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9
10 ETHICS COMMISSION
11 CITY AND COUNTY OF SAN FRANCISCO

12
13 In the Matter of Charges Against
14 ROSS MIRKARIMI,
15 Sheriff, City and County of San Francisco.

16
17 EXPERT DECLARATION OF
18 NANCY K. D. LEMON

19 I, NANCY K. D. LEMON, declare as follows:

20 1. I am an expert in domestic violence. I have focused on the issue of domestic
21 violence during my entire professional career. I was awarded a B.A. in Women's Studies from the
22 University of California at Santa Cruz in 1975 and a J.D. from Boalt Hall School of Law,
23 University of California at Berkeley in 1980. Starting in 1981, I worked at several agencies
24 offering legal assistance to survivors of domestic violence. Through my work, I have come into
25 contact with thousands of such victims as well as with about a dozen perpetrators and reformed
26 perpetrators of abuse.

27 2. In 1988, I started teaching Domestic Violence Law at Boalt, and in 1990, I started
28 directing the Domestic Violence Practicum there. I have taught these courses at Boalt Hall ever
since. I authored *Domestic Violence Law*, the first textbook in the U.S. on this topic, first published

1 in 1996 and now in its third edition with the current publisher, West Group. I have written
2 extensively on domestic violence issues, including books, curricula, law review articles, and amicus
3 briefs, etc. I have worked on numerous pieces of California state legislation since 1983. I have
4 conducted hundreds of trainings on domestic violence topics for many different professional groups.
5 Starting in 1995, I began working as an expert witness. I have consulted on hundreds of cases and
6 testified in sixty. I frequently work with prosecutors and also with criminal defense attorneys, as
7 well as in family law, tort, asylum, and other types of cases. Attached hereto as **Exhibit 63** is a
8 true and correct copy of my curriculum vitae, which describes my experience and expertise in
9 additional detail.

10 3. I testified as an expert in the criminal case against Sheriff Mirkarimi in a “402
11 hearing,” which is a hearing to determine whether proposed testimony will be admissible in a
12 criminal trial. The judge ruled that my testimony would be admissible in all respects that are
13 relevant to these proceedings.

14 4. My customary charge for expert testimony in a government matter is \$200 per hour
15 plus expenses. I am receiving my customary charge in this case.

16 SUMMARY OF OPINIONS

17 In this matter before the San Francisco Ethics Commission, I have the following general
18 opinions.

- 19 i. Domestic violence is an attempt by one partner to secure power and
20 control over the other partner by means of various abusive behaviors.
Domestic violence is an abuse of power, and it often escalates.
- 21 ii. The physical assault and false imprisonment of Ms. Lopez by Mr.
22 Mirkarimi on December 31, 2011, was a genuine incident of domestic
violence, not "just an arm grab," that took place in the context of
ongoing abuse.
- 23 iii. Mr. Mirkarimi's behavior and statements are consistent with typical
batterer behavior.
- 24 iv. Ms. Lopez's behavior and statements are consistent with typical
25 victim behavior.
- 26 v. Mr. Mirkarimi pleaded guilty to and received a sentence for a crime
of domestic violence.
- 27 vi. ~~Mr. Mirkarimi continues to make statements consistent with a typical
unreformed batterer.~~

1 vii. ~~Sheriff Mirkarimi's crime relates directly to his duty as Sheriff to~~
2 ~~enhance public safety and reduce the incidence and severity of~~
3 ~~domestic violence.~~

4 5. I have reviewed the materials listed in **Exhibit 64** in formulating my opinions. A
5 reasonable professional in my field would rely on this type of material for several reasons. First,
6 domestic violence expert witnesses virtually always rely on hearsay in formulating their opinions,
7 and the California Supreme Court has held such expert opinions admissible. In *People v Humphrey*,
8 13 Cal.4th 1073 (1996), the domestic violence expert witness who testified for the battered woman
9 defendant charged with killing her husband relied on the defendant's statements about the history of
10 the relationship and the incident in which the homicide took place. The expert testimony included
11 many statements by the defendant, which were hearsay. The California Supreme Court found the
12 expert's opinion so relevant that they reversed the conviction, holding that the jury should have been
13 instructed that they could take the expert testimony into account in considering the reasonableness
14 of the defendant's fear for her life, and not only in considering the honesty of this belief.

15 6. Second, evidence of statements made by victims of domestic violence close in time
16 to the abusive incident are more likely to be accurate, while those made later are more likely to be
17 false. This understanding was key to the holding in *People v. Cornell Brown*, 33 Cal.4th 892 (2004),
18 in which the defendant was charged with abusing his live-in girlfriend. She had initially told law
19 enforcement that he assaulted, threatened, and falsely imprisoned her, but in her testimony she
20 denied some of the abuse and minimized the rest of it. A domestic violence expert witness testified
21 that after the initial incident of abuse there was a window of about 24 to 48 hours during which the
22 domestic violence victim was likely to tell the truth, but that thereafter the victim was more likely to
23 deny or minimize the incident. The California Supreme Court found this testimony so persuasive
24 that they ruled its admission was correct, upholding the conviction even though there was no
25 evidence of prior abuse before the charged incident and the victim had recanted the charged incident
26 at trial.

27 7. I further explain the nature of and basis for my opinions in the declaration that
28 follows.

TYPICAL CHARACTERISTICS OF DOMESTIC VIOLENCE

1
2 8. There are two primary diagrams used extensively in the field of domestic violence,
3 the Cycle of Violence and the Power and Control Wheel. Both diagrams were developed in the
4 1980s as a result of numerous conversations with survivors of domestic violence and are still used
5 widely because they are so accurate. I have used these diagrams for many years in my teaching and
6 trainings, as well as in my work as an expert witness, to identify and describe abusive relationships,
7 including typical batterer behaviors and typical responses by victims.

8 9. The first diagram, the Cycle of Violence, was developed by Dr. Lenore Walker and
9 describes the typical stages in relationships in which domestic violence takes place, starting with the
10 honeymoon stage, followed by the tension building stage, the abuse stage, and then the
11 reconciliation or honeymoon stage. A true and correct copy of the Cycle of Violence diagram is
12 attached hereto as **Exhibit 65**.

13 10. As I testified during the 402 hearing in the case of *People v. Ross Mirkarimi*, in
14 many domestic violence cases, the relationship starts as even more romantic and exciting than other
15 relationships. The batterer is charming and on his best behavior. Sometimes there is a “whirlwind
16 romance” quality to this stage, with the batterer sweeping the victim off her feet, and making
17 comments like “You are the only one I’ve felt this way about,” “I love you,” “Let’s move in
18 together,” etc. This is not found in every domestic violence relationship but I have seen it in most of
19 the cases I have worked on.

20 11. However, then comes the tension building phase, where the batterer feels tense and
21 anxious and will often be crabby or irritable. The victim is typically wondering what is going on,
22 feeling anxious herself, maybe withdrawing a little, maybe trying to please her partner by cooking
23 special food, initiating or agreeing to sex, not bringing up topics that she knows will upset her
24 partner. She starts to feel she is “walking on eggshells,” trying to keep the abuser happy.

25 12. However, no matter what the victim does, at some point in an abusive relationship,
26 the couple moves into the abusive incident stage. Typically, there may be name-calling by the
27 abuser and the first physical abuse is minor, such as slapping, pushing, or shoving.
28

1 13. After this incident, typically the couple will move into part one of the honeymoon
2 stage. The batterer is conciliatory and apologetic, may make promises to change, ask the victim to
3 give him another chance, reminding the victim what a charming person he was when they first met,
4 etc. And the victim is wondering whether to stay or leave the relationship. One of the factors
5 victims often consider is the effect on any children involved of staying or leaving.

6 14. If the victim decides to stay, the couple moves into part 2 of the honeymoon stage.
7 Things will be fine for a while, with the batterer being the charming, wonderful, sweet, funny, great
8 guy he was when they were first together. But inevitably, the tension building stage will appear
9 again, and no matter what the victim does, there will be another abusive incident.

10 15. The cycle tends to repeat, and the level of abuse tends to escalate over time, so that
11 instead of a slap or push or shove, the abuse will involve actual hitting with a closed fist. There may
12 start to be visible injuries: bruises, a black eye, a split lip, or a bloody nose.

13 16. These stages typically repeat multiple times unless they are interrupted by arrest or
14 some other intervention. The abuse stage typically becomes more severe over time and can result in
15 one of the parties killing the other, typically the abusive male in a heterosexual relationship killing
16 the female partner. Sometimes the honeymoon stage is not found or disappears over time. After
17 experiencing this cycle numerous times, victims of domestic violence typically learn to anticipate
18 the next stage and will often try to forestall the abuse stage by placating the abuser. However, they
19 find that ultimately they have no control over their partner's behavior. See Lenore E. Walker, *The*
20 *Battered Woman* (Harper and Row, 1979) at 44-54, excerpted in my textbook, *Domestic Violence*
21 *Law* (West Group, 3rd ed., 2009) at 115. Attached hereto as **Exhibit 66** is a true and correct copy of
22 the title page and table of contents of my textbook. **Exhibit 67** is a true and correct copy of the
23 excerpt of Dr. Walker's work.

24 17. The Ninth Circuit has also described this cycle of violence in *Hernandez v. Ashcroft*,
25 345 F.3d 824 (9th Cir. 2003): “[D]omestic violence is not a phenomenon that appears only at brief
26 isolated times, but instead pervades an entire relationship...[The abuser's] success in this ‘contrite’
27 or ‘hearts and flowers’ phase occurred because of [the victim's] emotional vulnerability, the strong
28

1 emotional bond to [the abuser]..., and the underlying threat that the failure to accede to his demands
2 would bring renewed violence.”

3 18. The second diagram, the Power and Control Wheel, was developed by the Duluth
4 Abuse Intervention Project. A true and correct copy of the Power and Control Wheel is attached
5 hereto as **Exhibit 68**. I have found this diagram so useful that I have included it in every edition of
6 my textbook.

7 19. Its eight spokes describe typical batterer behaviors: Using Coercion and Threats;
8 Using Intimidation; Using Male Privilege¹; Using Economic Abuse; Using Children; Denying,
9 Minimizing, and Blaming; Isolation (and Jealousy); and Using Emotional Abuse. Not all of these
10 spokes are found in every relationship where domestic violence is taking place, but typically the
11 abuser’s behavior will fit at least several of the spokes.

12 20. The coercion and threats spoke involves the batterer making or carrying out threats
13 to do something to hurt the victim, such as assaulting her, killing her, hurting her family,
14 threatening to report her to CPS, or to call the welfare or immigration authorities and make
15 allegations that will get her in trouble, maybe get her deported. Typical threats also include trying to
16 get the victim to get the prosecutor to drop charges against the abuser. It can also involve making
17 the victim do illegal things.

18 21. The Minimizing, Denying, and Blaming spoke has three parts. Minimizing involves
19 making light of the abuse and not taking the victim’s concerns about it seriously (e.g., “You are
20 overreacting, it’s not that big a deal”, it was just a small bruise). Denying means saying or acting
21 like the abuse did not happen (“No, you caused that bruise yourself,” or “I did not abuse her.”). The
22 blaming part consists of telling the victim it was her own fault that this happened to her, that the
23 batterer had to respond abusively because the victim provoked him, and that she should have known
24 not to do whatever behavior it was that made him upset.

25
26 ¹ The Wheel was developed in the context of heterosexual relationships, in which it is much
27 more likely that the abuser is male and the victim female, although the converse is sometimes the
28 case. There are also versions of the Wheel describing abuse in same-sex relationships.

1 22. Victims tend to start believing this after hearing it from their partners over time, and
2 start to minimize, deny, and blame themselves for what the batterer has done.

