SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN **PART** 7
Justice

VICTORIA BURHANS and CHLOË RIVERA,

Plaintiffs,

- against -

THE STATE OF NEW YORK,

Defendant.

INDEX NO. 152906/14

MOTION SEQ. NO. 001

The following papers were read on this motion by the defendant The State of New York to dismiss the complaint.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits (Memo)	
Reply Affidavits — Exhibits (Memo)	

Cross-Motion: ☐ Yes ■ No

This action arises out of Victoria Burhans (Burhans) and Chloë Rivera's (Rivera) (collectively, plaintiffs) claims that they were subject to discrimination and a hostile work environment, based on their sex, in violation of the New York State Human Rights Law (NYSHRL). Plaintiffs maintain that defendant the State of New York is plaintiffs' employer within the meaning of the New York Executive Law § 292(5). Now before the Court is a motion by the State of New York, pursuant to CPLR 3211(a)(7) to dismiss the complaint.

BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiffs are former legislative aides for Vito Lopez (Lopez), a former member of the New York State Assembly (Assembly). Burhans was hired in April 2012, and was 26 years old at the time. Rivera was also hired in April 2012, and was 24 years old at the time. Lopez held his position as an Assemblyman in Kings County from 1985 until he resigned on May 20, 2013. The complaint alleges that the Assembly is part of the legislature of the State of New York, and that Sheldon Silver (Silver) is the Speaker of the Assembly.

While working for Lopez, plaintiffs alleged that they were subject to "egregious acts of sexual harassment" by Lopez (Complaint, ¶ 1). According to plaintiffs, Lopez's harassment, included, among other things, "a) repeated comments to plaintiffs about their physical appearance, their bodies, their attire and their private relationships; b) repeated unwelcome sexual overtures; and c) repeated inappropriate and unwelcome physical contact" (*id.*, ¶ 57.)[1]

In July 2012, both plaintiffs separately maintain that they reported the sexual harassment to Carolyn Kearns (Kearns), who was Deputy Counsel for the Majority and the Majority Counsel to the Ethics Committee. Plaintiffs' complaints were immediately relayed to the Ethics Committee for an investigation. In August 2012, after an investigation, the Ethics Committee concluded that Lopez had violated the Assembly's sexual harassment policy. The complaint contains some of the findings by the Ethics Committee, which included in pertinent part:

- "That [plaintiffs'] allegations of unwelcome verbal and physical conduct of a sexual nature were credible.
- "That there was pervasive unwelcome verbal conduct by Assembly member Vito Lopez toward both [plaintiffs] from early June 2012 until the time they made complaints of sexual harassment in mid-July 2012, including repeated comments about their physical appearance, their bodies, their attire, and their private relationships.
- "That [plaintiffs'] perception that such conduct created an intimidating, hostile and offensive working environment was reasonable" (*id.*, ¶ 71).

On August 24, 2012, pursuant to the recommendations made by the Ethics Committee, Silver imposed sanctions on Lopez. After the sanctions were publicly announced, the New York State Joint Commission on Public Ethics (JCOPE) commenced its own investigation into Lopez's conduct. Among other things, JCOPE's report concluded that Lopez's conduct towards

---

[1] While the complaint includes an extensive description of the harassment, as the State of New York does not dispute the underlying actions by Lopez, the details of the harassment are irrelevant for this decision.

plaintiffs and other women on the Assembly staff constituted numerous violations of the New York State Public Officers Law. After the public release of JCOPE's report on May 15, 2013, Silver announced an Assembly vote that could lead to Lopez's expulsion from the Assembly. Lopez resigned prior to this vote.

Plaintiffs' complaint contains one cause of action for sex discrimination and sexual harassment in violation of the NYSHRL. According to plaintiffs, the State of New York is liable for Lopez's actions because, among other reasons:

> "i) Silver and his senior staff acquiesced in and condoned Lopez's creation of a sexually hostile work environment for members of Lopez's staff; ii) Lopez was plaintiffs' supervisor and used the power granted to him by the Assembly and the State to sexually harass plaintiffs and cause then to suffer tangible and adverse employment actions; and/or iii) due to Lopez's high position in the Assembly, his actions are automatically attributable to the Assembly and the State" (*id.*, ¶ 86).

