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8 Attorneys for MAYOR EDWIN M. LEE

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.

**JOINT SUBMISSION OF PROPOSED
 FINDINGS REGARDING DISPUTED
 FACTS**

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
18 19 20 21 22 23 24 25 26 27 28	1. Between November 8, 2011, and January 8, 2012, SHERIFF MIRKARIMI had the duty and the power in his official capacity as Sheriff-Elect to work with the Sheriff's Department and its officials to prepare himself to assume the full duties of Sheriff. SHERIFF MIRKARIMI also had the duty and the power as Sheriff-Elect to represent the Sheriff's Department to the public. SHERIFF MIRKARIMI exercised those official powers. [Amended Charges, Para. 6.]	Agree. V. Hennessy Decl. Paras. 65-71; Lansdowne Decl. Para. 38; Mirkarimi Tr. at 707:14-708:1, 743:13-16.	Disagree. These statements are all legal conclusions about the duties of a sheriff-elect. They do not depend on the cited evidence for their veracity, if true at all.

	Findings of Fact	Mayor’s Position and Evidence In Support	Sheriff’s Position and Evidence In Support
2.	Between November 8, 2011, and January 8, 2012, SHERIFF MIRKARIMI had all of the duties and powers of a member of the Board of Supervisors. As the chair of the Public Safety Committee, SHERIFF MIRKARIMI also had particular powers and duties in regard to legislation addressing law enforcement and criminal justice issues. SHERIFF MIRKARIMI exercised those official powers. [Amended Charges, Para. 7.]	Agree. Exh. 78, p. 1 (January 8, 2012 letter of resignation from Board of Supervisors), p. 2 (January 8, 2009 oath of office for Board of Supervisors); Mirkarimi Tr. at 708:2-6, 743:17-23, 744:16-21, 826:15-21, 829:4-9.	Irrelevant. These statements concern the Sheriff’s duties when he was a member of the Board of Supervisors. The contention that the Sheriff’s duties as a Supervisor are relevant to the Mayor’s charges is a legal conclusion that should be argued separately.
3.	On January 8, 2012, SHERIFF MIRKARIMI ceased to be a member of the Board of Supervisors and assumed all powers and duties of the Sheriff of the City and County of San Francisco. SHERIFF MIRKARIMI exercised those official powers. [Amended Charges, Para. 8.]	Agree. Exh. 78, p. 1 (January 8, 2012 letter of resignation from Board of Supervisors), p. 7 (oath of office for Sheriff, sworn on January 7, 2012, effective January 8, 2012, filed January 9, 2012); Mirkarimi Tr. at 822:1-826:23.	Agree. However, the assertion, “Sheriff Mirkarimi exercised those official powers,” is vague. He obviously did not exercise “all powers and duties” immediately on January 8, 2012. For this reason, we disagree that this statement should be included.
4.	On or about December 31, 2011, while an incumbent Supervisor and Sheriff-Elect, SHERIFF MIRKARIMI committed acts of verbal and physical abuse against his wife, Eliana Lopez. Among other things, SHERIFF MIRKARIMI grabbed Ms. Lopez with such force that he bruised her upper right arm. [Amended Charges, Para. 19.]	Agree. Exh. 4 (video); Exh. 36 (Tr. (March 12, 2012) at 6:9-13 (guilty plea and stipulation to factual basis)); Exhs. 36-39 (transcripts and minutes from March 12 and 19, 2012 criminal court hearings); Madison Decl. Paras. 11 (except lines 22-23 (“and this...abusive”)), 12 (except lines 7-8 (“I was...still am.”), 13 (except lines 18-20 (“I asked...his career.”))), 14 (except lines 7:2-3 (“My impression...ready to do.”)), 15 (except lines 14-16 (“She brought...this threat.”)), 16	Disagree. These statements are vague and contain legal conclusions. The undisputed fact is that the Sheriff bruised his wife’s arm. All of the other language is piling on. Nancy Lemon’s opinions are not evidence of a fact.