3 23. The spoke called Using Children includes making the victim feel guilty about the
4 children, telling her she is a bad parent, threatening to hurt the children or take them away from the
5 victim, and using the children to relay messages after the adults are separated, using visitation to
6 harass the victim. With most mothers, being close to their children is the most important thing in
7 their life, so if the batterer threatens to take the children, this is a huge threat.

8 24. The spoke called Intimidation includes making the victim afraid by using looks,
9 actions, gestures, smashing things, destroying the victim's property, abusing pets, and displaying
10 weapons. The batterer may hit the wall or door near the victim, implying that right now he's hitting
11 the wall but next time it might be her face.

12 25. The spoke called Using Emotional Abuse is the only one found in every domestic
13 violence case I have ever worked on. It includes putting the victim down, making the victim feel
14 bad about herself, calling her names, making her think she is crazy, playing mindgames, humiliating
15 her, and making her feel guilty. This erodes the victim's self-esteem until it can be hard for her to
16 stand up for herself, and starts to believe she is not smart, capable, beautiful, etc., and instead
17 believes she has to do whatever her partner says.

18 26. Using Isolation, another spoke, includes controlling what the victim does, who she
19 sees and talks to, what she reads, where she goes, limiting her outside involvement, and using
20 jealousy to justify actions.

21 27. Using Male Privilege is another spoke. It includes treating the victim like a servant,
22 making all the big decisions, acting like the "master of the castle," and being the one to define
23 men's and women's roles.

24 28. Finally, Using Economic Abuse includes preventing her from getting or keeping a
25 job, making her ask for money, giving her an allowance, taking her money, and not letting her know
26 about or have access to family income.

27 29. Typically perpetrators of domestic violence utilize many of the spokes and do so
28 frequently before they resort to physical abuse. One of the points of the Wheel is to illustrate that

1 physical abuse is merely one of the many ways in which batterers act abusively toward their
2 partners, and that physical abuse is not an end in itself. Instead, the goal of the abuser is the exertion
3 of power and control by whatever means are necessary. See Lundy Bancroft and Jay G. Silverman,
4 *The Batterer as Parent* (Sage 2002), excerpted and attached hereto as **Exhibit 69**, at page 5 (“The
5 overarching behavioral characteristic of the batterer is the imposition of a pattern of control over his
6 partner.”).

7 30. Some of the psychological reasons that batterers desire to exert power and control
8 over their partners include an intense fear of being left, the need to be reassured of their centrality
9 due to insecurity, a narcissistic personality, rigid concepts of proper gender roles in a relationship,
10 and others. These may differ from batterer to batterer.

11 **TYPICAL BEHAVIORS AND ATTITUDES OF BATTERERS**

12 31. In addition to engaging in a number of the behaviors listed as spokes in the Power
13 and Control Wheel, batterers also commonly exhibit a Dr. Jekyll/Mr. Hyde behavior pattern. The
14 perpetrator may be charming, witty, funny, and friendly in some settings, especially in front of third
15 parties or in public settings, but suddenly switch to becoming intimidating, aggressive,
16 domineering, and violent, typically inside the home. This behavior often causes people who know
17 only the first aspect of the perpetrator to disbelieve or minimize the victim’s accounts of abuse that
18 took place in private.

19 32. For example, before he was arrested and charged with the murders of his wife,
20 Nicole Brown Simpson, and her friend, Ronald Goldman, O.J. Simpson was a popular and well-
21 liked athlete, whose public face was very different from his private one. The general public was
22 shocked to hear that he had beaten Nicole several times in the past, that she had written about this in
23 a diary, and that she hid photos of her injuries in a safe deposit box, as evidence in case he killed
24 her. This is Jekyll/Hyde behavior.

25 33. Another typical behavior of batterers is to be abusive in a series of intimate partner
26 relationships. This is evidence that the domestic violence stems from something internal to the
27 batterer, not from the specific relationship. This characteristic is described in a book I co-authored
28 with Peter G. Jaffe and Samantha E. Poisson, *Child Custody and Domestic Violence: A Call for*

1 *Safety and Accountability* (Sage 2003) at page 32: “Violent fathers may move on to new partners
2 and continue to inflict abuse if there has been no meaningful intervention or accountability. One
3 research study found that 58% of male offenders perpetrated violence against their new partners
4 after the dissolution of a previously abusive relationship.” A true and correct copy of the title page
5 and table of contents of my book and an excerpt providing additional information on this topic is
6 attached hereto as **Exhibit 70**. Bancroft & Silverman concur: “Batterers tend to abuse more than
7 one woman over the course of their adult relationships...The high degree of conflict in his current
8 relationship is probably the result of his abusiveness rather than its cause, and if he replicates these
9 dynamics in future relationships, his children may be at risk.” See Exhibit 69 at page 19.

10 34. It is also typical for batterers to see themselves as victims rather than as perpetrators
11 of abuse. They tend to blame others, such as their partners, perceived enemies, and the legal system
12 for their own actions and the consequences of these actions. Batterers tend to hold beliefs that
13 relieve them of responsibility for their abusiveness, and exhibit patterns of justifying their actions
14 and making excuses. They also tend to shift responsibility for the effects of their actions,
15 externalizing this to others. See Exhibit 69 at page 17.

16 35. Batterers tend to have a strong sense of entitlement, seeing their needs as paramount
17 over others’ needs. They tend to be grandiose, expect to be the center of attention, and expect to
18 have others in the family meet their needs. They are often preoccupied with their own needs and
19 thus not available to their children. Some batterers show tremendous emotion when speaking to
20 others about their children, yet quickly lose interest when their children’s needs inconvenience
21 them. Exhibit 69 at pages 9-10.

22 **IMMIGRANT VICTIMS MARRIED TO U.S. CITIZENS**

23 36. Since batterers tend to feel a need to control their partners and want to hide their own
24 abusive actions, they also typically will use the partner’s immigration status to keep the partner
25 from reporting abuse to the authorities. See **Exhibit 71** at page 176, excerpt from Michele de
26 Casas, *Protecting Hispanic Women: the Inadequacy of Domestic Violence Policy*, 24 *Chicano-*
27 *Latino L. Rev.* 56 (2003).

1 37. As mentioned above in the discussion of the Power and Control Wheel, if the
2 batterer is a U.S. citizen or lawful permanent resident and the partner is not, it is typical for the
3 batterer to threaten to have the victim deported if s/he reports the abuse to authorities or acts in
4 other ways contrary to the batterer’s wishes. This threat is usually based on alleging that the
5 marriage is a sham, entered into so the immigrant can get a “green card” (lawful permanent
6 residence).

7 38. If there are U.S. citizen children involved, the effect of deportation of the victim is to
8 separate the immigrant parent from the child or children. Such separation is so unthinkable and
9 painful to most parents, especially mothers, that the abused partner will usually do almost anything
10 to prevent it.

11 39. The threat to tell ICE that the marriage is a sham is most effective during the period
12 in which the immigrant has only conditional residence status, typically the first two years of the
13 marriage. Even though immigration law provides that abused immigrant spouses can file to
14 terminate their conditional residence status at the end of the two years without the abuser’s
15 assistance, many immigrants are not aware of this and believe the abuser’s statements that he can
16 have her deported.

17 40. Of course, immigrants without lawful permanent residence status also typically have
18 much more trouble finding employment in the U.S. that could support themselves and their
19 children. Batterers will also typically exploit this situation, reminding their partners that the batterer
20 is the sole source of income for the family, so should not be crossed.

21 **BATTERERS WHO ARE LAW ENFORCEMENT OFFICERS**

22 41. Batterers who are also law enforcement officers present more danger to their partners
23 than do other batterers. These batterers typically use their status as law enforcement officers to
24 control and intimidate their partners, reminding the victim that calling the police or sheriff’s
25 department will be futile, as the other officers will not intervene. Batterers who are law enforcement
26 officers also tend to threaten to use their connections with others in law enforcement, prosecutors,
27 and judges to prevent charges from being filed against them or to get such charges dismissed.
28

1 42. Batterers who are law enforcement officers have also been trained in how to subdue
2 and control people physically. They have access to firearms and have been trained in how to use
3 them. The presence of firearms in a home where domestic violence is taking place not only greatly
4 increases the chance of the death of one of the family members, but may also be used to intimidate
5 the victim partner, who is often afraid the abuser will get out his gun(s) if the victim does not
6 comply with the abuser's demands. See **Exhibit 72**, Susan B. Sorenson, Firearm Use in Intimate
7 Partner Violence, 30 Eval. Rev. 229 (2006).

8 43. At the same time, batterers who are law enforcement officers know they will
9 probably lose not only their current jobs, but their entire careers, if convicted of a domestic violence
10 crime or restrained by a domestic violence protective order. Given this knowledge, such batterers
11 typically will tell the victim partner that if the abuse is reported to authorities, the victim will be
12 responsible for the consequences, and that these will include loss of family income.

13 44. Because the problem of domestic violence by law enforcement officers is so
14 significant, the International Association of Chiefs of Police has developed a policy for dealing with
15 it. This is reprinted in my textbook, *Domestic Violence Law* at 770, attached hereto as **Exhibit 73**.
16 Many local jurisdictions around the country have adopted such policies. San Francisco is in the
17 process of doing so.

18 **COMMON MYTHS AND MISPERCEPTIONS ABOUT DOMESTIC VIOLENCE**

19 45. The general public believes many myths and misperceptions about domestic
20 violence. These include the beliefs that domestic violence is rare, not serious, mutual, and caused by
21 poor communication or by some other aspect of the relationship. The reality is that domestic
22 violence is an epidemic in the U.S., with 25% of surveyed women and 7.5% of surveyed men
23 reporting that they had been assaulted and/or sexually assaulted by a current or former partner at
24 some point. See Patricia Tjaden and Nancy Thoennes, Extent, Nature and Consequences of Intimate
25 Partner Violence: Findings from the National Violence Against Women Survey, NIJ and CDCP,
26 2000, surveying 8000 women and 8000 men, excerpted in my textbook, *Domestic Violence Law*, at
27 108 and attached hereto as **Exhibit 74**. The researchers stated that this means there are
28

1 approximately 4.9 million women being physically and/or sexually assaulted each year in the U.S.
2 by an intimate partner. Few other crimes are so widespread..

3 46. Another myth is that domestic violence encompasses only physical abuse, so that
4 verbal abuse or other types of controlling behavior, such as falsely imprisoning the partner, are
5 inconsequential. In contrast, Tjaden and Thoennes found that women whose partners were verbally
6 abusive were the most likely to be victimized physically, and that violence perpetrated by intimates
7 is usually part of a systematic pattern of dominance and control. Non-physical abuse is also very
8 damaging to victims: a majority of battered women report that the psychological abuse that they
9 suffer has a more severe impact on them than the physical violence. See Exhibit 69 at page 5,

10 47. Many people also falsely believe that domestic violence has not really occurred
11 unless there are serious injuries, such as broken bones. In fact, domestic violence encompasses
12 financial and emotional abuse as well as physical abuse, and the trauma from these can be great.
13 Additionally, we also know that domestic violence tends to repeat and escalate from minor
14 (slapping, pushing) to very serious, even lethal levels, and that sometimes the rate of escalation is
15 unpredictable.

16 48. Another myth is that an incident of violence in an intimate partner relationship is
17 usually a one-time event. In fact, Tjaden and Thoennes found that women who were physically
18 assaulted by an intimate partner averaged 6.9 physical assaults by the same partner over the course
19 of the relationship. Because victims tend to hide the abuse, it is typical for there to be several
20 physical assaults before the problem comes to the attention of the police.

21 49. Many people mistakenly believe that domestic violence happens only in
22 communities of color or in poor and uneducated communities. Similarly, many people believe that
23 women who are independent, professional, and well educated cannot be victims of domestic
24 violence. In fact, battered women are found in all races, ethnicities, religions, and classes.

