William Collins

From: William Collins [collinw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 3:09 PM
To: 'Kirschner, Kenneth'; 'James Yates'; 'Carolyn Kearns'
Subject: FW: mediation
Attachments: [redacted]SETTLEMENT AGREEMENT.doc

Ken, I think this does everything you suggested. The State Comptroller's office requests that we affirmatively state that the alleged pain and suffering payments are in lieu of any sort of compensation so the state can't be on the hook for or end up paying any form of salary which could lead to employer tax obligations, retirement service credits, etc. Thanks again, Bill

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From: William Collins [mailto:collinw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 3:05 PM
To: 'Gerald Lefcourt'; 'Sheryl E. Reich'; 'Carolyn Kearns'; 'James Yates'
Subject: FW: mediation

Forgot to "attach" AGAIN; dammit!!!

From: William Collins [mailto:collinw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 3:04 PM
To: 'Sheryl E. Reich'; 'Gerald Lefcourt'; 'Carolyn Kearns'; 'James Yates'
Subject: RE: mediation

Here is the third - and, hopefully, moving toward the final - draft. Unfortunately, I am not particularly adept at word processing editing so, I'll just direct your attention to the deletion of the phrase "the Employer" *passim*; reference to what we are and aren't paying for in paragraphs 5 and 6; replacement of paragraph 9 with other suggested language; reference to an attached "voluntary letter of resignation" to be executed by each employee; withholding the letters of recommendation until the releases are received in paragraphs 12 and 13;striking the creation and maintaining of a record of training in paragraph 14; omitting the excess language in paragraph 15 [NOTE: the language appears in paragraph 17]; paragraphs 19 and 23 are new and self-explanatory.

From: Sheryl E. Reich [mailto:reich@lefcourtlaw.com]
Sent: Wednesday, May 30, 2012 1:33 PM
To: William Collins; Gerald Lefcourt; Carolyn Kearns
Subject: RE: mediation

You are saying that the retained record you are suggesting in the draft is intended to meet their demand highlighted below? Do you have a few minutes to chat about that at say around 2:30?

-----Original Message-----
From: William Collins [mailto:collinsw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 12:30 PM
To: Gerald Lefcourt; Sheryl E. Reich; 'James Yates'; 'Carolyn Kearns'
Subject: FW: mediation

-----Original Message-----
From: margaretlshaw@gmail.com [mailto:margaretlshaw@gmail.com] On Behalf Of Margaret Shaw
Sent: Tuesday, May 29, 2012 1:16 PM

To: William Collins
Subject: Re: mediation

wonderful! I will try to get this today from Marianne.

On 5/29/12, William Collins <collinsw@assembly.state.ny.us> wrote:
> I think we're good with all of it. I've been taking a shot at drafting
> a settlement agreement. I'll need the numbers.
>
> ----- Original Message -----
> From: Margaret Shaw [mailto:mshaw@jamsadr.com]
> Sent: Tuesday, May 29, 2012 12:40 PM
> To: William Collins <collinsw@assembly.state.ny.us>
> Subject: Re: mediation
>
> Bill, Any response to the above? Many thanks, Margaret
>
> On 5/23/12, Margaret Shaw <mshaw@jamsadr.com> wrote:
>> Bill, Here's the email I received yesterday from Maryanne while I was
>> in a mediation. I just had a chance to talk with her about it, and
>> she has given me permission to forward it to you. Can you forward it
>> on to Gerry and Cheryl as well? My understanding from Maryanne is
>> that it was a tough sell to her clients, meaning very little if any
>> flexibility. Lets talk when you all have had the chance to digest and
>> discuss with your various clients. Thanks, Margaret
>>
>>
>>
>>
>> Margaret:
>>
>>
>> Sorry I missed your call. Thought I'd send the message this way. It
>> took an enormous number of long conversations and meetings, but I
>> think I've just about gotten my clients where they need to be to
>> accept the final offer, with a few important qualifiers. Because
>> they don't feel like the money is enough, these "other" points are
>> important for them and a condition of accepting the numbers:
>> (1) there's an agreed upon positive reference, attached as an exhibit
>> to the agreement for each of them; I don't think they care who signs
>> it, and obviously it would focus on the things they did well;
>> relatedly, the parties agree that they resign as of May 31, 2012;
>> (2) Vito Lopez and his staff is trained in a special session that
>> focuses on his office by a date certain - it could be within 90 days,
>> but there is retained proof of that fact on file (doesn't have to be
>> provided to them); they also want to be clear, as my initial demand
>> letter made clear that the allegations are not just about sexual
>> harassment (though obviously that's a big part of it), but about sex
>> discrimination as well;
>> (3) the lump sum payments that are made to them (as apart from the
>> attorneys fees) be made for emotional harm and as a 1099 tax
>> treatment (both have been getting extensive treatment from
>> therapists, and have only gotten the treatment since the events).
>>
>>
>> Assuming the defendants are on board with these pieces, I will then
>> send you a break down of the payments.

>>
>>
>> Thanks for your efforts,
>> Mariann
>>
>>
>> --
>> Margaret L. Shaw, Esq.
>> JAMS
>> 620 Eighth Avenue, 34th Floor
>> New York, N.Y. 10018
>> (212) 607-2763
>> (212) 751-4099 (fax)
>>
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> --
> Margaret L. Shaw, Esq.
> JAMS
> 620 Eighth Avenue, 34th Floor
> New York, N.Y. 10018
> (212) 607-2763
> (212) 751-4099 (fax)
>

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Margaret L. Shaw, Esq.
JAMS
620 Eighth Avenue, 34th Floor
New York, N.Y. 10018
(212) 607-2763
(212) 751-4099 (fax)

THIRD DRAFT SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[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]

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

EXHIBIT "E" :

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

Dear Ms. Gold:

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

Very truly yours,