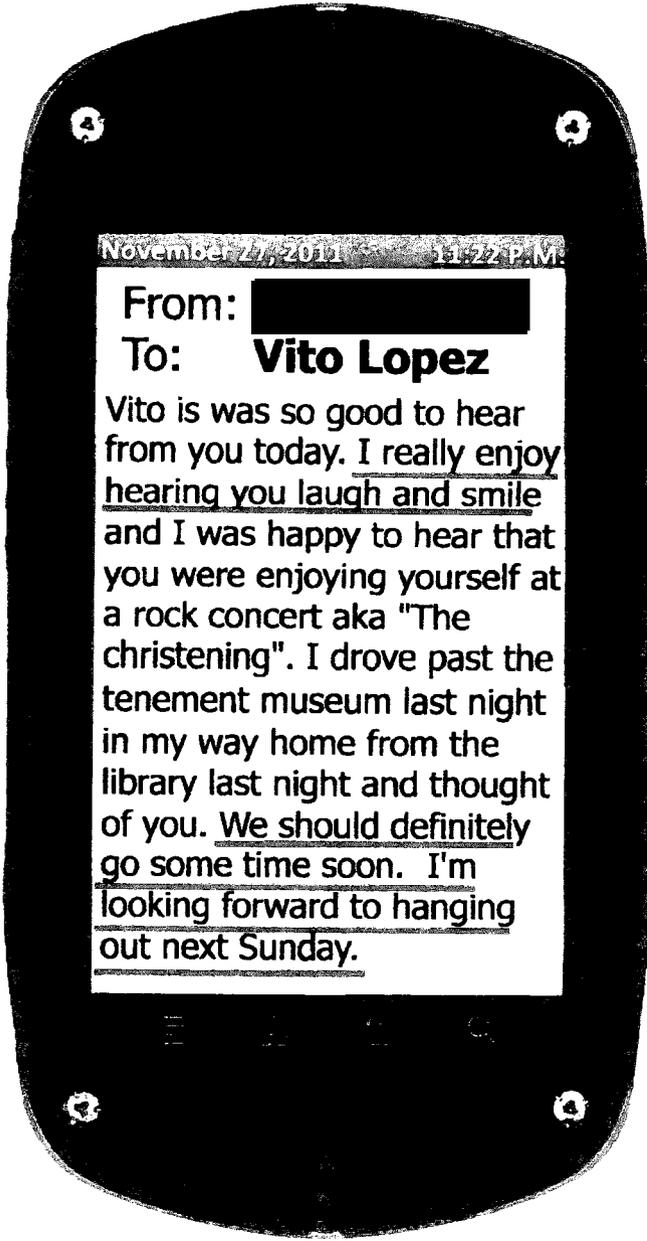


VLJCOPE000022

CLAIM:
Sexual advances made
to [redacted] and others

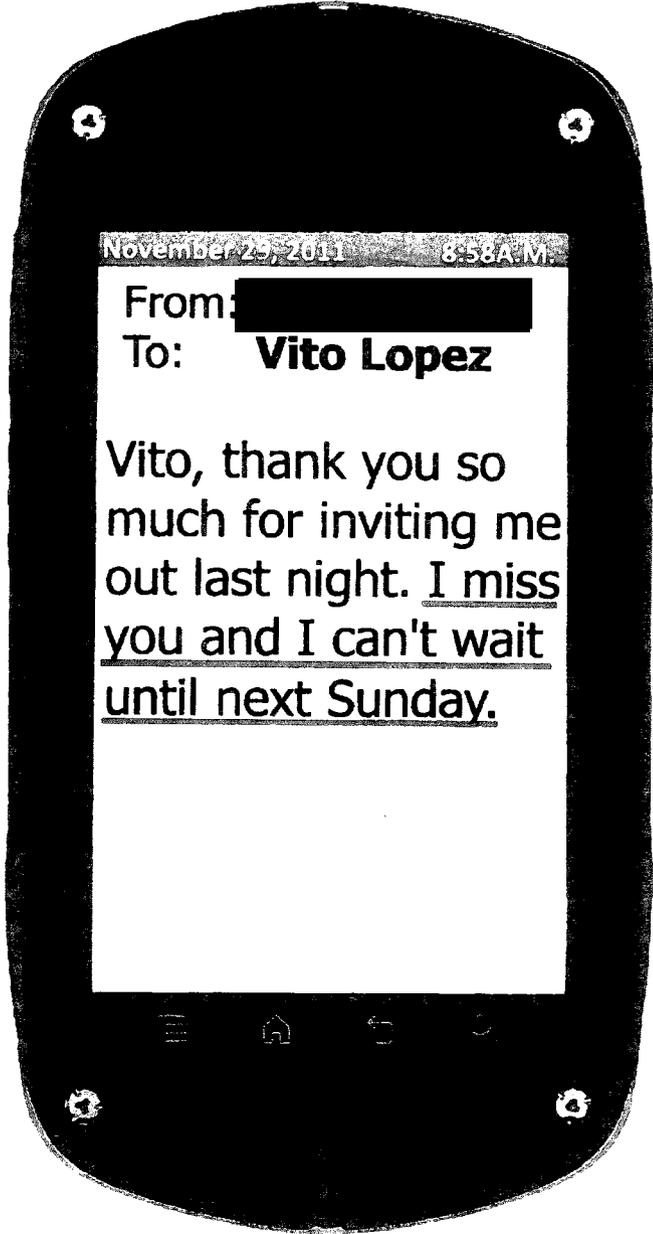


CLAIM:
Sexual advances made
to [redacted] and others



VLJCOPE000024

CLAIM:
Sexual advances made
to [redacted] and others



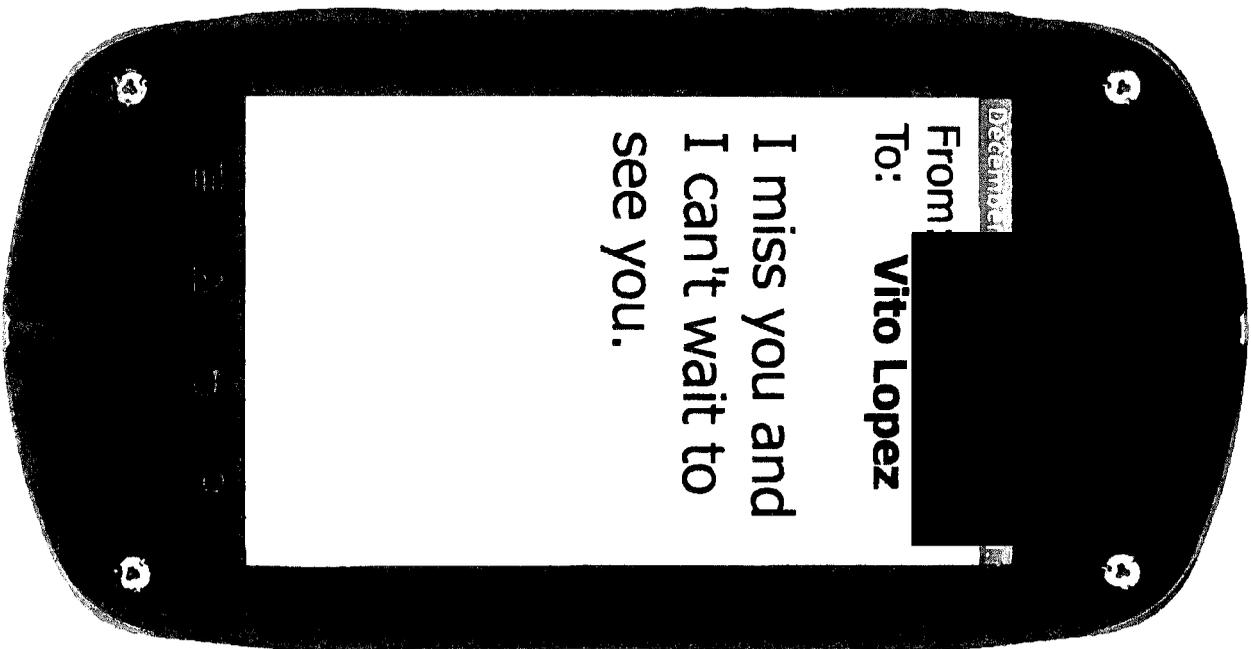