25 50. Another myth is that battered women are always timid and fearful. In fact, studies
26 have shown that most women respond to violence and abuse by resisting it, actively or passively.

27 51. Another myth is that women who are being battered call the police every time there
28 is an incident of domestic violence or otherwise document each incident. In fact, domestic violence

1 is very underreported to the police. Instead, battered women's attempts to stop, escape, and avoid
2 the violence are influenced by many factors and often include hiding the abuse, compliance, and
3 telling family or friends, rather than calling the police.

4 52. The general public also often mistakenly believes that victims often exaggerate or
5 fabricate stories about being abused (perhaps to gain an advantage in a custody fight), or that
6 victims provoke abuse. In fact, victims of domestic violence are much more likely to deny or
7 minimize the abuse. Reasons for this include shame, embarrassment, feeling they are responsible
8 for the abuse, wanting to keep the family together, feeling that they still love the batterer, fear of
9 reprisal, wanting a father for their children, financial dependence on the abuser, fear of deportation,
10 and others.

11 53. Another myth is that when the abuser apologizes the abuse will stop. However, as
12 described above in the section on the Cycle of Violence, apologies are a typical example of the
13 honeymoon phase, and the abuse is very likely to repeat and escalate unless the abuser obtains long-
14 term, in-depth intervention.

15 54. Another myth is that victims leave after the first incident and do not reunite with
16 their abusers. In fact, there are many reasons that victims of domestic violence often decide to
17 continue the relationship with the batterer. For example, victims who have children with the batterer
18 may decide to keep them united with the other parent for the sake of the children or to obtain
19 financial or non-financial support from the parent.

20 VICTIM RESPONSES TO DOMESTIC VIOLENCE

21 22 55. While victims of domestic violence vary in their responses to abuse, they also exhibit
23 some typical patterns of behavior. In addition to the responses outlined above, these include trying
24 to get the batterer to go to couples counseling to fix the relationship, in hopes that he will revert to
25 the charming and romantic man he was at the beginning of the relationship (see Exhibit 65, Cycle of
26 Violence, supra). Unfortunately, joint counseling is usually contraindicated in relationships where
27 one partner has physically abused the other, as anything the victim discloses in the counseling may
28 be used as an excuse to further abuse her afterward.

1 56. Another typical response of victims to abuse is feeling embarrassed and ashamed
2 because of the batterer’s actions, and at times, accepting responsibility for the abuse. This happens
3 in part because the batterer tends to tell the victim the abuse is her fault, so if she would just not talk
4 back, bring up subjects that make him upset, etc., it would not happen. See Minimization, Denial,
5 and Blaming spoke of the Power and Control Wheel, Exhibit 68. This self-blame by victims also
6 happens because in heterosexual U.S. society the woman is more often the one who is seen as
7 responsible for making the relationship work.

8 57. Another typical behavior of victims of domestic violence is publically aligning
9 herself or himself with the batterer, and recanting, minimizing, or denying that abuse occurred. It is
10 estimated that approximately 78% of domestic violence victims recant or become uncooperative
11 with the prosecution after the time of their initial accounts. (Maureen McLeod, Victim
12 Noncooperation in the Prosecution of Domestic Violence: A Research Note, 21 Criminology 395
13 (1983).) This figure holds true for first-time victims of abuse as well as victims of ongoing abuse,
14 with about 80% of first-time victims recanting their reports of the abuse. *People v. Gomez* (1999)
15 72 Cal.App.4th 405, 411.

16 58. Victims of domestic violence recant their initial reports of abuse for many reasons
17 that have nothing to do with their trustworthiness or with whether the event occurred. For example,
18 victims may fear reprisals from the batterer if the prosecution continues, due either to specific
19 threats from the batterer or from the victim’s knowledge of the batterer’s general patterns of
20 behavior. Other reasons for recantation and publically aligning oneself with the batterer, like
21 reasons for hiding the abuse mentioned supra, include love, hope that the abuser will change,
22 financial dependence, immigration status dependent on the abuser, wanting to keep the family
23 together for the sake of the children, family or religious pressure, and embarrassment and shame.

24 **LAW ENFORCEMENT RESPONSES TO DOMESTIC VIOLENCE**

25 Mandatory Reporting

26 59. California Penal Code section 11160(a)(2) mandates that a health practitioner
27 treating a patient for an injury the practitioner knows or reasonably suspects is caused by domestic
28 violence must immediately report this to law enforcement. Thus, in many cases a criminal

1 investigation is started because a doctor has notified the police, whether or not the patient agrees
2 with this report being made.

3 Arrest Encouraged if Probable Cause

4 60. California Penal Code section 13701 (a) requires that every law enforcement agency
5 adopt written policies for officers' responses to domestic violence calls reflecting that domestic
6 violence is alleged criminal conduct. The policies are required to encourage the arrest of domestic
7 violence offenders if there is probable cause that an offense has been committed.

8 Investigation and Prosecution Based on Evidence

9 61. Current policies in most California law enforcement agencies and prosecutor's
10 offices decree that the victim's wishes regarding criminal prosecution may be considered but do not
11 determine how the case will proceed. Instead, law enforcement and prosecutors are trained in
12 "victimless prosecution," in which they seek evidence regarding whether a crime occurred, and if it
13 can be proven beyond a reasonable doubt, file criminal charges against the batterer.

14 62. The reason for such policies is that domestic violence, like other crime, is an offense
15 against the People of the State of California, and affects the entire community. Additionally, in
16 many instances the batterer intimidates the victim into not participating in the criminal case. This is
17 why criminal courts are mandated to consider issuing protective orders in domestic violence cases
18 on their own motion; these orders mandate that the abuser stay away from the victim. See California
19 Penal Code section 136.2.

20 Emergency Protective Orders

21 63. Emergency Protective Orders (EPOs), authorized by California Family Code section
22 6240 et seq, are routinely requested by law enforcement in domestic violence cases. These orders
23 are issued by on-call judges 24 hours a day, 7 days a week, and last for 5-7 business days. The order
24 typically excludes the batterer from the household and prohibits contact with the victim and any
25 children. It is also illegal for anyone subject to an EPO to possess a firearm, so upon service the
26 restrained person is mandated to turn over any firearms to law enforcement or sell them to a
27 registered gun dealer.

FIREARMS AND DOMESTIC VIOLENCE

1
2 64. Firearms are much more common in homes where battering has occurred than in the
3 general population. In 1992, 62% of all murder victims killed by their partners or ex-partners were
4 shot to death, with handguns used in three quarters of these homicides. And, as mentioned above,
5 even if the abuser does not actually shoot or threaten to shoot the victim, the mere presence of a
6 firearm in the home is often very intimidating to victims of domestic violence.

7 65. In response to this problem, the U.S. Congress and the California legislature have
8 passed laws prohibiting or restricting batterers from possessing firearms. Federal law, 18 U.S. Code
9 section 922, makes it a crime to possess a firearm where the suspect is subject to a domestic
10 violence restraining order (subsection (g)(8)) or has been convicted of a misdemeanor crime of
11 domestic violence (subsection (g)(9)).²

12 66. California has many statutes prohibiting batterers from possessing firearms.

13 67. For example, California Penal Code section 18250 mandates law enforcement
14 officers to seize any firearms found at the scene of a domestic violence incident involving a threat to
15 human life or a physical assault. Section 18265 requires such firearms to be held at least 48 hours.
16 Section 18400 provides that law enforcement can file a petition with the court within 90 days
17 requesting that they keep the firearm if they believe the victim would be in danger were the firearm
18 returned. Section 18410 provides for a court hearing to determine this danger.

19 68. Once criminal charges are filed, other firearm prohibitions apply. California Penal
20 Code section 136.2, under which criminal courts issue protective orders in domestic violence cases,
21 states: “The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a
22 firearm while the protective order is in effect.” This section also requires anyone subject to such an
23 order to relinquish all his or her firearms to law enforcement or sell them to a licensed gun dealer
24 within 24 hours, and provide proof of this to the court. It also prohibits such persons from acquiring

25
26 ² The U.S. Supreme Court has interpreted the term “misdemeanor crime of domestic
27 violence” in 18 U.S.C. section 922 (g)(9) to include crimes not called “domestic violence” in state
28 statutes, as long as force is an element of the crime and the parties are in an intimate partner
relationship. See *U.S. v. Hayes*, 555 U.S. 415 (2009).

1 any new firearms. The California Family Code also has prohibitions on people subject to domestic
2 violence restraining orders from possessing firearms. Section 6389 is very similar to California
3 Penal Code section 136.2 in terms of relinquishment of firearms. Additionally, Subsection (h) of
4 section 6389 provides that before a family law court makes an exception allowing a peace officer to
5 carry a firearm as part of his or her employment, it must order a psychological examination to
6 determine whether this would pose a threat of harm. The court may also order the peace officer to
7 enter into counseling or other treatment to deal with any propensity for domestic violence.

8 **BATTERER'S INTERVENTION PROGRAMS IN CALIFORNIA**

9 69. Domestic violence counseling or treatment programs ordered by the court are
10 referred to as batterer's intervention programs (BIPs), defined in California Penal Code section
11 1203.097. Prior to the enactment of this statute, California law provided for diversion in domestic
12 violence misdemeanor cases, whereby if the batterer went to some sort of counseling and did not
13 reoffend within a specified period, the charges were dismissed. (California Penal Code section
14 1000.6) A California State Auditor General's report found that this system was ineffective in
15 addressing the epidemic of domestic violence, as it was virtually impossible to prosecute the
16 original offense and abusers tended to re-offend at high rates. See *The Administration Of The State's*
17 *Domestic Violence Diversion Program Could Be Improved: Report (1990)*, attached hereto as
18 **Exhibit 75**. Additionally, the old diversion policy was ineffective because it was based on the myth
19 that batterers "lose control" when they act abusively toward their victims, and thus merely need to
20 learn to take time-outs when they feel upset. In fact, research has shown that most batterers are very
21 much in control when they act abusively. The old diversion approach was also based on the
22 antiquated belief that domestic violence is not a real crime and does not belong in the criminal
23 justice system. Notably, O.J. Simpson was ordered to undergo counseling when he assaulted his
24 wife, Nicole Brown Simpson, prior to killing her. According to media reports, his counseling
25 consisted of a couple sessions with a therapist over the telephone.

26 70. As a result of these serious problems with diverting domestic violence cases, the
27 legislature repealed Penal Code section 1000.6 in 1995, replacing it with Penal Code section
28 1203.097. In doing so, it stated: "Diversion programs for perpetrators of domestic violence, while

1 worthwhile in intention and sometimes effective, are inadequate to address domestic violence as a
2 serious crime.” The current statute requires a court sentencing a domestic violence offender to
3 probation to impose a minimum three-year term of probation and require attendance at a 52-week,
4 certified BIP as a mandatory term of probation. In contrast to “anger management” approaches
5 prevalent under the old diversion system, the goal of BIPs is to change the typical underlying belief
6 system of batterers, as well as their behavior. Courts are explicitly authorized by the statute to
7 require more sessions beyond the initial year if they find that the defendant has not demonstrated an
8 understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in
9 an intimate relationship. The defendant must demonstrate acceptance of full responsibility for the
10 abusive behavior perpetrated against the victim, and understand and practice positive conflict
11 resolution skills. The defendant is not to blame, degrade, or commit acts that dehumanize the victim
12 or put the victim’s safety at risk, such as stalking, threatening, or battering the victim.

13 71. Another difference between the old law and the current one is the length of time
14 batterers must go to the program. The diversion law did not specify any length of time, and many
15 programs lasted only 12-18 weeks. In contrast, section 1203.097 mandates that defendants must
16 attend at least 52 weeks of weekly group sessions. Other differences are that BIPs must be certified
17 through the county’s Adult Probation office and that the facilitator of the BIP must report to the
18 court at least every three months regarding how the probationer is progressing.