Plaintiffs contend that, under the NYSHRL, the State of New York, as plaintiffs' employer, is liable for the hostile work environment created by Lopez. Plaintiffs aver that the State of New York was, and still is, their employer. At the outset of their employment with the Assembly, plaintiffs received New York State Employee identification cards. Their annual W-2 forms identify their employer as the State of New York, and the office of the New York State Comptroller issues bi-weekly payroll deposits to plaintiffs. Plaintiffs allege that Silver and/or his designees control plaintiffs' salary amounts. In addition, plaintiffs are members of the New York State public employee pension fund.

When plaintiffs commenced their employment, they received an employee manual entitled, "New York State Assembly 2011-2012 Employee Information Guide." Plaintiffs were required to comply with the policies in the employee manual, or otherwise be subject to discipline, including dismissal. The employee manual further contained the Assembly's policy on sexual harassment. Under the policy, Silver was enabled to impose discipline, including

termination, on any Assembly Member who violated the policy. Furthermore, the complaint alleges that Silver was "required to promulgate a sexual harassment policy prohibiting sexual harassment by members of the Assembly" (*id.*, ¶ 15).

According to plaintiffs, the State of New York, although it was aware of Lopez's propensity towards sexually harassing staff members, did nothing to protect staff members, including plaintiffs. Evidently, plaintiffs maintain that they were not the first women on Lopez's staff to complain about Lopez's inappropriate conduct. For example, in December 2011, a woman working on Lopez's staff (Complainant 1) spoke to Yolande Page (Page), the Assembly's Deputy Director of Administration, about Lopez's harassing conduct towards her (*id.*, ¶ 21).

The complaint sets forth that, at that time, the Assembly's policy required that complaints of sexual harassment be referred to the Assembly Committee on Ethics and Guidance (Ethics Committee) for investigation (*id.*, ¶ 22). The Ethics Committee was then required to conduct an investigation (*id.*). Nevertheless, there was no referral nor investigation regarding Complainant 1.

Similarly, around the same time, another woman who worked on Lopez's staff (Complainant 2) spoke to Kearns and William Collins (Collins), then the Chief Counsel for the Majority, among others, about instances of Lopez's inappropriate conduct towards her. In January 2012, Collins sought advice from Arlene Smoler (Smoler), a Deputy Attorney General in the office of Attorney General Eric Schneiderman, in general, regarding circumstances of complaints of sexual harassment in the Assembly. According to plaintiffs, Smoler advised Collins that the Assembly had a "legal obligation as an employer to conduct" a prompt and timely investigation (*id.*, ¶ 35).

In January 2012, prior to when plaintiffs began working for Lopez, Silver met with Collins, Yates and Kearns. The allegations of Complainants 1 and 2 were never forwarded to

the Ethics Committee, nor were the complaints investigated (*id.*, ¶ 76). In short, following a private mediation process, according to the complaint, Lopez and the Assembly agreed to pay the two complainants $135,080.00 in settlement of their potential claims. Plaintiffs state that "[t]he Assembly paid $103,080.00 of the settlement with State funds; Lopez paid the balance. The settlement also provided that Lopez and his staff would be required to attend a 'supplementary instruction' regarding the Assembly's discrimination and harassment policies within 90 days of the settlement" (*id.*, ¶ 44).

According to plaintiffs, Lopez was not reprimanded for his treatment of Complainants 1 and 2. Plaintiffs state, "Silver and the Assembly took no action to investigate Lopez or to ensure that the other women in his office were safe" (*id.*, ¶ 41). Moreover, in March 2012, according to plaintiffs, another female employee sought to be transferred out of Lopez's office as Lopez was allegedly sexually harassing her.

In addition, plaintiffs maintain that the State of New York is liable for discrimination, as Lopez's conduct caused them to suffer adverse employment actions. For instance, on the same day Rivera complained about Lopez's actions, she was transferred to another position in the Assembly. Rivera alleges that she "suffered a significant diminution in her job duties and responsibilities since leaving Lopez's office" (*id.*, ¶ 65). According to the complaint, while working for Lopez, Rivera was his liaison to important constituencies in the community. Now, while working for another assembly member, Rivera only responds to ordinary constituent complaints and inquiries.