VJICOPPE000025

CLAIM:
Sexual advances made
to [redacted] and others

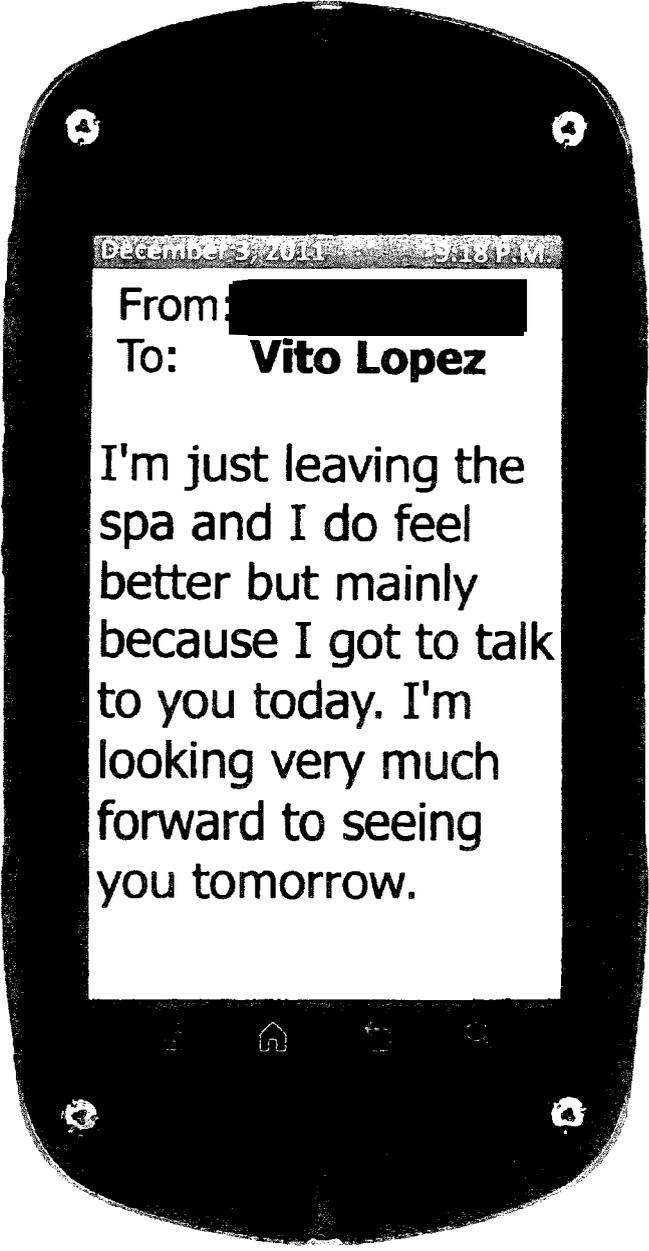


VJICOP E000026

CLAIM:
Sexual advances made
to [REDACTED] and others



CLAIM:
Sexual advances made
to [redacted] and others



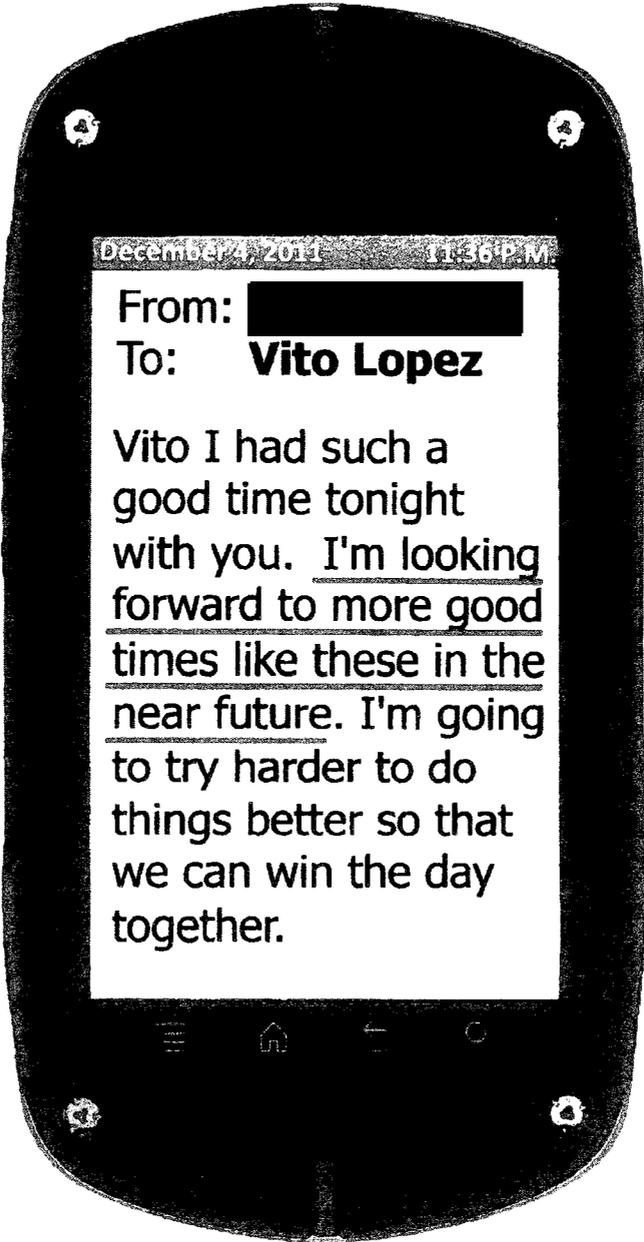
December 3, 2011 4:18 P.M.