19 72. The BIP is required to report any new offenses to the court, which can revoke
20 probation and remand the defendant into custody.

21 73. Across California, advocates against domestic violence, prosecutors, probation
22 officers, judges, and legislators have worked hard to craft a meaningful system to try to stop or
23 diminish domestic violence through the use of BIPs. This is clear from the State Auditor General’s
24 report, the legislative history of Penal Code section 1203.097, and the many refinements to this
25 code section over the years.

26 **RESOLVE TO STOP THE VIOLENCE PROGRAM IN SAN FRANCISCO JAIL**

27 74. San Francisco’s extensive efforts to combat domestic violence are documented in
28 reports by the Commission on the Status of Women, the Family Violence Council, and other bodies.

1 See exhibits attached to the declarations of Interim Sheriff Vicky Hennessy, Wendy Still and Paul
2 Henderson. The Sheriff's Department has been at the forefront of efforts to rehabilitate violent
3 offenders with the creation and success of the Resolve to Stop the Violence Program (RSVP) in the
4 county jail, which includes a very successful BIP.

5 75. Success rates for BIPs vary greatly across the U.S. and across California and are
6 sometimes not very promising. Remarkably, an evaluation by a researcher from the Harvard
7 Medical School found that re-arrest rates for crimes of violence one year after release from the San
8 Francisco jail were 42.4%, 50.7%, and 79.7% lower for offenders completing 2, 3, or 4 months or in
9 RSVP, respectively. See Hennessy Dec. Exhibits 24 and 25. It is obvious from these results why
10 RSVP has won multiple awards for its work in stopping domestic violence, and why it is crucial
11 that this program continue if San Francisco wants to lower its rates of domestic violence.

12 **CHARACTERISTICS OF REFORMED BATTERERS**

13 76. Reformed domestic violence offenders, such as many of the RSVP graduates who
14 have so dramatically lowered their rates of re-arrest for violent crimes, have changed both their
15 former attitudes and their behaviors in regard to intimate partner abuse. Attitudes and behaviors of
16 batterers who have reformed include being able to describe exactly what they did and why this was
17 wrong, and being able to articulate the effects of this behavior on others, including children who
18 may have witnessed it or were otherwise impacted by it.

19 77. Reformed batterers are able to articulate why they acted abusively, and the origin of
20 this problem in their lives, usually beginning with role models from childhood. Reformed batterers
21 also take responsibility for inflicting past abuse, both physical and non-physical, are truly and
22 consistently remorseful, and accept the consequences of their abusive behavior.

23 78. They work hard, sometimes for years, to make amends, which includes making
24 victims and others whole, financially and emotionally. Reformed batterers are able to articulate
25 what their plans are for no longer acting this way; these may include addressing the origins of any
26 substance abuse, continuing to participate in a BIP beyond the mandated time, participating in
27 therapy, speaking in public about their responsibility for the crimes they committed and the effects
28 of those crimes, etc.

1 Accordingly, he remained in constructive possession of the weapons, which is precisely what an
2 Emergency Protective Order, or any domestic violence restraining order, is designed to prevent.

3 84. Mr. Mirkarimi, through his attorney, also objected to the prosecution's request that
4 the court order the firearms transferred to the San Francisco Police Department, though when asked
5 why, the attorney gave no reason except that the transfer was not necessary. Judge Susan Breall,
6 who is assigned to the San Francisco Domestic Violence court, did not hesitate to enter the
7 requested order.

8 85. Mr. Mirkarimi's plea involved the prosecution dismissing the original three charges
9 of domestic violence assault (Penal Code section 273.5), child endangerment (Penal Code section
10 273a(b)), and dissuading a witness (Penal Code section 136.1(b)(1)), and substituting a fourth and
11 new charge of false imprisonment (Penal Code section 236), to which Mr. Mirkarimi pled guilty.
12 (Transcript of 3/12/12 hearing)

13 86. While Mr. Mirkarimi has said repeatedly in many public events that he did not plead
14 guilty to domestic violence, in fact he did.

15 87. False imprisonment of one's spouse during a heated argument in which that spouse is
16 bruised is a type of domestic violence. Furthermore, the terms of Mr. Mirkarimi's sentence are
17 dictated by California Penal Code section 1203.097, entitled "Terms of probation for crime of
18 domestic violence." These terms include 3 years probation, a \$400 domestic violence fine,
19 community service, a stay-away order from the victim, and a 52-week batterer's intervention
20 program (BIP). (Transcript of 3/12/12 hearing re guilty plea, pages 3-4; Transcript of 3/19/12
21 sentencing hearing, pages 3-4) Also significant is that section 1203.097 defines domestic violence
22 as based on the relationship between the defendant and the victim, not on the code section for which
23 the defendant is found guilty. This relationship is defined in California Family Code section 6211,
24 which states: "Domestic violence is abuse perpetrated against any of the following persons: (a) A
25 spouse or former spouse..."

26 88. The statements by Eliana Lopez are also consistent with those of a victim of
27 domestic violence.

1 • *Ms. Lopez's Statements on Video Recording 1/1/12*

2 89. In the video recording created 1/1/12, Ms. Lopez is tearful, which is typical. She says
3 this is the second time this is happening, which is typical in that often victims hide the first incident
4 of physical abuse but may ask for help if they see things repeating, escalating, or affecting the
5 children.

6 90. Her statement that she told her husband she wanted to work on the marriage and that
7 she has been telling him they need help is also typical of a victim of domestic violence, as described
8 above. The implication of her statement "I have been telling him we need help," is that she has been
9 telling him this for some time, which fits with her earlier statement in the video recording that this is
10 the second time "this" has happened. Given that Ms. Lopez points again to the bruise when she says
11 that this is the second time this has happened, it is clear that by "this" she means another bruise or
12 some other physical abuse.

13 91. Her statement that she is afraid that Mr. Mirkarimi is going to take Theo away from
14 her is also typical of a victim of domestic violence, as victims are often threatened with this. Ms.
15 Lopez also states that Mr. Mirkarimi told her he is very powerful and that he can do it, i.e., take
16 Theo from her. This is also typical of a domestic violence situation, where the batterer brags about
17 his power.

18 92. One of the many reasons why Mr. Mirkarimi's assertion that he is a very powerful
19 man may have caused Ms. Lopez so much fear is that as of Dec. 31, 2011, she reportedly did not
20 have lawful permanent residence status (a "green card") in the U.S. On April 29, 2012, Mr.
21 Mirkarimi stated in an interview on KGO Radio that his wife had acquired such status "about a
22 month and a half ago." He made similar statements in other public appearances and to other news
23 sources. Before acquiring lawful residence status, Ms. Lopez would have had only conditional
24 residence for approximately two years, a much more tenuous immigration status. As described
25 above, many U.S. citizen abusers tell their victim partners during the period of conditional residence
26 that the abuser can have the victim deported at any time if she does not comply with the abuser's
27 desires or angers him.

1
2 • *Ms. Lopez's Statements to Ivory Madison*

3 93. Ms. Madison and Ms. Lopez were neighbors, friends, and mothers of young children.
4 Ms. Madison and her daughter were enrolled in a baby dance class that Ms. Lopez taught.
5 (Declaration of Ms. Madison to Ethics Commission, paragraph 4) The mothers texted, called, and
6 emailed each other frequently, went places together, and talked in cars and at Ms. Madison's house.
7 (Id., emails between Ms. Madison and Ms. Lopez) Over the second half of 2011 they confided in
8 each other several times weekly about their marriages and families. (Madison Declaration,
9 paragraph 6 and emails between Ms. Madison and Ms. Lopez)

10 94. Near the end of 2011, one of the things Ms. Lopez reportedly told Ms. Madison was
11 that she hoped that now that the election was over, maybe Mr. Mirkarimi would finally go to
12 counseling with her, and that she hoped the two of them could work out the problems in the
13 marriage. (Id.) Ms. Lopez reportedly told Ms. Madison that during his campaign, Ms. Lopez
14 thought Mr. Mirkarimi was being a bad husband and father because of the stress of the impending
15 election, but that after he was elected Sheriff, he became worse at home, as now he thought he was
16 very important. (paragraph 7) Ms. Lopez reportedly stated that after the election, her husband was
17 acting like he could do whatever he wanted and he tell his wife to do whatever he wanted because
18 he was not feeling vulnerable anymore. (Id.) This is typical behavior of a batterer, as they tend to be
19 controlling and self-centered.

20 95. ~~Ms. Madison stated that months earlier Ms. Lopez had described behavior by Mr.~~
21 ~~Mirkarimi that Ms. Madison considered psychological abuse. (Id.) Ms. Madison said that sometime~~
22 ~~in 2011 Ms. Lopez had told her that Mr. Mirkarimi would not put Ms. Lopez's name on the house~~
23 ~~or on the bank accounts, would not let her control any of the finances, would not let her do the~~
24 ~~grocery shopping, and would not take Ms. Lopez and Theo to restaurants. (paragraphs 7 and 8) Ms.~~
25 ~~Lopez also reportedly stated that she had to beg Mr. Mirkarimi for twenty dollars to feed herself and~~
26 ~~Theo. (paragraph 7) This is an example of Economic Abuse, one of the spokes of the Power and~~
27 ~~Control Wheel.~~

1 96. Ms. Lopez also reportedly told Ms. Madison one day, presumably in 2011, that she
2 had just realized that she did not have to do everything her husband said. (paragraph 9) She stated
3 that this had not occurred to her previously. (Id.) This is an example of a victim of abuse at first
4 being psychologically controlled by the abuser, and then attempting to resist that control.

5 97. On 1/1/12, Ms. Lopez reportedly told Ms. Madison that while the family was in the
6 car the day before, going to a restaurant, she mentioned that she wanted to go home briefly to
7 Venezuela after the inauguration on 1/8/12, and that she did this gingerly because she knew Mr.
8 Mirkarimi was sensitive about it. (paragraph 11) This is a typical example of a victim of domestic
9 violence trying to bring up a topic that is important to her, and waiting until it appears that her
10 partner is in a good mood. Since it was unusual for Mr. Mirkarimi to take the family to a restaurant,
11 this indicated to Ms. Lopez that he was in a good mood that day. (Id.) Ms. Lopez’s waiting to talk to
12 Mr. Mirkarimi about this sensitive subject until he was in a good mood is also an example of the
13 Tension Building phase of the Cycle of Violence, in which the abused partner is “walking on
14 eggshells,” trying not to upset the abuser.

15 98. Ms. Madison reported that Ms. Lopez told her that in response, Mr. Mirkarimi
16 started screaming expletives, including “fuck you” several times, and accused his wife of trying to
17 take their son away from him. (Id.) This is an example of Dr. Jekyll/Mr. Hyde behavior, where the
18 batterer quickly switches from being happy and relaxed to being angry and scary. Notably,
19 Christina Flores, Mr. Mirkarimi’s ex-girlfriend, also described Mr. Mirkarimi as having a
20 Jekyll/Hyde personality in her testimony in court. Mr. Mirkarimi’s reaction is also an example of a
21 batterer interpreting his partner’s request as a personal attack on him. Batterers often interpret things
22 in this manner, as they tend to be very self-centered. Additionally, this interchange illustrates both
23 the Emotional Abuse and Using Children spokes on the Power and Control Wheel.

24 99. Ms. Lopez told Ms. Madison that she started recording Mr. Mirkarimi’s behavior in
25 the car with her phone. (Id.) Ms. Lopez further told her that Mr. Mirkarimi then turned the car
26 around and said he was not taking them anywhere. (Id.) Ms. Madison reported that Ms. Lopez
27 responded by asking her husband calm down (Id.). One of the strategies that victims of domestic
28

1 violence employ to try to stop their abusers from verbally and physically abusing them, especially
2 in front of the children, is to try to calm them.