Similarly, Burhans alleges that, while working for Lopez, she focused on policy and legislative work. After she was transferred, Burhans contends that she spends most of her time preparing newsletters. In addition, both plaintiffs allege that they were not promoted to Chief of Staff as they did not submit to Lopez's demands.

Plaintiffs initially commenced this action against the Assembly, as plaintiffs' employer.

In a decision dated March 7, 2014, Honorable Joan Kenney of this Court held, among other things, that the Assembly was not plaintiffs' employer. Justice Kenney dismissed the complaint as against the Assembly, as plaintiffs did not meet their burden to demonstrate that the Assembly was plaintiffs' employer for liability purposes. The court held that "the case is dismissed without prejudice to commence a timely action against the proper parties, e.g., The State of New York and/or Vito Lopez and/or any other individual, plaintiffs can proffer evidence against to support a claim of aiding and abetting" (*Burhans v Assembly of the State of N.Y.* (2014 WL 939300, 2014 NY Misc Lexis 1015, *12 [Sup Ct, NY County 2014]). Plaintiffs subsequently commenced the herein action, naming the State of New York as their employer. Plaintiffs also commenced an action, in federal court, against Lopez and Silver.

The State of New York argues that dismissal is warranted because it is not plaintiffs' employer for purposes of liability under the NYSHRL. The State of New York maintains that Lopez was plaintiffs' employer and that it did not have "any power to hire or fire them, set their rate of pay, or direct their job duties or functions" (The State of New York's memorandum of law at 12). Counsel for the State of New York refers to the State of New York as a "glorified payroll provider" (Oral Argument tr at 8).

In any event, according to the State of New York, even if it could be considered plaintiffs' employer, it never had any knowledge of Lopez's alleged harassment. It claims that, although plaintiffs allege that Silver and some members of his staff knew of the prior complaints against Lopez, the State of New York cannot be held liable for their knowledge. Additionally, although the Deputy Attorney General was made aware of the complaints, she was asked for advice in general about responding to complaints of sexual harassment.

Moreover, according to the State of New York, even if Silver and others knew about the alleged harassment Lopez perpetrated against other women, once the State of New York became aware of the harassment against the plaintiffs themselves, plaintiffs' "complaints were

investigated promptly and the harassment eliminated swiftly and effectively" (The State of New York's memorandum of law at 2).

In opposition, as previously detailed, plaintiffs contend that the State of New York is plaintiffs' employer under the NYSHRL as it pays plaintiffs' salaries and controls their job assignments. The State of New York also allegedly condoned Lopez's actions when, after it knew or should have known that sexual harassment was occurring, failed to take measures to stop Lopez.

STANDARD

When determining a CPLR 3211(a) motion, "we liberally construe the complaint and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion" *(511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]; *see Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409 [2001]; *Wieder v Skala*, 80 NY2d 628 [1992]). "We also accord plaintiffs the benefit of every possible favorable inference" (*511 W. 232nd Owners Corp.*, 98 NY2d at 152; *Sokoloff v Harriman Estates Dev. Corp*, 96 NY2d at 414). The court "accept[s] the facts as alleged in the complaint as true, accord[s] plaintiffs the benefit of every possible favorable inference, and determine[s] only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 376 [1st Dept 2003] ["In ruling on a motion to dismiss, the court is not authorized to assess the merits of the complaint or any of its factual allegations, but only to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action"]).

"In addition, employment discrimination cases are themselves generally reviewed under notice pleading standards . . . . [I]t has been held that a plaintiff alleging employment discrimination 'need not plead specific facts establishing a prima facie case of discrimination'

but need only give 'fair notice' of the nature of the claim and its grounds" (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009] [internal citation omitted]).

Under CPLR 3211(a)(7), "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Leon*, 84 NY2d at 88 [internal quotation marks and citations omitted]). However, "[i]t is well settled that bare legal conclusions and factual claims, which are either inherently incredible or flatly contradicted by documentary evidence . . . are not presumed to be true on a motion to dismiss for legal insufficiency" (*O'Donnell, Fox & Gartner, P.C. v R-2000 Corp.*, 198 AD2d 154, 154 [1st Dept 1993]; *see Silverman v Nicholson*, 110 AD3d 1054, 1055 [2d Dept 2013]).

