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4 ETHICS COMMISSION
5 CITY AND COUNTY OF SAN FRANCISCO
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7
8 In the Matter of Charges Against
9 ROSS MIRKARIMI,
10 Sheriff, City and County of San Francisco.

**DECLARATION OF ABRAHAM
MERTENS**

11
12 I, ABRAHAM MERTENS, declare:

13 1. I have personal knowledge of the matters stated herein, except for those matters set
14 forth on information and belief, which I believe to be true, and if called to testify, I can and will
15 testify competently as to all matters set forth herein.

16 2. I reside on Webster Street in San Francisco, California with my wife, Ivory Madison,
17 and our daughter, who is almost two years old.

18 3. I am a licensed attorney in the State of California, and the vice president and general
19 counsel for Red Room Omnimedia Corporation, an online social media company, online bookseller
20 and writers' community.

21 4. Beginning in 2010, Ivory and I developed a close friendship with our neighbor
22 Eliana Lopez, who is married to Ross Mirkarimi, then a member of the San Francisco Board of
23 Supervisors. Our friendship was mostly with Eliana.

24 5. In late 2010 or early 2011, Eliana invited us to attend her "Bilingual Rhythm and
25 Motion Class," a parent and child dance class taught by Eliana at the African American Cultural
26 Center on Fulton near Webster Street. Both Ivory and I regularly attended with our daughter.

27 6. As we became closer friends, over time, and in particular during October, November,
28 and December of 2011, Eliana told me about ways that Ross was withholding and controlling,

1 especially about money. She told me on a regular basis that he did not provide her with enough
2 money to function, and I saw how unhappy and deprived she was. She told me that Ross refused to
3 share his bank account with her or tell her how much money he earned or had. Every time she
4 brought up these issues with me, I was saddened to hear he treated her so poorly, and told her his
5 behavior was unacceptable in a marriage and needed to change. I gave her the best advice I could
6 about how to talk to him about being a better husband.

7 7. On October 19, 2011, I met Eliana outside of our house and she was obviously
8 extremely upset. I asked her what happened and she told me that she had a very traumatic
9 experience the night before after coming home from a trip to Los Angeles. I learned that Eliana was
10 stranded alone in the middle of the highway for at least an hour and a half because Ross didn't fill
11 their Jeep with gas and told her that he had. Eliana told me that the gas gauge on their Jeep, which is
12 an older Jeep with a cloth top, had been broken for months and Ross refused to pay to get it fixed.
13 So she had arrived at the airport, picked up the Jeep, and it stopped running in the middle of the
14 freeway and she didn't know why. She was afraid for her life as the car was coming to a stop, so she
15 opened the door and shouted for help to another driver, some workers in a truck or van, who I think
16 either pushed her car with theirs or the men got out and pushed her car out of traffic and to a median
17 strip or shoulder. When Eliana called Ross to help her, he said he would call AAA and they would
18 be there in twenty minutes, but then he refused to take her calls while she sat crying in the middle of
19 the freeway. When the tow truck arrived about an hour and a half later, the driver told her there
20 wasn't any gas in the Jeep, which made her cry even more because, she said, Ross had lied, had so
21 little concern for her safety, and wouldn't even take her calls. I think she was so shaken she had to
22 be driven home by someone else, but I'm not sure.

23 8. When I first visited Eliana and Ross's house, with our daughter, I was surprised that
24 the house looked like a bachelor's home. I did not see anything of Eliana's visible although she'd
25 lived there for more than two years. The house was dark and gloomy, with shutters on the windows,
26 and female nude photography on the walls that Eliana said Ross refused to take down. Eliana told
27 me that Ross also refused to spend the money or time needed to decorate their home even though
28

1 she repeatedly told him that the apartment was depressing to her, and that she was sad that there was
2 so little color in the apartment after coming from Venezuela where there is so much color and light.