3 100. According to Ms. Madison, after the family left the car and returned to the house,
4 Ms. Lopez said Mr. Mirkarimi continued to be verbally abusive and was violent, pushing and
5 grabbing her repeatedly. (paragraph 12) Notably, he is much taller and heavier than she is. Ms.
6 Lopez reported that Mr. Mirkarimi slammed her against a wall while grabbing her arm and refused
7 to let go. (Id.) This was what caused the large bruise that Ms. Lopez showed Ms. Madison (Id.)
8 Theo was watching the whole thing, and was screaming and crying hysterically, according to Ms.
9 Lopez. (Id.) Ms. Lopez pleaded with Mr. Mirkarimi to stop, pointing out the effect this was having
10 on their son. (Id.) This is a typical strategy of a victim of domestic violence, who may try to get the
11 batterer to stop the abuse for the children's sake.

12 101. Ms. Madison also stated that during this time, Ms. Lopez was speaking loudly and
13 carefully, hoping a neighbor would hear her, realize that Mr. Mirkarimi was being inappropriate,
14 and call the police, though apparently none of the neighbors heard the altercation. (paragraph 14)
15 This is an example of help-seeking behavior of a victim of domestic violence who is in the midst of
16 being attacked. Ms. Lopez, like many victims of domestic violence, tried many ways to get her
17 abuser to stop that day.

18 102. Ms. Madison stated that Ms. Lopez told her the violence was so bad inside the
19 residence that she ran out into the street to get away from Mr. Mirkarimi. (paragraph 13) This is an
20 example of a victim of domestic violence trying another strategy for getting help and stopping the
21 abuse when earlier strategies are not working. Ms. Lopez reportedly told Ms. Madison that there
22 were witnesses outside, and that their son was present, screaming, and very upset. (Id.) Ms.
23 Madison said that Ms. Lopez reported that she was screaming to her husband something like, "Do I
24 have to call the police?" after which his demeanor changed, he saw that people were there,
25 apologized, and asked her to come into the house. (Id.) Some batterers, including those who are
26 themselves law enforcement officers, are very afraid of police involvement, so even a threat to call
27 them can interrupt a violent incident; apparently Mr. Mirkarimi is in this category. After trying
28

1 several unsuccessful strategies to get Mr. Mirkarimi to stop abusing her and traumatizing Theo, Ms.
2 Lopez's threat to call the police caused him to stop.

3 103. Notably, when Ms. Madison discussed with Ms. Lopez whether Mr.
4 Mirkarimi's apology was for hurting her, for traumatizing Theo, or made because of his fear of
5 police involvement, Ms. Lopez reportedly stated that he was just scared that she would call the
6 police, and that it was all about his career. (Id.) This focus on his own desires and needs at the
7 expense of others is a typical attitude of a batterer who has not reformed. His apologies after an
8 abusive incident are often merely an attempt to get the victim to stay in the relationship and not call
9 public attention to the abuse, typical of the first part of the honeymoon stage of the Cycle of
10 Violence.

11 104. Ms. Madison stated that Ms. Lopez told her this was the second time in 2011 that her
12 husband was physically abusive to her. (paragraph 16) Ms. Lopez told Ms. Madison how after the
13 first physical abuse, she had tried to get help from a friend in Venezuela who is a therapist. (Id.)
14 There is an allusion to earlier scary incidents in an email from Ms. Lopez to Ms. Madison on
15 3/10/11: "I just went back when Theo was 8 months old and how I was so scared, actually I'm still
16 scared ..." As described above, in the Cycle of Violence section, it is typical for the violence to
17 repeat and escalate. It is also typical for victims to leave and go back several times before they leave
18 for good.

19 105. Ms. Lopez reported to Ms. Madison that after she went back into the house, her
20 husband tried to convince her not to leave again and not to tell anyone, but that Ms. Lopez
21 responded that she was going to tell people. (paragraph 23) She told Ms. Madison that Mr.
22 Mirkarimi looked scared. (Id.) This is a clear example of typical behavior of a batterer, who is
23 trying to hide the abuse and trying to get the victim to do so as well. They are also in part 1 of the
24 honeymoon stage of the Cycle of Violence: he is trying to keep the victim in the relationship and
25 she is considering her options.

26 106. Ms. Madison said that Ms. Lopez came to her house the next morning, on 1/1/12
27 while Mr. Mirkarimi was in the shower (paragraph 22), burst into tears (paragraph 11), and showed
28

1 her the large bruise on Ms. Lopez’s arm, which Ms. Madison videotaped at the request of Ms.
2 Lopez. (paragraph 19)

3 107. During the visit, Ms. Lopez’s phone rang; Ms. Lopez told Ms. Madison that Mr.
4 Mirkarimi was trying to contact her but that she was not responding. (paragraph 22) Ms. Lopez told
5 Ms. Madison that Mr. Mirkarimi was concerned when he got out of the shower and found her gone,
6 as he was worried that Ms. Lopez was at Ms. Madison’s house, telling her what had happened.
7 (paragraph 22) Mr. Mirkarimi’s attempt to contact Ms. Lopez at that point is typical of how a
8 batterer would respond after an abusive incident when he fears the victim is telling someone about
9 the abuse.

10 108. Ms. Madison also stated that Ms. Lopez had thought about leaving the marriage, and
11 had already contacted a divorce lawyer. (paragraph 18). However, she told Ms. Madison that she
12 was afraid to leave the marriage because of Mr. Mirkarimi’s repeated threats to take Theo away
13 from her. (paragraph 15). This is a classic example of Using Children, a spoke on the Power and
14 Control Wheel.

15 109. Ms. Lopez asked Ms. Madison to help her find out more information about her
16 options, including hiring an immigration lawyer and talking to a domestic violence advocate, a
17 couple’s therapist, and the police. (paragraphs 18, 20, 21) Ms. Madison offered to let Ms. Lopez and
18 Theo stay with her and her husband if a lawyer advised that this was okay. (Id.) Ms. Lopez
19 suggested that one of them contact some local men who might influence Mr. Mirkarimi to stop his
20 abusive behavior and go into counseling, and they discussed how to get the men’s cell phone
21 information. (paragraph 20)

22 110. A few hours later, at 5:13 pm, Ms. Lopez emailed Ms. Madison: “Hello dear!! It was
23 so helpful to talk to you! Thank you so much! I feel better. I was talking with my dad as well, he is
24 so smart and helped me to get in my center again. Please, send me the inf from your therapist.
25 Looks like Ross is doing research too. I’m with Theo now. Don’t get to worry, the problems are
26 there to face them and solve them not for feel sorry. Love, Eliana” (Exhibit 48) This is an example
27 of a victim of domestic violence who is hopeful that her husband will change, and that counseling
28 will solve the problems in the marriage, which is a typical response to abuse.

1 111. The next morning (1/2/12) at 10:23 a.m., Ms. Lopez emailed Ms. Madison to tell her
2 the family was going on a trip to Monterey, and implying that the trip was both unplanned and
3 unwelcome. This trip is consistent with how batterers frequently act after an abusive incident – it
4 seems that Mr. Mirkarimi took his wife and child on a “vacation” to show the world that everything
5 was fine between them. It is also consistent with how batterers tend to act in the first part of the
6 honeymoon phase of the Cycle of Violence, being on their best behavior. Sometimes this stage of
7 the Cycle is called the “going to Disneyland” stage. (“Hi dear! We are leaving to Monterrey. Can
8 you believe it? Today, monday. I’m so tired. I feel like the character in the book you were talking
9 about: ‘my husband is taking me to a route trip!’ We are coming back tomorrow and Ross will work
10 again and I will have my life and peace back. I will call you!! Thank you! E”) (Exhibit 49) Ms.
11 Madison told Ms. Lopez on the phone that it appeared that Mr. Mirkarimi was isolating her, taking
12 her away from the people who know what he did and are supporting her. (paragraph 25 of
13 declaration) Ms. Madison was also concerned for Ms. Lopez’s safety, since Ms. Lopez alluded to
14 *The Stepford Wives* in this email, a book in which husbands kill their wives on romantic weekend
15 trips. (paragraph 26)

16 112. Shortly after that, Ms. Madison emailed Ms. Lopez with the result of inquiries she
17 had made about how someone should respond to domestic violence. (paragraph 27) She advised
18 Ms. Lopez to report every incident to the police. (Id.) She also explained that even women who are
19 smart, strong, educated and independent can be in marriages where domestic violence is taking
20 place because the marriages start out fine but then become like a pot of boiling water, with the
21 victim being the frog in the pot. She advised Ms. Lopez, “So if Ross won’t stop boiling you and
22 Theo alive, you’ll have to jump out.” (Exhibit 50)

23 113. Ms. Madison also wrote that she had read that the emotional abuse, not the physical
24 abuse, makes up 99% of the pain in a domestic violence situation. She wrote that Mr. Mirkarimi fit
25 the profile of an abuser perfectly, controlling the money, and trying to isolate her from friends and
26 family. Ms. Madison also commented that just because Mr. Mirkarimi was romantic and fun at
27 times did not mean he was not an abuser, and just because Ms. Lopez loves him, or he is “sorry,” or
28 she is not perfect, does not mean she is not being abused. (Id.)

1 114. A few minutes later, at 11:18 a.m., Ms. Lopez emailed Ms. Madison: “I am agree
2 with everything. I’m realizing how serious it is and I have to be very smart to protect Theo and
3 myself. I always believe in my instinct, and now I just would like to run away. Thank you so
4 much!! I will call you back. E” (Exhibit 50) This is an example of a victim of domestic violence
5 who is continuing to confide in a close friend about the abuse, which is typically the case shortly
6 after an abusive incident.

7 115. The following day, 1/3/12, during the trip, Ms. Lopez emailed Ms. Madison: “He
8 needs to feel that we were taking a vacation even though it is not true. But the most funny is that he
9 needs ta [sic] call everybody and says: ‘by the way, I’m in Monterrey in a family trip’ He got scared
10 and he needs to feel that he is trying even though the trip is just change the scenery.” (Exhibit 51)
11 She also wrote that Mr. Mirkarimi was being very nice on the trip, and letting her and Theo eat
12 whenever they wanted, which was different for them (“Ross fed us regularly without complain.”)
13 (Id.). This is an example of part 1 of the honeymoon phase in the Cycle of Violence, where the
14 abuser is trying to get the victim to stay in the relationship and the victim is considering doing that.

15 116. Ms. Madison stated that Ms. Lopez reported Theo hitting his mother in the face
16 during the trip to Monterey, and that Ms. Lopez was upset by this and told him not to do this.
17 (paragraph 28). It is typical for children, especially boys, to repeat the abusive behavior they have
18 seen their fathers model toward their mothers.

19 117. They got back from the trip late on 1/3/12, and Mr. Mirkarimi went out, so Ms.
20 Lopez had no child care that night. (paragraph 30) She went to meet with Ms. Madison early on
21 1/4/12, the day Mr. Mirkarimi went back to work. (paragraph 32) According to Ms. Madison, Ms.
22 Lopez asked her if Ms. Lopez could change the locks on the door, or if she was the one who had to
23 leave, and if she filed a complaint would she have to go to the police department or would they
24 come to the house. (paragraph 33) She also asked Ms. Madison once she filed a complaint if the
25 police would arrest Mr. Mirkarimi or would they just tell him about the complaint, in which case
26 she would be at home with Theo when he returned and confronted her, and said she could not
27 handle that unless the police stayed in the house to protect her. (Id.) These questions and statements
28

1 are typical of a victim of domestic violence who has not yet decided whether to stay with the abuser
2 after an incident of abuse (see Cycle of Violence description, supra).