DISCUSSION

I. Whether the State of New York is Plaintiffs' Employer:

The complaint alleges that the State of New York is plaintiffs' employer within the meaning of Executive Law § 292(5). While the definition of employer is not given in the NYSHRL, courts have recognized four elements to be considered in determining whether a defendant may be sued as an employer: (1) the court must consider whether the proposed employer had the power to select or engage the employee; (2) paid the employee's wages or salary; (3) had the power of dismissal; and (4) had the power to control the employee's conduct (*see State Div. of Human Rights v GTE Corp.*, 109 AD2d 1082, 1083 [4th Dept 1985]; *see also Patrowich v Chemical Bank*, 63 NY2d 541, 544 [1984] [Proposed employer must have the "power to do more than carry out personnel decisions made by others. . ."]).

According to plaintiffs, the State of New York paid plaintiffs' salary and benefits, represented that it was plaintiffs' employer on tax forms and referred to plaintiffs as employees of the State of New York. The employee manual they received advised plaintiffs that they must abide by various State of New York personnel policies during the course of their employment.

After plaintiffs complained about Lopez's conduct, Silver or his designee arranged for plaintiffs to be transferred to other positions within the Assembly. "The essential element is control over the conduct of another including selection, payment of wages and power of dismissal" (*Germakian v Kenny Intl. Corp.*, 151 AD2d 342, 343 [1st Dept 1989]).

At this juncture, in liberally construing the complaint and accepting the facts alleged as true, as well as giving the plaintiffs the benefit of every favorable inference, the Court finds that plaintiffs adequately plead a cause of action that the State of New York may be their employer for purposes of liability under the NYSHRL (*see e.g. Hae Sheng Wang v Pao-Mei Wang*, 96 AD3d 1005, 1008 [2d Dept 2012] [in evaluating the sufficiency of the pleadings, the plaintiffs' ultimate ability to prove those allegations is not relevant]).

II. Plaintiffs' Hostile Work Environment Claim as Against the State of New York:

At the outset, the State of New York argues that, even if it can be considered plaintiffs' employer, dismissal is warranted because the knowledge of Lopez's harassment cannot be attributed to the State of New York through Silver or his staff. The State of New York argues that plaintiffs have not been able to establish that anyone acting on behalf of the State of New York had any knowledge of Lopez's prior harassment of employees.

In response, plaintiffs maintain that several senior supervisory officials were aware of Lopez's prior harassment. This includes officials in the Office of the Attorney General and Comptroller, and Silver, who plaintiffs describe as a "constitutional officer of the State's government and, along with the Temporary President of the State Senate, is the highest-ranking official of the legislative branch of the State" (Plaintiffs' memorandum of law at 14-15).

On a motion to dismiss, "[w]here the allegations are ambiguous, [the court] resolve[s] the ambiguities in plaintiff's favor" (*Snyder v Bronfman*, 13 NY3d 504, 506 [2009]). As a result, plaintiffs have adequately pled that the State of New York, through its supervisory personnel, had knowledge of Lopez's past misconduct.

The State of New York then claims that, as it was not aware of any harassment as against plaintiffs, it could not have condoned Lopez's actions. However, the Appellate Division, First Department, has held that under the NYSHRL, plaintiffs must plead that their employer knew or should have known that its employee was being harassed, but failed to take proper action (*see Polidori v Societe Generale Groupe*, 39 AD3d 404, 405 [1st Dept 2007] ["The amended complaint sufficiently alleges a pervasive atmosphere of workplace sexual harassment . . . and that defendant knew or should have known of the harassment before plaintiff made her formal complaint"]; *see also Cole v Sears, Roebuck & Co.*, 120 AD3d 1159, 1160 [1st Dept 2014] ["The record further shows that there are issues of fact as to whether defendant's response to plaintiff's complaints of widespread anti-gay harassment was reasonable under the circumstances, and whether, through a lack of effective action, defendant condoned or acquiesced in the hostile work environment"]).