From: [redacted]
To: **Vito Lopez**

I'm just leaving the
spa and I do feel
better but mainly
because I got to talk
to you today. I'm
looking very much
forward to seeing
you tomorrow.

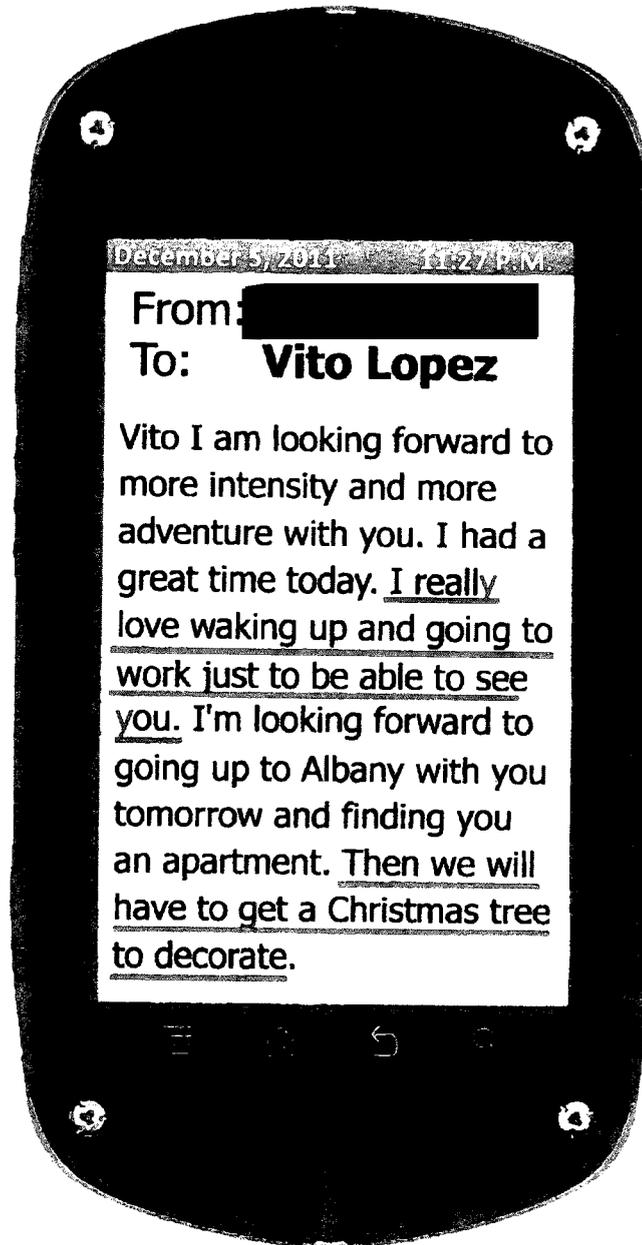
VLIJCOPE000028

CLAIM:
Sexual advances made
to [REDACTED] and others



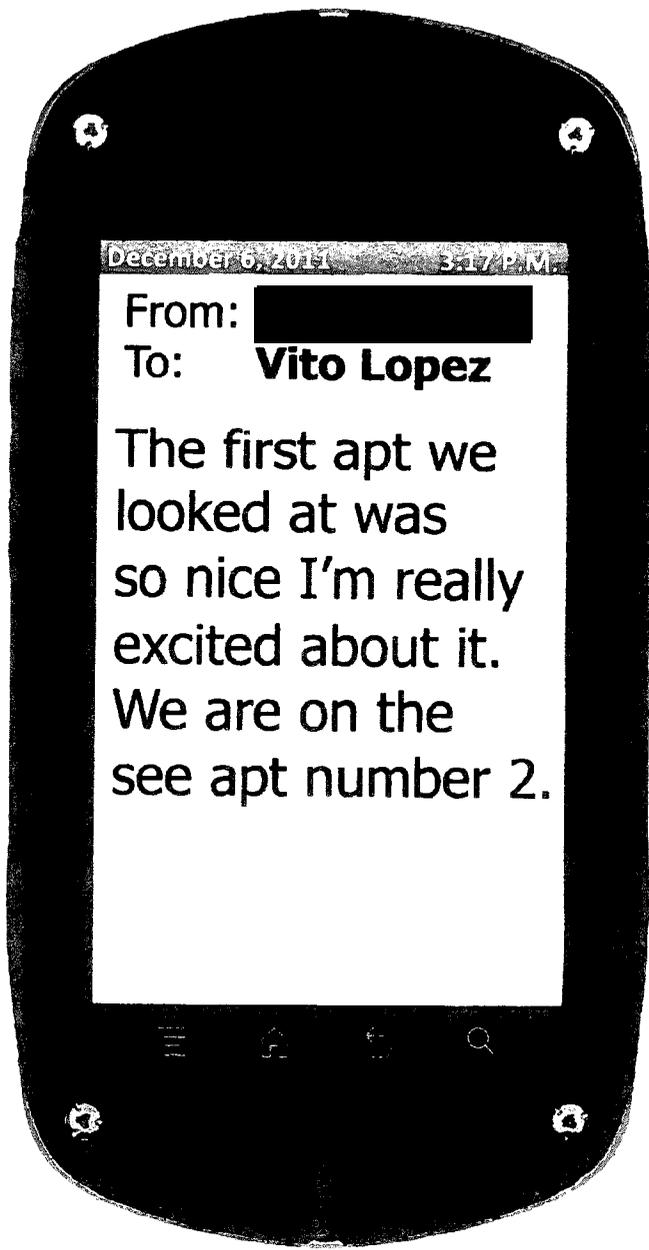
VIJCOPPE000029

CLAIM:
Sexual advances made
to [REDACTED] and others



VLJCOPE000030

Claim:
(Communicated Verbally)
Lopez pressuring [redacted] to
share Albany apartment



December 6, 2011 3:17 P.M.