3 9. Eliana also told me that Ross was uninterested in their son's comfort. Ross refused to
4 help Eliana create a separate and comfortable living space for their son. Eliana showed me the
5 cramped chair in a corner of their tiny living room where her son was forced to sleep. She told me
6 that the room was so cold at night that her son ended up sleeping in her bed most nights. She also
7 said that she was "freezing" all the time, too. To help keep their son warm at night, I gave Eliana a
8 space heater. My wife and I also gave Eliana a three-part privacy screen so their son would feel like
9 he had a personal space that was separate from the rest of the house. Eliana said she didn't know
10 where to buy curtains and Ross would not help her, so I offered to help, and took her shopping to
11 purchase curtains, to keep more heat in their living room and make it feel more like a home. When
12 my wife and I learned that Eliana's stroller was broken and Ross refused to buy a new one, we gave
13 Eliana a stroller. She said that for more than a year, she had been trying to get Ross to buy Theo a
14 real mattress, if not an actual bed. I could not understand why Ross wouldn't do this.

15 10. Based purely on our friendship with Eliana, we supported Ross in his campaign for
16 Sheriff. During the campaign, we cohosted a fundraiser for him, and we donated the maximum
17 allowable by law to his campaign, and we put our reputation on the line endorsing him.

18 11. After Ross was elected Sheriff, he invited Ivory and me to a dinner in his honor at
19 the home of the Japanese Consul General of San Francisco, to thank us for our friendship and
20 support, and he introduced us as his "close friends." He told us how much he appreciated our
21 support in the race, and also our support of Eliana. We were the only other guests at the dinner aside
22 from the hosts and their staff.

23 12. On January 1, 2012 at approximately 9:30 a.m. Eliana came to our house to see
24 Ivory. Ivory had previously told me she'd suggested that they get together and talk about their goals
25 for the year. They went into the living room. At first, I watched our daughter in the other rooms of
26 the house. At some point, I realized that Eliana had become very emotional, for reasons I didn't
27 understand at the time. I could hear that Eliana was very upset but not what she was saying exactly.
28 I was concerned about the effect their demeanor might have on our daughter, so I took my daughter

1 out of the house for a while. Upon returning to the house, I found that Eliana was still at our home
2 and she obviously had been crying. Our daughter really wanted to see her mother, so my daughter
3 and I came into the living room briefly a few times, and during one of those times, Eliana was
4 crying and apologized to me for taking so much of Ivory's time, and she jokingly referred to Ivory
5 as her therapist. I wanted to minimize our daughter's contact with Eliana while she was so
6 distraught, so we spoke only briefly enough for me to understand that she was upset about
7 something Ross had done that was very serious.

8 13. After Eliana left our home on January 1, Ivory's mood was somber, and she said that
9 Eliana had just told her that Ross had physically abused her, and had screamed profanity at her the
10 previous day, in front of Theo. I learned that the text message I received from Eliana on December
11 31st that stated "Hello! Where are you guys?" was sent right after that fight. Eliana had hoped that
12 we were home so she could find refuge from Ross, she had told Ivory. Ivory also told me that Eliana
13 had asked her to help document the incident by creating a video that showed a bruise Ross had
14 caused, and that Eliana was considering getting a divorce but hoped Ross would change and they
15 could stay married. Then Ivory told me that Ross had threatened to take Theo away from Eliana,
16 and had apparently told Eliana more than once that he was "a very powerful man" and could do it.
17 Since I was well aware of Ross's neglectful and almost entirely absent relationship with Theo, this
18 concerned me greatly. Ivory and I discussed whether I should confront Ross, and we weren't sure.

19 14. Between January 1 and January 4, I was aware that Ivory was calling and emailing
20 numerous people, at Eliana's request, seeking advice about how best to respond to the incident on
21 December 31. I was also aware that Ivory and Eliana were in frequent daily communication. Ivory
22 and I discussed allowing Eliana and her son to come live with us to protect her from further abuse
23 and to shield their son from such abuse.

24 15. When I saw Ivory at around 1:00 p.m. on January 4, she told me that Eliana had been
25 ready to call the police that morning, but had some good questions about what would happen when
26 she called, so Ivory had called a domestic violence number to get those answers, and had
27 inadvertently triggered an investigation. Ivory explained that immediately after the call, she had
28

1 received a text from Eliana saying she had decided not to go to the police. For Ivory, at that
2 moment, she was afraid she had let Eliana down and done the wrong thing.

3 16. At around 3:15 p.m. or 3:30 p.m. on January 1, Ivory and I ran into Eliana in front of
4 our home. Eliana came into our home to discuss what had happened and what would happen next.

