

REDACTED

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

IN THE MATTER OF AN INVESTIGATION OF
ASSEMBLYMEMBER VITO LOPEZ

Respondent,

Alleged Violations of §§74(3)(d), (f), and (h)
of the Public Officers Law

SUBSTANTIAL BASIS
INVESTIGATION
REPORT

JCOPE-127

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I. SUMMARY OF INVESTIGATION

On August 24, 2012, the Assembly Standing Committee on Ethics and Guidance (the “Assembly Ethics Committee”) issued a report which concluded that Assemblymember Vito J. Lopez (“Lopez”) had engaged in repeated conduct toward two former female staff members that violated the Assembly’s Sexual Harassment/Retaliation Policy and recommended that the Speaker of the New York State Assembly, Sheldon Silver, impose specific sanctions against Lopez.¹ In response to the report, on the same day, the Speaker adopted the Assembly Ethics Committee’s recommendations and took formal action against Lopez, including removing Lopez from his position as Chair of the Assembly Standing Committee on Housing, a position he held for more than 15 years.

On August 25, 2012, the New York Times reported that the Assembly and Lopez had previously entered into a confidential settlement agreement with two other former female staff members who had also alleged that Lopez had subjected them to improper behavior of a sexual nature. Subsequent reporting by the media indicated that the Assembly and Lopez had collectively paid more than \$100,000 pursuant to a confidential settlement agreement and that the Office of the Attorney General (“OAG”) and the Office of the State Comptroller (“OSC”) had been consulted during settlement negotiations by counsel for the Assembly. On August 28, 2012, Lopez resigned his position as the Chair of the Kings County Democratic Party.

In light of these events and other information, on September 10, 2012, the Joint Commission on Public Ethics (the “Commission”) commenced an investigation into whether Lopez violated the State’s ethics laws with respect to his treatment of certain female staff members, as well as with respect to the management and disposition of certain complaints against him. The investigation included the issuance of 49 subpoenas, interviews of more than 45 witnesses, and review of the more than 20,000 documents produced.

The investigation established that in December 2011 and January 2012, two of Lopez’s employees made complaints to the Office of Counsel for the Assembly Majority. Without any investigation by the Assembly or a referral to the Assembly Ethics Committee, these complaints were resolved on June 6, 2012, through a confidential settlement agreement negotiated between counsel for the Assembly Majority, counsel for Lopez, and counsel for the employees (the “Settlement Agreement”). In April 2012, while engaged in the settlement negotiations, Lopez hired two women to replace the first set of complainants, and subjected the new employees to similar, if not more, egregious mistreatment. In July 2012, six weeks after Lopez signed the Settlement Agreement, these two women complained to the Office of Counsel for the Assembly Majority. These complaints, unlike the first two, were promptly referred to the Assembly Ethics Committee, which, after an investigation, issued the August 24, 2012 report to the Assembly Speaker.

¹ The Assembly Ethics Committee is a bipartisan committee composed of four Democrats and four Republicans and meets on an *ad hoc* basis. The Assembly Ethics Committee’s jurisdiction includes, among other areas, matters that fall under the Sexual Harassment/Retaliation Policy.

The Commission's investigation revealed that the complaints made by the four former Lopez employees did not occur in a vacuum. Rather, since at least 2010,² Lopez engaged in an escalating course of conduct with respect to multiple female staff members, including the complainants, that began with demeaning comments about appearance and dress as well as demands for fawning text and email messages, increased to requirements for companionship outside the office, and culminated in attempted and forced intimate contact. The investigation found that Lopez rewarded female employees who tolerated his behavior or acceded to his demands with cash gifts, promotions, salary increases, and plum assignments.

When female employees resisted or were not sufficiently demonstrative in their praise of Lopez or receptive to his overtures, he punished them with removal from important assignments, public berating, and threats of demotion or job termination. Lopez also used his position and resources as an elected official to threaten or punish certain individuals, including those who left his office, and thereby created an environment that discouraged staff from making complaints or availing themselves of any form of redress against him. Perhaps because of this, the investigation did not reveal that any formal or informal complaints were made to the Office of Counsel for the Majority or the Assembly Ethics Committee until the complaints in December 2011, January 2012, and July 2012.

The investigation also revealed that errors were made in the management and disposition of the complaints against Lopez. The first two complaints against Lopez in December 2011 and January 2012, were not referred promptly to the Assembly Ethics Committee for an investigation. In addition, prior to entering into the Settlement Agreement, there was no investigation into the allegations, nor were there any other measures taken to protect Lopez's remaining female staff. Finally, the Settlement Agreement contained a confidentiality clause that shielded from public disclosure not just Lopez's conduct, but even the fact that Lopez and the Assembly had settled a dispute relating to Lopez's conduct. There is no evidence, however, that Lopez improperly exercised his influence or power as a public official in settling the complaints against him. To the contrary, the Commission's investigation found that the decision not to refer the initial two complaints to the Assembly Ethics Committee was made by Assembly staff, and later endorsed by the Speaker, without input, pressure, or influence by Lopez. Similarly, there is no evidence that Lopez violated the Public Officers Law with respect to the inclusion of the confidentiality clause in the Settlement Agreement.

Based upon the evidence developed through the investigation, the Commission finds that Lopez used the powers and perks of his position as a member of the Assembly to engage in knowing, willful, and prolonged mistreatment of certain female members of his Assembly staff. Lopez engaged in a pervasive pattern of abuse of public office and resources, not for a personal financial gain, but to indulge his personal whims and desires. By this conduct, Lopez indisputably breached the public trust and thereby violated the Public Officers Law. The Commission does not find a substantial basis to conclude that Lopez violated the Public Officers Law with respect to the Assembly's management and disposition of the complaints

² With the exception of Jonathan Harkavy, Lopez's long-time Chief of Staff in the Albany office, the former and current employees the Commission interviewed had begun working for Lopez no earlier than November 2008. Consequently, the Commission's findings cover a limited time period.

against him, but the Commission has referred its findings to the Assembly Ethics Committee for whatever action, if any, it deems appropriate.

This substantial basis investigation report shall be presented to the Legislative Ethics Commission for their consideration pursuant to Executive Law §§94(14) & (14-a) and Legislative Law §§80(9) & (10).

Pursuant to Executive Law §94(14) & (14-a), the Commission's Findings and Conclusions of Law are set forth below.

II. PROCEDURAL HISTORY

A. JCOPE Authority and Process

The Commission has authority to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law by executive and legislative branch officers and employees has occurred as set forth in Executive Law §§94(13) & (14). The statute provides that prior to commencing a full investigation, the subject of allegations must be provided notice and 15 days to respond to the allegations (known as a "15-Day Letter"). The matter must then be presented to the Commission. The Commission must vote to authorize an investigation before a full investigation of the matter can be commenced to determine whether a substantial basis exists to conclude that a violation of law has occurred. When the subject of such investigation is a member of the Legislature, legislative employee or a candidate for the Legislature, Executive Law §94(13) requires that at least two of the eight or more members who vote to authorize the investigation must have been appointed by a legislative leader from the major political party in which the subject of the proposed investigation is enrolled. If after an investigation, at least eight members of the Commission find a substantial basis to conclude that a violation of law has occurred, applying the same special voting requirements if applicable, it shall issue a substantial basis investigation report, pursuant to Executive Law §94(14) & (14-a). Commission findings with respect to legislative branch officers, employees, and candidates are required to be referred to the Legislative Ethics Commission for enforcement, pursuant to Executive Law §94(14-a). Within 45 days of receiving a substantial basis investigation report, the Legislative Ethics Commission must make such report public in its entirety, with limited exceptions, as set forth in Legislative Law §§80(9) & (10).

B. Substantial Basis Investigation

In accordance with Executive Law §94(13), on August 30, 2012, staff for the Commission sent Lopez a 15-Day Letter notifying him of allegations that he violated various provisions of Section 74 of the Public Officers Law.³ Specifically, the 15-Day Letter alleged that Lopez may have violated Public Officers Law §§74(3)(d), (f), and (h) by:

(i) engag[ing] in an unethical course of conduct as a member of the Assembly through inappropriate actions and offensive comments of a sexual nature with certain female

³ Letter from Ellen N. Biben to Assemblyman Vito J. Lopez dated Aug. 30, 2012 ("15-Day Letter").

legislative staff members under [his] supervision and professional employment; violating the public's trust . . . ;

(ii) engag[ing] in an unethical course of conduct as a member of the Assembly by subjecting certain female legislative staff members under [his] supervision and professional employment to unwanted physical contact;

(iii) us[ing] or attempt[ing] to use [his] official position to secure unwarranted privileges, includ[ing] but not limited to offering raises, promotions and bonuses as incentives and threats of adverse employment action to comply with inappropriate requests made by [him]; and

(iv) misappropriat[ing] legislative time and resources with respect to the above conduct, includ[ing] but not limited to requiring a Legislative employee to travel with [him] to Atlantic City when there was no legitimate governmental purpose.

On August 31, 2012, Justice Fern Fisher appointed Daniel Donovan, the Richmond County District Attorney, as a special prosecutor to investigate Lopez. Donovan's appointment was in response to an application by the Kings County District Attorney, Charles J. Hynes, who recused himself from the investigation because of a potential conflict arising from his political connections to Lopez. District Attorney Donovan made no request that the Commission defer its investigation.

The matter was presented to the Commission on September 4, 2012, in an emergency session. Certain Commissioners wanted additional information, including Lopez's response to the 15-Day Letter. The Commission voted to issue specific subpoenas but did not authorize the commencement of a substantial basis investigation at that time.

By letter dated September 6, 2012, Gerald Lefcourt, Lopez's counsel, responded to the Commission's 15-Day letter.⁴ The response did not address the substance of the allegations against Lopez. Instead, the letter expressed the view that the Commission should abstain from investigating until the Richmond County District Attorney's office completed its investigation of Mr. Lopez. The letter also requested additional information with respect to the allegations against Lopez.

On September 10, 2012, the Commission voted to commence a Substantial Basis Investigation, pursuant to Executive Law §94(13), to determine whether a substantial basis exists to conclude that Lopez violated §§74(3)(d), (f), and (h) of the New York State Public Officers Law, the relevant portions of which are excerpted below:

§74(3)(d). No ... member of the legislature ... should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others

⁴ Letter from Gerald B. Lefcourt to Ellen N. Biben dated Sept. 6, 2012.

§74(3)(f). A[]... member of the legislature ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

§74(3)(h). A[]... member of the legislature ... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

The Commission authorized an investigation into whether Lopez's conduct, including his actions, if any, relating to the manner in which the complaints against him were handled and resolved, constituted violations of these provisions of the Public Officers Law.

On September 21, pursuant to the Commission's vote on September 10, the Commission sent Lopez a Notice of Substantial Basis Investigation that detailed the alleged violations of the provisions of the Public Officers Law discussed above.⁵ On October 23, 2012, Lopez, through his counsel, submitted a twenty-three page response ("Lopez Submission"), denying that Lopez violated the Public Officers Law.⁶

The Commission issued 49 subpoenas, interviewed more than 45 individuals, and reviewed the approximately 20,000 pages of documents that were produced to the Commission. The witnesses interviewed included current and former employees of Lopez, employees and Members of the New York State Assembly, including Speaker Sheldon Silver, the Comptroller, Thomas DiNapoli, the Attorney General, Eric Schneiderman, and employees of both the OAG and the OSC.

Lopez was issued a subpoena for documents and testimony. While he submitted documents pursuant to the subpoena, Lopez did not appear for an interview. After numerous efforts to secure his appearance, counsel for Lopez communicated that Lopez would not be appearing because, were he to appear pursuant to the Commission's subpoena, counsel would advise him to invoke his Fifth Amendment right against self-incrimination.⁷

⁵ Notice of Substantial Basis Investigation, Case No. JCOPE-127, dated Sept. 21, 2012.

⁶ Submission of Hon. Vito Lopez to Notice of Substantial Basis Investigation, dated Oct. 23, 2012 ("Lopez Submission").

⁷ Email from Sheryl E. Reich to Letizia Tagliafierro, dated Dec. 18, 2012; Letter from Sheryl E. Reich to Letizia Tagliafierro, dated Dec. 19, 2012.

III. FINDINGS

A. Lopez and His Treatment of Female Staff Members

1. Lopez

Lopez has been a member of the New York State Assembly, representing the Williamsburg and Bushwick neighborhoods in Brooklyn, since 1984. Until August 24, 2012, when he was removed from the position by the Speaker, Lopez was Chair of the Standing Committee on Housing in the Assembly. Similar to many State legislators, he has two offices, one in Albany and a District Office in Williamsburg, Brooklyn. The Albany office generally is staffed by two persons: a Legislative Assistant and Jonathan Harkavy, who has worked for Lopez since 1995 and has been the Chief of Staff for the Albany office since 2005. In the District office, Lopez employs approximately eight people, most of whom are women. Numerous individuals over the years have held the title of Chief of Staff for Lopez’s District Office.⁸ By virtue of his seniority and his Housing Committee chairmanship, Lopez had one of the larger budget allocations for staff, exceeding \$425,000 a year.⁹ Prior to August 28, 2012, when he resigned the position, Lopez was also the Chair of the Kings County Democratic Party.

2. Environment for Women in Lopez’s Office

The Commission’s investigation found that before he hired Complainant 1, Complainant 2, Complainant 3 and Complainant 4 – the four women who made formal complaints against him – Lopez used his public office and position to harass and subject a number of his female employees to unreasonable demands unrelated to any legitimate aspect of his public office.

In June 2010, Lopez hired Employee 1 as a Legislative Assistant in the Albany office. She was 23 years old at the time. Prior to joining Lopez’s office, Employee 1 interned for the Speaker in Albany during the 2010 Legislative Session. It was during her internship with the Speaker that Employee 1 met and became acquainted with Lopez.¹⁰ Employee 1’s starting salary was \$28,000 a year. When she left the office two years later it had increased by nearly 80% to \$50,000.¹¹

In November 2010, Lopez requested that Employee 1, Employee 2 and Jonathan Harkavy have dinner with him in New York City. Employee 2 was a Legislative Assistant in the District Office at the time. Throughout the dinner, Lopez used his foot to touch Employee 1’s foot underneath the table. Employee 1 thought this conduct was “violating” and “sexual in nature.” She stated that she was very upset at the end of the evening and “cried” during her

⁸ Interview of Jonathan Harkavy (“Harkavy Interview”); Interview of Employee 2 (“Employee 2 Interview”); Interview of Complainant 1 (“Complainant 1 Interview”).

⁹ Interview of James Yates (“Yates Interview”).

¹⁰ Interview of Employee 1 (“Employee 1 Interview”).

¹¹ NYA009501 (Assembly payroll records); NYA009502 (same).

“entire ride home.” After this incident, Employee 1 said she “never wanted to be alone in a room with him.”¹²

Lopez made cash gifts to certain women in the office. A few weeks before the incident with Employee 1, Lopez had given her \$300 in cash as a birthday “gift.” According to Employee 1, Lopez frequently asked her what she had purchased with the money he gave her. Employee 1 eventually bought a ring and Lopez asked that she wear it when she was with him. On at least one occasion, according to Employee 1, Lopez became upset with her for not wearing the ring. Employee 1 also stated that on one occasion, Lopez gave her \$600 to buy new tires for her car.¹³

Employee 1 also related an incident that occurred during a May 2011 work-related conference in Lake George.¹⁴ She said that, as she and Lopez approached their respective hotel rooms, Lopez stopped in front of her hotel room door, instead of proceeding to his room, which was next door. By this conduct, she understood that he wanted to be invited in. Instead, Employee 1 pointed out to Lopez that his room was next door.¹⁵ Lopez, who according to Harkavy expresses his anger through silence,¹⁶ did not speak to Employee 1 on the drive back to Albany from the conference. Employee 1 said that it was clear that she had upset Lopez by rejecting him the night before.¹⁷

Employee 1 eventually left Lopez’s office in June 2012. She stated that she only remained in the office because she believed that, given Lopez’s power and vindictiveness, she would not be able to find another job in the Legislature. She was also concerned that if she found a new job in politics, Lopez would create difficulties for her employer.¹⁸

Employee 3 was another young woman whom Lopez subjected to unreasonable demands. Lopez had hired Employee 3 as a Legislative Assistant for his District Office in September 2010, after Employee 3 had worked on his 2010 primary campaign. She was 28 years old at the time.¹⁹

According to Employee 3, Lopez made comments about her appearance and clothes on numerous occasions. He also frequently demanded that she spend time with him outside the office for no apparent work purpose. For instance, in or about November 2010, just two months

¹² Employee 1 Interview.

¹³ Employee 1 Interview. No witnesses suggested that the cash Lopez gave to female employees was anything other than his own money, and the Commission found no evidence to suggest that Lopez used Assembly funds when doling out such gifts to select female employees.

¹⁴ VLJCOPE000160 (Voucher); AMEX000409 (Statement).

¹⁵ Employee 1 Interview.

¹⁶ In his interview, Harkavy, who has worked for Lopez for close to two decades, said, “If Vito is yelling at you, he is not mad at you. When Vito is mad at you he doesn’t talk to you.”

¹⁷ Employee 1 Interview.

¹⁸ Employee 1 Interview.

¹⁹ Interview of Employee 3 (“Employee 3 Interview”).

after Employee 3 joined the office, Lopez pressured her, after a Thanksgiving party, to meet him at a bar near her apartment in the Greenpoint neighborhood of Brooklyn. Lopez told Employee 3 that he wanted to discuss legislation with her. It was already late in the evening, but Employee 3 did not feel she could decline, so she went to a bar with Lopez. Instead of talking about legislation, however, Lopez only spoke to Employee 3 about “completely personal” matters, such as her relationship with her boyfriend and her father. At the end of the evening, Lopez gave Employee 3 \$50 in cash and told her to purchase a low-cut blouse to wear. Employee 3 stated that Lopez’s actions “came out of nowhere.”²⁰

The next day Employee 3 told Employee 2 about the incident but told her that she would handle the matter herself.²¹ Employee 3 gave the money back to Lopez, telling him that she was “uncomfortable” with his offer. Lopez calmly took the money. Later that evening, they attended the Brooklyn Unidos Christmas party, and Employee 3 said that Lopez threw the \$50 in her face, while yelling that she should never “disrespect” him again and that when he gives her something, she should take it. Lopez’s anger did not subside for several days. According to Employee 3, for weeks after the incident, Lopez mocked her by telling her that she was making him “uncomfortable.”²²

As Christmas neared in 2010, Lopez also made attempts at physical intimacy with Employee 3. Employee 3 said that he announced to the office that he wanted to hang mistletoe over Employee 3’s desk and give her a kiss. When Employee 3 suggested that Lopez reserve his affections for his girlfriend, Angela Battaglia, Lopez became angry and told Employee 3 to never speak about Battaglia again. Later that night, Lopez repeated his comment, telling both Battaglia and Employee 3 of his desire to hang mistletoe over Employee 3’s desk and give her a kiss. Lopez branded Employee 3 as “uptight” for her refusal to countenance his actions.²³ On other occasions, Employee 3 said that Lopez told her that she must be a lesbian.²⁴

Lopez’s insistence that Employee 3 spend time outside the office with him continued. He eventually dropped all pretenses about his objective. In the first part of April 2011, for example, Employee 3 texted Employee 2 about Lopez’s demands that Employee 3 drink with him:

[H]e wants to “go get drunk” w me tomorrow night around 10.
He wants to “turn a corner” w me. Which is the same shit he says
to [Employee 1]. But he has called 4 times in 24 hrs and says he
is serious about going.²⁵

²⁰ Employee 3 Interview.

²¹ Employee 3 Interview; Employee 2 Interview.

²² Employee 3 Interview.

²³ Employee 3 Interview.

²⁴ Employee 3 Interview; CHW000449 (Text message exchange between Employee 3 and Complainant 1). Note: documents with the “CHW” prefix were produced by counsel for Complainant 1 and Complainant 2.

²⁵ E20500. Note: documents with the “E2” prefix were produced by counsel for Employee 2.