From: [redacted]

To: **Vito Lopez**

The first apt we
looked at was
so nice I'm really
excited about it.
We are on the
see apt number 2.

VLIJCOPE000031

NOV 12 10:11 PM

From: [REDACTED]
To: **Vito Lopez**

Vito thank you for bringing me tonight, I had a really great time and I enjoy seeing you in your element. You are a great county leader that truly deserves to celebrate all your victories. I am looking forward to your return next week when we can get caught up in causes saving the world together. Have safe flight and I'll talk to you when you land.

NOV 12 10:11 PM

From: [REDACTED]
To: **Vito Lopez**

Vito I had a really good time with you tonight. As much as you like seeing me smile, I like seeing yours more. I like it even better when you laugh, which is something that I am going to work on getting more out of you, even if it means being crazy every once in awhile. I'm learning a lot from you.

NOV 12 10:11 PM

From: [REDACTED]
To: **Vito Lopez**

Vito, I missed seeing you tonight but I'm looking forward to seeing you tomorrow and spending time with you soon...

NOV 12 10:11 PM

From: [REDACTED]
To: **Vito Lopez**

Vito, thank you so much for inviting me out last night. I miss you and I can't wait until next Sunday.

NOV 12 10:11 PM

From: [REDACTED]
To: **Vito Lopez**

I miss you and I can't wait to see you.

NOV 12 10:11 PM

From: [REDACTED]
To: **Vito Lopez**

Vito I am looking forward to more intensity and more adventure with you. I had a great time today. I really love waking up and going to work just to be able to see you. I'm looking forward to going up to Albany with you tomorrow and finding you an apartment. Then we will have to get a Christmas tree to decorate.

VJICOPED000032

2

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August 15, 2012

VIA E-MAIL TO ANN HOROWITZ

The Honorable Daniel J. O'Donnell, Chairman
Assembly Standing Committee on Ethics and Guidance
LOB 819
Albany, N.Y. 12248

In re Complaints of [REDACTED] *and* [REDACTED]

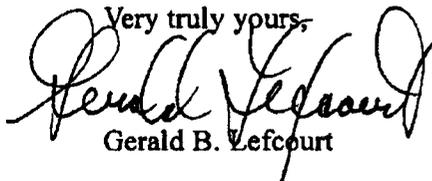
Dear Chairman O'Donnell:

I represent Assembly Member Vito Lopez, who was asked on July 27, 2012, to provide a written or oral statement to the Committee on Ethics and Guidance in response to a complaint received from Kevin Mintzer, Esq., on behalf of two employees.

At my request, by letter dated August 3, 2012, Mr. Lopez's time to submit a response was extended to August 16, 2012. On August 9, 2012, we notified you that Mr. Lopez's response would be written.

Herewith is a written submission which we ask you to consider.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Gerald B. Lefcourt

**SUBMISSION OF ASSEMBLY MEMBER VITO LOPEZ TO THE NEW YORK
STATE ASSEMBLY COMMITTEE ON ETHICS AND GUIDANCE
IN RESPONSE TO COMPLAINT SET FORTH IN LETTER DATED JULY 26,
2012, FROM KEVIN MINTZER, ESQ., TO CAROLYN KEARNS, ESQ.**

Introduction

Vito Lopez has served as an elected member of the New York State Assembly from Kings County for 28 years. Mr. Lopez has always maintained a very active office in advocating around social issues, in particular on behalf of the less fortunate. When first running for office, Mr. Lopez made a commitment to help others, without regard to his own personal interests, and he has stuck by that commitment. He has not taken a vacation in many years, though his ability to discharge his responsibilities has been limited by his ongoing struggle with cancer and sympathetic illnesses that are common to those with weakened immune systems.

██████████ and ██████████ joined Mr. Lopez's staff in mid April 2012. During their brief tenure (from April 18, 2012, through July 15, 2012, approximately twelve weeks) Mr. Lopez provided whatever support or guidance he could. It was a difficult time for him, during which he was hospitalized with pneumonia for seven days and he suffered the death of his close friend, Judge Gus Reichbach. That same three month period saw significant legislative work, including on his housing agenda, and two important Congressional races in North Brooklyn.¹ Both ██████████ and ██████████ enjoyed the support of the rest of Mr. Lopez's staff in both Albany and in the Brooklyn District Office. Frankly, until the day they stopped working he was unaware that either had any complaint about the conditions of employment. That is particularly true, as shall be further explored below, because each of them to the very end of her respective tenure regularly reported, both to him and to others, that, as ██████████ put it in one of many similar text messages,

. . . I was just talking about my job and I thought i'd text you to say how lucky and excited I am to work for you and how dedicated I am to you and the work.

██████████ 7/3/2012 3:53:47 PM.

And, from ██████████

. . . I'm very happy with my job.

¹ During the twelve week period of their employment Mr. Lopez had no or limited interactions with these staff members, as reflected on the attached calendar indicating such.

[REDACTED] 6/3/2012 6:17:18 AM, continued [REDACTED]
[REDACTED] 6/3/2012 6:17:28 AM.

In fact, their desks, files, phones, and chairs remained untouched for weeks, with an expectation on the part of other staff that [REDACTED] and [REDACTED] would return to the jobs they professed to love.

The working environment Mr. Lopez established in his offices was always intended to be positive and supportive, with the goal of creating a successful team both to meet the day to day needs of constituents and to press forward Mr. Lopez's legislative agenda. The work given to [REDACTED] and [REDACTED] seemed to be suited to the skills each exhibited; the areas of interest each expressed; and the willingness each had to stretch out of her safety zone to take on new challenges. Each said she was willing to devote the hours necessary to get the job done.

That being said, both [REDACTED] and [REDACTED] each experienced some difficulties with meeting the goals and objectives of her work responsibilities. Whether those were a function of a continuing adjustment period, or deeper shortcomings, is unknown. Certainly, until Mr. Mintzer's letter, neither [REDACTED] nor [REDACTED] ever complained about any aspect of her work. In fact the opposite is true:

We had our staff meeting and I just wanted you to know that I'm here to support you and I'll have your back. I'm excited and love this job, I'm going to show you that.

[REDACTED] 7/12/2012 11:19:24 AM.