3 118. A little after noon that day, Mr. Mirkarimi texted Ms. Lopez, saying he had left her a
4 voicemail but did not hear back from her and asking her what happened. Ms. Lopez texted Ms.
5 Madison at 12:24 pm, stating that she was not going to call the police, but instead would go to her
6 doctor. (Exhibit 56) While she assumed that going to the doctor would not result in a police report,
7 in fact, as stated above, California Penal Code section 11160 mandates that health practitioners
8 report any known or suspected domestic violence to the police. This text was the first time Ms.
9 Lopez stated that she did not want police involvement, and was in direct contradiction to what she
10 and Ms. Madison had discussed both on 1/1/12 and earlier on 1/4/12.

11 119. At 4:14 pm, Ms. Lopez emailed Ms. Madison, reiterating that she did not want the
12 police involved: "I really hope you respect my feelings and work with me in a healthy way without
13 to mess it up. This is my family an [sic] my son's dad." (Exhibit 58) Two minutes later she added,
14 "I have been calling social workers, therapists, and lawyers. I don't want to make impulsive
15 decisions because Ross is a victim as well. He couldn't escape from his circumstances. How you
16 said: he could got married with a shy and quiet person, but he got married to me that face and
17 scream if I have to be heard." (Exhibit 59) At 4:18 pm she texted Mr. Mirkarimi: "Call me. It is an
18 emergency." At 5:36 pm she emailed Ms. Madison: "I'm so sorry you misunderstood everything."
19 (Exhibit 60) This was the last communication from Ms. Lopez to Ms. Madison. (paragraph 43)

20 120. These are examples of a victim of domestic violence accepting the batterer's
21 perception of himself as a victim and blaming the victim for his behavior. See Denial,
22 Minimization, and Blaming on the Power and Control Wheel. They are also examples of part 2 of
23 the honeymoon phase of the Cycle of Violence, where the victim has recommitted to the
24 relationship.

25 121. When Ms. Madison saw Ms. Lopez in person soon afterward on 1/4/12, Ms.
26 Madison told her that she had already called the police to ask the questions Ms. Lopez wanted
27 asked. (paragraph 37) Ms. Madison stated that Ms. Lopez said that she did not want the police
28

1 involved because she did not want to hurt Mr. Mirkarimi or his career, and that he is the father of
2 her son. (paragraph 41; see also text message.

3 122. During this visit from Ms. Lopez, her phone rang or she placed a call, and she
4 handed the phone to Ms. Madison. (paragraph 37). Before she gave the phone to Ms. Madison, Ms.
5 Lopez told the person on the phone what had happened. (Id.) Ms. Lopez told Ms. Madison that the
6 person on the phone was a domestic violence advocate. (Id.) Ms. Madison asked the person her
7 name, and she replied, “Linnette,” but stated she did not want her name involved. (Id.) Then
8 Linnette told Ms. Madison she should not have involved the police, and should refuse to talk to
9 them any more, or she should tell them she had lied, or that she was mistaken and talking about
10 another couple. (Id.) Ms. Madison told her that she did not sound like a domestic violence advocate,
11 and that Ms. Madison refused to lie to the police. (Id.) This behavior by Linnette is typical of
12 someone helping a batterer cover up the abuse.

13 123. After ending the call, Ms. Lopez asked Ms. Madison not to cooperate further with
14 the police, and told Ms. Madison, “Make [the police] go away, don’t answer the door, don’t tell
15 them anything, tell them you made it up, tell them you lied.” (paragraph 37). Ms. Madison
16 responded again that she could not lie to the police. (Id.) Ms. Lopez then left, very upset, and Ms.
17 Madison let the police in and answered their questions. (paragraphs 37 and 38) Ms. Lopez’s
18 behavior, like that of Linnette, is typical of someone helping a batterer cover up the abuse.

19 124. Ms. Lopez’s texts to Mr. Mirkarimi then became very urgent: “You have to call
20 hennessey and stop this before something happen.” (at 5:51 pm). Ten minutes later, she told her
21 husband that Linnette “has some advices.”

22 125. The next day, 1/5/12, at 10:40 am. Ms. Lopez wrote a long text message to Mr.
23 Mirkarimi in which she told him repeatedly how she told the police she did not need their help and
24 thanked them profusely for their concern, saying her neighbor was “nuts” and “broken” and “was
25 trying to take attention.”

26 126. On 1/12/12, Ms. Lopez texted Mr. Mirkarimi that there “is a new law that a woman
27 in my position cannot be force [sic] to testify in court against my husband. And if I refuse to testify
28

1 is no case.” (In fact, this is not true, as spouses can be compelled to testify in domestic violence
2 cases and held in contempt if they refuse.)

3 127. The texts by Ms. Lopez and her behavior starting the afternoon of 1/4/12 are typical
4 examples of a victim of domestic violence who appears to be planning to stay in the relationship
5 and maintain a unified front with the batterer against the outside world; the couple seems to have
6 moved into the second part of the honeymoon phase. It is highly likely that a victim in this stage
7 will recant any earlier statements about the abuse, for the reasons described above.

8 • *Ms. Lopez’s Statements to Abraham Mertens*

9
10 128. ~~Abraham Mertens, the husband of Ivory Madison, stated in his declaration that Ms.~~
11 ~~Lopez told him on a regular basis around October-December 2011 that Mr. Mirkarimi did not~~
12 ~~provide her with enough money to function, that she did not know how much money her husband~~
13 ~~made or had, and that he would not share bank accounts with her (paragraph 6). She also said that~~
14 ~~Mr. Mirkarimi refused to buy a working stroller for Theo, or a bed, or even a mattress, making him~~
15 ~~sleep in a cramped chair in a corner of their tiny living room, which was very cold. (paragraph 8)~~
16 ~~This is an example of Economic Abuse.~~

17 129. Mr. Mertens stated that on 12/31/11, Ms. Lopez texted him and asked, “Where are
18 you guys?” (paragraph 13) He did not realize until later that Ms. Lopez had just been assaulted by
19 Mr. Mirkarimi and was asking for refuge. (Id.) As mentioned above, victims of domestic violence
20 typically try multiple approaches to getting help during and after an abusive incident.

21 130. Mr. Mertens reported that on 1/1/12, when Ms. Lopez was at their house, he saw that
22 she had been crying and was distraught after she had been speaking with Ms. Madison at length.
23 (paragraph 12) Ms. Lopez jokingly said that Ms. Madison was her therapist (Id.). He spoke to her
24 briefly, but enough to understand that she was upset about something Mr. Mirkarimi had done that
25 was very serious. (Id.)

26 131. He also stated that on 1/4/12, while Ms. Madison was speaking with the police at
27 their home, Ms. Lopez called Mr. Mertens and he heard Mr. Mirkarimi speaking in the background.
28 (paragraph 19) Mr. Mertens reported that Ms. Lopez was very upset that the police were involved,

1 and asked Mr. Mertens to intervene and stop Ms. Madison from speaking to the police (Id.) and not
2 to give them the videotape. (Id.)

3 132. Mr. Mertens also said that at some point, Ms. Lopez may have asked either
4 Ms. Madison or himself to destroy the videotape; while he was not sure of her exact language, he
5 stated that the intent was clear. (Id.) Ms. Lopez also reportedly asked him to tell the police that the
6 incident did not happen, and he replied that he would not do that, as he does not do that kind of
7 thing, and that it was not the right thing to do. (Id.)

8 133. He also stated that he was present when someone purporting to be a domestic
9 violence advocate was talking on the phone to his wife, Ms. Madison, and that he heard his wife
10 questioning the caller's credentials, and say the caller did not sound like she was advocating for Ms.
11 Lopez. (Id.) He heard Ms. Madison say to the caller at least once, "I'm not going to lie to the
12 police." (Id.)

14 134. Mr. Mertens stated that after that call Ms. Madison and Ms. Lopez had a similar
15 conversation in his presence, in which Ms. Lopez was trying to get Ms. Madison to get the police to
16 go away, or to tell them Ms. Madison had lied to them, or was talking about someone else. (Id.) He
17 heard Ms. Madison say, "I can't delete it, it's too late. They told me I can't." and "Eliana, I'm not
18 going to jail to protect Ross. That doesn't make any sense." (Id.)

20 *Ms. Lopez's Statements to Callie Williams*

21 135. Callie Williams lives above Ms. Lopez and Mr. Mirkarimi. (paragraph 3 of Callie
22 Williams declaration) She and Ms. Lopez became friends in mid-2011, according to Ms. Williams.
23 (Id.) ~~Ms. Williams reported that she sometimes heard the couple fight downstairs with Theo present,~~
24 ~~including hearing Mr. Mirkarimi yell, "Get the fuck out!" (paragraph 4) However, she was not~~
25 ~~worried about Ms. Lopez's safety until 1/4/12. (Id.)~~

26 136. Ms. Lopez's statement to Ms. Williams on 1/4/12 is typical of that of a victim of
27 domestic violence. The conversation took place around 1:00 p.m., after Ms. Lopez met with Ms.
28

1 Madison the second time. (paragraph 6) The fact that Ms. Lopez approached Ms. Williams to talk to
2 her indicates that Ms. Lopez was seeking help, which many victims do, especially from friends and
3 neighbors. (Id.) According to Ms. Williams, Ms. Lopez's demeanor, usually bright, lively, and
4 happy, was somber and serious that day, which is consistent with what she was about to disclose to
5 Ms. Williams. (Id.)

6 137. Ms. Lopez's description to Ms. Williams of what happened on 12/31/11 is clearly a
7 description of a domestic violence incident, including Ms. Lopez locking Mr. Mirkarimi out of the
8 house and his pounding on the door. (paragraph 7) Ms. Williams declared that Ms. Lopez stated that
9 she hoped Ms. Williams or someone else would hear the pounding and call the police. (Id.) When
10 this did not happen, she stated that she ran outside screaming, trying to get away from her husband,
11 (Id.) and in response he grabbed her arm so hard he left a bruise. (paragraph 8) Ms. Lopez's
12 showing the bruise to Ms. Williams confirmed her account of what had happened. (Id.)

13 138. Ms. Lopez's stating to Ms. Williams that she had talked to a divorce lawyer is further
14 evidence that she took the incident seriously. (paragraph 9) Ms. Lopez's statement that Theo saw
15 the assault and commented later, "Daddy made a boo-boo on mommy's arm" (Id.) is also typical, in
16 that children are often present and affected by such incidents. Ms. Lopez's statement to Ms.
17 Williams that Mr. Mirkarimi did not want counseling (Id.) is also typical, in that most abusers do
18 not admit that they have a problem and need help.

19 139. Ms. Lopez told Ms. Williams that her husband had also abused her physically
20 in March 2011. (Id.) As described above, domestic violence is rarely a one-time incident, though
21 victims tend to try to hide it at first. Ms. Lopez described long-term abuse by Mr. Mirkarimi,
22 including frequent verbal abuse. (Id.) As noted above, verbal abuse typically precedes physical
23 abuse and is more frequent than physical abuse in an ongoing relationship.

24 140. Ms. Lopez also told Ms. Williams that her husband told her he was a very powerful
25 man politically, in the context of dissuading her from reporting the abuse or perhaps regarding his
26 ability to get custody of Theo. (paragraph 10) This is consistent with what Ms. Lopez said in the
27 videotape three days earlier, in the presence of Ms. Madison. It is also typical of the threats and
28

1 intimidation that batterers often use to control their partners. (See Intimidation, Coercion and
2 Threats, and Using Children spokes of Power and Control Wheel.)