Lopez also did not cease in his demands that Employee 3 dress to his liking. According to Employee 3, he stated that she had “great legs” and advised her to wear skirts to show off her “best feature.” In early June 2011, Employee 3 complained to Employee 2 about this behavior. In a text message she wrote that she has to “listen to [Lopez] tell me I need to wear mini skirts and high heels” and that such comments constituted part of an “ordinary day” with Lopez.²⁶

Three days later, Employee 3 texted Employee 2 about more sexualized comments Lopez had made to her. Lopez and Employee 3 were scheduled to attend a community event involving a dinner at a local firehouse. Employee 3 wrote to Employee 2 that Lopez has “been really weird about it. Telling me for days how [I] should dress for it (high heels and a mini skirt).”²⁷ Three weeks later Lopez had not stopped making comments to Employee 3 about how she should dress for the event at the firehouse. On June 27, 2011, Employee 3 sent a text message to Complainant 1 in which she reported that Lopez had asked her (Employee 3) for a “report on how a drunken night in the firehouse would loosen me up.”²⁸ Also in late June, Employee 3 attended a fundraiser with Lopez where he told Employee 3 that the dress she was wearing “could be a little shorter.”²⁹

In June 2011, Employee 3 traveled to Albany for the final week of the Assembly’s session. During a break in session, Lopez told Employee 3 that he did not know if he had the energy to drive Employee 3 to the house of a friend with whom she was staying. Instead, Lopez suggested that Employee 3 could stay in his hotel room. Employee 3 was opposed to sharing a room and told Lopez that she would get her own room. According to Employee 3, Lopez kept pushing and insisting that they share a room, explaining that he did not have the money for two rooms and that Employee 3 should not have to pay for a room herself. Eventually, Employee 3 stayed the night at the home of Harkavy, Lopez’s Chief of Staff in Albany. The next evening, Lopez repeated his suggestion that Employee 3 share a hotel room with him.³⁰

At some point during her employment, Employee 3 began to make audio recordings of some of her interactions with Lopez. She referenced this fact in a text message to Complainant 1 on June 30, 2011:

Complainant 1:	Did anything happen?
Employee 3:	No. Hes just weird. But the recordings are working :)
Complainant 1:	Ok well I’m glad you are ok. I was worried
Employee 3:	I’m ok. Sick of his shit but arent we all
Complainant 1:	You get it the worst though ³¹

²⁶ E20501.

²⁷ E20502.

²⁸ CHW000442.

²⁹ Employee 3 Interview.

³⁰ Employee 3 Interview.

³¹ CHW000444-45.

When asked about the recordings during the investigation, Employee 3 minimized their importance and frequency, saying that they were few in number and very difficult to hear due to their poor quality. When asked by Commission staff, she stated that she no longer had the recordings.

Lopez's inappropriate behavior also extended to Employee 2, whom he had hired in November 2008 as a Legislative Assistant in the District Office and promoted to Chief of Staff in January 2011. At the time she was hired, Employee 2 was 29 years old. When she began working for Lopez, her salary was \$47,000 a year. When she left in August 2011, it had increased by nearly 90% to \$88,000 a year.³²

Many staff members said she was very highly regarded by Lopez, and Employee 2 herself described how she and her boyfriend (now husband) traveled to Atlantic City to gamble with Lopez. Employee 2 also acknowledged that Lopez played a role in securing a job for her husband as the Executive Director of a New York State agency. Employee 2's husband was appointed to the position in January 2010.³³

Employee 2's rise in Lopez's office came at a cost. She had described to Employee 1 her interactions with Lopez as something like a "domestic abuse relationship" in which one "can't leave."³⁴ On February 1, 2011, Employee 2 sent a text message to Employee 3, writing that Lopez had just "asked why I don't wear mini skirts like [Employee 1]." Employee 3 replied, "Oh my god! That's sexual harassment!!!! WTF!!!!!"³⁵ In April, Employee 2 sent a text message to Employee 3 saying that her "hatred spiked even more today" and that Lopez was "[b]eyond insane and egomaniacal."³⁶ In June of 2011, Employee 2 contracted pink eye after assenting to Lopez's request to place drops in his infected eyes. Employee 2 related the incident to Employee 3 in a text message:

Employee 2: I cannot believe I have pink eye

Employee 2: This is absurd

Employee 2: Vito man. It's not a problem when he is gross everywhere and infects others. Just when people do it to him.

Employee 3: Blargh. He made you put drops in his eyes. Fing sadness!!! I'm so sorry³⁷

Employee 2 also expressed concern, according to Complainant 1, that she (Employee 2) might have some legal liability with respect to Lopez's behavior toward Employee 3 and others because, as Chief of Staff, she was a supervisor.³⁸

³² NYA009503 (Assembly payroll records); NYA09504 (same).

³³ Employee 2 Interview.

³⁴ Employee 1 Interview.

³⁵ E20503.

³⁶ E20504-05.

³⁷ E20506.

In late June or early July 2011, Employee 2 informed Lopez that she would be leaving his office.³⁹ Employee 2, like Employee 1, also worried that Lopez would use his office and power to thwart her career if she left. Employee 2 stated that she thought Lopez might be angered at her departure and frustrate her job search and even use his influence to have her husband fired from his Executive Director job at a State agency. Consequently, Employee 2 told Lopez of her plans to leave, but did not tell him that she was looking for alternative employment.⁴⁰

At approximately the same time, Employee 3 was also surreptitiously conducting a job search. Like Employee 2 and Employee 1, Employee 3 stated that she was afraid Lopez would retaliate against her if he learned she was looking to leave. Employee 3 had heard stories that Lopez had attempted to have Employee 6, his former Chief of Staff in the District Office, fired from her new job when she left Lopez's office. When Employee 3 learned that Employee 2 was planning to leave, she grew concerned that Lopez would ask her to become Chief of Staff, which would entail spending more time with Lopez.⁴¹

Employee 3 was correct. When Lopez found out that Employee 2 was planning on leaving, he asked Employee 3 to become his Chief of Staff in the District Office. Employee 3, who was already looking for other employment, demurred. She told Lopez that she did not think it would be a good fit for her. According to Employee 3, Lopez was "stunned" at first and then became very angry, yelling at her and asking her how she could not want to be Chief of Staff. Later that evening, though, Lopez drove Employee 3 to a Board of Elections event. According to Employee 3, Lopez told her that he was dying and that he needed her. He took Employee 3's hand and placed it on his neck, shoulder and armpit, telling her that tumors were located in those places. He also gave Employee 3 another \$50, again for the purpose of buying clothes. Employee 3 attempted to give the money back to Lopez, but he refused. Later, Employee 3 donated the money to charity.⁴²

In early July 2011, just a few weeks before Employee 3 quit, she attempted to explain to Lopez the reasons why she wanted to leave the office. Employee 3 described the conversation to Complainant 1 in a text message:

He called again. He wanted to challenge me on why I wanted to leave. So I straight up told him there are conflicts. We got into the fact he said I can't mention my bf (so he said hed ask people if they know him tomorrow in tr office etc). Then I told him the stuff about me being gay and my body make me feel bad. (i mentioned legs and my chest and he said he wasn't going there). Then he said maybe he should never joke with me. Then he said well maybe I

³⁸ Complainant 1 Interview.

³⁹ Employee 2 Interview.

⁴⁰ Employee 2 Interview.

⁴¹ Employee 3 Interview.

⁴² Employee 3 Interview.

had a few drinks in me. Then he actually said he was sorry (but it was twisted). You could tell it was hurt and sarcastic.⁴³

On July 30, 2011, Employee 3 quit her job.⁴⁴ Shortly after, in mid-August 2011, Employee 2 left Lopez’s office. Unbeknownst to Lopez, Employee 2 had found a job at the New York City Department of Finance. She quit without letting Lopez know about her new employment.⁴⁵ On the first day at her new job, however, Crain’s New York Business ran a story, mentioning Employee 2, about new employees at the Department of Finance.⁴⁶ In a text message exchange between Complainant 1 and Employee 2, Complainant 1 indicated that Lopez was “flipping out” and “telling everyone” that Employee 2 was “deceitful.”⁴⁷ Employee 2 replied that she was “terrified.”⁴⁸ In a text message to Employee 3 on that same day, Employee 2 wrote that she was “freaked out” and “terrified of Vito.”⁴⁹ Harkavy confirmed that Lopez was very upset about Employee 2’s departure.⁵⁰

Soon after Employee 2 left, Lopez told Complainant 1 that he was going to hold Employee 2’s final paycheck. Complainant 1, in turn, told Employee 2.⁵¹ Employee 2 stated that individuals at the Department of Finance told her that they had been pressured to fire her. Employee 2 said that she understood, based on these communications and communications she had with employees in Lopez’s office, that Lopez had used his influence to attempt to have her fired.⁵² According to Harkavy, Lopez attempted to enlist the help of other elected officials to “address the situation” of Employee 2’s new employment.⁵³ Complainant 1 stated that she heard Lopez ask these elected officials if they would contact Employee 2’s supervisor to have her “moved.” According to Complainant 1, Lopez also asked her to call one of these officials to follow up on these efforts.⁵⁴

Additionally, shortly after Employee 2’s departure, Lopez held hearings on whether the New York City Department of Finance should continue to administer the Senior Citizen Rent Increase Exemption (“SCRIE”) program.⁵⁵ According to Employee 2, she and others found it

⁴³ CHW000449.

⁴⁴ Employee 3 Interview

⁴⁵ Employee 2 Interview.

⁴⁶ *Today’s News: Finance’s Racial Divide*, Crain’s Insider, Aug. 17, 2011, <http://www.crainsnewyork.com/article/20110817/INS/110819912#ixzz2IohuyA5u> .

⁴⁷ CHW000546.

⁴⁸ CHW000546.

⁴⁹ E20507.

⁵⁰ Harkavy Interview. Harkavy claimed that Lopez was upset because he believed the city had “poached” his staff.

⁵¹ Complainant 1 Interview; CHW000758.

⁵² Employee 2 Interview.

⁵³ Harkavy Interview.

⁵⁴ Complainant 1 Interview.

⁵⁵ Employee 2 Interview; Complainant 1 Interview; Interview of Complainant 2 (“Complainant 2 Interview”).

“unusual” that Lopez, who had never before expressed an interest in SCRIE, was now holding hearings on the program that required Employee 2’s new boss to testify before Lopez.⁵⁶ Employee 1, as well, stated that she believed the hearing was at least partially motivated by Lopez’s anger that Employee 2 left and took a position at the Department of Finance.⁵⁷

Lopez also subjected Employee 4 to inappropriate behavior. Employee 4 joined Lopez’s District Office in November 2009 after working on the City Council campaign of Maritza Davila, and remains employed as a Legislative Assistant in Lopez’s District Office today. Employee 4’s starting salary was \$26,072 a year. Her salary has nearly tripled to \$72,000 a year.⁵⁸

In September 2011, Lopez invited Employee 4 to join him on a trip to the Dominican Republic, organized by State Senator Adriano Espaillat, to meet with government officials. Employee 4 stated that when she and Lopez arrived at the hotel in Boca Chica, only one room had been booked. Employee 4 was “surprised” at the arrangements. Similar to the incidents described by Employee 3, Lopez pressured Employee 4 to stay in his room, telling her that he does not speak Spanish and that he could never be more than “ten feet” from her during the trip. Lopez also told her that State Senator Martin Dilan, another trip participant, was sharing a room with two staffers in order to save money. Employee 4 pointed out that those two staffers were men, and she declined to stay with Lopez. Instead, she paid for her own room.⁵⁹

Approximately six weeks later, Lopez brought Employee 4 on another trip, this time to Puerto Rico for the annual SOMOS El Futuro conference held in San Juan. Lopez had originally asked both Employee 1 and Complainant 1. Both declined.⁶⁰ According to Complainant 1, Lopez told her she could come on the trip only if they shared a hotel room.⁶¹ Employee 4 stated that, prior to the trip, Lopez gave her a Post-it note, that Employee 4 later showed to Complainant 1, on which Lopez had written words to the effect that the Puerto Rico excursion would be a “trial period” for an “affair.”⁶²

When Employee 4 and Lopez arrived at the hotel in San Juan, separate rooms had been booked for each of them. Lopez, however, mentioned (as he had on the trip to the Dominican Republic) that Senator Dilan was sharing a room with his staff. Once again, Employee 4 insisted on her own room. During the trip, Lopez asked Employee 4 to come into his room to iron his clothes. Employee 4 refused. Lopez also requested that Employee 4 accompany him to

⁵⁶ Employee 2 Interview.

⁵⁷ Employee 1 Interview.

⁵⁸ NYA009505 (Assembly payroll records); NYA009506 (same).

⁵⁹ Interview of Employee 4 (“Employee 4 Interview”). Records obtained by the Commission reflect that an American Express credit card in Lopez’s name was used to reserve and pay for only one room at the Hamaca Oasis Hotel in Boca Chica. The same credit card also shows the purchase of flights for both Employee 4 and Lopez. (AMEX00416-17).

⁶⁰ Complainant 1 Interview; Employee 1 Interview.

⁶¹ Complainant 1 Interview; Employee 4 Interview; CHW000574 (text message from Complainant 1 to Employee 1).

⁶² Employee 4 Interview; Complainant 1 Interview.

a casino in the evening. While at the blackjack table, Employee 4 stated that Lopez put his hand on her knee. Employee 4 removed his hand and told him to stop. When back in Brooklyn, Employee 4 told Complainant 1 that Lopez's conduct during the trip made her feel "uncomfortable."⁶³

Additionally, Complainant 1 stated that Employee 4 had told her of an incident in which Lopez, while drunk, tried to kiss her. Complainant 1 related this story to Employee 1 in a text message sent early in December 2012.⁶⁴ Employee 4, however, denied that Lopez attempted to kiss her.⁶⁵

B. Experiences of the First Set of Sexual Harassment Complainants

In early March 2011, Complainant 1 began working for Lopez as a Legislative Assistant. Complainant 1 was 28 years old. Complainant 1 first came to Lopez's attention through her work on loft tenant issues with Stephen Levin, a member of the New York City Council and Lopez's former Chief of Staff.⁶⁶ Before accepting the offer, several individuals counseled Complainant 1 not to take the job because Lopez had a reputation as a very demanding boss who required his staff to work long hours. Complainant 1, however, welcomed the challenge as well as the opportunity to work for Lopez, who was immersed in community issues.⁶⁷ Complainant 1's starting salary was \$45,000 a year. Approximately nine months later, shortly before she quit, Lopez had arranged to increase her salary to \$70,000.⁶⁸

Shortly after Complainant 1 started working for Lopez, he made it clear that complaints against him would not be successful. Lopez told Complainant 1 about Diane Gordon, a former employee of another Brooklyn Assemblymember who had filed an employment lawsuit against her boss. Gordon lost the litigation because, according to Lopez, she was an at-will employee and her employer, the Assemblymember, could treat her however he wanted.⁶⁹ On another occasion, Lopez stated to Complainant 1 that, in his estimation, legislators should be able to sexually harass staff – including buying them revealing clothing – because staff members are at-will employees. In a similar vein, during a staff meeting in April 2011, Complainant 1 reported that Lopez asked a male, college-age intern if he was interested in dating a fourteen-year-old

⁶³ Employee 4 Interview. Records obtained by the Commission confirm that Lopez purchased airfare and lodging for both him and Employee 4. (AMEX00420-22).

⁶⁴ CHW000575.

⁶⁵ Employee 4 is still employed in Lopez's District Office and acknowledged during her interview that her attorney had been recommended by and paid for by Lopez.

⁶⁶ Complainant 1 Interview.

⁶⁷ Complainant 1 Interview.

⁶⁸ Complainant 1 Interview; NYA001731 (Assembly payroll records); NYA009507 (same).

⁶⁹ Complainant 1 later discovered that Gordon had been fired after expressing her opinions during a political protest and that the case did not establish that an Assemblymember has the right to treat employees according to his whims. (Complainant 1 Interview). Indeed, the case held that "legislative aides occupying positions in which their public speech may reasonably be associated with, or mistaken for, that of the legislator's may constitutionally be dismissed for their public speech." *Gordon v. Griffith*, 88 F. Supp. 2d 38, 58-59 (E.D.N.Y. 2000).

female who was also an intern in the District Office. When the male intern indicated that relationship would not be appropriate, Lopez opined that statutory rape laws should not exist.⁷⁰

Additionally, according to Complainant 1, as early as May 2011, Lopez started requiring her to call him outside of the office frequently.⁷¹ By late June, Lopez told her she needed to call him seven to eight times a week outside of the office, a demand about which Complainant 1 complained to Employee 3 in a text message: “I had to call him, three times this weekend and today he told me I have to start calling him 7-8 times a week.”⁷²

Lopez’s behavior intensified when he elevated Complainant 1 to the Chief of Staff of his District Office in September 2011. With Employee 2 and Employee 3 gone, Lopez needed a new Chief of Staff. He approached Employee 1, Employee 4, and Complainant 1 about the position. Employee 1 told Lopez that she did not want to move to Brooklyn, a requirement of the job.⁷³ Employee 4, too, was not interested in the job. At the time, she was engaged to be married and planning on moving back to the Dominican Republic. She also did not want to travel to Albany, another requirement of the position.⁷⁴ Additionally, Will Harris, the most senior staff member at that point and one of the few male staff members, told Lopez he would be leaving and did not want the job.⁷⁵ After Employee 1 and Employee 4 declined to take the position, Lopez made Complainant 1 his Chief of Staff in the District Office.⁷⁶

Once Complainant 1 was promoted to Chief of Staff, Lopez demanded that she meet with him twice a week after work hours, at either a bar or restaurant. Complainant 1 said that work would be discussed just “sometimes” during these outings. Lopez, according to Complainant 1, always paid for their meals and drinks.⁷⁷

Additionally, at this point, Lopez also demanded that Complainant 1 send him text messages at least once a day. Complainant 1 stated that Lopez instructed that the messages articulate how much she enjoyed working in the office and how much she cared for Lopez.⁷⁸ The following December 5, 2011 exchange is an example of the type of text messages that, according to Complainant 1, Lopez required of her:

Lopez: a little more adventure or intensity would be better

⁷⁰ Complainant 1 Interview.

⁷¹ Complainant 1 Interview.

⁷² CHW000442.

⁷³ Employee 1 Interview.

⁷⁴ Employee 4 Interview.

⁷⁵ Interview of Will Harris.

⁷⁶ Complainant 1 stated that both she and Employee 4 had the title of Co-Chief of Staff. Lopez, in his submission, also states that Complainant 1 held the title of Co-Chief of Staff. (Lopez Submission at 20). Complainant 1 – and not Employee 4 – however, accompanied Lopez on his trips to Albany, a responsibility that was generally reserved for the Chief of Staff in the District Office. (Complainant 1 Interview; Employee 4 Interview).

⁷⁷ Complainant 1 Interview.

⁷⁸ Complainant 1 Interview.

Complainant 1: 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!⁷⁹

In addition to the text messages and phone calls, on a number of occasions Lopez told Complainant 1 that she needed to "turn a corner" with him in their relationship. According to Complainant 1, he repeatedly told Complainant 1 that "98%" of what he liked about her was job performance-related and "2% was something else." He also advised Complainant 1 to leave the "window of opportunity" open for that "something else."⁸⁰ Again, an example from a text message exchange, which took place on December 6, 2011:

Complainant 1: The first apt we looked at was so nice. I'm really excited about it. We are on to see apt number 2

Lopez: Turn a corner real soon

Complainant 1: Yes I will

Lopez: The right corner

Complainant 1: Yes Vito⁸¹

Complainant 1's mention of an apartment in the text message exchange above is a reference to a request Lopez made that Complainant 1, together with Harkavy and Employee 1, conduct an apartment search for him in Albany. Lopez was contemplating an apartment, rather than a hotel, for his time in Albany when the Legislature was in session.⁸² Privately, Lopez told Complainant 1 that he wanted her to stay with him in the apartment when they were in Albany:

Lopez: Alright, but I also I know that if I play blackjack with you, you know it is going to be hard for me just to play black jack and that's the problem, that I have so I don't know what to do about that. I am going to make a major investment into an apartment and half of the investment, although I really want to do it, is to do it with somebody and do it with you, otherwise we could probably get an apartment for six, seven hundred dollars, you know by myself but I probably wouldn't get it if it was by myself so it's one on those things. . . .⁸³

⁷⁹ CHW000523-25 at 525.

⁸⁰ Complainant 1 Interview.

⁸¹ CHW000523-25 at 525.

⁸² Complainant 1 Interview.

⁸³ Staff-prepared transcript of CHW000677. As explained below, at Complainant 2's suggestion, Complainant 1 began to record some of her conversations with Lopez.

As a ploy to extricate Complainant 1 from this situation, Employee 1 and Complainant 1 agreed to tell Lopez that they could only find one bedroom apartments.⁸⁴ Additionally, according to Complainant 1, she informed Harkavy of Lopez's request and her attendant distress. Complainant 1 stated that Harkavy did nothing to intervene.⁸⁵ Harkavy does not dispute this. During his interview, he acknowledged that Lopez did want to get an apartment in Albany and did not deny that Lopez wanted staff to stay at the apartment with him. Harkavy said that Lopez spoke of having a situation like that of Senator Martin Dilan, who had an Albany apartment and shared it with his staff. Those staff members, as Harkavy acknowledged, are all male.⁸⁶

On another occasion, in early November 2011, Lopez reiterated his attraction to Complainant 1, adding that he was having difficulties with Battaglia, his girlfriend. When Complainant 1 told Lopez that she was not interested in a relationship, Lopez became very upset and told her he was rethinking making her Chief of Staff because he needed someone "closer than close."⁸⁷

This threat of demotion was not an isolated incident. Lopez had first asked Complainant 1 if she wanted to join him on the trip to Puerto Rico. According to Complainant 1, he conditioned her participation on the two of them sharing a hotel room.⁸⁸ When Complainant 1 said she would pay for her own room, Lopez told her that she probably should no longer be Chief of Staff. Distressed, Complainant 1 asked Lopez to meet to discuss that matter. It was a weekend and Complainant 1 wanted to address the issue before the workweek started. Complainant 1 stated that she met Lopez at a bar, where he proceeded to pressure her about sharing a hotel room in Puerto Rico. Complainant 1 again refused. Later that evening, Lopez told Complainant 1 that she was fired. The next morning, however, he called her and told her she could stay.⁸⁹

According to Complainant 1, when she told Harkavy of her concerns about sharing a hotel room with Lopez in Puerto Rico, his response was to tell her not to go on the trip.⁹⁰ Later that day, Complainant 1 and Employee 1 exchanged text messages concerning the idea, and the futility, of talking to Harkavy about Lopez's behavior:

Employee 1: I asked Jonathan today if we could sit down and talk.
He didn't ask me if everything was ok or what's it about . . . didn't say yes, either.