Mr. Lopez is deeply saddened by their complaint and its impact on the people with whom they have worked. Because they simply walked off the job, constituents were literally left on a street corner waiting to be picked up by a bus that never came; supporters and work partners left messages but were never called back; and important business was left unfinished. Not only is that irresponsible on a professional and an interpersonal level, but other staff had to bear the brunt of this.

As he approaches thirty years in the New York State Assembly and fifty years in public service, Mr. Lopez takes well deserved pride in his legacy and, therefore, the actions of these staff members has even more significance.

So it is clear, Mr. Lopez absolutely and entirely rejects any claim that he ever engaged in any inappropriate (or any) touching of [REDACTED] or [REDACTED]. Nor has he ever said anything or done anything that was intended to be inappropriately familiar. Nor has he ever said or done anything that was intended to make either of them uncomfortable.

[REDACTED] text messages tend to be broken into multiple messages, evidently because she would press "send" before ending the message. For clarity, where it is evident that that occurred (usually because a single word is broken into two messages), the broken messages are presented as one message.

That having been said, both the Albany office and the Brooklyn District Office are small offices populated by staff members who see each other for many hours a day, day in and day out. Mr. Lopez acknowledges that, as is typical of small offices, the hierarchical lines can become blurred, with topics discussed and intimacies shared that are best left out of the workplace. If he is at fault for any hurt feelings or misunderstandings, it is through a failure on his part to insist on a more formal atmosphere than what he has allowed in the past. So too, it would appear that the generational gap between Mr. Lopez and these employees may have led him to believe that what to him was innocent might be seen as suggestive and even inappropriate. In that, he certainly has learned his lesson.

With that, below we address the specific claims as to each of the two complainants after a short focus on each employee. To avoid confusion, we have taken the liberty of assigning numbers to the "bullet points" in each of the sections "A" and "B" (e.g., A.2, etc.). Duplicative or similar claims are grouped.

██████████ was hired after she applied for a position in response to a job opening posting. She began working in mid April 2012 and worked out of the Albany office until the first week of June 2012, approximately seven weeks of her 12 week employment. During this first, Albany, period -- approximately 14 days of legislative session -- Mr. Lopez missed six session days when he was hospitalized with pneumonia (May 12-21). The hospital stay and resulting fatigue curtailed his work schedule and performance for the subsequent six weeks.

By early June, ██████████ had transferred to the Brooklyn District Office. However, she accompanied Mr. Lopez to Albany for the eleven session days held in early June. Because of his physical condition, Mr. Lopez was in his hotel room, alone, by 9:30 p.m. every evening he was in Albany.

While ██████████ showed potential for promotion, based on performance of job tasks undertaken in the Albany office, she approached the Brooklyn community differently and often alienated leaders in both the Asian community and the loft tenant community--two very important constituencies in the 53rd Assembly District. In fact, while her work was able, she had an imperious attitude that caused significant constituent friction. This was a matter of great concern to Mr. Lopez and he spoke to ██████████ about it directly. ██████████ recently received a \$2,000 raise based on her willingness to relocate to Brooklyn and to travel back and forth from the District Office to the Albany office. Nevertheless, she left many tasks unfinished in the District Office, further alienating important constituencies.

██████████ did not, by the way, work for "more than two years" in Albany for DC 37, as is claimed in the complaint.

A.1

"Invitation to Travel to Russia"

There was a gathering at the Bushwick United Democratic Club on the date alleged and both [REDACTED] and Mr. Lopez were present, as were between 15 and 25 others, all of whom were there in connection with the impending June 26, 2012, Congressional race.

That day was a trying one. Not only was there an important upcoming election, but Mr. Lopez had that day suffered a disappointing rejection of a housing bill on which and staff had expended a great deal of effort. Compounding matters was Mr. Lopez's disappointment at the manner in which [REDACTED] had communicated the legislative set-back to the loft tenant constituents. Instead of empathizing, she lectured them. They in turn were upset by her behavior, and they let Mr. Lopez know it. Mr. Lopez told [REDACTED] she had handled the matter poorly and instructed her on how she might improve. Unfortunately, [REDACTED] is always quite certain that she is right and does not take criticism well.

At no time at the Democratic Club was Mr. Lopez alone with [REDACTED]. In fact, given the number of people in attendance (many) and the size of the room (small), no two people could have a private conversation even if they had wanted to do so. And Mr. Lopez neither wanted to nor did he have a private conversation with [REDACTED]. Further, he did not invite her to accompany him on a trip to Russia nor, even if he had done so, would he have conditioned her joining him on any particular sleeping arrangements.

First of all, Mr. Lopez does not travel. In the last several years, he has flown twice, both times in connection with his official duties and both times locally: to Puerto Rico and to the Dominican Republic. No official responsibilities would take him to Russia and he does not take vacations.

There is a recollection that on that occasion, or perhaps another, [REDACTED] saying that she had an interest in traveling to Russia, but it was not in response to an invitation from Mr. Lopez. Thus, the claim that he "stormed" out of the Club because of her rejection of him is denied. At one point, he did leave the Club -- to reach out to Italian community leaders to gather support in connection with the Congressional race.

A.2., A.8, A.9, A.12

Clothing and Appearance

Mr. Lopez denies raising with [REDACTED] the subject of her undergarments, or for that matter, her outergarments, either. At no time did he ever "snap her bra" or touch her in any way. He does not recall one way or the other if he ever told her she "looked nice". He never told her to dress in any particular way and he never told her how to wear her hair.

For her own reasons, on one occasion and with no predicate, [REDACTED] volunteered that she had recently cut her hair; that she regretted having done so; and that she intended to grow her hair long like that of [REDACTED]. Mr. Lopez expressed no view on the subject.

A.3

Discussion of Personal Relationship with her Former Employer

The complaint asserts that Mr. Lopez repeatedly questioned Ms. [REDACTED] about whether she had had a personal relationship with her prior employer and that the subject made her "uncomfortable". The reality is that [REDACTED] inexplicably offered that she had had a personal relationship with a prior employer, a lobbyist; that the lobbyist's wife had been incensed about it; and the lobbyist's wife had contacted [REDACTED] directly to get her to desist. [REDACTED] also volunteered that the employer arranged dates for her with other lobbyists and even with Assembly members.

Though puzzled as to why [REDACTED] would share such information, Mr. Lopez did express concern as to what impact the prior relationship might have on his own working relationship with the lobbyist, with whom he occasionally worked on various issues. Mr. Lopez did not initiate the topic with [REDACTED] for a number of reasons, first and foremost because he had no knowledge that there was any relationship between the two until [REDACTED] volunteered the information.