5 17. Several minutes later, in our front hallway, I saw Eliana hand her phone to Ivory and
6 tell Ivory that the person on the other end of the call was a domestic violence advocate. The other
7 party seemed to be doing most of the talking. I was present during this conversation, but was also
8 watching our daughter, and saying goodbye to my father, who was leaving, so I did not hear all that
9 was said by Ivory on the phone. Ivory seemed calm but slightly annoyed, and I remember her
10 questioning the person's credentials and saying the caller didn't sound like she was advocating for
11 Eliana. I also heard her say, at least once, "I'm not going to lie to the police." I believe the doorbell
12 rang while they were still on the phone, but it may have been just after.

13 18. After the telephone conversation ended, Ivory and Eliana had a similar conversation,
14 in which Eliana was trying to get Ivory to make the police go away, or to tell them she had lied, or
15 was talking about someone else, while the police were ringing the doorbell or knocking. Again, I
16 heard Ivory saying she would not lie to the police. I heard Ivory encourage Eliana to at least talk to
17 them and see what they could do to help her get Ross into counseling. Eventually, Ivory answered
18 the door and Eliana left as they arrived.

19 19. While the police inspectors were interviewing Ivory in the living room, Eliana called
20 me on my mobile phone and I do not recall if she left a voicemail and I returned the call or if she
21 reached me directly on my mobile phone. She told me to tell Ivory to stop cooperating with police
22 and to not turn over the video to police. I told her I couldn't do that, that in our household, we don't
23 do that kind of thing. And that it wasn't the right thing to do. While I was talking with Eliana, I
24 recognized what I am confident was Ross's distinctive voice in the background during the call. I
25 realized soon after that Eliana called our landline and Ivory's mobile phone repeatedly, after her
26 conversation with me failed. On one of these calls, I was in the room when Eliana spoke to Ivory
27 and demanded that she destroy the video. I heard Ivory say, "I can't delete it, it's too late. They told
28 me I can't." And I heard her say, "Eliana, I'm not going to jail to protect Ross. That doesn't make

1 any sense.” Eliana also may have asked me to have Ivory get rid of the video of her injury, I am not
2 sure what her exact language was, but the intent was clear.

3 20. During the investigation of this incident, I have always cooperated with
4 investigators. I gave a recorded statement on January 11. I consented to the police downloading
5 from my telephone text messages between Eliana and me and between our neighbor Callie Williams
6 and me. Callie Williams and I have never discussed what Eliana told her or us about the December
7 31 incident, and I have personal knowledge that Ivory made a point of never discussing the incident
8 with Callie either.

9 21. While the trial of the domestic violence charges against Ross were underway, I
10 received numerous calls from journalists who said they were acting on story ideas suggested by
11 Ross, Ross’s attorneys, Eliana, or a few key allies of Ross’s, all of which were designed to discredit
12 Ivory. An example of these lies, was Eliana doing a radio interview in January claiming she told
13 Ivory about “a discussion like all couples have” between she and Ross, which Eliana said included
14 no raised voices, no argument, and no violence, plus, that Ivory had been paid off by a conspiracy
15 of the “richest people in California” who had a racist and anti-progressive agenda to politically
16 persecute her husband. I am aware, as are a huge number of our clients, friends, and acquaintances,
17 of Ross’s efforts to portray my wife as a nosy neighbor, bad friend, liar, publicity seeker,
18 overzealous feminist, family-law practitioner impersonator, anti-progressive sheriff conspirator, and
19 so on. A recent example that stands out in my mind because it was the fourth or fifth reason Ross
20 has told the press was the real reason why he pled guilty, was in April, when Ross initiated an
21 article that appeared in section A of the national print edition of *The New York Times*, wherein Ross
22 claimed that the only reason he pled guilty was “false allegations” made by Ivory. In my opinion,
23 Ross’s actions, and those who acted with him on his behalf, including Eliana, in planting these
24 stories were not only wrong, but also cruel.