⁸⁴ Employee 1 Interview.

⁸⁵ Complainant 1 Interview.

⁸⁶ Harkavy Interview.

⁸⁷ Complainant 1 Interview; CHW000500. Complainant 2 also stated that, in staff meetings, Lopez would approvingly describe principal/chief of staff relationships he admired. In particular, he mentioned one such relationship in which the female chief of staff looked up to her male boss "adoringly, almost like she is in love with him." (Complainant 2 Interview).

⁸⁸ Complainant 1 Interview; CHW000485, 574.

⁸⁹ Complainant 1 Interview; CHW000501-02, 512.

⁹⁰ Complainant 1 Interview.

...

Complainant 1: Yikes. That is not good. He legally has to do something if you tell him there is this shit going on- which is probably why he is avoiding it.

Employee 1: Idk what th[e]re is that we can do but things need to change. . . it's getting out of hand for you, Employee 4 and myself

Complainant 1: Omg- I feel so bad for her. He tried to kiss Employee 4 one time when he was drunk. I am scared of him.

Employee 1: Exactly!!

Employee 1: Oh no!!! Yes def getting out of hand Jonathan needs to step in and help us figure out what to do. . . what do you think?

Complainant 1: Don't say anything yet. Let me talk to Employee 4 and see what she thinks. He goes through waves but bringing it up to Jonathan or Vito is not going to be pretty

Employee 1: OK I wasn't going to tell Jonathan any specifics, just to ask what's the best way for us to handle the situation. I'll hold off, tho

Complainant 1: Do you think Jonathan will tell Vito? You know Employee 3 quit bc of this reason. He said super fucked up shit to her.

Employee 1: Yea I knew what he was doing to Employee 3. He did this shit to Employee 2 too. He's been getting worse over time w/ it. Jonathan wouldn't tell VJL. He prob wouldn't

Employee 1: even have anything to say to me if I did talk to him. I've talked to him in the past several times, on the surface of things, and he's never had anything to say⁹¹

Around this time, Complainant 1 also spoke to Frank Carone, a long-time Lopez associate and supporter, to see if he could somehow persuade Lopez to stop his behavior. At the time, Carone was counsel to the Kings County Democratic Party, of which Lopez was the Chair. Complainant 1 said that Carone told her that she may simply have to go her separate way.⁹²

Complainant 1 also spoke to Complainant 2 about Lopez's demand that they share a hotel room in Puerto Rico. In early November 2011, Complainant 1 attended an Assembly training on sexual harassment with Complainant 2, who had started in the office a few weeks earlier. Complainant 2, who was a lawyer, began in mid-October 2011 as a Legislative

⁹¹ CHW000575.

⁹² Complainant 1 Interview.

Assistant. She was 29 years old.⁹³ With the sexual harassment training in mind, Complainant 2 suggested that Complainant 1 report Lopez to the Assembly Ethics Committee.⁹⁴ At that time, Complainant 1 was dismissive of this idea because she was afraid that even if she went forward, nothing would happen and she would lose her job.⁹⁵

Complainant 2 also suggested that Complainant 1 make audio recordings of her interactions with Lopez. Complainant 2 had seen and been subjected to some of the same inappropriate behavior by Lopez. For example, when Complainant 2 was being trained for the position, a female staff member told her that Lopez “likes skirts . . . heels . . . you’ll see.” Sure enough, on her second day at work Lopez asked Complainant 2, “Don’t you ever wear high heels?” He then told her to dress up for a fundraiser and to “maybe wear heels.” Complainant 2 stated that Lopez would often make comments about the dress and appearance of other women in the office as well.⁹⁶

Complainant 2 had also witnessed Lopez’s temper. She had heard Lopez frequently yell at Complainant 1. Additionally, in staff meetings, according to Complainant 2, Lopez would routinely berate certain individuals to demonstrate the consequences of displeasing him. On one occasion, Complainant 2 was the subject of such treatment. Lopez had commented that Complainant 2 could more easily change a light bulb if she wore heels. Complainant 2 replied, “I’ll wear heels when you do, Vito.” At the next staff meeting, Lopez branded Complainant 2 as “snappy” and publicly “brow beat” her.⁹⁷

Complainant 1’s attempts to seek intervention proved futile, and Lopez’s mistreatment of her continued. In addition to pressuring Complainant 1 for physical intimacy, Lopez also explicitly told her that that he was attracted to her, combining his confession with a requirement that Complainant 1 act as a “strong support system” for him. At a Brooklyn Unidos event in November 2011, Lopez pulled Complainant 1 aside to speak with her. Complainant 1 stated she told Lopez that she did not want anything more than a professional relationship. She also told Lopez that, while she respected him, his behavior was scaring her. According to Complainant 1, Lopez responded by telling her that she was going to be phased out in six weeks.⁹⁸ When he drove her home, however, he again told Complainant 1 that he was attracted to her and that had to figure out how to deal with his attraction. This conversation was also recorded by Complainant 1:

Lopez: I probably have an attraction to you and I have to deal with that just like you said. That might sound terrible to you, but that is not the worst thing. If I thought you were terrible and ugly that

⁹³ Complainant 2 began her employment with \$55,000 a year salary. By the time she left Lopez’s office, less than two months later, she was making \$56,000 a year. (NYA001741 (Assembly payroll records); NYA009508 (same)).

⁹⁴ Complainant 2 Interview; Complainant 1 Interview; CHW000500.

⁹⁵ Complainant 1 Interview.

⁹⁶ Complainant 2 Interview.

⁹⁷ Complainant 2 Interview.

⁹⁸ Complainant 1 Interview.

might even be worse, or you might like that better but that is something I will deal with, like you said. But I don't want it to be, there has to be. . . I'm not presenting it well. There must be a way of us moving towards a very good friendship then that is good.

Complainant 1: and that's exactly what I want,

Lopez: I need a strong support system, all right? Do you hear me?

Lopez: and I get a text. . . if you text me twice a night I would like it more than once, but at least once. . . good night and a text.⁹⁹

According to Complainant 1, Lopez frequently commented on her clothing, both complaining that she did not wear heels or button-down shirts left open to reveal cleavage or praising her when she wore clothes to his liking.¹⁰⁰ Complainant 1 captured one such comment on a tape recording:

And to your credit wearing the shoes and button your blouse, you know I think it looks much nicer in general, and for you to do that, to me that was really nice, that was a really nice gesture, it really was, so and I think you look much nicer in high heels than you don't . . .¹⁰¹

Complainant 1 also stated that once she became Chief of Staff, Lopez commented more frequently on her appearance. For example, Lopez told her she had to start wearing dresses instead of pantsuits. On a different occasion, when Lopez gave Complainant 1 a raise, Complainant 1 said he told her it came with a requirement to buy different clothes. According to Complainant 1, Lopez also told her to shop for clothes with Employee 4, whom he said had a "sexier" style, and also with a 19-year-old intern, who wore short skirts that Lopez liked. At one point, Complainant 1 bought two-inch heels and wore them to work. Lopez told her they were not high enough. In front of others in the office, he told Complainant 1 to buy shoes more to his liking.¹⁰² Employee 4 also recalled that on at least one occasion, Lopez gave Employee 4 money with the direction that she take Complainant 1 to "fix her face." Employee 4 stated she understood that Lopez wanted Complainant 1 to get her eyebrows waxed.¹⁰³

On another occasion, Lopez gave Complainant 1 \$250 and told her to purchase a watch and earrings. Complainant 1 was reluctant to take the money, but decided to do so. When asked why, Complainant 1 stated that while employed with Lopez, she was studying for the LSAT. The first time she was scheduled to take the exam, Complainant 1 said that Lopez refused to allow her time off from work to study. Consequently, she did not sit for the test and rescheduled to a later exam date. She took the money, because she felt Lopez had deliberately

⁹⁹ CHW000435 (Transcript of audio recording).

¹⁰⁰ Complainant 1 Interview.

¹⁰¹ Staff-prepared transcript of recording CHW000677.

¹⁰² Complainant 1 Interview.

¹⁰³ Employee 4 Interview; *see* NYA001510-11.

“sabotaged” her efforts to take the LSAT the first time, and she hoped he would be more supportive the second time.¹⁰⁴

As the date for the rescheduled LSAT drew near, Lopez told Complainant 1 that she could have a week off before the exam, but only if she would meet him for dinner and wear the watch, earrings, and a “provocative dress.” While Complainant 1 did not come into the office during the week before the test, she continued to respond to work-related phone calls and to help Lopez plan a fundraiser. According to Complainant 1, Lopez also insisted that she send him a text message for every day she would be out of the office telling him how much she enjoyed her job and missed him.¹⁰⁵ Some examples follow:

Complainant 1 (November 23, 2011, 7:14 p.m.): Vito, I’m looking forward to seeing you tomorrow. I often have a lot of fun around you and really enjoy your company. I will miss you while I’m out but I will call you regularly to make up for it. I’m looking forward to spending that Sunday with you and I’m excited that I will be able to finally have more time to do more things with you.¹⁰⁶

Complainant 1 (November 25, 2011, 11:43 p.m.): Hi Vito, I wanted to let you know that I’ve been thinking of you and that I will miss you during the upcoming week. I had a wonderful time with you yesterday and I was so excited that I was able to [be] a part of your tradition that helps so many seniors. I spent almost an hour talking about you to my grandma last night. She told me that I was so lucky to work for such a wonderful person, but she didn’t tell me anything I didn’t already know.¹⁰⁷

Complainant 1 (November 27, 2011, 1:08 a.m.): Hi Vito, I hope you are doing well. Today was such a beautiful day- I wish I could have spent it with you! I will be so happy when I am done with [the] test. I’m looking very much so to being able to spending more time with you soon.¹⁰⁸

Complainant 1 (November 30, 2011, 12:12 a.m.): Vito, I can’t wait until this week is over so I can see you. I’m looking forward to Sunday. I found a place in manhattan that I think you’ll like that I will call and make reservations tomorrow.¹⁰⁹

¹⁰⁴ Complainant 1 Interview.

¹⁰⁵ Complainant 1 Interview.

¹⁰⁶ CHW000523-25 at 523.

¹⁰⁷ CHW000523-25 at 523-24.

¹⁰⁸ CHW000523-25 at 524.

¹⁰⁹ CHW000523-25 at 524.

Complainant 1 (November 30, 2011, 11:21 p.m.): Vito you are getting good with the texts. It's so good to hear from you. I'm looking forward to coming back and spending time with you soon.¹¹⁰

Lopez (in response): I'm sending a present for you tomorrow with [Employee 1]¹¹¹

Complainant 1 (December 1, 2011, 11:29 p.m.): Vito it's almost over. One more day to go. I'm going to go in the office on Sunday before we meet up To catch up on the week and everything I missed. I miss you and I can't wait to see you¹¹²

When Complainant 1 tried to take the LSAT, she realized that she had not had time to adequately prepare for it. Consequently, she walked out of the exam and canceled her score. Nonetheless, as she had promised, Complainant 1 met Lopez for dinner at the end of the week. Complainant 1 wore the watch and earrings to the dinner as well as the dress. At dinner, Complainant 1 stated that Lopez told her if she had not dressed to his liking, he would have demoted her.¹¹³

Complainant 1 also described Lopez's frequent requests for a neck massage with a hand-held electric massager.¹¹⁴ Employee 2 and Harkavy had done this for Lopez previously,¹¹⁵ and Lopez had requested that Complainant 1 do the same. Complainant 1 was instructed to purchase a massager for the District Office, which she did using her own money.¹¹⁶

Lopez's requests for a massage did not end with the use of the electric massager in his office. On December 6, 2011, soon after Complainant 1 had informed Lopez that his behavior was scaring her, Lopez requested that Complainant 1 massage his hand while the two of them were driving to Albany for a legislative Special Session. Travel vouchers from the Assembly confirm the trip took place.¹¹⁷ Because Complainant 1 did not want any physical contact with Lopez, she tried to reason with him during the ride in an effort to gain his sympathy and understanding. Complainant 1 revealed to Lopez that she was a victim of a sexual assault while in college and, as a result, his behavior and comments were particularly troubling to her. After Complainant 1 told Lopez about her assault, he brought Complainant 1's head towards him,

¹¹⁰ CHW000523-25 at 524.

¹¹¹ CHW000523-25 at 524. Employee 1 was staying at Complainant 1's apartment during this time. (Complainant 1 Interview).

¹¹² CHW000523-25 at 524-25.

¹¹³ Complainant 1 Interview.

¹¹⁴ Complainant 1 Interview.

¹¹⁵ Employee 2 Interview; Harkavy Interview.

¹¹⁶ Complainant 1 Interview; CHW000888 (December 1, 2011 email from Complainant 1 to Harkavy).

¹¹⁷ Complainant 1 Interview; VLJCOPE000150. Lopez had requested a hand massage from Employee 1 as well. On one occasion, while in the District Office, Employee 1 complied. (Employee 1 Interview).

kissed her forehead and asked Complainant 1 if she “felt guilty” about the attack. Lopez then asked her again to massage his hand. Scared about Lopez’s reaction if she should say “no,” Complainant 1 agreed. When she began the massage, though, Complainant 1 started to cry. Lopez responded by saying “I like that you’re holding my hand.” Complainant 1 cried even harder and Lopez eventually relented and told her to stop the massage.¹¹⁸ The conversation was recorded by Complainant 1 and is excerpted below:

Lopez: You know, but you can’t be so wired. . . . You can’t, you have to just break the steel wall not even brick wall, a little bit. And I know you can’t so . . . we’ll leave it at that.

Complainant 1: If I tell you why will you keep it between us?

Lopez: Yeah, definitely. What am I gonna break. . . what am I’m gonna talk to the world.

Complainant 1: No, but you know, I don’t know. I just it’s just a natural reflex for me. When I was in college I had to leave cause I was raped and it’s like my body the only thing I have to control and I, I’m sorry, it’s just a natural reflex for me.

Lopez: It’s good that you told me that. Not that it’s good that it happened, it’s good that you told me that. Do you hear me.

Complainant 1: And because of the way the law’s structured there is nothing I could do.

Lopez: About what?

Complainant 1: About, about charging the guy

Lopez: So you feel guilty about that?

Complainant 1: No I don’t feel guilty about it. . . it’s just that when you go through something like that..

...

Lopez: Yeah well, could I tell ya, that’s bad and it’s terrible but a little bit, there needs to be a little bit of turning the corner. Do you hear me?

Complainant 1: Yes.

Lopez: I really believe the work that you do or can do and have done and if you get caught up in it we could do a lot.

Complainant 1: Absolutely.

Lopez: But I want that intensity and I want it to be a little bit adventurous, alright. . . .

Complainant 1: Absolutely.

¹¹⁸ Complainant 1 Interview.

Lopez: . . . you know and so if you rub my hand you know I like that because it's therapy. . . I tell ya it's practically therapy. . .

Complainant 1: Absolutely.

Lopez: . . . but it's more than therapy. . .

Complainant 1: Absolutely.

...

Lopez: . . . and rubbing my neck like you just did before was a nice gesture. . .

Complainant 1: Absolutely.

...

Lopez: Alright, okay, good. Now it's a deal. Stop crying. Alright, rub my hand, do my hand.

...

Lopez: Good. I like that. That means that you have to rub it longer. . . do you. . . do you mind.

...

Lopez: Rub it harder though.

...

Complainant 1: I have tiny hands.

Lopez: What?

Complainant 1: I said I have tiny hands.

Lopez: Alright well whatever. It feels good, is that alright, does that hurt you that you're doing this.

Complainant 1: No. Not at all.

Lopez: You may have to do it one more time. . . cuz I swear. . .

Complainant 1: Okay.

...

Lopez: So you're gonna cry cuz you're doing this, stop.

Complainant 1: No, Vito, I just get very upset when you're mad at me.

Lopez: Well, . . . not for anything but it works both ways, you think I was happy. . .

Complainant 1: No.

Lopez: . . . I love the way ya make it. I try not to be mad at you. But ya know, all I was saying is. . . ya know I got to be. . . that felt good right in here.

Complainant 1: Where?

Lopez: . . . inside in my inside. . .

Complainant 1: On the inside right in here?

Lopez: Right here.

Complainant 1: Right there.

...

Lopez: Good. Later ya have to rub my neck for one minute, then two in about half an hour also ya gotta do that again. Think ya can get off the hook with just one time. Is that fair?¹¹⁹

After the hand massage ended, Lopez brought up the Albany apartment again. He told Complainant 1 that she would have to “cuddle” with him in the apartment:

Complainant 1: I see. Yeah, this is the reason they go up on Sunday night.

Lopez: Yep. There’s another reason. What’s the other reason?

Complainant 1: To have fun.

Lopez: And to be with me.

Complainant 1: Yeah.

Lopez: Alright.

Complainant 1: Yeah. So we. . .

Lopez: And to cuddle.

Complainant 1: . . . and so we can be relaxed.

Lopez: And cuddle.¹²⁰

Complainant 1 tried to avoid the cuddling discussion, and Lopez became very quiet and distant. According to Complainant 1, Lopez then told her that he realized that Albany was not for her. When they arrived in Albany, Lopez again brought up the threat of terminating Complainant 1, telling her that this would be her last trip there. When he brought Complainant 1 on to the Assembly floor during the trip, Lopez reiterated this point, explaining to Complainant 1 all that she would be missing after she left the office.¹²¹

¹¹⁹ Staff-prepared transcript of CHW000678.

¹²⁰ Staff-prepared transcript of CHW000678.

¹²¹ Complainant 1 Interview.

During this same trip, Lopez told Complainant 1 that not only did he want to share an apartment with her, but he also wanted to spend time with her in Atlantic City and was “serious” about traveling with her abroad. Again, the conversation was captured on tape:

Lopez: Good start. But I need you to be my star.

Complainant 1: I am your star, Vito.

Lopez: You know what I mean. Alright. I need us to go to Atlantic City and get lost there. Go to Morocco or whatever that Monaco.

Complainant 1: Monaco.

Lopez: Monaco. I say it wrong. See you think I'm joking but I'm serious.

Complainant 1: (Laughs) I know you're serious.

Lopez: Alright.

Complainant 1: I know you're serious.

Lopez: And I want to take that February week off and go someplace. That week that we have that winter recess. Can we do that?

Complainant 1: Yes. When is it?

Lopez: I don't know.

Complainant 1: Okay.

Lopez: In the third week, we'll find out.

Complainant 1: Alright. Sounds good.

Lopez: I think that will make me and an apartment will make me happy.¹²²

Lopez also reiterated his need to have his hand massaged and told Complainant 1 he needed her around him “[i]n an adventurous way”:

Lopez: I want to do all these things with you, Miss. Can I do it?

Complainant 1: Yes.

Lopez: But I do need my hand and arm rubbed and I need you to be around me.

Complainant 1: Absolutely.

Lopez: In an adventurous way.

Complainant 1: Absolutely.

Lopez: Ya hear.

¹²² Staff-prepared transcript of CHW000678.

Complainant 1: Yep.

Lopez: Do you understand what that means.

Complainant 1: I do understand Vito.

Lopez: Alright.

Complainant 1: I'm excited about it.

Lopez: You are?

Complainant 1: Yep. Very much so.

Lopez: Very good. I hope we talk. We're gonna have fun.

Complainant 1: Yep. Lots of fun.

Lopez: Alright. Good. You make my day then.

Complainant 1: Good. I'm happy.

Lopez: Alright.¹²³

On another occasion, in early December 2011, according to Complainant 1, Lopez also touched her inner thigh when they were alone in the car. Lopez had requested that Complainant 1 come with him to look at Christmas lights in Brooklyn. When Complainant 1 was in the car, her dress had inadvertently flipped up on her leg. Lopez reached to pull it down, placing his hand between Complainant 1's legs and touching her inner thigh. Complainant 1 was extremely upset. Lopez responded that he was merely helping Complainant 1 because he did not want her to appear "inappropriate" with her dress riding up on her leg.¹²⁴

At this point in December, Complainant 1 told Employee 1 she felt unsafe around Lopez. Employee 1 suggested that Complainant 1 speak to Yolande Page, Deputy Director of Administration for the Assembly. While Complainant 1 was previously reluctant to bring a complaint against Lopez, she was, as she explained, more prepared to do so now.¹²⁵ On December 8, 2011, as explained below, Complainant 1 took Employee 1's advice and contacted Page.