3 141. Ms. Lopez told Ms. Williams that Mr. Mirkarimi was afraid she would go to the
4 police because of the bruise, that he had not gone to work on 1/3/12, and that he was calling her
5 frequently on 1/4/12 to check on her. (paragraph 12) Ms. Lopez said that Mr. Mirkarimi had taken
6 her and Theo to Monterey for two days to keep her quiet. (Id.) (Thus, 1/4/12 was the first day Ms.
7 Lopez had a chance to talk to either Ms. Madison or Ms. Williams privately.) Ms. Lopez told Ms.
8 Williams that her husband had cautioned her, “Don’t tell anyone [about the bruise].” (Id.)

9 ~~142. Ms. Lopez also told Ms. Williams that her husband controlled the money and did not~~
10 ~~allow her to have much. (paragraph 13) As mentioned above, this is an example of Economic~~
11 ~~Abuse, another spoke of the Wheel.~~

12 143. During this conversation, Mr. Mirkarimi appeared on the back steps below the
13 women and asked Ms. Lopez what she was doing (paragraph 15), a typical question for a batterer to
14 ask, and apparently designed to intimidate Ms. Lopez, as it must have been obvious what she was
15 doing. He told her to inform him when she went inside. (Id.) Ms. Lopez commented to Ms.
16 Williams, “See, he’s scared I’m going to talk.” (Id.) This is consistent as well with her being a
17 victim of domestic violence.

18 144. Ms. Lopez’s emails to Ms. Williams at 7:13 pm and 7:47 pm are examples of typical
19 behavior of a victim of domestic violence as well. In the first of these emails, Ms. Lopez wrote:
20 “Please all I told you today is confidential. Please. Don’t repeat please. It was to dramatic.”
21 (Exhibit 1 to Callie Williams declaration) In the second email she thanks Ms. Williams for her
22 promise not to share this with anyone. (Id.) Given that Mr. Mirkarimi saw Ms. Lopez talking to Ms.
23 Williams and directed her to inform him when she came back into their residence, it appears that
24 Ms. Lopez had had contact with Mr. Mirkarimi in the meantime, and was now afraid of what would
25 happen if Ms. Williams told the police about their conversation and the bruise. These emails are
26 also consistent with the emails Ms. Lopez sent to Ms. Madison that evening, discussed supra.

27 145. The next day, 1/5/12, Ms. Williams emailed Ms. Lopez that she was concerned about
28 her, and recommended that Ms. Lopez see a doctor to document the injuries. Ms. Williams offered

1 her love and support. (Id.) Ms. Lopez replied “Hello, Callie, thank you! We are fine, let me know if
2 something else happen.” (Id.) These responses, starting with the emails on the evening of 1/4/12, are
3 consistent with a victim of domestic violence who has recommitted to the abuser.

4
5 *Testimony of Christina Flores:*

6 146. In the March 2, 2012 testimony of Christina Flores, Mr. Mirkarimi’s girlfriend with
7 whom he was involved when he met Ms. Lopez, she described Mr. Mirkarimi as acting similarly to
8 how he acted with Ms. Lopez. Ms. Flores described him becoming suddenly enraged over minor
9 things, which she called a Jekyll and Hyde mentality. (page 42-43) She testified that he was
10 verbally abusive and threatening to her on four occasions, (page 12) and “like a pitbull,” (page 42)
11 which made her scared. (page 32) In one of these instances, she testified that Mr. Mirkarimi was
12 yelling loudly, backing her into a couch and wall while pointing his finger at her face, (pages 13-14)
13 following her in the house for ten minutes in a rage, (pages 15-17) and accusing her of trying to “set
14 him up” to “take him out” – presumably as a politician. (page 12)

15 147. In another incident, she stated that when she told him she was leaving because she
16 thought he was lying to her, he grabbed her upper right arm so hard he left a bruise, pushed her up
17 against the wall and yelled at her (pages 29-32). This is an example of false imprisonment. When
18 she screamed, he let go and apologized. (pages 32-33) When he saw the bruise a couple days later,
19 he apologized but also said it was an accident, (page 38) an example of denial and minimization on
20 the Power and Control Wheel. During the last incident, similarly to Ms. Lopez’s actions on
21 12/31/11, Ms. Flores fled the residence and went out into the street even though it was in a
22 dangerous area, because she felt in more danger staying in his residence, given his escalating anger.
23 (pages 40-43)

24 148. In her earlier statement to the police, Ms. Flores said that Mr. Mirkarimi was
25 “extremely volatile,” (page 2) “very, very friendly and very nice to people and then I’d see the flip
26 side where he’d be extremely aggressive and manipulative,” (Id.) “like a pitbull.” (page 4) This is
27 an apt description fitting many unreformed batterers.

1 149. Ms. Flores also believed a myth about domestic violence -- in explaining why she
2 did not call the police when Mr. Mirkarimi pushed her against the wall, would not let her leave,
3 yelled at her, and grabbed her arm hard enough to leave a bruise, she stated, "I didn't really believe
4 that that was domestic violence 'cause he didn't punch me." (page 10) Of course, the Penal Code
5 defines this as domestic violence. This statement by Ms. Flores is similar to some of Ms. Lopez's
6 public statements denying that what occurred toward her was domestic violence, as discussed infra.
7 It seems likely that Mr. Mirkarimi's denial and minimization of his abuse, also discussed infra,
8 contributed to each woman's denial that she had experienced domestic violence.

9 150. The parallels between Mr. Mirkarimi's actions toward Ms. Flores and toward Ms.
10 Lopez are not surprising, given that most batterers demonstrate similar modus operandi in a series
11 of intimate partner relationships.

12
13 *Ms. Lopez's Statements to the Media:*

14 151. Ms. Lopez's statements to the media denying that any domestic violence took place
15 are also typical of those of a victim who is now in part 2 of the honeymoon phase of the Cycle of
16 Violence, i.e., having decided to stick by him, at least for the present. Her appearing in public with
17 her husband as a unified front, starting with the inauguration on Jan. 8, 2012, and continuing from
18 then on, is also typical of victims who are in the honeymoon phase.

19 152. Mr. Mirkarimi describes Ms. Lopez's piece in the April 6, 2012 SF Chronicle, as "a
20 love letter" to him. In it, she denies ever being afraid for her safety or the safety of Theo in the
21 presence of Mr. Mirkarimi, in direct contradiction to oral and email statements she made to Ms.
22 Madison and Ms. Williams quoted above. Her statement about domestic violence in the piece
23 makes no sense: she says that "just as domestic violence is to be condemned, so too is twisting an
24 emotionally charged argument into the basis for removing [her husband] from office without a
25 hearing and without pay." She does not explain why if domestic violence is to be condemned, her
26 husband should not be treated as a convicted batterer, including suspension without pay until his
27 fitness to hold office is ruled on.
28

1 153. Ms. Lopez denies seeking Ms. Madison’s help “as a friend,” though does not assert
2 that she was seeking legal help, so the reader is left wondering in what capacity she sought this
3 help. She claims that Ms. Madison and her husband mischaracterized the conversation with Ms.
4 Lopez, but does not state that the comments she made in the videotape were a lie or explain what
5 the mischaracterization was.

6 154. Tellingly, Ms. Lopez assumes some of the blame for the abuse, stating that Mr.
7 Mirkarimi has paid “an unfair price for *his side* of *our* family disputes.” (emphasis added) She
8 praises him as a “wonderful man, a considerate father, and a loyal public servant who is
9 demonstrating his ability to become better in all ways.” She states that she is committed to him,
10 their marriage, and their fight for justice and democracy. All of these are statements consistent with
11 a victim of domestic violence who is in phase 2 of the honeymoon stage.

12 155. Ms. Lopez calling the SF Ethics Commission process “fascist” in her interview with
13 KGO TV aired on 5/22/12 is another example of her allying herself with Mr. Mirkarimi, though it is
14 significant that she does not outright deny that he bruised her on 12/31/11. As described above, it is
15 very likely that victims will recant their original statements about the abuse, for all the reasons
16 previously discussed. It is also typical that victims in this stage will agree, at least in public, that
17 their husbands are being victimized. Batterers frequently portray themselves as the actual victims,
18 and their partners have been known to go along with this characterization, for all the reasons
19 described above in the section discussing typical victim behavior.

20 156. However, there are indications that Ms. Lopez may be moving out of the honeymoon
21 stage, which admittedly must be hard to maintain for so many months. In the same KGO interview,
22 she says she may seek a divorce, she does not know if she will come back to San Francisco, she
23 wants to share her motherhood with her family (in Venezuela), and when asked if she still loves Mr.
24 Mirkarimi, she replies that she loves her family and will do whatever it takes to help them. Given
25 that she has referred to her family earlier in the interview as her Venezuelan family, one is left with
26 the impression that there may be cracks in the former unified front.

27 157. It is also telling that while Mr. Mirkarimi is claiming that his family has been
28 “destr[oyed] in the name of justice” (SF Chronicle June 15, 2012, reprinted as “A Father’s Day

1 Reflection” on June 17, 2012), published with a photograph of Mr. Mirkarimi just after Theo’s
2 birth, both Mr. Mirkarimi and Ms. Lopez requested a few days earlier that the family court in San
3 Francisco allow her to extend her stay with Theo in Venezuela by yet another two months. (SF
4 Chronicle June 2012) The court granted this request. Apparently both Ms. Lopez and Mr. Mirkarimi
5 feel that the best way for her to support him in his current battle to be retained as Sheriff is by
6 remaining 5000 miles away, unable to testify before the Ethics Commission or to face cross
7 examination.

8
9 *Mr. Mirkarimi’s Public Statements:*

10 158. ~~Mr. Mirkarimi’s public statements regarding the Dec. 31, 2011 incident are also~~
11 ~~typical of comments by unreformed batterers.~~

12 159. During his swearing-in speech on Jan. 8, 2012, in front of a large crowd at the Herbst
13 Theater, Mr. Mirkarimi joked that, “I was even afraid that we would garner little media attention
14 [for the inauguration] but I think we took care of that.” He then laughed, as did the audience, at this
15 joke about having assaulted his wife. This is an obvious example of Denial and Minimization, one
16 of the spokes of the Power and Control Wheel.

17 160. ~~On Jan. 13, 2012, Mr. Mirkarimi gave a press conference, with Ms. Lopez by his~~
18 ~~side, just before he was booked on domestic violence charges. He stated that this was “an injustice,~~
19 ~~“and vowed that “we’ll fight the charges.” At this point he was completely unrepentant, and made a~~
20 ~~point of his wife, the victim of the crime, being on his side fighting the charges with him. This is a~~
21 ~~typical statement of an unreformed batterer.~~

22 161. On March 12, 2012, when Mr. Mirkarimi pled guilty, he apologized in court to Ms.
23 Madison, her family, his neighbors, the Sheriff’s Dept., and the people of San Francisco, but not to
24 his wife or child. And his apology was not an admission that what he did was wrong. Nor did he
25 take responsibility for having acted violently, which led to the criminal charges. Instead, he states
26 that he regrets that “these proceedings” may have caused the Madison family or anyone any
27 suffering, grief, embarrassment, harassment, or damage to their reputations. He seems not to accept
28

1 that it was his own actions, not the court proceedings, that caused the damage to his family. (page 4,
2 3/12/12 transcript) These are typical statements of batterers who have not reformed, as discussed
3 above.

4 162. Mr. Mirkarimi's memo to the Sheriff's Department employees that same day,
5 3/12/12, similarly drastically minimizes his conduct. He wrote: "I have decided to resolve my legal
6 matter so that we all may move forward with the important work of our department." This is not the
7 statement of an unreformed batterer, who would have stated that he had assaulted his wife, that this
8 was wrong, that it hurt their child emotionally, and that he planned to do whatever it took to address
9 his problem, and to accept the consequences of his actions. Instead, it is clear that he sees "his legal
10 matter" as something minor, to be gotten out of the way so he can address more important matters.
11 The apology he gives is for "any discomfort [he] may have caused," not for having committed a
12 crime that has serious consequences. (See Exhibit 28 to Declaration by Interim Sheriff Vicky
13 Hennessy.)