25 22. On or about February 14, 2012, Red Room Omnimedia Corporation received an
26 intrusive, overbroad and harassing subpoena from Ross’s attorney, Lidia Stiglich, which demanded
27 “all records from Red Room Omnimedia Corporation pertaining to Ivory Madison” between
28 December 31, 2011 and January 7, 2012. This subpoena would have, if unchallenged, would have

1 exposed all of Ivory's personal and professional information and communications with family,
2 friends, Red Room's business partners, investors, clients, employees, and others. The
3 correspondence and records they were requesting contained a financial and proprietary information
4 about our company, a partner company, and personal details of the lives of many people unrelated
5 to this matter. Opposing this frivolous subpoena was time-consuming, greatly concerned me for the
6 potential damage to our business and relationships, and necessitated the addition of outside counsel
7 to represent Ivory as an individual as separate from the interests of the company. We agreed to
8 provide the defense with a limited scope of information and communications, which was 100% of
9 the email between Ivory and anyone else regarding this matter, during that period, with personal
10 identifying information redacted. The correspondence benefited the prosecution, not the defense,
11 because everything Ivory told the police was true and complete and her private correspondence
12 further demonstrated that.

13 23. On February 16, 2012, I received a "Cease and Desist" letter addressed to me, from
14 attorney Paula Canny, that accused Ivory of engaging in criminal behavior by cooperating with law
15 enforcement. This assertion is defamatory and untrue. The letter claimed that Ivory told Eliana she
16 "had been to Court many times, knew how to handle custody disputes and also advised she would
17 enlist your further help as well in Ms. Lopez'[sic] custody dispute." The letter said, in part, "Your
18 wife's conduct as well as possibly your conduct, has caused Ms. Lopez and her family to suffer
19 irreparable harm." The letter instructed me not to make any further disclosures of supposedly
20 privileged communications. The letter was clearly an effort to dissuade me from further cooperating
21 with law enforcement and to attempt to enlist my help in preventing my wife from cooperating with
22 law enforcement. In a radio interview after his plea agreement, I heard Ross perpetuate this
23 fabrication about Ivory claiming to be an attorney. Ross stated that he was aware that Eliana had
24 consulted with a divorce and custody attorney and that it was Ivory. Ross has said he is solely
25 responsible for paying Ms. Canny for her legal work.

26 24. In the more than six years that I have known my wife, I have never heard her claim
27 to be an attorney, offer legal advice, or represent herself as a member of the State Bar of California.
28 In fact, I have heard Ivory state specifically, to Eliana and many others, when the topic of law was

1 discussed or the topic of Ivory's legal training is raised, that she is not a licensed, practicing
2 attorney. In Ivory's online bios, Ivory has also made a point of using language that makes clear she
3 is not a licensed, practicing attorney, such as on the "Meet the Team" page of Red Room, on
4 Facebook, LinkedIn, Twitter, and other websites where a bio is required. Ivory like "trained as an
5 attorney" and "non-practicing lawyer" and even "with a useless law degree," and it always appears
6 in the context of what she does do, which is run a company that is totally unrelated to law, Red
7 Room. She has been on the same career path and associated with Red Room for the past decade. It
8 is unlikely and unreasonable that a close friend, such as Eliana was, would disregard direct
9 statements by Ivory indicating that she is not an attorney, all of her personal knowledge of Ivory's
10 life and career, and instead check Ivory's online bio, and misunderstand it to mean the opposite of
11 what it says. The idea, advanced by Ross and his representatives, that Ivory lead Eliana to believe
12 that she was her attorney, and that their conversation was privileged, is utterly implausible and an
13 example of the results-oriented and unethical manner in which Ross has conducted and continues to
14 conduct his defense.

15 25. My only public statement thus far about this matter was an op-ed that appeared in the
16 *San Francisco Chronicle* on March 20. It detailed some of my thoughts about how Ross and Eliana
17 have conducted themselves in relation to the charges and to my wife cooperating with the
18 investigation. I was careful to make sure that every fact I referred to was provable. Not only does
19 everyone have that moral responsibility, but I also have a professional responsibility, as a member
20 of the State Bar of California, to do so. In the op-ed, I stated that I believe that Ross should resign as
21 Sheriff, be suspended, or be recalled by the people. I believe it is an insult to his oath of office and
22 the people of San Francisco that a top law enforcement official and the lawyers he paid would
23 relentlessly attempted to discredit, dissuade, and harm my wife for providing honest and accurate
24 information to the police. Ross's behavior toward my wife was so abhorrent that District Attorney
25 George Gascón forced Ross to apologize to Ivory as part of his plea deal. That op-ed is attached
26 hereto as Exhibit "62".