C. Management and Disposition of the First Set of Complaints

1. Complainant 1's December 14, 2011 Email

On December 8, 2011, Complainant 1 called Yolande Page and left a message for her.¹²⁶ Unbeknownst to Complainant 1, Employee 1 had spoken to Page the day before, on December 7, 2011. Prior to working for Lopez, Employee 1 had served as an intern in the Speaker's office and knew Page from that internship. In addition to other duties, Page was responsible for the

¹²³ Staff-prepared transcript of CHW000678.

¹²⁴ Complainant 1 Interview.

¹²⁵ Complainant 1 Interview.

¹²⁶ Page Interview; Complainant 1 Interview; YP100013-18 (Page telephone logs).

administration of the intern program for the Assembly. Employee 1 alerted Page that Page might be contacted by another Lopez employee about problems in Lopez's office.¹²⁷

While Complainant 1 was waiting for a return phone call from Page, Lopez ordered Complainant 1 into his office where he proceeded to yell at her and criticize her job performance. Lopez also reprimanded Complainant 1 for making his use of the term "cuddle" (in relation to the apartment that Lopez wanted to share with Complainant 1) sound "dirty." In Lopez's estimation, "cuddle" meant "nestle and hug."¹²⁸

When Page returned the call, Complainant 1 complained about Lopez's treatment of her, including pressure to share an apartment. According to Complainant 1, she also told Page that Lopez had subjected Employee 3 (who had already left the office), Employee 4 and Employee 1 (both of whom were still working for Lopez) to similar treatment. Complainant 1 was extremely distraught, telling Page that she thought she might have a heart attack or commit suicide if Lopez's behavior continued. Page stated that Complainant 1 sounded "very stressed" and that "she might have been crying."¹²⁹ Complainant 1 asked Page if the Speaker could talk to Lopez to make the conduct stop. Page offered, instead, to speak to Lopez. Complainant 1 told her Lopez would only listen to the Speaker.¹³⁰

Page informed Complainant 1 that she did not have to share an apartment with Lopez or engage in any physical contact with him. Page then instructed Complainant 1 to contact the Office of the Counsel for the Majority if she wanted to make a formal complaint against Lopez. Complainant 1 told Page that before she filed a complaint she needed time to speak with her parents and consider the implications if the matter became public.¹³¹

On December 11, a Sunday, Lopez called Complainant 1 into the office, ostensibly about work. He spoke again about the "wall" that Complainant 1 had erected and how it was impeding her work. Complainant 1 told Lopez that she wanted him to stop sexually harassing her and other female staff. Lopez responded by stating that there was no sexual harassment on his part because there was no "continual behavior" at issue. Lopez then began to read to Complainant 1 some of the text messages she had sent to him (at his request). According to Complainant 1, Lopez looked at her and said of her texts, "Pretty provocative, don't you think?" Lopez told Complainant 1 to stay in his office until the end of December, at which point she could leave without telling anyone she was fired. He also told Complainant 1 that he had been prepared to talk to an influential person in order to help Complainant 1 get into law school. Though Complainant 1 had never asked for any such help, Lopez told her he would no longer be willing to offer this assistance.¹³²

¹²⁷ Employee 1 Interview; Page Interview; NYA001510-11 (Kearns's notes).

¹²⁸ Complainant 1 Interview.

¹²⁹ Page Interview.

¹³⁰ Complainant 1 Interview.

¹³¹ Complainant 1 Interview; Page Interview.

¹³² Complainant 1 Interview.

Complainant 1 called Page the next day, on December 12, to inform her that Lopez had fired her when she told him to stop sexually harassing her and then rescinded her termination.¹³³ She again told Page that other women in the office were being harassed. Page repeated her instruction to Complainant 1 that if she wanted to file a complaint against Lopez, she should contact either William (“Bill”) Collins or Carolyn Kearns. Collins is Counsel for the Majority, and Kearns is Deputy Counsel for the Majority. Kearns reports to Collins, who, in turn, reports to the Speaker. Both Collins and Kearns have served as lawyers in the Assembly for many years. In addition to her role as Deputy Counsel for the Majority, Kearns is also Majority Counsel to the Assembly Ethics Committee.

Complainant 1 said she would “definitely” do something and told Page that she wanted to find an attorney and file a complaint. The next day, Complainant 1 called Page again, and reiterated that she was definitely going to file a complaint and that she was speaking with a lawyer.¹³⁴ She also told Page that Lopez had told another female staffer that he was going to take her out but she could wear nothing but a scarf.¹³⁵ On the call, Complainant 1 spoke about the incident with the hand massage in the car, telling Page that she had explained to Lopez that she had been sexually assaulted. Page told her, again, to file a written complaint with Collins.¹³⁶

After the call, Page had a very brief telephone conversation with the Speaker, informing him that she had spoken to an employee in Lopez’s office and there might be sexual harassment litigation filed.¹³⁷ Shortly thereafter, according to Collins, the Speaker mentioned to him that there was an issue in Lopez’s office and they should speak to Page or otherwise look into it.¹³⁸ James Yates, who is Counsel to the Speaker and one of his principal advisors, also stated that the Speaker briefly related to him that he should check into a possible incident in Lopez’s office.¹³⁹ The Speaker stated that, while he did not deny these communications took place, he could not recall them.¹⁴⁰

On December 14, after being informed at least twice by Page that she needed to contact Collins or Kearns in order to file a complaint, Complainant 1 did just that. After calling Page, and speaking with her assistant, Complainant 1 sent an email to Lopez, copying Collins, Kearns, and Page, in which she summarized her allegations of sexual harassment and stated that Lopez had fired her:¹⁴¹

¹³³ Page Interview; Complainant 1 Interview; YP100013-18 at 15-16 (Page telephone logs).

¹³⁴ Complainant 1 Interview; Page Interview.

¹³⁵ Page Interview.

¹³⁶ Complainant 1 Interview; Page Interview.

¹³⁷ Page Interview.

¹³⁸ Interview of William Collins (“Collins Interview”).

¹³⁹ Yates Interview. Yates began serving as Counsel to the Speaker in January 2011. He reports directly to the Speaker. (Yates Interview).

¹⁴⁰ Collins Interview.

¹⁴¹ NYA008394.

William Collins

From: [REDACTED]
Sent: Wednesday, December 14, 2011 1:02 PM
To: [REDACTED]
Cc: pagey@assembly.state.ny.us; collinsw@assembly.state.ny.us;
kearnsc@assembly.state.ny.us
Subject: termination

December 14th, 2011

Dear Assemblyman Vito Lopez:

As you are fully aware, you fired me on Sunday, after a series of escalating incidents in which I repeatedly denied your sexual advances and told you to stop making sexual and other inappropriate remarks to me and other staff or to retaliate against me, and after I reported your behavior last week to human resources. Although you told me that I should still report for work for a brief transition before leaving, you then continued to yell at me on Monday, within ear shot of all staff, stating that you were "not going to get caught up in this minutia type of thing" or "be bogged down in bullshit."

I no longer feel safe at work or in your presence. It is impossible for me to perform my actual job, and I need time to recover from the way I have been treated. You have forced me out, and I am no longer able to report to work. I ask that you continue to pay me while I recover. In any event, I currently have 5 personal days and 6 days of unused comp time, so regardless of your position, I should receive a paycheck through and including December 28, 2011.

I have left all work related materials and papers on my desk and my keys, and left instructions for staff to deal with outstanding matters. My Assembly I.D. will be placed in the mail as of later today.

Complainant 1 stated in her interview that she intended the email to be a formal complaint that she understood would invoke the process set out in the Assembly's sexual harassment policy. Page, too, believed that by sending the email, Complainant 1 had followed through on her conversation about filing a complaint. At that point, according to Page, the process was out of her hands and for the Counsel for the Majority to move forward with pursuant to the Assembly's sexual harassment policy.¹⁴²

2. Assembly's Sexual Harassment/Retaliation Policy

The Assembly's Sexual Harassment/Retaliation Policy (the "Policy") dates back to 1984 and has been modified a number of times since then. Most notably, the Policy was modified in 2006 as a requirement of the Assembly's settlement of a post-litigation civil lawsuit.¹⁴³ Subsequent to the settlement, the Policy was revised to become more "user-friendly," including the creation of an intake committee comprised of Members and other staff so that Assembly employees had multiple avenues for making a complaint of sexual harassment. Both Kearns

¹⁴² Page Interview.

¹⁴³ Interview of Sheldon Silver ("Silver Interview"); Collins Interview; *Jane Doe v. The New York State Assembly*, Index No. 3314-04, State of New York Supreme Court (County of Albany).

and Collins were the Assembly attorneys responsible for crafting and implementing this revision.¹⁴⁴

The Policy was also significantly revised in March 2011. Up until this time, the Office of the Counsel for the Majority was responsible for investigating all complaints of sexual harassment. When a complaint of sexual harassment was made against a Member, the office of Counsel for the Majority would refer the matter to the Assembly “Ethics Committee” if the investigation conducted by Counsel for the Majority resulted in a finding that prohibited conduct had occurred. The Assembly Ethics Committee is a bipartisan committee composed of four Democrats and four Republicans and meets on an *ad hoc* basis. The Assembly Ethics Committee’s jurisdiction includes, among other areas, matters that fall under the Policy.

In March 2011, the Speaker approved a substantial revision to the Policy with respect to the manner in which sexual harassment complaints against Members are handled.¹⁴⁵ Under the revisions, the Office of the Counsel for the Majority no longer has any role in the investigation of complaints against Members. Rather, pursuant to Section V of the Policy, all complaints of sexual harassment against any Member “shall” be referred to the Assembly Ethics Committee for investigation.¹⁴⁶ With respect to non-Member employees, the Office of Counsel for the Majority still retains the responsibility to conduct an investigation.¹⁴⁷ The change was an effort to eliminate the appearance that partisan politics could influence the investigation and policing of Members.¹⁴⁸

To further the objective of removing the Office of Counsel for the Majority from playing a substantive role in allegations made against Members, the revised Policy requires only that a “complaint” be made in order for the matter to be referred to the Assembly Ethics Committee for an investigation. In contrast, when the allegations are against a non-Member employee of the Assembly, the Policy requires that the complainant submit a “*written* complaint” to the Office of the Majority Counsel.¹⁴⁹ Kearns and Collins were involved with drafting and implementing all the revisions to the Policy.¹⁵⁰

¹⁴⁴ Collins Interview; Interview of Carolyn Kearns (“Kearns Interview”).

¹⁴⁵ NYA006059-63 (Sexual Harassment/Retaliation Policy dated Mar. 2011), §V.

¹⁴⁶ *See id.*, §V.

¹⁴⁷ *See id.*, §IV.

¹⁴⁸ Collins Interview.

¹⁴⁹ *See* NYA006059-63, §§IV (emphasis added), V. According to both Collins and Kearns, they eventually became aware that requiring a written complaint in order to initiate an investigation was inconsistent with federal law and that the Assembly, accordingly, would have to revise its policy. (Kearns Interview; Collins Interview; NYA008003-04 (August 29, 2012 email from Collins: “One flaw in our Policy is the written complaint requirement.”)).

¹⁵⁰ Collins Interview; Kearns Interview.

3. Assembly Response to Complainant 1 and Complainant 2 Complaints

After receiving the December 14 email from Complainant 1, Collins and Kearns met with Page, who related to them the conversations she had with Complainant 1.¹⁵¹ Page informed Collins and Kearns about the behavior Complainant 1 described and told them that Complainant 1 was extremely distraught. Page also told Collins and Kearns that Complainant 1 wanted to speak with an attorney and that she might initiate litigation. Additionally, Page informed Collins and Kearns that she was trying to talk Complainant 1 “off the ledge” and that she repeatedly told Complainant 1 to contact Collins to file a complaint.¹⁵² Collins and Kearns said in their interviews that this was the first time they had been made aware of any type of sexual harassment allegations against Lopez.¹⁵³

After discussion amongst themselves, Kearns and Collins concluded that it was unclear if Complainant 1 wanted her email to be considered a complaint that would, therefore, be sent to the Assembly Ethics Committee. Consequently, on December 15, Kearns emailed Complainant 1 asking her “whether it was your intention to file a formal complaint of sexual harassment by sending us a copy of the email to Assemblyman Lopez.”¹⁵⁴ After discussion with Yates, Kearns also sent an additional email to Complainant 1, making it clear that she would not be fired.¹⁵⁵ On December 19, Kearns sent Complainant 1 a letter again inquiring whether it was Complainant 1’s intention to file a formal complaint.¹⁵⁶

Although Section V of the Policy does not include a requirement for a written complaint, both Collins and Kearns stated they interpreted Section V as containing such a requirement.¹⁵⁷ Both also stated they understood that individuals making sexual harassment complaints could pursue those complaints in a number of different venues, including state, federal, and city agencies as well as the courts. Both counsel stated that they believed at the time that the availability of these options required that they ask Complainant 1 if she wanted her complaint sent to the Assembly Ethics Committee.¹⁵⁸

Both Collins and Kearns stated that their decision not to forward Complainant 1’s December 14 email to the Assembly Ethics Committee was also based on their understanding, acquired through communications with Page, that Complainant 1 was concerned about publicity and “that there was some personal history that made this all the more difficult for” Complainant

¹⁵¹ Page Interview; Collins Interview; Kearns Interview; NYA001510-11 (Kearns’s notes).

¹⁵² Page Interview.

¹⁵³ Collins Interview; Kearns Interview.

¹⁵⁴ NYA008395-97 at 8396.

¹⁵⁵ NYA001546.

¹⁵⁶ NYA002375-76.

¹⁵⁷ Kearns Interview; Collins Interview. With respect to the a requirement for a written complaint both stated they interpreted Section V to be consistent with Section IV, which does, as explained above, contain a requirement that complaints against non-Members be in writing before an investigation can commence.

¹⁵⁸ Collins Interview; Kearns Interview.

1.¹⁵⁹ Kearns communicated this information to Yates.¹⁶⁰ Page, however, said that she never told Collins or Kearns that Complainant 1 was reluctant to file a complaint. In fact, Page believed that by sending her email, Complainant 1 was following through on their prior conversations about filing a complaint.¹⁶¹

On December 20, after speaking to Kearns and having informed the Speaker that a woman in Lopez's office had made allegations of sexual harassment, Yates told the Speaker that Kearns had been unsuccessful in contacting Complainant 1 to date.¹⁶² In his interview, the Speaker stated that he assumed that the procedures set forth in the Policy were being followed and that Kearns, acting in her capacity as Majority Counsel to the Assembly Ethics Committee, was trying to contact Complainant 1, presumably to start the Assembly Ethics Committee process.¹⁶³

On December 28, 2011, Complainant 2 called Page to ask her if she could file with her a sexual harassment complaint against Lopez.¹⁶⁴ Page informed her that she could not file a complaint with her, and she should instead call Collins.¹⁶⁵ Following Page's instructions, Complainant 2 had a long phone conversation with Collins and Kearns during which she related a number of instances of Lopez's behavior directed toward her and other female staff members. Collins asked Complainant 2 if she wanted to file a formal complaint to which Complainant 2 replied that she did.¹⁶⁶ Collins and Kearns then asked Complainant 2 to put her complaint in writing.¹⁶⁷

On January 3, 2012, following the instructions of Collins and Kearns, Complainant 2 sent an email to them detailing her allegations.¹⁶⁸ Complainant 2 said that she spoke to Collins before she sent the email and that he informed her that it would be forwarded to the Assembly Ethics Committee.¹⁶⁹ On January 4, in response to Collins's request, Complainant 2 sent a formal letter to Collins containing the text of the email she had written the previous day.¹⁷⁰ Neither Collins nor Kearns forwarded Complainant 2's email or letter to the Assembly Ethics Committee. While Complainant 2's email and letter did not mention Complainant 1, Collins and Kearns both stated that they believed Complainant 2's complaint was interrelated with Complainant 1's complaint and should not be sent to the Assembly Ethics Committee until they

¹⁵⁹ Collins Interview; Kearns Interview; NYA001510-11 (Kearns's notes).

¹⁶⁰ Kearns Interview.

¹⁶¹ Page Interview.

¹⁶² Yates Interview.

¹⁶³ Silver Interview.

¹⁶⁴ Page Interview; YP100013-18 at 18 (Page telephone logs).

¹⁶⁵ Page Interview; Complainant 2 Interview.

¹⁶⁶ Complainant 2 Interview.

¹⁶⁷ Kearns Interview; Complainant 2 Interview; NYA002366-67 at 2366.

¹⁶⁸ NYA001867-69.

¹⁶⁹ Complainant 2 Interview;

¹⁷⁰ Complainant 2 Interview; NYA003467-68 at 3467.

understood what was happening with Complainant 1's issues. Both Collins and Kearns said that because Complainant 1 had not yet responded to communications from Kearns, they did not send Complainant 2's complaint to the Assembly Ethics Committee.¹⁷¹

On January 4, 2012, Complainant 1 responded to the December 16 email from Kearns, writing, "I am currently out of town and will follow up with your office regarding the email I sent on December 14th when I return on January 11."¹⁷² Kearns replied that it was "important to understand what you are seeking the Assembly to do" and proposed meeting on either January 11 or 12. Complainant 1 and Kearns eventually settled on a January 12 meeting.¹⁷³

On January 11, 2012, Lopez fired Complainant 2. By letter dated January 12, Mariann Wang sent a multipage letter to Kearns, as Deputy Counsel to the Majority, and to Lopez. In the letter, Wang identified herself, as well as Gloria Allred, as counsel for Complainant 1 and Complainant 2. The letter contained a summary of her clients' allegations against the Assembly, as the employer of the women, and against Lopez, as the supervisor. The allegations against the Assembly included liability under federal, state and New York City law.¹⁷⁴

In the letter, Wang communicated her clients' intention to pursue litigation but stated that they "nonetheless remain willing to explore whether this matter can be resolved prior to the initiation of legal proceedings." To this end, the letter offered "resolving this matter through a confidential mediation process."¹⁷⁵ The letter also contained the standard admonition that, because her clients now had counsel, the Assembly and Lopez were to refrain from "discussing these allegations any further with our clients directly."¹⁷⁶ Employee 5, a Lopez employee, told Complainant 1 that Lopez read the January 12 letter to staff, and pressured Employee 4 and another staff member to act as character witnesses during the subsequent mediation.¹⁷⁷

After receiving the January 12 letter, Collins and Kearns met with the Speaker, Yates and Judy Rapfogel, the Speaker's Chief of Staff, to discuss the letter and allegations, including the Assembly's potential liability as an employer for Lopez's conduct under applicable law.¹⁷⁸ Collins had concerns about the likelihood of sensationalized press, because Gloria Allred was one of the lawyers representing the women.¹⁷⁹ Yates said that he was "disturbed" by this possibility as well.¹⁸⁰

¹⁷¹ Collins Interview; Kearns Interview.

¹⁷² NYA001550-51.

¹⁷³ NYA001566-68 at 1566. Kearns had also left a voicemail message for Complainant 1 on December 28, 2012. (NYA002377).

¹⁷⁴ CHW000003-07.

¹⁷⁵ CHW000003-07.

¹⁷⁶ CHW000003-07.

¹⁷⁷ Complainant 1 Interview.

¹⁷⁸ Collins Interview; Kearns Interview; Yates Interview; Silver Interview; Interview of Judith Rapfogel.

¹⁷⁹ Collins Interview.

¹⁸⁰ Yates Interview; Collins Interview.

During the meeting, the Speaker accepted the recommendations of Yates, Collins and Kearns to enter into a confidential mediation. The Speaker made clear that the Assembly's interests and liability were to be kept separate and apart from the interests and liability of Lopez and that the Assembly would only pay for its – and not Lopez's – potential liability.¹⁸¹

At this point, as explained above, Yates, Collins, and Kearns had decided not to send Complainant 1's and Complainant 2's complaints to the Assembly Ethics Committee absent further discussion with Complainant 1. During their interviews, Yates, Collins, and Kearns stated that – even if Complainant 1's email and Complainant 2's communications were written complaints that, under the Policy, should have been referred to the Assembly Ethics Committee when they were received – Wang's letter precluded the Assembly from undertaking any further internal action on the claims, including referring the matters to the Assembly Ethics Committee.¹⁸² The Speaker stated in his interview that at the time they received Wang's letter, he had been under the impression that Kearns, in her capacity as Counsel to the Assembly Ethics Committee, was acting on the complaints. While the Speaker did not read Wang's January 12 letter, based on the information conveyed to him by Yates, Collins, and Kearns, he also agreed that the letter precluded the Assembly Ethics Committee from any work on the matter.¹⁸³ As a result, the complaints were not forwarded to the Assembly Ethics Committee, nor is there any evidence that any of its members or the Minority Counsel were informed about the complaints.