14 163. In the same 3/12/12 memo Mr. Mirkarimi continued, "This decision also allows me
15 to reunite with my family," which was not at all the case, given that the court had issued an order on
16 1/27/12 allowing no contact between him and his wife or Theo, and that the order remained in effect
17 after he pled guilty to this crime. In fact, he is still prohibited from contact with Ms. Lopez and has
18 only limited contact with his son. This approach to reality is also found in many of Mr. Mirkarimi's
19 other public statements, in which he often says things that he wishes were true, but in fact are not,
20 such as that this minor problem will soon be a thing of the past and he will be reinstated as the
21 Sheriff, that the crime he committed was non-violent and minor, that it was not a domestic violence
22 offense, that he and his wife will be reunited, etc.

23 ~~164. Just after he was sentenced on 3/19/12, Mr. Mirkarimi gave a press conference in~~
24 ~~which he read a script, publicly apologizing for the first time to his wife and son, as well as others.~~
25 ~~He claims to accept full responsibility and says there are no excuses for his behavior on Dec. 31,~~
26 ~~2011. He cries at the appropriate moments, and says he started counseling some time ago to address~~
27 ~~his arrogance and anger issues, and looks forward to the "additional counseling he will be~~
28 ~~receiving."~~

1 165. While these comments appear to indicate that he may in fact be remorseful, his later
2 comments in the same speech start to be ambiguous. For example, he does not specify that the
3 counseling he will be receiving is domestic violence counseling in a certified batterer's treatment
4 program, which the court ordered him to undertake as a condition of probation.

5 166. Similarly, he says he hopes he and his wife can have couples counseling, and
6 pointedly states that this was denied (by the court during the criminal case), failing to mention that
7 he was free to do this in the months or years leading up to his being criminally charged with
8 domestic violence, and that Ms. Lopez apparently asked him to go to couples counseling with her
9 many times in 2011, as well as in the first days after the Dec. 31, 2011 incident, but he did not agree
10 to this. Instead, in his eyes it is the court that is to blame for their not going to counseling together.

11 167. In his first public appearance before a political group after his sentencing for this
12 crime, at the Harvey Milk Club, on April 17, 2012, Mr. Mirkarimi characterized what had occurred
13 over the last four months as "a nightmare, an ordeal." He said he felt the "tsunami" of "negativity"
14 from the press was "torturing" him. These are typical statements of an unreformed batterer, who
15 sees himself as the victim, rather than taking responsibility for what he did that led to this situation,
16 or acknowledging that the victims of his crimes were his wife and child.

17 168. He does state in that talk that he "made a terrible mistake" on Dec. 31, 2011, but then
18 claims that his "putting his hand underneath" his wife's arm was an attempt to "de-escalate" the
19 situation. This is a far cry from admitting guilt and taking responsibility for bruising her. He says
20 "in that exchange she got a bruise on her arm," implying that somehow this bruise just happened,
21 and again failing to admit that he was the one who caused the bruise.

22 169. He says the reason he pled guilty was that the jury pool was "polluted" by the media
23 coverage, and that "we [Ms. Lopez and he?] were not going to get a fair trial," again shifting
24 responsibility away from himself for the fact that it appeared he would be convicted because the
25 evidence was overwhelming, and again aligning the victim with himself. He claims that it is "time
26 to put this behind me," failing to accept that the consequences of his violence and guilty plea are not
27 just going to disappear. Reformed batterers accept the consequences of their actions, as mentioned
28 above.

1 170. Mr. Mirkarimi goes on to say to the Milk Club that he “pled to a low-level
2 misdemeanor,” ignoring the fact that there are no levels of misdemeanors, an example of
3 Minimization from the Power and Control Wheel. He also states that this will not bar him from
4 being the Sheriff, failing to mention that this is in fact to be determined by the Ethics Commission
5 and the Board of Supervisors, or bar him from having a gun, which in fact is left to the discretion of
6 the court for at least the three years he will serve on probation. To the best of my knowledge and
7 belief, Mr. Mirkarimi may not lawfully have a gun even after his probation is completed, due to his
8 conviction.

9 171. Later in the talk he states that his being a criminal will give him a perspective that
10 few have on “this process,” and that he can use his own experience to improve the criminal justice
11 system. This is an example of the grandiosity found in many batterers, who try to turn their faults
12 into strengths.

13 172. He also tells the Club that it was always his wife’s determination, and his, to repair
14 their marriage and get back together. In fact, he knew that this was not true, as Ms. Lopez had told
15 him she had consulted a divorce attorney; this was purportedly one of the reasons he got so angry
16 on Dec. 31, 2011.

17 173. He says “to try to deal with this vilification is mind-boggling,” again characterizing
18 himself as the victim, rather than the instigator of his problems.

19 174. He again says that he pled to a “low-level” misdemeanor, and this time adds that it
20 was “non-violent,” which is not the case, since misdemeanor false imprisonment by definition
21 includes the use of force, according to *People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1356-
22 1357, cited in the Written Charges of Official Misconduct filed 3/21/12 at page 7, and he has
23 admitted assaulting and injuring his wife in any event in his declaration submitted to the Ethics
24 Commission.

25 175. Mr. Mirkarimi then says he owes it to the people of San Francisco, or the Milk Club,
26 as well as to his family, to fight the attempt to remove him from office, “because it didn’t happen.”
27 He is thus denying that he committed any crime, the opposite of a reformed batterer taking
28 responsibility and admitting culpability.

1 176. In the talk, he continues to paint himself as a victim, saying he is “fully vulnerable,”
2 “dissected,” at times he just wants to walk away, feels “devastation,” that at the Ethics Commission
3 “we’re sitting ducks,” that the press is “ferocious,” but that at some point “we” have to fight back,
4 because if “we” capitulate because of an “uncomfortable decision,” we recede over and over.

5 177. He accuses the Mayor of trying to unseat him for political reasons, an example of
6 shifting responsibility and painting anyone who has concerns about whether a Sheriff can hold
7 office after being convicted of a domestic violence-related crime and put on probation as merely out
8 to get him.

9 178. Mr. Mirkarimi concludes with saying that what is happening to him is “very surreal,”
10 given that he was part of the criminal justice system for years. Again, this is an example of his
11 failing to accept that what is happening to him is the result of a crime that he committed, and that
12 his having been in a police academy or working as a DA investigator should not shield him from the
13 consequences of his acts.

14 179. His other public appearances, such as his interview on KQED’s Forum with Michael
15 Krasny the next day, April 18, 2012, contain similar statements. He continues to minimize and deny
16 having abused his wife. For example, on June 6, 2012 at the District 5 Democratic Club gathering,
17 he stated that “this is a low-level misdemeanor, one step above disturbing the peace,” and paints
18 himself as the victim -- “the level of retribution and negativity thrown at him depressed him and his
19 wife...a tsunami of negativity...”

20 180. In his constant pleas to “put this all behind him,” Mr. Mirkarimi does not understand
21 that one of the consequences of being a convicted abuser is potentially losing his position as Sheriff.
22 This is indicative of an attitude that is typical of many batterers – i.e., his saying he was sorry and
23 pleading guilty should just take care of the problem and everyone should move on, returning to
24 business as usual -- “I believe in the power of redemption.” Apparently his “redemption” occurred
25 almost overnight, since when he made this statement, he still was required to attend 9 more months
26 of the court-ordered BIP sessions and be on probation until March 2015.

27 181. Mr. Mirkarimi then expands on a comment he made in another speech, that (rather
28 than condemning him as a convicted criminal,) people should see him as “an asset, a more

1 enlightened law enforcement official, who can speak to both sides [i.e., criminals and law-abiding
2 citizens?], unlike other law enforcement leaders.” This is pure hubris and typical of the grandiosity
3 that many batterers exhibit, as well as their tendency to try to manipulate and twist things to their
4 own advantage.

5 182. He states repeatedly in his public statements that the abuse did not happen, and if it
6 did, it was no big deal. He portrays anyone who does not see it his way as merely acting out of
7 underhanded motives (“It’s all political at this point.”).

8 183. His recent article in the 6/15/12 San Francisco Chronicle demonstrates similar
9 attitudes typical of unreformed batterers. He states that he and his wife were “forced apart by a
10 court order six months ago that neither [of them] wanted,” ignoring the fact that the order was
11 issued by a criminal court in which he was charged with domestic violence, child endangerment,
12 and dissuading a witness. He blames the criminal justice system for destroying his family, shifting
13 responsibility away from his own criminal actions in leading to that destruction. He asserts that
14 “once the court case was settled, I also enrolled in counseling,” conveniently leaving out that this
15 counseling was a court-ordered year-long BIP which is a term of his three years of probation. He
16 again asserts: “[i]n an attempt to put the matter behind us and move forward, I pleaded to a
17 misdemeanor that doesn’t preclude my ability from serving as sheriff,” leaving out the role of the
18 Ethics Commission and Board of Supervisors in making that determination.

19 184. In his declaration submitted to the Ethics Commission Mr. Mirkarimi continues to
20 minimize and deny his criminal conduct, stating merely that he “grabbed his wife’s arm,” and
21 leaving out the entire rest of the incident as related in detail by Ms. Lopez to Ms. Madison and to
22 Ms. Williams. He does not even mention his falsely imprisoning her, the crime he pled to. Nor does
23 he mention the traumatic effect of his crime on his wife and son, or the fact that this was not the
24 first time he had abused Ms. Lopez.

25 185. Given all the above, it is my opinion that retaining Ross Mirkarimi as Sheriff of San
26 Francisco would create dangerous and insurmountable problems.

27 186. Domestic violence abusers, some of whom are already emboldened by the fact that
28 Mr. Mirkarimi was not sentenced to time in jail even though he caused a large bruise on his wife,

1 would be further emboldened, realizing that they too can appear to apologize but then face no
2 serious consequences for their crimes, such as losing their jobs. Additionally, Mr. Mirkarimi's
3 consistently minimizing or even denying in public that he assaulted his wife hard enough to bruise
4 her, calling it merely "an arm grab" necessary to "guide her" when she was very upset, and stating
5 that this crime was "just a step above disturbing the peace" emboldens other unreformed batterers,
6 as it confirms their beliefs that such abusive actions are no big deal. The same holds true when Mr.
7 Mirkarimi portrays himself, rather than Ms. Lopez, as the victim, and when many members of the
8 public agree with him. Retaining Mr. Mirkarimi as Sheriff would even further embolden these
9 unreformed batterers.

10 187. There would be a chilling effect on victims of domestic violence from coming
11 forward, as they saw that a man could assault his wife and still keep his job as the head of one of the
12 two law enforcement agencies in San Francisco. Victims of law enforcement officers would be
13 particularly impacted by the message that domestic violence by the chief law enforcement officer
14 was not taken seriously, and thus would be even less likely to report their own abuse, as their fears
15 that law enforcement would not take the abuse seriously would already have been confirmed.

16 188. Retaining Mr. Mirkarimi as Sheriff would also send a message to the entire
17 community that "minor" violence is not really criminal behavior, that falsely imprisoning one's
18 partner is no big deal, and that assaulting a partner severely enough to leave a bruise is not a "real"
19 assault. Not only is this not true under the California Penal Code, it is a dangerous message and one
20 that would undo decades of concerted work to address the epidemic of domestic violence in San
21 Francisco.

22 189. San Francisco has a strong and clear public policy that domestic violence is criminal
23 behavior and will be taken seriously. Retaining Ross Mirkarimi as Sheriff after he has been
24 convicted of a domestic violence related crime would constitute a giant step backward from that
25 public policy.

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