27 26. I was glad to see that Mr. Gascón issued statements that commended Ivory and
28 Callie for their courage, and reminded the public (including those in positions of power) that the

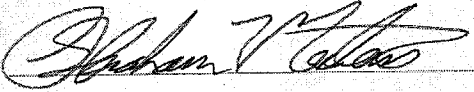
1 criminal justice system needs witnesses to come forward on behalf of victims and the community.
2 To paraphrase, Gascón expressed concern that the effects of what Ross had done to defame Ivory
3 would chill the speech of other witnesses in criminal cases. I believe Ross's behavior has already
4 had this effect in our community, since several acquaintances of mine, including a few trial lawyers,
5 have said to me that after seeing the vicious attacks that Ross and his representatives waged against
6 my wife, they would not be willing to come forward against a prominent official like Ross. I am not
7 acquainted with Mr. Gascón, and it is a matter of public record that I supported an opposing
8 candidate in the District Attorney race in November, donating the maximum amount allowable by
9 law to another candidate, as did my wife.

10 27. In interviews after his conviction, Ross has stated that my wife and I (and other
11 witnesses, by which I understand him to mean Callie and Christina Flores) are lying about
12 everything. For example, at a press conference, he announced that my op-ed was a "complete
13 fabrication," despite what the District Attorney's office says was "overwhelming evidence"
14 supporting their charges against him, and the fact that he plead guilty to specifically false
15 imprisonment, and a sentence that included fifty-two weeks of domestic violence counseling. It is
16 extraordinary to me that he continues to publically claim that my statements and the statements of
17 others are all lies.

18 28. It is hard to express how much pain and inconvenience Ross's almost six months of
19 ongoing harassment of and lies about my wife, and occasionally of me, have caused our family. My
20 wife and I each spend thirty to fifty hours a week caring for our small child plus fifty to seventy
21 hours a week working for our company. Our company has a small team and we each must do the
22 job of several people. The financial future of our family, and that of other families depending on us,
23 has been negatively impacted by Ross's refusal to handle this matter without attacking my wife,
24 both in the media and through legal mechanisms, draining our resources and hampering our
25 operations. My wife's reputation personally and professionally has been harmed and the attacks by
26 Ross and those working for him or who have a financial or other interest in the outcome of this
27 matter, including Eliana, have made it difficult for Ivory to be her usual, optimistic and joyful self
28 with our young daughter and during her current pregnancy with our second child. She thought that

1 avoiding the press would make her role less prominent, but Ross has made sure that is not the case.
2 As our daughter is beginning to learn to read, Ivory is saddened that she will eventually find and
3 read the defamatory statements Ross and his team have made. There has been no indication of
4 when, if ever, Ross will stop, since even yesterday, one of his attorneys, when asked by the
5 *Chronicle* to comment on my wife's declaration, responded not by disputing the facts, but instead
6 made a personal and insulting comment about Ivory. Ross should not allow this type of comment to
7 be made by those representing him.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed this June 17, 2012 in San Francisco.

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11 ABRAHAM MERTENS
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EXHIBIT 62

A neighbor's side of Ross Mirkarimi case

Abraham Mertens

Tuesday, March 20, 2012



My next-door neighbor, Sheriff Ross Mirkarimi, should resign immediately based on his actions on the afternoon of Dec. 31 and during the legal proceedings that followed.

Ross' wife, Eliana Lopez, told my wife, Ivory Madison, and at least one other witness that on that day he screamed profanities at and attacked her, inflicting a large bruise on her arm, in front of their terrified and crying 2-year-old son, Theo. Ross was charged with domestic violence battery, child endangerment and dissuading a witness.

Ross should also resign because it is an insult to his oath of office that, for the past two months, he paid a team of lawyers to relentlessly attempt to discredit, dissuade and harm my wife.

My wife is the CEO of Red Room, a demanding social media startup and online book retailer. We also are full-time parents of our baby daughter. You can imagine how little free time Ivory has, and yet she's always there for friends. Unfortunately, by being a friend to Eliana, Ivory unwittingly became a key witness in this case.