When asked what aspect of Wang's letter led them to the conclusion that the Complainant 1 and Complainant 2 complaints could not be handled by the Assembly Ethics Committee, the Speaker, Yates, Collins, and Kearns each cited two provisions: the request for confidential mediation and Wang's admonition to the Assembly not to communicate directly with her clients.¹⁸⁴

With respect to the first provision, Yates, Kearns and Collins all stated that the women, by choosing confidential mediation, had, in effect, elected that as the exclusive venue in which to seek a remedy, thereby rejecting a referral to the Assembly Ethics Committee.¹⁸⁵ These witnesses were questioned further about this position because the Assembly Ethics Committee process and mediation or litigation are independent and non-exclusive processes. The Assembly Ethics Committee's sole purpose is to meet the Assembly's obligation to investigate potential violations of its own rules and policies and to recommend sanctions for such violations. The Assembly Ethics Committee is not designed for, and has no authority or ability to provide, relief of any kind to victims. Mediation or litigation, the purpose of which is to provide compensation or other relief to victims, is not a process through which a Member of the Assembly can be sanctioned.

¹⁸¹ Collins Interview; Silver Interview.

¹⁸² Yates Interview; Collins Interview; Kearns Interview.

¹⁸³ Silver Interview.

¹⁸⁴ Yates Interview; Collins Interview; Kearns Interview; Silver Interview; CHW000003-07.

¹⁸⁵ Yates Interview; Collins Interview; Kearns Interview; Silver Interview.

When asked about their conclusions, Yates, Kearns, and Collins each reiterated the position that the letter from Wang had, in effect, communicated that the women had chosen mediation as their exclusive remedy, thereby precluding an Assembly Ethics Committee referral.¹⁸⁶ During his interview, the Speaker stated that at the time he relied on information provided to him by staff. He acknowledged, however, that mediation did not necessarily preclude an Assembly Ethics Committee investigation. In his estimation, the two processes could, if the parties desired, proceed on parallel tracks.¹⁸⁷

With respect to the second provision of Wang’s letter, the Speaker, Collins, Yates and Kearns all stated that Wang’s warning that the Assembly not communicate with her clients directly meant that Complainant 1 and Complainant 2 would be unwilling to participate in any investigation.¹⁸⁸ Yates, Collins, Kearns and the Speaker (all lawyers themselves) acknowledged that nothing in Wang’s letter or the law precluded the Assembly from asking Wang if her clients would consent to be interviewed for the purposes of an investigation and that they never made such a request to Wang.¹⁸⁹

After the January 12 meeting, Collins informed Wang that the Assembly had agreed to mediation. Wang stated that Collins also asked for her assurances that she would not file any public document relating to the allegations.¹⁹⁰

Also after the January 12 meeting, Yates called Neal Kwatra, the Chief of Staff to Attorney General Eric Schneiderman.¹⁹¹ Yates told Kwatra there was a possible sexual harassment complaint against the Assembly and wanted to know who in the OAG had employment law experience. Yates was eventually given the name of Arlene Smoler, a Deputy Attorney General in the Office of the State Counsel within the OAG. Smoler, a longtime lawyer in the OAG, was recognized as an expert in employment law. Yates, in turn, gave Smoler’s name to Collins.¹⁹²

Collins had one or two telephone conversations with Smoler in January 2012. Smoler explained that the OAG only represents state entities once litigation has been initiated. While the Assembly had agreed to mediation, there was no active lawsuit. Consequently, Smoler informed Collins that the OAG could not represent the Assembly in the pre-litigation mediation.¹⁹³ As is the practice of the OAG, however, Smoler provided general guidance based on hypothetical facts, something which Smoler had done on many occasions for a variety of

¹⁸⁶ Yates Interview; Collins Interview; Kearns Interview.

¹⁸⁷ Silver Interview.

¹⁸⁸ Yates Interview; Collins Interview; Kearns Interview; Silver Interview.

¹⁸⁹ Yates Interview; Collins Interview; Kearns Interview; Silver Interview. While Wang and Allred were co-counsel to Complainant 1 and Complainant 2, Wang was responsible for communicating with the Assembly and Lopez’s attorneys.

¹⁹⁰ Interview of Mariann Meier Wang (“Wang Interview”).

¹⁹¹ Yates Interview; Interview of Neal Kwatra (“Kwatra Interview”).

¹⁹² Yates Interview.

¹⁹³ Collins Interview; Interview of Arlene Smoler (“Smoler Interview”).

state entities.¹⁹⁴ Thus, Smoler made clear to Collins that she only needed a broad outline of the facts and did not want specific details. Collins then proceeded to provide Smoler with a general overview, omitting names and identifying information. For example, Collins told Smoler that the claims were against an Assemblymember but did not reveal his name.¹⁹⁵

Smoler spoke to Collins about “potential liability issues for both the Assembly and the individual, and the benefits and drawbacks of participating in JAMS mediation.”¹⁹⁶ Smoler also provided some general guidance to Collins on settlement. Specifically, Smoler told Collins if the Assembly were to consider settlement, it should keep in mind what its liability could be if the case went to trial and the Assembly lost. Collins stated that Smoler informed him that the general range for a post-litigation judgment of two “garden variety” sexual harassment claims was \$250,000 to \$400,000, exclusive of attorneys’ fees.¹⁹⁷ Collins also said that Smoler advised him that the Assembly, as the employer, should “swing into action”¹⁹⁸ and conduct “a prompt and timely investigation” of the allegations.¹⁹⁹

Smoler told Kwatra and Kent Stauffer, her supervisor, that she had spoken to Collins about a matter concerning sexual harassment and a Member of Assembly.²⁰⁰ Kwatra, Stauffer, and Smoler all reported that they did not inform the Attorney General about these allegations at that time, and the investigation revealed no evidence that the Attorney General was otherwise informed about the matter at that time.²⁰¹

Shortly after his conversation with Smoler, Collins engaged in an email exchange with Wang regarding the Assembly’s obligation to investigate the allegations. On January 19, 2012, Collins wrote to Wang in response to an email that Wang sent to Lopez’s counsel, Lefcourt, and on which Collins was copied:

With respect to the assertion in your email correspondence with Mr. Lefcourt that your clients were waiting for the Assembly to take meaningful action, please recall that the Assembly repeatedly sought, but never received, any indication from your clients what action, if any, they wished the Assembly to take, including whether

¹⁹⁴ Smoler Interview.

¹⁹⁵ Collins Interview; Smoler Interview.

¹⁹⁶ SMOLER0004.

¹⁹⁷ Smoler Interview; Collins Interview. Collins believed that Smoler told him the claims could be worth as much as \$400,000. In her interview Smoler said that she did not recall providing Collins with the \$400,000 figure, but she acknowledged that this amount of liability, based on the information provided by Collins, was a possibility.

¹⁹⁸ Collins Interview.

¹⁹⁹ NYA007738-39 (August 31, 2012 email from Collins recounting his earlier communications with Smoler).

²⁰⁰ KWATRA0004; Smoler Interview. Stauffer did not deny or even doubt that Smoler communicated with him on this matter in early January. He did not, however, recall any such communications. (Interview of Kent Stauffer (“Stauffer Interview”).)

²⁰¹ Smoler Interview; Kwatra Interview; Stauffer Interview; Interview of Eric Schneiderman (“Schneiderman Interview”).

or not they wished to trigger the Assembly’s sexual harassment complaint process.²⁰²

Wang responded that same day, making clear that her clients did not, and legally could not, dictate how their complaints are handled, including whether a referral should be made to the Assembly Ethics Committee or whether the Assembly should conduct an investigation of any sort. Rather, Wang expressly stated that the responsibility of how to handle the complaints belonged to the Assembly.

[I]t is my understanding that both my clients communicated repeatedly with various individuals in the Assembly (both your office and human resources) complaining about Mr. Lopez’s conduct and behavior . . . Under governing law, I am not aware that the victim is required precisely to direct or require a particular outcome or specific next steps, but that instead the employer has the responsibility to take appropriate action in a meaningful manner that both protects the employee and ensures their safety and the cessation of the unlawful behavior – and ensures that no retaliation occurs.²⁰³

According to Wang, she also told Collins in a telephone conversation that the Assembly should investigate the allegations.²⁰⁴ To her knowledge, no investigation was conducted, and the Assembly acknowledges that it has not conducted an investigation to date.²⁰⁵

On January 24, Yates, Kearns, and Collins met with the Speaker at the Capitol. Collins informed the group that he had spoken with Smoler and that the OAG could not represent the Assembly in mediation because an actual lawsuit had not been filed.²⁰⁶ Collins also reported that his initial legal research indicated that the Assembly might have a legal duty to investigate allegations and that such duty might have arisen when Complainant 1 first spoke to Page.²⁰⁷

Given the circumscribed role of the OAG, the Speaker told Collins to contact Ken Kirschner, an employment lawyer whom the Speaker had known for several years.²⁰⁸ After the meeting, Yates initially spoke to Kirschner.²⁰⁹ Throughout the next several months, Collins continued communicating with Kirschner for advice concerning the mediation and settlement

²⁰² CHW000009-10.

²⁰³ CHW000009-10.

²⁰⁴ Wang Interview.

²⁰⁵ Wang Interview; Collins Interview; Kearns Interview; Yates Interview; Silver Interview.

²⁰⁶ Collins Interview; Silver Interview.

²⁰⁷ Collins Interview.

²⁰⁸ Silver Interview.

²⁰⁹ Interview of Kenneth Kirschner (“Kirschner Interview”).

negotiations, including drafting of the Assembly’s mediation statement and certain terms of the Settlement Agreement.²¹⁰

In late January or early February, Collins also called Suzanne Gold in Human Resources to tell her not to take anyone off the payroll in Lopez’s office. In early February, Lopez complained to Yates that Complainant 1 and Complainant 2 were still on his payroll but not in his office.²¹¹ After discussion with Complainant 1, Complainant 2 and Wang, Yates found placement for the women within the Assembly, thereby removing them from Lopez’s payroll.²¹² With these salary lines no longer being utilized, Lopez hired three new women – two of whom were Complainant 3 and Complainant 4.²¹³ As explained below, some of Lopez’s behavior about which Complainant 3 and Complainant 4 complained occurred while Lopez’s counsel was engaging in settlement talks with Wang.

In March 2012, Collins and Kearns were preparing for confidential mediation with Wang and Lefcourt. Collins had additional communication with Smoler about mediation generally at this time.²¹⁴ It was during these communications that Smoler believes Collins told her the matter involved Lopez. According to Smoler, she reported this fact to Kwatra and Stauffer and provided them with a general update.²¹⁵ There is no evidence that the Attorney General was aware or was made aware of the matter at this time.

On March 27, Collins also called Nancy Groenwegen, General Counsel at the OSC because he knew OSC would eventually have to approve any settlement.²¹⁶ According to Collins, he “broadly spoke” about the matter, but did not provide any details.²¹⁷ Groenwegen told Collins that she was aware of a previous pre-litigation settlement negotiation involving a State University of New York (“SUNY”) employee. Groenwegen explained to Collins that she had recommended that counsel for SUNY contact Smoler, who Groenwegen considered to be an expert in employment matters, in order to assess the State’s potential liability and exposure. According to Groenwegen, it is not the role of the OSC to assess or review the legal rationale for liability. Rather, the entity requesting payment is responsible for ensuring that a legal basis for a payment exists. Groenwegen also stated that she told Collins that, when she was employed at the OAG, the office had a policy of not “agreeing to” settlement agreements containing confidentiality clauses.²¹⁸

²¹⁰ Collins Interview; Kirschner Interview; *see, e.g.*, KK000103 (email correspondence); KK000151-53 (same); NYA006473-74 (same).

²¹¹ Yates Interview.

²¹² Yates Interview; Wang Interview.

²¹³ Silver Interview; Yates Interview; Collins Interview.

²¹⁴ Collins Interview; Smoler Interview.

²¹⁵ Smoler Interview; STAUFFER0006. Kwatra did not dispute that Smoler communicated this information to him. He did not, however, recall any such communications. (Kwatra Interview.)

²¹⁶ OSC1 (Internal OSC email noting phone call from Bill Collins).

²¹⁷ Collins Interview.

²¹⁸ Groenwegen Interview.

While Collins and Kearns were preparing for mediation, Employee 1 spoke with Kearns, who Employee 1 also knew from her internship. She told Kearns that she wanted to be reassigned from Lopez’s office to a different position in the Assembly, but did not want Lopez to know that she was looking for another job. Kearns gave Employee 1 a copy of the Policy and asked her if she understood it. Employee 1 said that she did. Kearns then asked Employee 1 if she wished to make a complaint of sexual harassment. Employee 1 said that she did not want to make a complaint.²¹⁹ According to Kearns, Employee 1 told her that she wanted to leave because there was “a lot going on” in Lopez’s office that she did not “want to be a part of.”²²⁰

Kearns stated that Employee 1 was “very stressed” during the conversation and had an “urgency” to leave Lopez’s office.”²²¹ Kearns was also aware, through conversations with Page, that Complainant 1 had stated that Lopez was mistreating other female staffers.²²² Kearns, however, made no further inquiries of Employee 1 or anyone else as to the conditions for female staff in Lopez’s office.²²³ In June, the Assembly reassigned Employee 1 to a position in the communications office, which reports to the Speaker.²²⁴

On April 9, 2012, after Employee 1 came to Kearns but before she was reassigned, the mediation among Lopez, the Assembly, Complainant 1, and Complainant 2 took place. While the mediation did not immediately produce a resolution of the matter, it did mark the beginning of settlement negotiations. Collins, Lefcourt, and Wang were the principals throughout the settlement talks, with Collins taking the lead in the drafting the Settlement Agreement.²²⁵

4. The Confidentiality Clause in the Settlement Agreement

The initial draft of the Settlement Agreement was provided to the parties by Collins. The confidentiality clause that ultimately was included in the Settlement Agreement was first negotiated between Collins and Lefcourt. In late May, Collins circulated various draft versions of the agreement to Smoler at the OAG, Groenwegen at the OSC, Kirschner, and Lefcourt.²²⁶ The confidentiality provision in these drafts provided that no “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.”²²⁷ During this time, Collins emailed Kirschner, stating that “[m]oney flow and our desire to keep this away from media scrutiny complicates [sic] the resolution of this matter a

²¹⁹ Kearns Interview; Employee 1 Interview.

²²⁰ Kearns Interview.

²²¹ Kearns Interview.

²²² Kearns Interview; Page Interview.

²²³ Kearns Interview.

²²⁴ Employee 1 Interview.

²²⁵ Collins Interview; Wang Interview.

²²⁶ KK000185-90; SMOLER0072-77; NYA000362-70; NYA000371-79; KK000192-200; NYA000382-90; SMOLER0080-88; NYA000435-46; SMOLER0099-108.

²²⁷ KK000185-90 at 187; SMOLER0072-77 at 74; NYA000362-70 at 366; NYA000371-79; KK000192-200 at 196; NYA000382-90 at 386; SMOLER0080-88 at 84; NYA000435-46 at 441; SMOLER0099-108 at 103.

bit.”²²⁸ Kearns’s notes also indicate a concern about publicity. In describing a conversation with Lopez’s counsel, Kearns noted that there are “quotes” in the recordings made by Complainant 1 that are “headline-making.”²²⁹

It was during the exchange of these initial drafts that counsel for Lopez included an addition to the language of the confidentiality clause that made “the fact of this Agreement” part of the provision.²³⁰ Collins accepted the addition. Then, on May 31, 2012, Collins sent – for the first time – a draft of the settlement agreement to Wang.²³¹ The confidentiality provision in the draft that Collins sent to Wang included the original language as modified by counsel for Lopez:

Except in response to a court order or in response to a valid subpoena, neither 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, *the fact of this Agreement*, or any terms of this Agreement with any other person or entity.²³²

Wang said in her interview that, while she did not necessarily object to a confidentiality provision, she did not propose or demand one.²³³ After receiving the draft Settlement Agreement from Collins, Wang made modifications to the clause to include additional exemptions for disclosures “to financial or tax advisors, or medical professionals” and to include a party’s attorney and counsel among the entities covered by the confidentiality clause.²³⁴

On June 5, 2012, as the parties were completing negotiations of the Settlement Agreement, Collins reiterated the Assembly’s concern about confidentiality in a voicemail message to Wang in which he stated that, like Lopez, the Assembly “as well is concerned about the confidentiality issue.”²³⁵ Wang did not suggest any further modifications to the clause. The confidentiality provision included in the signed Settlement Agreement contained both Lefcourt’s and Wang’s additions to the original language proposed by Collins:

Except in response to a court order or in response to a valid subpoena or in connection with necessary disclosures to financial

²²⁸ KK000192-200 at 192.

²²⁹ NYA002360 (emphasis in original).

²³⁰ NYA000479-90 at 485

²³¹ CHW000084-99 at 85.

²³² CHW000084-99 at 91 (emphasis added) (version Wang received from Collins with Wang’s redlined edits added).

²³³ Wang Interview.

²³⁴ CHW000084-99 at 91.

²³⁵ CHW000111 (email containing automated transcription of Collins’s voicemail message).

or tax advisors, or medical professionals, neither party to this Agreement, nor any attorney, counsel, 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, the fact of this Agreement, or any terms of this Agreement with any other person or entity.²³⁶

The parties continued to negotiate other aspects of the agreement, including a clause providing for liquidated damages for breach of the confidentiality clause.²³⁷

5. Role of OAG and OSC in Reviewing Draft Settlement Agreements

As referenced above, Collins sent drafts of the Settlement Agreement to Smoler at the OAG and Groenwegen at the OSC. More specifically, Collins emailed them three drafts of the agreement – one draft on May 29 and two drafts on May 30 – all before sending a version to Wang on May 31.²³⁸

Smoler did not see the first draft, as she was on vacation when Collins emailed it to her. When Smoler saw the second draft from Collins, she said that she was “surprised,” because, as she explained to Collins, her role in pre-litigation disputes is to provide general guidance, and this does not include the review of pre-litigation settlement agreements. Consequently, Smoler merely scanned the second draft agreement. In the beginning of the document, she noted a mistake – Lopez was identified as the employer when it should have been the Assembly. At that point, she stopped reading the document and sent a reply email to Collins noting the error.²³⁹

In that same email, dated May 30, 2012, Smoler attached a “sample pre-litigation agreement.” Smoler wrote that the sample document “contains most of the [non-monetary] provisions that I would include if I had negotiated a pre-litigation settlement agreement.” She also invited Collins to call her if he had “any questions” about why Smoler “would typically use these types of provisions.”²⁴⁰ The sample agreement Smoler sent did not contain any confidentiality provision.²⁴¹ Less than an hour after Smoler sent her reply to Collins, Collins emailed Smoler again with a third (and for her, final) draft of the Settlement Agreement.²⁴² Smoler opened the document, immediately saw that it did not resemble the sample agreement she had sent Collins, and did not review the document further. Consequently, she never saw the

²³⁶ NYA001227-56 at 1233.

²³⁷ Wang Interview; Collins Interview.

²³⁸ SMOLER0072-77; SMOLER0080-88; SMOLER0099-108.

²³⁹ Smoler Interview; SMOLER0090-97.

²⁴⁰ SMOLER0090-97 at 90.

²⁴¹ SMOLER0090-97.

²⁴² SMOLER0099-108.

proposed confidentiality clause. Smoler did not respond to Collins's email and saw no further versions of the Settlement Agreement.²⁴³

In her interview, Smoler stated that it was – and is – the OAG's policy not to include confidentiality provisions of any kind in a settlement agreement. During the drafting of the Settlement Agreement, Collins was well aware of the OAG's position, a fact which he explained in an August 31, 2012 internal Assembly email detailing his late-May communications with Smoler:

Throughout our conversations, I was aware that – some years back – the AG had stopped doing “confidential” settlement agreements. I never asked [Smoler] about our confidentiality clause or whether she thought doing a confidential settlement agreement was a good idea. We never discussed that.²⁴⁴

Collins's assessment is consistent with Smoler's account of her involvement. According to Smoler, she never discussed the confidentiality clause with Collins. Smoler also stated that she did not approve or otherwise endorse any provision of the Settlement Agreement.²⁴⁵ Collins is in accord. In another August internal Assembly email describing his interactions with Smoler, Collins wrote that Smoler “never was asked to and never did approve” any language in the Settlement Agreement.²⁴⁶

Smoler, Kwatra, and Stauffer all stated that this matter was not brought to the attention of the Attorney General at any point during this time period.²⁴⁷ The Attorney General confirmed that he was not informed of this matter and not aware of it until late-August 2012.²⁴⁸ The Commission's investigation found no evidence to the contrary.

Groenwegen, for her part, did not recall receiving Collins's first email, which he sent on May 29, and a copy could not be found on the OSC server.²⁴⁹ When Groenwegen received Collins's second email on May 30, she forwarded it to John Dalton, Associate Counsel in the State Finance Unit.²⁵⁰ Dalton then worked with an associate, Mary Anne Tommaney, on language in the agreement relating to the OSC's pre-audit authority. They also provided language for the agreement concerning how the damage payment should be classified in order to meet the parties' expectations.²⁵¹

²⁴³ Smoler Interview.

²⁴⁴ NYA007738-39 at 7739.

²⁴⁵ Smoler Interview.

²⁴⁶ NYA007783-85 at 7783; Smoler Interview.

²⁴⁷ Smoler Interview; Kwatra Interview; Stauffer Interview.

²⁴⁸ Schneiderman Interview.

²⁴⁹ Interview of Nancy Groenwegen (“Groenwegen Interview”).