It is difficult to understand how, having volunteered the information when it was neither appropriate nor called for, Ms. [REDACTED] now seeks to assign wrongdoing to the recipient of the unwanted information.

Moreover, it is quite clear that Mr. Lopez in no way invited intimacy of any kind with [REDACTED], as she herself admits in the following text:

I know you said you didn't like texts but I just thought I'd check in and say goodnight. I know our relationship is a work in progress but I hope you know and I hope to prove to you how caught up I am in your work and that I am looking so forward to everything we are going to do together.

[REDACTED] 7/5/2012 11:08:13 PM

A.4; A.5; A.11

Forced Touching; the Hand Massage

Mr. Lopez never touched [REDACTED], never put his hand between her legs and never made contact with her inner thigh; he never insisted on a kiss. Mr. Lopez rarely drinks and would not drive drunk. Indeed, if [REDACTED] ever was truly concerned about being

in a car alone with Mr. Lopez, one wonders how to reconcile that with, for example, the following text:

Hope you had a nice, relaxing day! We're all set for the press conference. I am planning on being there by 9:45. Then I am looking forward to the ride up to Albany!

██████████ 6/17/2012 9:21:27 PM (emphasis added)

██████████ did on one occasion massage Mr. Lopez's hand, but not in a sexual or other inappropriate manner. It occurred when she observed him massaging his own hand while driving. She asked what the problem was and he explained that he had suffered nerve damage in it and as a result it would "go numb"; he then relayed that he found that massaging it revived circulation. ██████████ offered to massage the hand and did so. Mr. Lopez neither solicited it nor thought it was wrongful. He never required her to massage his neck. If she nevertheless in fact did so, he has no recollection of it.

A.6, A.7
The Atlantic City Trip

The complaint alleges that Mr. Lopez insisted that ██████████ join him on a trip to Atlantic City, that the trip had no work purpose but was for pleasure, and that despite her insistence that she would not sleep over, he obtained a room for the two of them.

This is materially inaccurate.

The trip to Atlantic City was solely for work, undertaken for the purpose of meeting with a prominent civic leader and business man. The plan was to meet him there for dinner, discuss several business and civic issues with the goal of establishing a working relationship, and leave that evening. Ms. ██████████ accompanied Mr. Lopez because it was work, although she seemed rather happy to be going, as can be seen from this text message sent the morning of the trip:

Good morning Vito! I'm looking forward to today! I have the lucky coin ready to go!

██████████ 7/10/2012 9:18:43 AM.

Mr. Lopez and ██████████ left Brooklyn at about 1 p.m. and arrived in Atlantic City shortly after 4 p.m. Upon arrival, Mr. Lopez endeavored to locate the person with whom they were to meet and a plan to meet for dinner was made.

While waiting to meet for dinner, ██████████ disclosed that she was an experienced gambler, a claim that was confirmed when over the course of approximately two hours she won what appeared to be at least \$1,000 playing blackjack and craps.

In setting a firm time for dinner, Mr. Lopez learned that his contact had arranged for access to a hospitality room in which he could use the bathroom to freshen up. He and [REDACTED] did so, visiting the room for the sole purpose of using the bathroom. Mr. Lopez denies that he arranged a room, denies he was "comped", and denies absolutely that he in any way made any improper, aggressive or sexual approach to [REDACTED] in the ten to fifteen minutes they were in the room, or at any other time.

The two proceeded to the place they were to meet their dinner companion. He was late and the two ordered dinner without him. When he did arrive, the three went to the casino, where [REDACTED] wandered off and Mr. Lopez had the planned discussion. Sometime before 11 p.m., Mr. Lopez and [REDACTED] started back to Brooklyn, as planned. Mr. Lopez was not only not drunk, but he had had no alcohol at all. He rarely drinks.

The morning after this entirely uneventful day, [REDACTED] sent Mr. Lopez the following text:

Good morning Vito! I was just thinking what a nice night we has being high rollers! I hope you found a little respite last night and also got hone safely! See you in the office, we have the 2pm REBNY meeting to go over!

[REDACTED] 7/11/2012 10:16:48 AM (*emphasis added*)

Or this one, sent a day later:

We had our staff meeting and I just wanted you to know that I'm here to support you and I'll have your back. I'm excited and love this job, I'm going to show you that.

[REDACTED] 7/12/2012 11:19:24 AM

Or other texts thereafter:

... I'm excited and love this job.

[REDACTED] 7/12/2012 11:19:24 AM

... I love this job.

[REDACTED] 7/14/2012 1:19:09 AM

Perhaps it is not necessary to say that it is very difficult to reconcile a claim that Mr. Lopez made unwanted advances with the fact that [REDACTED] sent messages that entirely belie that anything untoward occurred.

During the approximately twelve weeks that she was on staff, [REDACTED] generally got her work done and seemed pleased with her role and interactions with other office staff. So pleased, in fact, that she began to express her desire to pursue a career in politics. Her specific first objective was to take over as Mr. Lopez's chief of staff at the end of the year should his current chief of staff follow through on an intention to move back to the Dominican Republic. As [REDACTED] told Mr. Lopez in a text:

Thank you for everything tonight. I know that you don't want me to thank you but I'm going to do it anyway because I am thankful that you recognize that

I love my job, politics in general and that we can talk candidly over beer. I enjoyed it and we'll do it often. I want to be your right hand person so I'

m going to do what I think is the right to eventually be that person.

[REDACTED] 6/25/2012 1:49:51 AM, continued [REDACTED]
[REDACTED] 6/25/2012 1:50:06 AM, continued [REDACTED] 6/25/2012
1:50:09 AM.

B.1, B.13, B.14

Mr. Lopez Encouraged/Instructed Staff to Dress in a Particular Way

As noted above in Section A.2, 8, 9, 12, [REDACTED] and other staff dress according to what they determine is appropriate, though Mr. Lopez has asked staff to be cognizant of the mores of the various constituency groups. He noted that [REDACTED] consciously (and appropriately) dressed conservatively when meeting with religious leaders, usually twice a week. [REDACTED] dress, hair style and general appearance played no role in her work assignments or functioning in the office. And at no time did Mr. Lopez suggest that [REDACTED] come to work topless. Indeed, it is difficult to know how to take such a claim: the Brooklyn District Office is staffed by at least six persons at all times. A typical day sees not only those staff members, but dozens of constituents appearing without notice or appointment to provide information or to seek assistance. Deliveries are made, items are picked up, things are dropped off. It is just impossible to imagine that such a comment could have been made, or, if it were, taken seriously.

