Arlene Smoler

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

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

From: Arlene Smoler [mailto:Arlene.Smoler@ag.ny.gov]
Sent: Wednesday, May 30, 2012 12:49 PM
To: 'William Collins'; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement

Bill- I don't see an attachment of the SECOND draft. Am I missing something?

Arlene

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

Arlene and Nancy,

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

Bill

DRAFT SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

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

14. Member of Assembly Vito Lopez and the staff of the office of Member of Assembly Vito Lopez will, within 90 days of the execution of this Agreement receive supplementary instruction – in addition to that which is biennially provided to Members of the Assembly and staff – concerning the Assembly Affirmative Action Policy, the Assembly Sexual Harassment/Retaliation Policy, and identification and avoidance of sex discrimination and sexual harassment in the workplace. A record concerning the dates and nature of this training shall be created and maintained by the New York State Assembly. This training may be conducted in separate sessions.

15. Except in response to a court order or in response to a valid subpoena, neither any party to this Agreement, nor any representative, heir, assign or other person affiliated with any party to this Agreement will discuss or make any statement of any sort concerning the underlying circumstances of the dispute which has given rise to this Agreement or any terms of this Agreement with any other person or entity. Each of the Employees and their representatives agree that the Employer shall be entitled to liquidated damages of ten thousand dollars ($10,000) or actual damages, whichever is greater, from the person or entity breaching the terms of paragraph 15 or 16 of this Agreement for each breach of this paragraph, and any breach of paragraphs 15 or 16 of this Agreement by either Employee or their representative shall be considered a material breach.

16. The Employees hereby agree, individually and collectively, that they shall not communicate or publish, or cause to be communicated or published, any disparaging remarks, comments or statements in any form concerning any aspect, circumstance or incident involving their employment in the office of Member of Assembly Vito Lopez or any office(s) of the New York State Assembly.

17. Each of the Employees and their representatives agree that the Employer shall be entitled to liquidated damages of ten thousand dollars ($10,000) or actual damages, whichever is greater, from the person or entity breaching the terms of paragraph 15 or 16 of this Agreement for each breach of such terms, and any breach of paragraphs 15 or 16 of this Agreement by either Employee or their representative shall be considered a material breach.

18. Any claim, action, suit or other dispute relating to any terms of this Agreement or the Releases entered into pursuant to this Agreement shall be

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

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

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

[redacted]

Date:

NEW YORK STATE ASSEMBLY

By: _____
(Print Name)

TITLE: Counsel to the Majority

Date:

[redacted]

Date:

CUTTI HECKER WANG LLP

By: _____
(Print Name)

Date:

MEMBER OF ASSEMBLY VITO LOPEZ

Date:

ALLRED MAROKO & GOLDBERG

By:_____

Date:

Exhibit "A"

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

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

[redacted]

STATE OF NEW YORK
COUNTY OF _____

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

[redacted]

Exhibit "B"

RELEASE

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

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

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

[redacted]

STATE OF NEW YORK
COUNTY OF _____

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

[redacted]