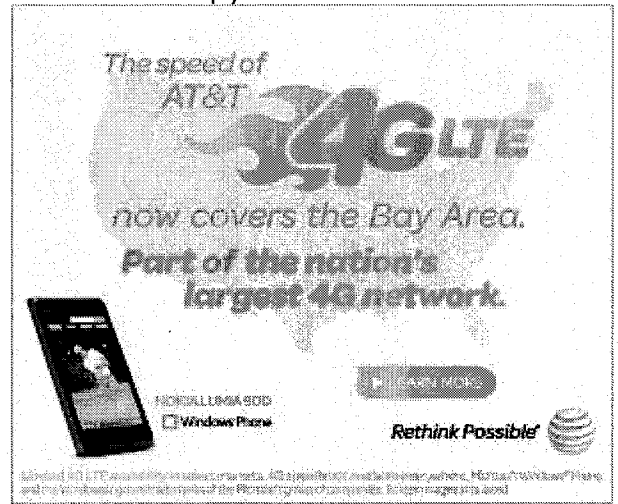
The last time I spoke to Eliana was when she called me on Jan. 4. I recognized what I thought was Ross' voice in the background as Eliana pressured me to destroy evidence and lie to the police. Then she repeatedly called Ivory, demanding that Ivory destroy the video, e-mail and texts from Eliana about the incident. I'm an attorney, but even if I were not, I would not destroy evidence, obstruct justice or lie to the police, and neither would my wife. Our criminal justice system can work only if most people follow the law and tell the truth to law enforcement.

After we refused to lie, Ross, Eliana and attorneys working for them attacked Ivory's character and motives. This included falsely accusing her of implausible criminal activity, such as being part of a vast political conspiracy to frame Ross, and practicing law without a license. They subpoenaed our confidential business and personal correspondence and the phone records of our friends. Reporters told us that Ross's attorneys were trying to feed them stories almost every day.

Among other efforts to silence my wife, a dramatic letter was delivered to us demanding that she not testify and falsely claiming that she would be acting illegally if she did so. Attorney Paula Canny, who Ross recently admitted is being paid for by him and his "legal defense fund," signed the letter.

Ross' behavior toward my wife was so abhorrent that San Francisco District Attorney George Gascón forced Ross to publicly apologize to her as part of the plea deal in which Ross admitted to domestic violence false imprisonment. Gascón commended Ivory for her courage and reminded the community that law enforcement needs witnesses to cooperate for law enforcement to do its job.

Yet before the ink was dry on the plea agreement, Ross made statements that indicate a total failure to understand that his wounds in this matter are self-inflicted and that he pleaded guilty to a crime.



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Ross' team first implied he pleaded guilty because the scales of justice were weighted against him. People from his camp said his legal defense "couldn't get a fair shake" in court. His attorney, Lidia Stiglich, had challenged an earlier judge she said was prejudiced against her client. Ross talked of "forces at work" to prevent him from being sheriff, and his allies claimed the district attorney's office was prosecuting him only for political reasons.

It appears that Ross thinks the legal system, which he is sworn to uphold, is rigged.

Ross and his various spokespeople also claimed he pleaded only because he wanted to be reunited with his wife as soon as possible. And, in an apparent effort to solicit money, he claimed that he mostly pleaded guilty because he couldn't afford the legal bills since he is solely responsible for supporting Eliana.

Telling the truth and facing the consequences are pillars of our society, and I'm proud of my wife for setting a good example for our daughter. If everyone acted as she did, the world would be a better place. If everyone behaved as Ross and Eliana did, can you imagine what would happen to our justice system and society?

The office of sheriff of the city and county of San Francisco is an important law-enforcement leadership position overseeing a budget of more than \$175 million and a staff of nearly 1,000 employees. Ross has delayed the trial and collected his sheriff paycheck for long enough. Ross' actions in this matter reveal that he does not have the moral qualifications or commitment to law enforcement necessary to do the job.

If he won't resign, Mayor Ed Lee and the Board of Supervisors need to remove him, and if they don't, the people will by recall. Ross says he wants to move on. So do we all - without him as sheriff. It's bad enough my family has to live next door to him.

Abraham Mertens is vice president and general counsel of Red Room.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/03/20/EDUC1NN1L0.DTL>

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