B.2

Most Attractive Person in the Office

██████████ contends that Mr. Lopez told her that he considered her to be "the most attractive person in the office". Mr. Lopez does not recall saying it.

B.4

Mr. Lopez "Insisted that She Dine Alone with Him and Drink Alcohol"

In the introduction section above, reference is made to a pattern of errors by ██████████. While Mr. Lopez found these errors disconcerting, it was ██████████ who chose to confide personal details about herself to Mr. Lopez. She asked to see Mr. Lopez alone and when he agreed to do so, approximately one month into her tenure, she informed him that she suffers from attention deficit disorder, and though she had (inexplicably) stopped taking the medication prescribed to address the problem, she was "working on it".

In relaying this unsolicited information, she became extremely emotional. Mr. Lopez in response advised her on how to work on correctly categorizing information. She agreed to take his advice. However, she begged Mr. Lopez to keep her condition a secret and he agreed to do so.

To assure that she was both correctly keeping track of his schedule and completing the other tasks assigned to her, the two agreed to meet regularly to review assignments. Because ██████████ was extremely agitated at the thought that anyone else in the office would learn of her condition, the meetings were held out of the office. Thus, though Mr. Lopez regularly dines with staff, usually with as many as can make it, it was ██████████, not Mr. Lopez, who insisted that the two meet outside the office for dinner and not be joined by other staff. ██████████ sought out these meetings aggressively, and they met three or four times, always at locations and at times chosen by ██████████ function as scheduler enabled those meetings to occur, although several were cancelled based on Mr. Lopez's work conflicts.

On several of those occasions, she chose on her own to bring wine or beer. As with ██████████ he denies ever touching ██████████ or engaging in inappropriate conduct.

B.5, B.6, B.10, B.11, B.12

Meetings Turning Into "Therapy Sessions"

The accusation is also made that meetings between the two turned into unsolicited "therapy sessions". That is not inaccurate, though that turn of events was neither solicited by Mr. Lopez nor welcomed by him. During these working dinners, ██████████ would bring up family issues that had no place in the work environment. She chose to discuss her brother's behavioral issues and in particular that he had recently been excluded from the grandmother's public housing apartment.

She also *volunteered* details of her problems with her boyfriend, another unwelcome topic, and repeatedly shared that her boyfriend did not like social causes, politics or community work, causing an obvious conflict with [REDACTED] stated interests.

Mr. Lopez denies that he, as asserted, used [REDACTED] in turn to unburden himself with respect to his personal life. Indeed, when he was too busy to meet with her, she pursued him:

Hey Vito - I left you a voicemail message and I don't know if you're just no longer interested in or too busy but I was just reminding you of our 8:00 meeting if you wanted to talk. I'd like to. Let me know!

[REDACTED] 6/27/2012 7:01:38 PM, continued [REDACTED]
[REDACTED] 6/27/2012 7:01:48 PM.

And she certainly appreciated it when he did make the time:

I sincerely hope you know that I not only appreciate but enjoy your interest in me and just hanging out.

[REDACTED] 6/25/2012 1:50:27 AM.

Thank you, Vito, for a really great night! Sincerely, [REDACTED]

[REDACTED] 6/29/2012 12:19:35 AM.

Thank you for checking in on me all night, it was really really nice of you.

[REDACTED] 7/10/2012 10:25:19 PM.

B.7, B.8, B.9

The Suggestion that They Travel Together

Mr. Lopez denies asking [REDACTED] to travel with him, at all or under any conditions.

At one of the dinner meetings described above, [REDACTED], for her own reasons and with no suggestion or encouragement from Mr. Lopez, brought a six pack of beer with her. He drank one; she drank more than one.

During the course of that dinner, she volunteered that she spoke French and for that reason was thinking about traveling to Quebec. Frankly, Mr. Lopez did not even know where Quebec was or that French was spoken there. It was she who suggested that he accompany her, a suggestion he never took seriously and as to which there was no follow up.

Mr. Lopez is certainly puzzled by the pattern to the complaints of both women. For reasons Mr. Lopez can only attribute to [REDACTED] and [REDACTED] getting together on their complaint, [REDACTED] also claims that Mr. Lopez suggested they travel together to Russia. Mr. Lopez has never had any plans to travel to Russia and never asked either of them, or anyone else, to go with him to Russia. He has no idea where this notion came from. He does recall that in connection with her interest in the Hasidic community [REDACTED] suggested that she and Mr. Lopez have dinner at a Russian night club, in Brooklyn. They never did so.

Nor did he suggest taking her to Atlantic City, another suspected cross-over from consultation with [REDACTED].

B.15

Calling the Police

The claim that Mr. Lopez instructed [REDACTED] to go shopping with an intern so that the intern could teach [REDACTED] something about how to dress is denied. It does appear that [REDACTED] mother phoned the police to claim that the intern was in imminent danger because the police responded to the complaint and did not hide the reason they were there. [REDACTED] has never met Mr. Lopez and to Mr. Lopez's knowledge has never been in the District Office.

On the day she phoned in the complaint, police arrived at the Office and interviewed the intern. We understand that the intern denied being in any danger or that Mr. Lopez (or anyone else) acted inappropriately to her. The police on the scene informed Mr. Lopez that the woman who phoned was "crazed" and that the complaint was likely really "about something else". Needless to say, no arrests were made or any wrongdoing found.

Thereafter, [REDACTED] repeatedly phoned the intern in an effort to enlist her in supporting the complaint. Despite every effort to get [REDACTED] to understand that the intern had nothing to complain about, [REDACTED] pestered the intern for some time.

Conclusion

Mr. Lopez's staff, including [REDACTED] and [REDACTED], dress as they wish. There were no sanctions for dressing in any particular manner and no outbursts for doing so. It is certainly so that [REDACTED] has a strong will. To the extent she was criticized by Mr. Lopez, it was not for her dress, but for her ham-handed manner of addressing other staff members and even constituents. Nevertheless, he was both tolerant and supportive.

Mr. Lopez's core concern is the proper functioning of both his District Office in Brooklyn and his Albany office. Staff members are promoted and rewarded based on level of service to the community and job performance. Indeed, he always tries to promote from within, witnessed by his current Brooklyn chief of staff. [REDACTED] started

as a legislative aide approximately three years ago. Based on performance and commitment to the community, [REDACTED] was promoted to deputy chief of staff and then to chief of staff. [REDACTED] understands that Mr. Lopez's goal is to maintain a professional work atmosphere encouraging camaraderie among staff and a high level of service to the community. Any claim that promotions and raises are tied to any factor other than job performance is unsupportable.

