

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 provide 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 do 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

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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 ___ and [REDACTED] residing at ___ (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 _____ 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 _____ 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 _____, 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 Ms. [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 Ms. [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

[REDACTED], 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 [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]