Plaintiffs allege that Silver, among other staff at the Assembly and the State of New York, knew of Lopez's past confirmed sexual harassment against other women, prior to plaintiffs' commencement of their employment. This includes the information reported by Complainants 1 and 2. Silver is responsible for drafting the sexual harassment policy, which calls for reporting complaints to the Ethics Committee and for an investigation. However, according to plaintiffs, instead of investigating sexual harassment complaints, Silver would reassign complainants or offer confidential settlements as a way to silence public complaints against Lopez for sexual harassment.

As set forth by plaintiffs, Lopez was never disciplined for his past behavior, nor were any actions taken to protect future employees who would be working with Lopez, despite there being many supervisory employees who were aware of Lopez's harassment of prior female employees. Accordingly, plaintiffs have adequately pled that the State of New York should have known about Lopez's propensity for improper conduct, yet failed to take any preventative

actions (*see e.g. Matter of Medical Express Ambulance Corp. v Kirkland*, 79 AD3d 886, 887-888 [2d Dept 2010] ["only after an employer knows or should have known of the improper conduct can it undertake or fail to undertake action which may be construed as condoning the improper conduct"]).

Nonetheless, the State of New York responds that, as it responded quickly to plaintiffs' complaints, plaintiffs cannot demonstrate defendant's condonation of the harassing conduct as against plaintiffs in particular. However, as explained in *Polidori v Societe Generale Groupe* (39 AD3d at 405), "[d]efendant's termination of the alleged primary harasser promptly after plaintiff made her formal complaint does not necessarily show that defendant did not . . . condone . . . the alleged harassment before plaintiff made her formal complaint, or that defendant took reasonable corrective action in response to the formal complaint" [internal citation omitted]).

This Court notes the similarities between the present situation and the one present in *Doe v The New York State Assembly* (Sup Ct, Albany County, Mar. 15, 2005, McNamara, J., index No. 3314/2004). In *Doe v The New York State Assembly*, the plaintiff, who had been working as a legislative aide for a member of the Assembly, commenced an action against the State of New York, the Assembly, and Silver, alleging that they had violated the NYSHRL. While she was employed at the Assembly, the plaintiff had been raped by James Michael Boxley (Boxley), who, at the time, was employed as chief counsel to Silver. In her complaint, the plaintiff alleged that, prior to the incident, the defendants were aware that other female employees had made complaints about Boxley's unwelcome comments. In addition, the plaintiff alleged a specific incident that occurred in 2001, in which a female employee of the Assembly had reported to Silver and other employees that she had been raped by Boxley. In *Doe*, the defendants moved to dismiss the complaint. Evidently as the defendants were not aware of any alleged harassment of the plaintiff prior to the rape, they could not have condoned Boxley's behavior.

The court did not dismiss the complaint as against the State of New York. It held, among other things, that the State of New York was the employer and was the party subject to suit. The court explained that the plaintiff must establish that the employer knew of or should have known of the harassment. It explained with the following, in pertinent part:

> "Given the severity of the allegations and the claim of inaction by the Assembly, and again considering the de minimis showing needed to survive a motion to dismiss, the allegations of Boxley's alleged propensity for making unwelcome sexual advances to female employees of the Assembly, the complaint contains sufficient factual allegations from which the conclusion could be made that the employer knew or should have known of the harassment and failed to take remedial action" (*Doe v The New York State Assembly* (Sup Ct, Albany County, Mar. 15, 2005 McNamara, J., index No. 3314/2004, *8).

Moreover, this Court also notes that, in denying Silver's motion to dismiss the federal action, which included claims against him under the NYSHRL, the Court held, "[t]his is not a case where the plaintiffs have offered mere conclusory assertions that Silver caused their rights to be violated. Plaintiffs have provided specific factual details such as names, dates and events to support their claims" (*Burhans v Lopez*, __ F Supp 2d __, 2014 WL 2583739, *6, 123 Fair Empl Prac Cas. (BNA) 281, *6 [SD NY 2014]). Accordingly, for the reasons set forth above, plaintiffs have adequately pled a claim for sexual harassment under the NYSHRL.

III. Plaintiffs' Claim for Sex Discrimination:

Pursuant to NYSHRL, as set forth in Executive Law § 296(1)(a), it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because of the individual's sex.