²⁵⁰ OSC2.

²⁵¹ OSC35-37 (Inter-office OSC Memorandum).

Tommaney supplied Collins with suggested language, which Collins incorporated into the draft.²⁵² According to Tommaney and Dalton, Collins told them that after having discussed the matter with Smoler, he understood that had the matter been litigated, the State’s potential exposure would have been considerably greater than the amounts in the Settlement Agreement.²⁵³ Both Tommaney and Dalton saw the confidentiality provision in the draft agreement. Neither, however, substantively reviewed the provision or provided any comments on it, as their role and purpose for reviewing the agreement was limited to the issues described above.²⁵⁴ Groenwegen did not review or forward Collins’s third and final email later that day.²⁵⁵

The OSC’s narrow focus on select provisions of the Settlement Agreement is consistent with Collins’s characterization of their role. In an internal Assembly email, Collins wrote that he “never had any discussion with any OSC lawyer about the confidentiality clause.” He also wrote that he “believe[d]” Groenwegen’s assertions that she did not look at any of the draft agreements and that she forwarded them to her staff for the purpose of providing “technical” advice.²⁵⁶ Groenwegen, Tommaney, and Dalton stated that the technical advice they provided was done as a courtesy and was not a requirement for OSC to process the payment.²⁵⁷

Groenwegen, Dalton and Tommaney all stated that this matter was not brought to the attention of the Comptroller, Thomas DiNapoli, at any point during this time period.²⁵⁸ Groenwegen stated that she never informed the Comptroller of this matter prior to August 2012.²⁵⁹ The Comptroller confirmed this,²⁶⁰ and the Commission’s investigation found no evidence to the contrary.

6. Settlement Agreement Execution and Payments

On June 6, 2012, Complainant 1, Complainant 2, Lopez, and the Assembly executed a confidential Settlement Agreement.²⁶¹ Among its provisions, the agreement provided that the Assembly pay \$103,080 for “alleged damages for pain and suffering” and attorneys fees with respect to the allegations made by Complainant 1 and Complainant 2. Lopez, under the agreement, was required to pay \$32,000. At the insistence of Complainant 1 and Complainant 2, the Settlement Agreement also required Lopez and his staff to attend “supplementary instruction” concerning the “Assembly Affirmative Action Policy, the Assembly Sexual Harassment/Retaliation Policy, and identification and avoidance of sex discrimination and

²⁵² OSC15-16 (email correspondence).

²⁵³ Interview of Mary Anne Tommaney (“Tommaney Interview”); Interview of John Dalton (“Dalton Interview”).

²⁵⁴ Tommaney Interview; Dalton Interview.

²⁵⁵ Groenwegen Interview.

²⁵⁶ NYA007742.

²⁵⁷ Tommaney Interview; Dalton Interview; Groenwegen.

²⁵⁸ Groenwegen Interview; Tommaney Interview; Dalton Interview.

²⁵⁹ Groenwegen Interview.

²⁶⁰ Interview of Thomas DiNapoli (“DiNapoli Interview”).

²⁶¹ NYA001227-56.

sexual harassment in the workplace.”²⁶² After the Settlement Agreement was executed, the Assembly took no further action with respect to conditions for women in Lopez’s office other than to arrange for the mandated “supplemental instruction” for sexual harassment training, which took place on August 23, 2012.²⁶³

In order to meet its payment obligations under the Settlement Agreement, the Assembly Department of Finance submitted a voucher for payment to the OSC.²⁶⁴ The submission was made using the new Statewide Financial System (“SFS”). SFS requires limited information relating to a transaction. Prior to the implementation of SFS, transactions over \$1,000 had to be accompanied by supporting documentation. SFS eliminated that requirement and instead obligates the submitting agency to retain the documents in the event the transaction is selected for an audit.²⁶⁵

On June 7, 2012, Collins prepared a memorandum to, among others, William Oak, the Director of the Assembly Department of Finance. The memorandum explained details about the payment the Assembly was required to make under the Settlement Agreement, including that payments would be directed to plaintiffs’ counsel, who would then handle distribution of the funds. Among the information provided to Oak was the confidential nature of the settlement, the characterization and amount of the damages payment, and the payee name.²⁶⁶ Based on the memorandum and conversations with Collins, Oak understood that the damages were payment for alleged emotional distress and attorney fees. The damages were not, Oak understood, for back or front pay. Consequently, Oak determined that the funds should come from the Assembly’s Miscellaneous Contractual Services Account.²⁶⁷ According to Oak, SFS did not have a category that precisely described the settlement payment. Therefore, when entering the required code for the precise account from which the payment was to be made, Oak chose the code for “Legal-Attorney,” which is a sub-account under Miscellaneous Contractual Services. Oak chose this subaccount because, in his estimation, it was the “best fit.”²⁶⁸

Additionally, the Assembly was required to enter an invoice number into SFS. Because no such invoice number existed, Oak stated that he chose to input instead the term “Legal Services 06/07/2012.” According to Oak, he could have entered a variety of phrases in this field, including the last names of the women or even the term “Settlement Agreement.” He

²⁶² NYA001227-56 at 1233; Complainant 1 Interview; Complainant 2 Interview; Wang Interview.

²⁶³ Silver Interview; Collins Interview; Kearns Interview; Wang Interview; Yates Interview; NYA005055 (August 25, 2012 email from Collins stating that the sexual harassment training took place on August 23).

²⁶⁴ Interview of William Oak (“Oak Interview”).

²⁶⁵ Oak Interview; Interview of Bernard McHugh (“McHugh Interview”).

²⁶⁶ NYA006440-41 (June 7, 2012 Memorandum prepared by Collins).

²⁶⁷ Oak Interview. According to Oak, the Assembly has a budget of approximately \$100 million. Of that amount, approximately \$80 million is allocated for Personal Services and the remaining approximately \$20 million is divided into four categories of Non-personal Services: Supplies and Materials; Travel; Equipment; and Miscellaneous Contractual Services. Thus, had the damages been characterized as salary payments, the proper account would have been Personal Services. (Oak Interview).

²⁶⁸ Oak Interview; OSC149 (SFS Screenshot).

rejected such options and chose the “Legal Services” terminology because he did not want to run afoul of the Settlement Agreement’s confidentiality provision.²⁶⁹

Pursuant to Article V, section 1 of the State Constitution, the OSC has pre-audit authority over all expenditures.²⁷⁰ According to Bernard McHugh, Director of State Expenditures, the OSC receives approximately 17,000 vouchers on a daily basis. In order to comply with their pre-audit function, a number of risk factors have been established to identify potential issues with a payment as it is not possible to conduct an audit for each voucher.²⁷¹

The electronic voucher payment the assembly submitted to OSC also contained a request that the check be picked up rather than mailed directly to the payee. This type of request is known as “A routing.”²⁷² Under OSC policy, “A routing” is a risk factor.²⁷³ Consequently, the request from the Assembly triggered a pre-audit of the transaction, and auditors from the OSC contacted Oak.²⁷⁴ Oak explained the reason for the A routing request was to enable the Assembly to mail its payment and Lopez’s payment together in one package to Wang.²⁷⁵ Satisfied with the response, on June 13, 2012, the OSC approved the request for payment and issued a check, which Oak then picked up.²⁷⁶

The Commission’s investigation revealed that the OSC followed its regular internal process relating to its pre-audit function. The Comptroller stated that the OSC is reviewing its policies and procedures relating to its pre-audit function with respect to pre-litigation settlements.²⁷⁷

With respect to Lopez’s payment obligations under the Settlement Agreement, bank records show that Lopez wrote a check for \$32,000 from a personal bank account in his name.²⁷⁸ The money was deposited into his attorney’s account on June 15, 2012.²⁷⁹ On June 26, 2012, Lefcourt mailed a letter to Collins and enclosed a check made payable to Cuti Hecker Wang for

²⁶⁹ Oak Interview; OSC148 (SFS Screenshot).

²⁷⁰ Groenwegen Interview.

²⁷¹ McHugh Interview.

²⁷² Oak Interview.

²⁷³ McHugh Interview.

²⁷⁴ McHugh Interview; Oak Interview.

²⁷⁵ Oak Interview.

²⁷⁶ McHugh Interview; Oak Interview.

²⁷⁷ DiNapoli Interview.

²⁷⁸ Bank records obtained by the Commission show that the account from which the payment was made is funded exclusively with Social Security and New York State Pension System checks.

²⁷⁹ RSB000309 (Ridgewood Savings Bank records).

\$32,000.²⁸⁰ Pursuant to the Settlement Agreement, on June 27, 2012, Collins mailed the checks from the Assembly and Lefcourt to Cuti Hecker Wang.²⁸¹

D. Experiences of the Second Set of Sexual Harassment Complainants

1. Complainant 4

While engaged in the confidential mediation, Lopez hired both Complainant 4 and Complainant 3. Complainant 4 began working for Lopez as a Legislative Assistant in the Albany office in April 2012. She was 26 years old. In June, she moved to Brooklyn and began working in Lopez’s District Office. Prior to taking the position with Lopez, Complainant 4 had worked in a variety of political advocacy positions, including as a Legislative Aide for District Council 37.²⁸² Complainant 4’s starting salary was \$50,000. Five weeks later, around the time that she relocated to the District Office, her salary was increased to \$52,000 a year.²⁸³

According to Complainant 4, soon after she started, Lopez required her to communicate with him regularly by sending text messages, handwritten notes and phone calls. Complainant 4 also stated that Lopez initially told her he wanted her to text him in the morning to say “hello” and in the evening to ask if he was “ok.” In addition, Lopez demanded that Complainant 4 write letters to him. Lopez’s demands for communication and attention increased over time. Lopez told Complainant 4 that if she did not keep in regular contact with him, it showed that she did not care for him. According to Complainant 4, he wanted a text message at least in the morning every day of the week and preferably one at night as well.²⁸⁴

Complainant 4 stated that Lopez also instructed her to compose more detailed text messages, stating how much she cared for him and loved her job. He told Complainant 4 that she could not use “like” in her messages when referring to her job because it was the “wrong L-word.” To this end, Complainant 4 said that Lopez showed her laudatory text messages other female staff members had sent him, and suggested that Complainant 4’s messages be more like those.²⁸⁵ In one instance, Lopez himself wrote for Complainant 4 an example of the type of message he should receive from her. It read, “Vito, I wanted to be nice to you. Hope you like way I look. T.”²⁸⁶ The note follows:

²⁸⁰ VLJCOPE000086 (Letter enclosing check).

²⁸¹ VLJCOPE000084-85 (Letter enclosing check).

²⁸² Interview of Complainant 4 (“Complainant 4 Interview”).

²⁸³ NYA009509 (Assembly payroll records); NYA009510 (same).

²⁸⁴ Complainant 4 Interview.

²⁸⁵ Complainant 4 Interview.

²⁸⁶ C490000. Note: documents with the “C4” prefix were produced by counsel for Complainant 4.

Oto
I wanted
to be nice
to you
Hope you
like the
way I
look

Lopez’s demands for letters also changed. Complainant 4 stated that, over time, Lopez required her to write how much she cared for him and loved her job and what she would do to “relieve his stress.” Eventually, Lopez also demanded that Complainant 4 call him every night. If she failed to do so, Complainant 4 stated that Lopez would often berate her the following day.²⁸⁷

According to Complainant 4, Lopez also subjected her to inappropriate comments and sexual overtures soon after her employment began. Lopez often spoke to Complainant 4 about wearing high-heeled shoes, and if she happened to be wearing a pair, Lopez would ask if she wore them to please him. On one occasion, Lopez asked Complainant 4, in the presence of a male lobbyist, to wear high heels for the lobbyist the next time they saw each other.²⁸⁸

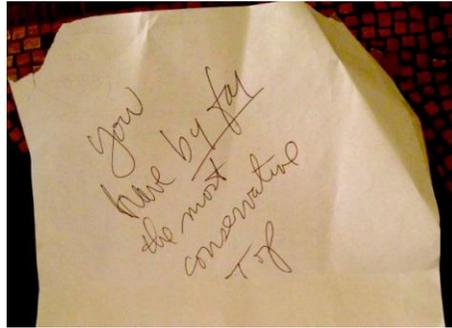
When Lopez first started commenting on Complainant 4’s appearance, she attempted to treat the remarks as jokes – by laughing and telling him to “stop joking” – so as to not anger Lopez. Eventually, however, Complainant 4 told Lopez he was making her uncomfortable. According to Complainant 4, Lopez did not back off; instead, his comments escalated from remarks about wearing shorter hemlines and higher heels to comments about her body, telling Complainant 4 that she was “well endowed” and that she should “play it up.” On occasion, Lopez told Complainant 4 that she should wear short skirts to work and use her sexuality in meetings, including crossing and uncrossing her legs. Lopez told Complainant 4 that watching the reactions of other people watching her “turn[ed] him on.” Complainant 4 also stated that Lopez began making comments to her several times a week that she should not wear a bra. Lopez often made the comments by remarking on how he liked Complainant 4’s blouse, but that he would like it even better if she did not wear a bra. On another occasion, Lopez made a

²⁸⁷ Complainant 4 Interview.

²⁸⁸ Complainant 4 Interview.

comment about Complainant 4 not wearing a bra and proceeded to snap her bra from the back.²⁸⁹

In late June, Complainant 4 and Lopez were at the Bushwick Brooklyn Democratic Club (the “Democratic Club”), the location out of which Lopez runs his political activities.²⁹⁰ Lopez turned over a piece of paper on which primary election predictions were printed and wrote “You have by far the most conservative top.”²⁹¹ He then passed the note to Complainant 4:



Lopez also made overtures for physical intimacy towards Complainant 4. According to Complainant 4, Lopez once asked her if she would kiss him if the Assembly passed a piece of legislation they had worked on. Complainant 4 replied that she would kiss him on the cheek. Lopez, however, said that Complainant 4 should kiss him on the lips. Complainant 4 did not comply with his request. While at the Democratic Club in late June, Complainant 4 stated that Lopez asked her if she would accompany him on a trip to Russia and sleep in the same bed with him. When Complainant 4 told Lopez she would not go on the trip under those conditions, Lopez passed her a note that read: “One drinking partner, one train car, one bed – yes or no?” When Complainant 4 said “no” for a second time, Lopez became angry, ripped up the note, and left the Democratic Club.²⁹²

Complainant 4 stated that Lopez also insisted that Complainant 4 give him hand massages when they were alone in the car. Lopez told Complainant 4 he had a medical condition that necessitated the massage and that it was Complainant 4’s responsibility to give him one. According to Complainant 4, Lopez kept a bottle of lotion in his car for the purposes of a hand massage.²⁹³

Lopez’s desire for physical contact with Complainant 4 did not end with hand massages. According to Complainant 4, Lopez subjected her to other unwanted physical contact. The incidents occurred during car trips when Lopez was driving with Complainant 4 to dinner or a special outing. Complainant 4 stated that she felt obligated to go on these trips with Lopez, as

²⁸⁹ Complainant 4 Interview.

²⁹⁰ Complainant 4 Interview.

²⁹¹ Complainant 4 Interview; C490001 (emphasis in original).

²⁹² Complainant 4 Interview.

²⁹³ Complainant 4 Interview.

he often spoke about his work being so stressful.²⁹⁴ Lopez repeatedly told Complainant 4 that it was the job of staff to go out with him to “have fun” and “bring his stress level down.”²⁹⁵ On multiple occasions, according to Complainant 4, Lopez remarked to her that his “work to fun ratio is 95% to 5%” and that it was Complainant 4’s job to “lower the ratio.”²⁹⁶

The first instance of unwanted physical contact, according to Complainant 4, was on June 29, 2012, during a car ride to one of the many dinners Complainant 4 felt compelled to attend. Lopez picked Complainant 4 up at her apartment and, while he was driving, asked Complainant 4 to massage his hand. During the course of the massage, according to Complainant 4, Lopez put his hand on Complainant 4’s inner thigh. Complainant 4 attempted to lift his hand away from between her legs but Lopez persisted stating, “I’m just going to put it back.”²⁹⁷

Complainant 4 stated that she was afraid and felt particularly vulnerable because she was alone with Lopez and had no idea where they were or where they were going. When they arrived at their location, City Island, they had dinner but there was no mention of what occurred in the car. During the car ride home, Complainant 4 said that Lopez once again put his hand between Complainant 4’s legs on her inner thigh. She squeezed her legs together in an effort to prevent him from touching her and was scratched by one of Lopez’s jagged fingernails. When they arrived back in Brooklyn, Lopez told Complainant 4 that he wanted her to go to another bar with him. Complainant 4, in an effort to get free from Lopez, told him she had a family emergency and needed to be at her apartment.²⁹⁸

Complainant 4 was extremely upset. She was also afraid that she angered Lopez by leaving early. Complainant 4 stated that she had left a good job in Albany to move to Brooklyn to take the position with Lopez. She did not have any other immediate employment prospects and was often concerned that Lopez might fire her if she displeased him. Complainant 4 stated that she “knew [Lopez] was upset that I didn’t continue to drink with him” the night before. To smooth things over with Lopez and to satisfy his demands for daily text messages,²⁹⁹ Complainant 4 sent the following message on Saturday afternoon, the day after the trip to City Island:

I’m so sorry I cut the night short last night. I try to help out my parents with my sister as much as I can . . . I had a blast before that and can’t wait to go back to city island with you! I’m looking forward to everything we talked about and continuing to be close to you! I hope this text is a bit more up your alley!³⁰⁰

²⁹⁴ Complainant 4 Interview.

²⁹⁵ Complainant 4 Interview.

²⁹⁶ Complainant 4 Interview.

²⁹⁷ Complainant 4 Interview.

²⁹⁸ Complainant 4 Interview.

²⁹⁹ Complainant 4 Interview.

³⁰⁰ C400426.

Lopez subjected Complainant 4 again to unwanted physical contact on Saturday, July 7, 2012. That day Complainant 4 had worked at the Democratic Club with Lopez. According to Complainant 4, Lopez told her that he wanted to have dinner with her that night and gave her the telephone number of a restaurant located in Long Island for her to call and make reservations. Lopez picked Complainant 4 up at her apartment and drove her to the restaurant. During the ride, Lopez instructed Complainant 4, as he had in the past, to massage his hand. This time, Complainant 4 stated, Lopez placed his hands on Complainant 4's legs which she held tightly crossed. Lopez used his hand to push her legs apart and Complainant 4, once again, crossed her legs tightly. Lopez pried Complainant 4's legs open with his hand and forced his hand between her legs and high up on her inner thigh, in Complainant 4's words, "all the way up."³⁰¹

The third and final episode occurred on July 10, shortly before Complainant 4 quit, during a trip to Atlantic City. In late June, after the primary election, Complainant 4 stated that Lopez told her to plan a trip to Atlantic City for the two of them. According to Complainant 4, Lopez said the outing would not be work-related because he needed a "fun trip." He told Complainant 4 that it was her responsibility to help lower the 95%-5% work-to-fun ratio and that this trip was part of the "fun ratio." After she agreed, Lopez told Complainant 4 to enter the trip on his schedule as a "coded" trip so that it would appear to other staff as a work-related event. Specifically, Complainant 4 said that Lopez told her to identify the trip on the calendar as a coop-condo meeting because that was one of Complainant 4's policy areas. Complainant 4 did as she was told, but blocked out time only from noon to three o'clock in the hope that another staff member would schedule another event for that day and the trip to Atlantic City would need to be canceled.³⁰²

On July 10, 2012, a Tuesday, Complainant 4 accompanied Lopez to Atlantic City. They left the office in the early afternoon, with Lopez driving. According to Complainant 4, during the car ride, Lopez put his hand on her inner thighs. Complainant 4 tightly crossed her legs to prevent Lopez's hand from moving any further up her leg. Eventually, Lopez relented and removed his hand. During the trip, they stopped at a rest area so Complainant 4 could change her clothing. Earlier, Lopez had told Complainant 4 to bring a dress to change into and not to wear a bra. When she returned to the car, Complainant 4 was wearing a different skirt (one that she stated she would wear to work). She was also wearing a bra. According to Complainant 4, Lopez became angry when he saw that she was wearing a bra and said, "Maybe you shouldn't be working for me." He was then silent for the remainder of the car ride.³⁰³

Lopez drove to the Borgata Hotel, Casino and Spa ("Borgata") in Atlantic City. According to Complainant 4, Lopez was extended a substantial line of credit and obtained vouchers for gambling.³⁰⁴ Records obtained by the Commission from the Borgata confirm that Lopez applied, and was approved, for a \$7,500 credit limit on July 10, 2012.³⁰⁵ Complainant 4

³⁰¹ Complainant 4 Interview.

³⁰² Complainant 4 Interview

³⁰³ Complainant 4 Interview.

³⁰⁴ Complainant 4 Interview.