Lessons Learned

As noted, Mr. Lopez is deeply shocked by the claims made here, in particular because they are entirely inconsistent with the feedback he got both directly from these employees and from others on the staff and in the community who have reported back how happy each has said she was with her job. If anything, he has come to understand that he may well fail to understand that what he says and does, no matter how innocently intended, can be misunderstood by others of a different generation and experience. He certainly intends to examine his conduct and endeavor to understand how his actions may be perceived rather than focus solely on his own intent.

Some of the claims, however, cannot be attributed merely to different world views and experiences. He either did or did not attempt to kiss [REDACTED] in Atlantic City. And he did not.

Submitted 8/15/12

Calendar

VLJCOPE000129

April 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 Apr 2012	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	VL, [redacted] Limited Time [redacted] Based in Albany	VL, [redacted] Limited Time [redacted] Based in Albany	VL, [redacted] Limited Time [redacted] Based in Albany	VL, [redacted] Limited Time [redacted] Based in Albany VL- Out of town Colombian Lawyers conf.	VL, [redacted] Limited Time [redacted] Based in Albany VL- Out of town Colombian Lawyers conf.
VL, [redacted] Limited Time [redacted] Based in Albany VL- Out of town Colombian Lawyers conf.	VL, [redacted] Limited Time [redacted] Based in Albany	VL, [redacted] Limited Time [redacted] Based in Albany VL- Hope Reichbach event				
VL, [redacted] Limited Time [redacted] Based in Albany	VL, [redacted] Limited Time [redacted] Based in Albany	1 May	2	3	4	5

May 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
29 Apr 2012	30	1 May	2	3	4	5
		VL [redacted] - Limited Time [redacted] - Based in Albany	VL [redacted] Limited Time [redacted] Based in Albany	VL [redacted] Limited Time [redacted] Based in Albany VL - Bklyn. Unidos	VL [redacted] Limited Time [redacted] Based in Albany VL - [redacted] bday (granddaughter)	VL [redacted] Limited Time [redacted] - Based in Albany VL - [redacted] Communion (granddaughter)
6	7	8	9	10	11	12
VL [redacted] Limited Time [redacted] Based in Albany VL - w/ Sister (all day)	VL [redacted] Limited Time [redacted] Based in Albany VL - Sloan Kettering (Dental Clinic)	VL [redacted] Limited Time [redacted] - Based in Albany	VL [redacted] Limited Time [redacted] Based in Albany	VL [redacted] Limited Time VL - 101 Fever [redacted] Based in Albany	VL - 102 Fever [redacted] Based in Albany	VL - 104 Fever Hospitalized [redacted] Based in Albany
13	14	15	16	17	18	19
VL - Hospital [redacted] Based in Albany	VL - Hospital [redacted] Based in Albany	VL - Hospital [redacted] Based in Albany	VL - Hospital [redacted] Based in Albany	VL - Hospital [redacted] Based in Albany	VL - Hospital [redacted] Based in Albany	VL - Bed rest (pneumonia related fatigue) [redacted] Based in Albany
20	21	22	23	24	25	26
VL - Bed rest (pneumonia related fatigue) [redacted] Based in Albany	VL - Bed rest (pneumonia related fatigue) [redacted] Based in Albany	VL - Albany Meeting [redacted] Based in Albany	VL - Returned Home [redacted] Based in Albany	VL - LI Vacation (tooth problem) [redacted] Based in Albany	VL - LI Vacation (tooth problem) [redacted] Based in Albany	VL - LI Vacation (tooth problem) [redacted] Based in Albany
27	28	29	30	31	1 Jun	2
VL - LI Vacation (tooth problem) [redacted] Based in Albany	VL - LI Vacation (tooth problem) [redacted] Based in Albany	VL - LI Vacation (tooth problem) [redacted] Based in Albany	[redacted] Based in Albany	[redacted] Based in Albany VL - Kings Cty. Democratic Dinner		

June 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
27 May 2012	28	29	30	31	1 Jun [redacted] moves to Brooklyn after six weeks based in Albany	2
3 VL- [redacted] Recital (went home early w/ tooth prob.)	4 VL- Albany Session	5 VL- Albany Session and bday party (went home early w/ tooth problem)	6 VL- Albany Session	7 VL- Bklyn. Unidos (tooth problem)	8 VL- Pompeii Players Musical (went home early w/ tooth problem)	9
10 VL- [redacted] Bday party (grandson)	11 VL- Albany Session	12 VL- Albany Session	13 VL- Albany Session	14 VL- Albany Session Fundraiser Dinner	15 VL- Nassau County Fundraiser Dinner	16 VL- Dinner Party (12 people)
17 VL- Father's Day w/ family in LI	18 VL- Albany Session	19 VL- Albany Session	20 VL- Albany Session	21 VL- Albany Session	22 VL- Demo. Club (Prep for Cong. Primary, work late on election activities)	23 VL- Demo. Club (Prep for Cong. Primary, work late on election activities)
24 VL- Demo. Club (Prep for Cong. Primary, work late on election activities)	25 VL- Demo. Club (Prep for Cong. Primary, work late on election activities)	26 VL- Demo. Club (Prep for Cong. Primary, work late on election activities)	27	28	29	30 [redacted] July 4th Vacation VL- Visit Gus R. (sick friend)

July 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 Jul 2012 [redacted] July 4th Vacation VL- Peconic, LI	2 [redacted] July 4th Vacation VL- Peconic, LI	3 [redacted] July 4th Vacation VL- Peconic, LI	4 [redacted] July 4th Vacation VL- Peconic, LI	5 [redacted] July 4th Vacation	6 VL- Comm. based Agency Staff Farewell Party	7 VL- Assisted in Binding Petitions (all day)
8 [redacted] Assisted in Binding Petitions (all day)	9 VL- Petition filing & challenging specs on opponents	10 VL- Petition filing & challenging specs on opponents VL [redacted] Atlantic City	11 VL- Petition filing & challenging specs on opponents	12 VL- Petition filing & challenging specs on opponents *various appts. from 6pm-2am	13 [redacted] Last Day	14 VL- Canarsie Pol. Mtg. on Judge (morning) VL- Death of friend (visit w/ wife from 1pm-7pm)
15 VL- Funeral Service for Reichbach(2-6pm) Specs on District Petitions (7pm-1am)	16 VL- Mtg. w/ Russian Leaders @ Frank Carone's (7:30pm-11pm)	17 [redacted] Last Day	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1 Aug	2	3	4