A plaintiff has the initial burden to establish a prima facie case of discrimination under the NYSHRL (*Forrest v Jewish Guild for the Blind,* 3 NY3d 295, 305 [2004]). Plaintiff must set forth that "the plaintiff is a member of a protected class, was qualified for the position, and was

terminated or suffered some other adverse employment action, and that the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination" (*Baldwin v Cablevision Sys. Corp.*, 65 AD3d 961, 965 [1st Dept 2009]).

Although not well articulated, plaintiffs apparently believe that, due to Lopez's actions, they have been discriminated against. Plaintiffs argue that, as a result of the sanctions against Lopez being publicly announced, they "have suffered damage to their reputation and career prospects" (Complaint, ¶ 78). Plaintiffs further argue that, as a result of not submitting to Lopez's sexual demands, they were not promoted to positions such as the Chief of Staff.

However, both of these allegations are speculative and conclusory, as there is no evidence of plaintiffs' future career being affected, or the concrete possibility of either plaintiff, who had both just recently started with the Assembly, being promoted to Chief of Staff. As these allegations are "vague, conclusory and unsubstantiated," any sex discrimination claims as against the State of New York are dismissed (*All the Way E. Fourth St. Block Assn. v Ryan-NENA Community Health Ctr.*, 30 AD3d 182, 182 [1st Dept 2006]); *see also Messinger v Girls Scouts of U.S.A.*, 16 AD3d 314, 315 [1st Dept 2005] [argument that plaintiff's removal from a team at work could have disadvantaged him was speculative]).

Moreover, there is no basis to conclude that the State of New York discriminated against them by publicly announcing the sanctions (*see e.g. Whitfield-Ortiz v Department of Educ. of City of N.Y.*, 116 AD3d 580, 581 [1st Dept 2014] ["[p]laintiff also failed to adequately plead discriminatory animus, which is fatal to both her discrimination and hostile environment claims"]; *Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 621 [1st Dept 2013]).

Plaintiffs further argue that they suffered adverse employment actions when they were transferred to different positions within the Assembly. For instance, Rivera claims that she used to be a liaison to important constituencies in the community and now primarily responds to constituent complaints and incidents. Similarly, Burhans claims that while working for Lopez

she used to focus on strategy and in her current position she prepares newsletters.

The Appellate Division, First Department, describes an adverse employment action, in pertinent part:

> "An adverse employment action requires a materially adverse change in the terms and conditions of employment. To be materially adverse a change in working conditions must be more disruptive than a mere inconvenience or an alteration of job responsibilities. . . . A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices . . . unique to a particular situation" (*Messinger v Girls Scouts of U.S.A.*, 16 AD3d at 314-315 [internal quotation marks and citations omitted]).

Moving the plaintiffs laterally within the Assembly did not cause a change in wages or any less distinguished title. As set forth above, to be materially adverse a change in working conditions must be more disruptive than a "mere inconvenience or an alteration of job responsibilities" (*id.*). Plaintiffs allegations of diminished duties upon their transfers are "merely an alteration of [their] responsibilities," and, as such, are not adverse employment actions (*Mejia v Roosevelt Is. Med. Assoc.*, 95 AD3d 570, 571 [1st Dept 2012] [internal quotation marks and citation omitted]). Accordingly, plaintiffs have not adequately pled that they were discriminated against by being moved to a different position in the Assembly after they complained about Lopez.

As a result of this decision, plaintiffs' remaining contentions need not be addressed.

CONCLUSION

Accordingly, it is

ORDERED that the motion of the State of New York to dismiss the complaint herein is granted only to the extent that the claim for sex discrimination is dismissed, and the motion to dismiss the claim for sex-based hostile work environment is otherwise denied; and it is further,

ORDERED that the State of New York is directed to serve an answer to the complaint

within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the parties are directed to appear for a Preliminary Conference on February 25, 2015 at 11:00 a.m. in Part 7, 60 Centre Street, Room 341.

This constitutes the Decision and Order of the Court.

Dated: 4/7/15

PAUL WOOTEN J.S.C.

Check one: ☐ **FINAL DISPOSITION** ■ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**