³⁰⁵ BORG104037.

stated and records reflect that Lopez obtained a complimentary hotel room.³⁰⁶ Records from the Borgata confirm that a room was booked under Lopez's name for two guests with a check-in date of July 10, 2012.³⁰⁷ Complainant 4 said that she was surprised that Lopez had booked a room, and she told Lopez that she was not staying overnight.³⁰⁸

Although Lopez continued to express his displeasure with Complainant 4, they proceeded to the casino and gambled for approximately three hours. During this time period, Lopez threatened Complainant 4 that he would take away some of her work responsibilities. At one point, when Complainant 4 questioned a gambling decision, Lopez threatened to leave her in Atlantic City. According to Complainant 4, Lopez was drinking regularly, consuming five or six bloody marys while they were gambling. Complainant 4 ordered a beer. She ordered a gin cocktail when Lopez pressured her to get "something stronger." Complainant 4 stated that Lopez's mood lightened considerably after she complied with his insistent request that she kiss his cheek.³⁰⁹

As dinner time was nearing, Lopez suggested that they freshen up in the hotel room. Complainant 4 reluctantly agreed. Once in the room, Complainant 4 stated that Lopez grabbed her face and tried to kiss her. Complainant 4 repeatedly asked Lopez, "What are you doing," and "fought him off." Lopez tried to justify his conduct to Complainant 4 by telling her that he was only trying to kiss her on the cheek.³¹⁰

Complainant 4 and Lopez left the room and went to a restaurant located in the Borgata. Records from the Borgata indicate that Lopez redeemed \$191.00 of "gaming comps" for dinner that evening.³¹¹ Lopez, according to Complainant 4, was angry and sullen again. Complainant 4 believed it was because she rebuffed his kiss. After dinner, Lopez and Complainant 4 saw an acquaintance of Lopez's. Complainant 4 stated that the meeting appeared to be happenstance and not planned by Lopez. Lopez suggested that the three of them return to the casino, where they gambled for approximately another hour. Complainant 4 stated that she was unaware whether any substantive discussion took place between Lopez and his acquaintance, but if the two did speak about business, she was not present for the conversation. Lopez gave Complainant 4 two hundred dollar bills and casino chips from his winnings.³¹²

Lopez and Complainant 4 left the Borgata around midnight. Complainant 4 stated that she thought Lopez was too drunk to drive, but he insisted on doing so. On the drive home, Lopez again requested a massage for his right hand. Complainant 4 stated that she complied

³⁰⁶ Evidence reflects that the Borgata, like other casinos, routinely offers complimentary amenities based on a player's gambling history or rating.

³⁰⁷ Complainant 4 Interview; BORG104042-43.

³⁰⁸ Complainant 4 Interview.

³⁰⁹ Complainant 4 Interview.

³¹⁰ Complainant 4 Interview.

³¹¹ Complainant 4 Interview; BORG104041. *See* n.308.

³¹² Complainant 4 Interview. Complainant 4 later turned the money and chips over to the Richmond County District Attorney.

because she was worried that Lopez might fall asleep while driving and she thought the massage would keep him awake. Lopez used this opportunity to force his right hand between Complainant 4 legs again. Complainant 4 would either close her legs tightly or move Lopez's hand away. According to Complainant 4, Lopez did this throughout the trip back to Brooklyn. According to Complainant 4, during one of these incidents, Lopez's hand made contact with her underwear between her legs.³¹³

The next day at work, July 11, 2012, Lopez chastised Complainant 4 for "making" him drive home after the Atlantic City trip because she was not willing to stay overnight. According to Complainant 4, Lopez told her that the "real way" to go to Atlantic City is to stay the night and get breakfast and massages in the morning. Complainant 4 also stated that Lopez told her she would no longer be doing policy work for him because she demonstrated on the trip that she did not care about him.³¹⁴ Five days later, as explained below, Complainant 4 left Lopez's office and contacted Kearns to file a complaint of sexual harassment.

2. Complainant 3

Complainant 3 began working for Lopez as a Legislative Assistant in his District Office at approximately the same time – April 2012 – that Complainant 4 started in the Albany office. She was 24 years old. Prior to working for Lopez, Complainant 3 had held two internships, one with the Legal Services Council and the other with a City Councilman Jimmy Van Bramer.³¹⁵ Complainant 3 starting salary was \$44,000 a year. Approximately three months later, Lopez increased her salary to \$47,000 a year.³¹⁶

Lopez, according to Complainant 3, made similar demands of her regarding his need for written communications. From the beginning of her employment at the District Office, Lopez told Complainant 3 that she needed to text him frequently. According to Complainant 3, that requirement became more demanding over time. Like Complainant 4, Lopez asked Complainant 3 for a letter telling him how much she loved working for him. He also asked Complainant 3 to leave him notes, call him multiple times a day, and send text messages stating how much she cared for him and wanted to be with him. With respect to the text messages, Complainant 3 said Lopez instructed her to send him "something to make me happy in the morning."³¹⁷

Complainant 3 was also required to meet with Lopez after work several times a week. According to Complainant 3, work was not discussed at these outings. Rather, Lopez said they were a way for him to "decompress" and that he considered spending time with, and even looking at, Complainant 3 as his "therapy." Complainant 3 said that Lopez made clear to her

³¹³ Complainant 4 Interview.

³¹⁴ Complainant 4 Interview.

³¹⁵ Interview of Complainant 3 ("Complainant 3 Interview").

³¹⁶ NYA009511 (Assembly payroll records); NYA009512 (same).

³¹⁷ Complainant 3 Interview.

that these meetings were part of her responsibilities, telling her “if you care about your political future, this is how you get it done.”³¹⁸

On several occasions, after going out with Complainant 4 and Complainant 3 for drinks and dropping them off at their respective apartments, Lopez returned to Complainant 3’s apartment. From his car, Lopez called or sent a text messages to Complainant 3, informing her that he was outside and that he wanted her to join him for more drinks. Many times, Complainant 3, cognizant of Lopez’s admonition that “this is how you get it done” and not wanting to anger Lopez, went back out with him.³¹⁹ For instance, on July 9, 2012, Lopez sent a text message to Complainant 3 while they were in the bar together with others: “if we end would you come back for two more beer[s].” Complainant 3 responded several minutes later: “Tonight? I can hang out but don’t think I can drink two more and not yawn at work tomorrow!”³²⁰

Lopez also made “constant” comments about Complainant 3’s appearance, which she said began almost as soon as she started working. Lopez told Complainant 3 that she had beautiful eyes and hair and that he thought she was the most attractive person in the office. Soon after she started her job, Lopez asked Complainant 3 to wear mini-skirts, button down blouses and high heels for him. Like he did with Complainant 4, Lopez also requested that Complainant 3 come to work without wearing a bra. Lopez also told Complainant 3 that she should learn to “dress sexy” like a 14-year-old intern who was working in the office at the time. On one occasion, Lopez told Complainant 3 that she should schedule a shopping trip with the intern.³²¹

Lopez also frequently badgered Complainant 3 about her personal life, relationships and sexual history. When Complainant 3 told him that it was not his business, Lopez became angry and made comments to her about being “too conservative” and prudish. On several occasions when Complainant 3 rebuffed Lopez’s advances, Lopez said that her lack of interest in him was because she was purportedly a lesbian. According to Complainant 3 (who is not gay), Lopez often spoke to her about his desire to set her up with various lesbian elected officials because he thought it would be “hot.” In one instance, Lopez told Complainant 3 that she should have dinner with a female New York City Councilmember that they were scheduled to meet with. Lopez said he would excuse himself from the table so Complainant 3 could ask her out.³²²

On several occasions, Lopez asked Complainant 3, just as he had done with others, to massage his hand. According to Complainant 3, Lopez told her that everyone on staff had to do it. Complainant 3 massaged his hand once but refused to do so again, which visibly angered Lopez. Complainant 3 also stated that Lopez asked her to give him a manicure, telling her that doing so would demonstrate that she cared and respected him. Complainant 3 declined. He also asked Complainant 3 to take a personal trip with him to Atlantic City, reiterating that it was

³¹⁸ Complainant 3 Interview.

³¹⁹ Complainant 3 Interview.

³²⁰ C3001288-89. Note: documents with the “C3” prefix were produced by counsel for Complainant 3.

³²¹ Complainant 3 Interview.

³²² Complainant 3 Interview

staff's responsibility to ensure that he has fun. When Complainant 3 told Lopez that she would not go alone on the trip, he yelled at her.³²³

Additionally, Lopez asked Complainant 3 to schedule a 5-day trip to Quebec for the two of them. In order not to anger Lopez, Complainant 3 initially agreed. As Lopez's scheduler, however, she did not add it to his calendar, thereby allowing other activities and engagements to take precedence. Lopez later yelled at Complainant 3 for not scheduling the trip.³²⁴

Complainant 3 also reported instances of inappropriate physical contact by Lopez, such as playing with her hair, touching her chest pretending to brush away a fly, and grabbing and running his fingers along her upper arm. At a bar in Brooklyn one evening, Complainant 3 described how Lopez grabbed her hand from across the table. When she tried to pull away, he grabbed her hands and tightened his grip. As Complainant 3 began to cry, Lopez told her he would release his grip only after he counted to sixty, which he proceeded to do while staring at Complainant 3 the entire time.³²⁵

E. Management and Disposition of the Second Set of Complaints

On the morning of July 16, 2012, Complainant 3 called the Office of Counsel for the Majority to report sexual harassment allegations against Lopez.³²⁶ Collins was on his way out the door for a hearing, so he referred Complainant 3 to Kearns.³²⁷ During the call, Complainant 3 told Kearns about Lopez's comments concerning her body and clothes, as well as comments Lopez made about the dressing style of the 14-year-old intern in the office. Kearns did not ask Complainant 3 if it was her intention to make a complaint. Instead, she told Complainant 3 that this matter would be sent to the Assembly Ethics Committee.³²⁸

That same day, Yates and Kearns discussed Complainant 3's complaint.³²⁹ Yates, too, said the complaint needed to be sent immediately to the Assembly Ethics Committee.³³⁰ Yates also told Kearns she had a conflict of interest because of her dual roles as Deputy Counsel to the Majority and Majority Counsel to the Assembly Ethics Committee. In this capacity she was responsible for, among other things, investigating complaints of sexual harassment brought to the Committee. The conflict arose because Kearns had knowledge about the prior settlement with Complainant 1 and Complainant 2. As Majority Counsel to the Assembly Ethics Committee, Kearns had an obligation to disclose this relevant information to the Committee. Yet, she and Yates believed she was bound by the confidentiality provision of the Settlement

³²³ Complainant 3 Interview.

³²⁴ Complainant 3 Interview.

³²⁵ Complainant 3 Interview.

³²⁶ Collins Interview; Complainant 3 Interview.

³²⁷ Collins Interview, Kearns Interview.

³²⁸ Kearns Interview; Complainant 3 Interview.

³²⁹ Collins Interview; Kearns Interview; Yates Interview.

³³⁰ Collins Interview; Kearns Interview; Yates Interview.

Agreement, which forbade her from disclosing even the fact that there had been a settlement.³³¹ Kearns decided, therefore, that she had to recuse herself from any investigation conducted by the Assembly Ethics Committee.³³²

Kearns then had a long meeting with Assemblyman Danny O'Donnell, then-Chair of the Assembly Ethics Committee. Kearns informed O'Donnell that Complainant 3 made a complaint of sexual harassment against Lopez.³³³ In Complainant 3's intake statement – the information she related to Kearns on the call early in the day – Complainant 3 referenced prior complaints against Lopez.³³⁴ When O'Donnell asked if this was true, Kearns replied that she could not answer him.³³⁵ In his interview, O'Donnell stated that after speaking with Kearns he understood the issue generally and presumed that Complainant 3's assertion about prior complaints in her intake statement was true. O'Donnell also said that he thought Kearns had a conflict in that she was Majority Counsel but also might be a fact witness as a result of her conversation with Complainant 3. Consequently, O'Donnell decided to replace Kearns with Ann Horowitz, a lawyer who worked part-time for O'Donnell in his Assembly office. Horowitz was to be Acting Majority Counsel to the Assembly Ethics Committee for the purposes of the investigation.³³⁶

O'Donnell's stated justification for the replacement of Kearns with Horowitz differs from Horowitz's understanding. According to Horowitz, she believed, based on several discussions throughout July with Kearns and O'Donnell, that Kearns was in possession of other knowledge she could not reveal. For instance, Horowitz's notes of a July call with O'Donnell state that there may have been a prior complaint against Lopez, which was settled confidentially and which Kearns could not disclose.³³⁷ In her interview, when asked about the notes, Horowitz stated she had merely "surmised" that Kearns had information concerning prior complaints against Lopez which she could not legally divulge. Her notes of an August 1 call with Kearns specifically state that O'Donnell had made a prior statement to the Assembly Ethics Committee that "Carolyn might be a fact witness. I am therefore going to use A[nn] H[orowitz]." Referring to Kearns as "CK," Horowitz then writes, "CK & I agree – stay with this explan[ation] for now."³³⁸

On July 17, the day after Complainant 3's call, Complainant 4 called Kearns to report that she was being sexually harassed by Lopez. Complainant 4 asked if she could call Kearns later that night from her apartment, which she did. After listening to Complainant 4 recount her treatment, Kearns told Complainant 4 that that her complaint would be sent to the Assembly Ethics Committee and asked her to write her allegations down while they were still fresh in her

³³¹ Yates Interview; Kearns Interview.

³³² Kearns Interview.

³³³ Kearns Interview; Interview of Daniel O'Donnell ("O'Donnell Interview").

³³⁴ NYA002794-801 at 2795.

³³⁵ O'Donnell Interview; Kearns Interview.

³³⁶ O'Donnell Interview.

³³⁷ NYA005738.

³³⁸ NYA005794-97 at 5795.

mind. According to Kearns, Complainant 4 spoke nervously about Lopez’s power and influence. Kearns assured her that she could not be retaliated against.³³⁹ Kearns then informed O’Donnell about Complainant 4’s complaint.³⁴⁰

On July 24, Kearns spoke with Kevin Mintzer, counsel for Complainant 4 and Complainant 3. Kearns informed Mintzer that the two complaints were being referred to the Assembly Ethics Committee and that the Assembly expected “full cooperation” from his clients with any investigation.³⁴¹ At Kearns’s request, Mintzer wrote a letter to Assembly counsel detailing his clients’ sexual harassment and retaliation allegations.³⁴²

On July 27, 2012, the Assembly Ethics Committee met for the first time with respect to the Complainant 3 and Complainant 4 complaints. O’Donnell told the Committee members that Kearns could not act as Counsel because she might be a witness due to the fact that she did the initial intake of Complainant 4’s and Complainant 3’s allegations.³⁴³ The Committee voted to substitute Horowitz for Kearns as Counsel for the purposes of the investigations.³⁴⁴

The Assembly Ethics Committee met again on August 2. During this meeting, the Committee voted to (i) send notice to Lopez’s counsel of the investigation, (ii) allow Lopez more time to testify or submit a sworn response, and (iii) direct Horowitz and Kevin Engel, Minority Counsel to the Assembly Ethics Committee, to interview Complainant 3 and Complainant 4.³⁴⁵ On August 9, Horowitz and Engel interviewed Complainant 4 and Complainant 3.³⁴⁶ On August 15, Horowitz and Engel submitted their report to the Assembly Ethics Committee. In the report, Horowitz and Engel stated they found both women to be candid and truthful.³⁴⁷

Lopez declined to testify or to provide a sworn statement.³⁴⁸ Instead, on August 15, Lefcourt provided a written submission to the Assembly Ethics Committee on Lopez’s behalf. In that submission, Lopez argued that he had provided Complainant 4 and Complainant 3 guidance and support during their short tenures despite the fact that they had a number of issues meeting their job requirements.³⁴⁹ The submission also cited to the text messages that

³³⁹ Kearns Interview; Complainant 4 Interview.

³⁴⁰ Kearns Interview.

³⁴¹ Kearns Interview; Interview of Kevin Mintzer (“Mintzer Interview”); NYA006217-20 at 6218.

³⁴² Kearns Interview; Mintzer Interview; NYA002813-19 (July 26, 2012 letter from Mintzer).

³⁴³ O’Donnell Interview, Interview of Assemblymember Janet Duprey (“Duprey Interview”); Interview of Assemblymember Tony Jordan (“Jordan Interview”); Interview of Assemblymember Brian Curran (“Curran Interview”).

³⁴⁴ O’Donnell Interview; Kearns Interview; Interview of Ann Horowitz (“Horowitz Interview”); NYA003486-87 (Minutes from the July 27, 2012 Assembly Ethics Committee Meeting).

³⁴⁵ NYA003388-89 (Minutes from the Aug. 2, 2012 Assembly Ethics Committee Meeting).

³⁴⁶ Horowitz Interview.

³⁴⁷ NYA002613-22; Horowitz Interview.

³⁴⁸ O’Donnell Interview.

³⁴⁹ VLJCOPE000115-28 at 117.

Complainant 4 and Complainant 3 sent Lopez as evidence of Lopez’s assertion that the two women were happy in their jobs.³⁵⁰ Lopez did not deny that he met with Complainant 3 after work hours, but instead argued that it was her request.³⁵¹ He denied, however, the allegations that he had invited Complainant 3 or Complainant 4 to travel with him out of the country, that he had touched either of them, and that the trip to Atlantic City had anything other than a work-related purpose.³⁵²

Similarly, Lopez denied inviting Complainant 3 to Quebec, claiming that he did not even know where the city was located.³⁵³ In its conclusion, the submission stated Lopez was “deeply shocked” by the claims Complainant 4 and Complainant 3 made, but “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.”³⁵⁴

On August 16, the Assembly Ethics Committee met to consider the complaints.³⁵⁵ The members were provided with a number of materials, including Kearns’s intake notes, the investigators’ report, and Lefcourt’s response.³⁵⁶ The Committee then deliberated. Some Committee members voiced concerns about retribution by Lopez against the women making the complaints. According to Assemblymember Tony Jordan, some individuals were worried that Lopez’s political power could pose a threat to Complainant 3’s and Complainant 4’s careers.³⁵⁷ Acknowledging the breadth and depth of Lopez’s influence in Brooklyn, one Committee member remarked, “You can’t get a dog license in Brooklyn without Lopez’s blessing.”³⁵⁸ A few of the Committee members thought that further investigation may be warranted, while others were satisfied that the Committee had sufficient evidence to make a finding.³⁵⁹ More than one Member found Lopez’s submission unavailing. According to some Members, Lopez’s assertions that he did not know where Quebec was located and that he did not drink particularly undermined the credibility of his case.³⁶⁰

³⁵⁰ VLJCOPE000115-28 at 116.

³⁵¹ VLJCOPE000115-28 at 125.

³⁵² VLJCOPE000115-28 at 119-28.

³⁵³ VLJCOPE000115-28 at 126.

³⁵⁴ VLJCOPE000115-28 at 128.

³⁵⁵ O’Donnell Interview; NYA005720-21 (Assembly Ethics Committee Meeting Agenda), NYA005704-07 (Draft Minutes from the Aug. 16, 2012 Assembly Ethics Committee Meeting).

³⁵⁶ O’Donnell Interview.

³⁵⁷ Jordan Interview.

³⁵⁸ Jordan Interview.

³⁵⁹ O’Donnell Interview; Interview of Assemblymember Joseph Giglio (“Giglio Interview”); Interview of Assemblymember Kevin Cahill (“Cahill Interview”); Curran Interview; Interview of Assemblymember Michelle Titus (“Titus Interview”).

³⁶⁰ Titus Interview.

At this point in the deliberations, O'Donnell told the Committee members that he was in possession of new information and called a brief recess.³⁶¹ O'Donnell then went to speak with Kearns in her office.³⁶² The plan was for the Committee to issue a subpoena to Kearns to testify regarding the prior complaints and the Settlement Agreement. The subpoena would allow Kearns to provide this testimony without running afoul of the Settlement Agreement's confidentiality provision, which provided an exception to its disclosure strictures when the disclosure is made in response to a "valid subpoena."³⁶³ Kearns herself drafted the subpoena, which O'Donnell then signed.³⁶⁴ The subpoena called for Kearns to testify and to produce "any and all documents in the possession of the New York State Assembly complaining of or alleging sexual harassment by Assemblymember Vito Lopez."³⁶⁵

With subpoena in hand, O'Donnell reconvened the Committee and explained that Kearns was going to testify briefly.³⁶⁶ Kearns testified about the Settlement Agreement for approximately five to ten minutes, during which she explained that there had been two prior complaints against Lopez, and the Assembly settled its liability with the complainants for \$103,000, while Lopez paid \$32,000 to settle the claims against him.³⁶⁷ Assemblymember Brian Curran asked if the settlement was public. Kearns replied that it was not and then read the Settlement Agreement's confidentiality provision.³⁶⁸

Several of the Assembly Ethics Committee members recall that someone asked Kearns why the prior complaints were not sent to the Committee.³⁶⁹ According to Kearns, when this question was asked of her during the meeting, she replied by stating an attorney for the women contacted her office and "directed that there be no further discussion with her clients regarding the matter."³⁷⁰ During her interview, Kearns stated that she gave that response because Collins was concerned that the entire fact of the mediation might have been confidential, and they were not certain how to "thread that needle." Reflecting on that decision, Kearns stated she and Collins "may not have threaded the needle perfectly and now think differently."³⁷¹

³⁶¹ O'Donnell Interview; Curran Interview; Cahill Interview; Jordan Interview.

³⁶² O'Donnell Interview.

³⁶³ O'Donnell Interview; Kearns Interview; Horowitz Interview; NYA001227-56 at 1233 (Settlement Agreement).

³⁶⁴ O'Donnell Interview; Kearns Interview.

³⁶⁵ NYA003470-71.

³⁶⁶ O'Donnell Interview.

³⁶⁷ Kearns Interview; Giglio Interview; Cahill Interview; Jordan Interview; O'Donnell Interview; Duprey Interview.

³⁶⁸ Curran Interview.

³⁶⁹ Curran Interview; Cahill Interview; Jordan Interview; Duprey Interview; Titus Interview. According to Horowitz, this question was never asked during the Assembly Ethics Committee meeting. (Horowitz Interview). O'Donnell, in his interview, stated that Curran asked him the question when the meeting was over. (O'Donnell Interview).

³⁷⁰ Kearns Interview; NYA002808-12 at 2809.

³⁷¹ Kearns Interview.

Recollections differ about Kearns's response. One member stated that Kearns replied that the two women had not actually filed a complaint and that they wanted to "cut a deal."³⁷² Other members recall that Kearns responded by referencing the women's desire to keep proceedings confidential.³⁷³ Curran stated that he asked the question, but he did not recall Kearns supplying him with an answer.³⁷⁴

Kearns also supplied, pursuant to the subpoena, documents to the Assembly Ethics Committee members. The subpoena, as noted above, called for "any and all documents in the possession of the New York State Assembly complaining of or alleging sexual harassment by Assemblymember Vito Lopez." Kearns, however, only produced two documents for the Committee members to review: the December 14, 2011 email sent by Complainant 1 and the January 4 letter from Complainant 2.³⁷⁵ Despite the breadth of the language in the subpoena, Kearns did not provide Wang's January 12, 2012 letter in which the allegations against Lopez and the Assembly are detailed. She also did not provide a copy of the Settlement Agreement itself.

After Kearns's presentation, the Committee members came to a consensus that no further investigation was needed with respect to the Complainant 4 and Complainant 3 complaints. The Assembly Ethics Committee then voted unanimously on its findings that Lopez "violated the Assembly's Sexual Harassment/Retaliation Policy" by, among other things engaging in "unwelcome verbal and physical conduct of a sexual nature." The report also recommended a variety of sanctions.³⁷⁶ On August 24, 2012, the Assembly Ethics Committee presented its report and recommendations for sanctions to the Speaker. That same day, the Speaker adopted, in full, the report and its recommended sanctions.³⁷⁷ He then instructed the Assembly's press office to issue a press release and a letter from the Speaker summarizing the Assembly Ethics Committee's findings and detailing the sanctions against Lopez.

F. Public Statements Subsequent to August 24, 2012

On August 24, Collins called Wang. Wang was unavailable, so Collins spoke with Julie Ehrlich, an associate in Wang's law firm. According to Ehrlich, Wang told her that there might be some press about an issue relating to Lopez, and while he could not say more, he wanted her to remind her clients about their obligations under the Settlement Agreement's confidentiality clause.³⁷⁸

³⁷² Jordan Interview.

³⁷³ Cahill Interview; Titus Interview.

³⁷⁴ Curran Interview.

³⁷⁵ Kearns Interview; NYA002808-12 (Kearns's notes, including documents presented to Assembly Ethics Committee).

³⁷⁶ NYA003298-300.

³⁷⁷ NYA000719-20.

³⁷⁸ Wang Interview; Interview of Julie Ehrlich.

On Saturday, August 25, the New York Times reported that the Assembly and Lopez had previously entered into a confidential settlement with two other Lopez employees who had complained of sexual harassment.³⁷⁹ Other newspapers soon followed with similar articles. The Commission’s investigation found that over the course of the following five or six days, the Assembly and the OAG both engaged in numerous internal efforts to gather information to respond to press inquiries and frame the evolving story.³⁸⁰ Additionally, Yates had conversations with the Attorney General, Kwatra (the Attorney General’s Chief of Staff), and Wang during this time period.³⁸¹

On August 27, 2012, Yates called Wang.³⁸² Wang stated that Yates told her the Assembly was under “extraordinary pressure” from the press to explain the Settlement Agreement. In particular, he told Wang that the Assembly needed to explain that the complaints were not forwarded to the Assembly Ethics Committee out of deference to her clients’ wishes, and that the settlement payment made by the Assembly was for lost income (rather than damages for pain and suffering).³⁸³ Wang stated that Yates asked if her clients would be open to a modification of the Settlement Agreement’s confidentiality clause³⁸⁴ in order to make this information public.³⁸⁵ Wang stated that she told Yates that she completely disagreed with his characterization of the facts. She did tell Yates, however, that she would welcome a modification to the confidentiality clause and that Yates should send her a proposal. The parties never agreed to modify the confidentiality clause.³⁸⁶

The next day, the Assembly issued the following statement: “The only instance in which a complaint would not be handled by the ethics committee would be if a victim insisted for reasons of personal privacy that it not go before the committee. The Assembly would only keep such a matter confidential at the express insistence of the victim.”³⁸⁷

Upon seeing the Assembly’s statement in a New York Times article, Wang emailed Collins, stating that the statement was “a complete misrepresentation of the facts in this case” and that she had “expressed . . . as much yesterday to the Speaker’s counsel [Yates] on the

³⁷⁹ Danny Hakim and Thomas Kaplan, *Before Censure, a Hushed Settlement Against Assemblyman*, N.Y. Times, Aug. 26, 2012, at A1.

³⁸⁰ Silver Interview; Yates Interview; Interview of Jonathan Rosen (“Rosen Interview”); Interview of Michael Whyland; Schneiderman Interview; Interview of James Freedland; Kwatra Interview; Stauffer Interview; Smoler Interview.

³⁸¹ Yates Interview; Kwatra Interview; Schneiderman Interview; Wang Interview.

³⁸² Yates Interview; Wang Interview.

³⁸³ Wang Interview.

³⁸⁴ Yates Interview.

³⁸⁵ Wang Interview.

³⁸⁶ Wang Interview. On August 29, 2012, Collins faxed to Wang a proposed modification to the confidentiality clause. (NYA006395-96). Wang was unsatisfied with the modification and did not respond. The Assembly made no further inquiries to Wang on the matter. (Wang Interview).

³⁸⁷ Danny Hakim, *Assembly Paid \$103,000 in Harassment Case*, N.Y. Times, Aug. 27, 2012, at A1; NYA007477.

phone.” Wang requested a retraction.³⁸⁸ Collins forwarded Wang’s email to Yates and Kearns, as well as the Speaker’s press secretary, indicating that Wang’s position was “not “inaccurate,” because it was “true that neither she nor the complainants [e]ver expressly, affirmatively ‘insisted’ that this matter not be referred to the Ethics Committee.”³⁸⁹ When questioned about the statement, the Speaker admitted that “maybe ‘insist’ was too strong a word.”³⁹⁰ The Assembly’s statement, however, was never corrected.

IV. VIOLATIONS OF THE PUBLIC OFFICERS LAW

A. Substantial Basis to Conclude Violation of Public Officers Law

The Commission finds that Lopez used the powers and perks of his position as a member of the Assembly to engage in knowing, willful, and prolonged mistreatment of certain female members of his Assembly staff. Under the facts found here, and as a public officer and an elected official, Lopez’s conduct involved misuse of his public office and political power to serve his personal interests, and therefore the Commission finds a substantial basis to conclude he violated the Public Officers Law.

The core purpose of Section 74 of the Public Officers Law is to ensure that public officers act and use public resources in furtherance of the public interest. It is well recognized that a “public office is a public trust,”³⁹¹ and that “[p]ublic trust and confidence in elected and appointed public officials are fundamental and necessary conditions for a strong and stable democratic government.”³⁹² Further “[f]avoritism and the potential for conflicts of interest, as well as the mere appearance of such, serve to weaken and erode the public’s trust and confidence in government.”³⁹³ Consequently, the public “[is] entitled to expect from their public servants a set of standards set above the morals of the market place.”³⁹⁴

Section 74 of the Public Officers Law protects against conflicts of interest or other misconduct involving a public official’s use of his office or public resources to further his own personal interests. Such personal interests are not confined to financial interests. Indeed, in this instance, Lopez engaged in a pervasive pattern of abuse of public office and resources, not for a personal financial gain but for his personal gratification and desires. By this conduct, Lopez indisputably breached the public trust and thereby violated the Public Officers Law.

As noted above in Section II.B, the Commission’s investigation was for the purpose of determining whether there was a substantial basis to conclude that Lopez violated any one of the following three subsections of Section 74:

³⁸⁸ NYA007477.

³⁸⁹ NYA007477.

³⁹⁰ Silver Interview.

³⁹¹ *People v. Caban*, 258 A.D.2d 87, 88 (1st Dep’t 1999).

³⁹² Governor’s Program Bill Memorandum to the Ethics in Government Act (Bill Jacket, L 1987, ch. 813), at 5 (quoted in *Kelly v. New York State Ethics Comm’n*, 161 Misc. 2d 706, 713 (N.Y. Sup. Ct. 1994)).

³⁹³ *Id.*

³⁹⁴ Laws 1954, ch 696, §1.

§74(3)(d). No ... member of the legislature ... should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others

§74(3)(f). A[]... member of the legislature ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

§74(3)(h). A[]... member of the legislature ... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

The Commission finds a substantial basis to conclude that Lopez violated Public Officers Law Sections 74(3)(d), (f), and (h). The Commission does not find, however, a substantial basis to conclude that Lopez violated the Public Officers Law with respect to the manner in which the Complainant 1 and Complainant 2 complaints against him were treated, including the settlement of the complaints made by Complainant 1 and Complainant 2. These findings are explained below.

B. Public Officers Law §74(3)(h)

As set forth in Section III above, since at least November 2010, Lopez did not treat his office as a “public trust,” but instead used it to reward certain female employees for submitting to his inappropriate and offensive behavior, and to bully those same employees who did not acquiesce to his demands for companionship and entertainment. Lopez’s intentional and pervasive conduct relied on rewards and threats derived from his position and power as a public official. In so doing, there is a substantial basis to conclude that Lopez pursued a course of conduct that did not merely raise a “suspicion” that he was engaging in acts in “violation of his trust,” but that such conduct did, in fact, violate the public trust.³⁹⁵

Lopez’s demeaning comments about his female employees’ clothes and bodies; his demands that these women spend considerable personal time with him outside the office for non-work-related purposes; the pressure he exerted on several women to share hotel rooms or an apartment with him; his requirement for laudatory emails, text messages and phone calls; the forced physical intimacy; his efforts to punish those who left his office without his approval; and his marrying of advancement, opportunity, bonuses and cash payments with acquiescence to his conduct and demands all constitute a “violation of his trust” in willful and knowing disregard for his obligations under Section 74(3)(h) of the Public Officers Law.

The Lopez Submission contains arguments that are premised on either a refutation or an interpretation of the facts. They are unavailing. As an initial matter, the current and former employees interviewed all presented credible information, much of which was corroborated by other evidence, such as text messages and audio recordings. While some witnesses were more

³⁹⁵ Public Officers Law §74(3)(h).

forthcoming than others, many of the witnesses – including Employee 4, a current employee, and Employee 2, who still has close ties to Lopez – corroborated one another. The pattern of conduct and comments – such as hand massages, pressure to share hotel rooms, remarks about clothing and appearance, and the requirement that staff provide “fun” – described by many of the witnesses paint a picture that cannot be explained away through claims of misinterpreted comments or fabrication.³⁹⁶

Lopez also points to text messages sent by Complainant 1 in an attempt to discredit her allegations. Lopez makes the astonishing assertion that it was Complainant 1 who “persisted in making the most extraordinarily inappropriate statements to Mr. Lopez” and who “sent sexualized messages.”³⁹⁷ The Commission’s investigation found no basis whatsoever for this claim. Instead, the facts show that Lopez pressured Complainant 1 to send admiring and sycophantic text messages.³⁹⁸ Additionally, the evidence revealed that Lopez made the same demands on other women, such as Complainant 4 and Complainant 3. Indeed, Lopez may have been motivated to have the women send these text messages, at least in part, in an effort to create a defense should anyone complain of his misconduct.

Lopez’s attempt to undermine Complainant 1’s credibility by describing her as “a difficult employee who never got the hang of the job” is also unavailing and belied by the facts.³⁹⁹ Lopez himself promoted Complainant 1 to his Chief of Staff after she had been on the job for approximately six months. Lopez also increased Complainant 1’s salary from \$45,000 to \$70,000 during her brief time in the office.⁴⁰⁰ Additionally, no current or former employees expressed the view that Complainant 1 was a poor worker or otherwise unqualified for the job.

C. Public Officers Law §74(3)(d): Conduct with Respect to Female Employees

Based on the facts gathered in the course of the Commission’s investigation, there is a substantial basis to conclude that Lopez violated Section 74(3)(d) of the Public Officers Law by using his official position – through bonuses, raises, promotions and threats of adverse employment action – to compel or attempt to compel female employees to comply with his inappropriate requests and demands. Additionally, the facts revealed that Lopez, in violation of

³⁹⁶ See generally Submission of Hon. Vito Lopez to Notice of Substantial Basis Investigation, dated Oct. 23, 2012 and incorporated exhibits (“Lopez Submission”). Included in the Lopez Submission, and incorporated by reference, are Lopez’s Aug. 15, 2012 Submission to the Assembly Ethics Committee and a portion of Lopez’s presentation at the April 2012 mediation.

³⁹⁷ Lopez Submission at 4. Lopez made the same claims about Complainant 1’s text messages during the April 2012 mediation. (Lopez Submission, Tab 1, at VLJCOPE000006-32).

³⁹⁸ Equally audacious is Lopez’s contention that there is “no evidence whatever that anyone ever actually took seriously the remarks he is allege[d] to have made” because no employees dressed the way he requested. (Lopez Submission at 19). This argument demonstrates a complete misunderstanding of the debasing nature of Lopez’s comments and the impact they had on many of the young women in his office.

³⁹⁹ Lopez Submission at 3.

⁴⁰⁰ Assembly payroll records for Complainant 1 show that on December 7, 2011, Lopez increased Complainant 1 salary to \$70,000 and that on December 28, 2011 after her departure, Lopez contacted Human Resources and reduced Complainant 1’s salary to \$50,000. (NYA009507 (Assembly payroll records)).

Section 74(3)(d), misappropriated legislative time and resources by requiring Complainant 4 to travel with him to Atlantic City when there was no legitimate governmental purpose for the trip.

As detailed above in Section III, Lopez pressured select female employees to cater to his personal needs and desires. Lopez made frequent demands on the personal time of these women for non-work-related reasons and explained that the time he required of these women to entertain him and provide him with some measure of “fun” or “therapy” was an integral part of their responsibilities as his employees. Late night dinners, drinks at bars, massages, and pressure to be his companion on excursions were among the requirements that Lopez sought from selected women on his staff. When these women did not meet his expectations, he subjected them to punishments, such as removal of responsibilities and threats of demotion or termination. On the other hand, Lopez used cash gifts, advancement and salary increases as a way of increasing his interaction with select women and incentivizing them to tolerate his behavior.

Lopez also used his position and power to create an environment in which employees were afraid of professional and personal reprisal if they complained or resigned. Lopez was a dominant force in Brooklyn politics, and several women expressed concerns about their future opportunities should they run afoul of him. Consistent with this view, Lopez’s efforts to have Employee 2 fired from the position she took after she left her position with Lopez was a message to the staff of the consequences of displeasing him.

With respect to the Atlantic City trip Lopez took with Complainant 4, Lopez does not dispute the outing took place. Rather, Lopez maintains that the trip was for a legitimate business purpose and that he did not have any improper physical contact with Complainant 4. These assertions are, based on the Commission’s investigation, without merit. Once again, Complainant 4 was a credible witness and Commission staff found no reason to doubt her statements. The documentary evidence, such as credit card receipts and hotel records, also supports the basic facts of the trip as recounted by Complainant 4. While Complainant 4 did state that they saw an acquaintance of Lopez’s – the purported reason for the trip – that encounter took place at 11 p.m. in the evening and was, by Complainant 4’s account, happenstance. Additionally, Complainant 4 was not present during any substantive discussions between Lopez and his acquaintance, obviating the need to bring her to Atlantic City for the “meeting.”

In an attempt to discredit Complainant 4, Lopez relies, once again, on text messages. According to Lopez, the tone of the messages Complainant 4 sent him is at odds with any improper conduct on his part. Again, this argument has no merit. As previously explained, Lopez insisted that Complainant 4 (and others) send adoring text messages and would reprimand women when they were not to his liking. Moreover, Complainant 4 quit a mere five days after the Atlantic City trip.

D. Public Officers Law §74(3)(d): Management and Disposition of the First Set of Complaints

Although the notice of substantial basis investigation alleged a violation of the Public Officers Law with respect to the manner and process by which allegations of sexual harassment

by Complainant 1 and Complainant 2 were handled by the Assembly, the evidence did not support a finding of a Public Officers Law violation.

The investigation revealed that errors were made relating to the management and disposition of the complaints against Lopez. Among other things, the first two complaints against Lopez in December 2011 and January 2012, were not referred promptly to the Assembly Ethics Committee. In addition, prior to entering into the Settlement Agreement, there was no investigation into the allegations, nor were any other measures taken to protect Lopez's remaining female staff. The Commission's investigation, however, found no evidence that Lopez exercised his influence or power as a public official to prevent the complaints, once they were filed, from being considered by the Assembly Ethics Committee. To the contrary, the Commission's investigation found that the decision not to refer Complainant 1's and Complainant 2's complaints to the Assembly Ethics Committee was made by Assembly staff, and later endorsed by the Speaker, without input, pressure, or influence by Lopez.

The disposition of these complaints through a confidential settlement agreement, given the facts here, is not a violation of the Public Officers Law by Lopez. Certainly, it is not a violation of the Public Officers Law, or otherwise improper, for a public official or state government agency to enter into a settlement agreement. Like private individuals, public officers and state institutions settle disputes and potential liabilities to "save themselves the time, expense, and inevitable risk of litigation."⁴⁰¹ Additionally, there is no evidence that Lopez used an improper influence to persuade Complainant 1 and Complainant 2 or the Assembly to agree to a pre-litigation resolution of the complaints.

The Settlement Agreement's confidentiality clause requires a different analysis. Certain types of confidentiality provisions are not necessarily problematic for settlements involving state entities and public funds. Clauses tailored, for example, to protect victims' identity or specific facts may be appropriate. Confidentiality clauses that shield a public officer or institution from disclosure of allegedly improper or illegal conduct, however, raise a number of public policy concerns and should be subject to a high degree of circumspection. The Commission authorized the investigation of alleged violations of the Public Officers Law by Lopez. Under the record here, the evidence does not establish such a violation by Lopez with respect to the inclusion of the confidentiality clause in the Settlement Agreement.

Finally, there is no evidence that Lopez used his influence or position in an attempt to minimize the damages assigned to him in the Settlement Agreement. The Settlement Agreement identified separate payments to be made by Lopez and the Assembly. Lopez's damages flowed from his potential liability for his conduct. The Assembly, under the law, had its own liability as the employer of the women. Lopez, the investigation confirmed, paid for the damages allocated to him in the Settlement Agreement, while the Assembly paid for the damages it was assigned for its separate potential liability.

⁴⁰¹ *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971); see New York State Consolidated Laws: Court of Claims Act, Section 20-a (detailing procedure for government entities to settle claims brought against them under the Court of Claims Act).

In view of the above, the Commission is referring its findings relating to the management and disposition of the complaints concerning Lopez to the Assembly Ethics Committee for whatever action it deems appropriate, if any.

E. Public Officers Law §74(3)(f)

The Commission's investigation found there to be a substantial basis to conclude that Lopez violated Section 74(3)(f) of the Public Officers Law by engaging in conduct that provides a reasonable basis for the impression that a person can "unduly enjoy his favor in the performance of his official duties."⁴⁰² As described above, Lopez created and oversaw an office environment where employees who tolerated his conduct and acceded to his demands enjoyed his favor and received work-related privileges, including plum assignments, promotions and raises. In contrast, if employees bristled at his inappropriate remarks or were unwilling to meet his demands, they received his disapprobation, were threatened with loss of position or job, and removed from key assignments.

V. CONCLUSION

Based upon evidence established by the investigation, there is a substantial basis to conclude that Lopez used his office to pursue a course of conduct that was in violation of his public trust, to secure unwarranted benefits, and to give a reasonable basis for the impression that one could unduly enjoy his favor in the performance of one's official duties. There is therefore a substantial basis to conclude that Lopez violated Public Officers Law §§74(3)(d), (f), and (h) through knowing and intentional conduct. This substantial basis investigation report shall be presented to the Legislative Ethics Commission for their consideration pursuant to Executive Law §§94(14) & (14-a) and Legislative Law §§80(9) & (10).

⁴⁰² Public Officers Law §74(3)(f).

Dated: February 12, 2013

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS

Hon. Janet DiFiore
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Member