	Findings of Fact	Mayor’s Position and Evidence In Support	Sheriff’s Position and Evidence In Support
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22		(except lines 20-24 (“I did not...poor advice”)), 19, 28, 33 (except line 1 “Eliana does...quickly, so”); Exh. 50 (email from Lopez to Madison); Mertens Decl. Paras. 12, 13 (except line 7 (“Since I was ...with Theo,”)); Williams Decl. Paras. 5-8, 9 (except lines 5-7 (“Eliana described...place frequently.”)), 12, 14-15; Haynes Decl. Para. 2, sentence 1 (unnumbered: “On January 4, 2012, Eliana Lopez contacted me and I had several phone conversations with her regarding a domestic violence related incident that had occurred with her husband Ross Mirkarimi.”); Haynes Tr. at 1028:23-1029:3, 1029:22-1030:5, 1108:24-1109:7, 1130:9-13; Mirkarimi Tr. at 693:1-20, 695:21-25, 700:14-17; Lopez Decl. Para. 8; Lopez Tr. at 1208:6-8, 1246:19-1247:9, 1322:5-19, 1323:5-7; Lemon Decl. Paras. 4 (bullet points i-v), 81, 87-94, 97-127, 129-130, 143-149; Flores Tr. (March 2, 2012) at 11:26-18:6, 21:9-24:5, 25:9-36:7, 38:14-21, 40:19-41:11, 42:3-43:22.	
23 24 25 26 27 28	5. During that incident, SHERIFF MIRKARIMI restrained Ms. Lopez and violated her personal liberty. [Amended Charges, Para. 20.]	Agree. Exh. 4 (video); Exh. 36 (Tr. (March 12, 2012) at 6:9-13 (guilty plea and stipulation to factual basis)); Exhs. 36-39 (transcripts and minutes from March 12 and 19, 2012 criminal court hearings); Madison Decl. Paras. 12 (except lines 7-8 (“I was...still	Disagree. This statement is a legal conclusion. The Sheriff grabbed his wife’s arm and immediately let go. Lopez Tr. 1206:15-16. Nancy Lemon’s opinions are not evidence of a fact. The Flores transcripts are irrelevant to this factual allegation.

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
		am.”), 13 (except lines 18-20 (“I asked...his career.”)), 16 (except lines 20-24 (“I did not...poor advice”)); Williams Decl. Paras. 7, 8, 14; Mirkarimi Tr. at 693:1-20, 695:21-25; Lopez Tr. at 1322:5-19, 1323:5-7; Lemon Decl. Paras. 147-150; Flores Tr. (March 2, 2012) at 25:9-36:7.	
6.	At or around the time of the incident, SHERIFF MIRKARIMI indicated to Ms. Lopez that he was very powerful and could therefore take custody of their two-year-old child. [Amended Charges, Para. 21.]	Agree. Exh. 4 (video); Madison Decl. Para. 15 (except lines 14-16 (“She brought...this threat.”)); Williams Decl. Para. 10; Exhs. 80, 83 (January 4, 2012 5:51 pm text message (“...Use your power.”)); Lopez Tr. at 1181:8-14, 1187:14-1188:6, 1279:12-1280:2, 1322:5-19, 1323:5-7; Lemon Decl. Paras. 91, 92, 140.	Disagree. Ms. Lopez’s reference to the Sheriff being “powerful” was in the context of US custody laws and citizenship. Lopez Tr. 1180:24-1188:10. Nancy Lemon’s opinions are not evidence of a fact.
7.	On January 1, 2012, Ms. Lopez described the incident to one of her neighbors. On January 4, 2012, Ms. Lopez described the incident to a second neighbor. One of these neighbors contacted the San Francisco Police Department, which initiated a criminal investigation into the report of domestic violence by SHERIFF MIRKARIMI. [Amended Charges, Para. 22.]	Agree. Daniele Decl. Para. 4; Madison Decl. Paras. 11 (except lines 22-23 (“and this...abusive”)), 12 (except lines 7-8 (“I was...still am.”), 13 (except lines 18-20 (“I asked...his career.”)), 14 (except lines 7:2-3 (“My impression...ready to do.”)), 15 (except lines 14-16 (“She brought...this threat.”)), 16 (except lines 20-24 (“I did not...poor advice”)), 34; Williams Decl. Paras. 5-8, 9 (except lines 5-7 (“Eliana described...place frequently.”)), 10; Lopez Tr. at 1215:24-1216:9, 1261:13-18, 1264:16-18.	Irrelevant. The actions of neighbors are irrelevant to the Mayor’s charges.

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28.	Between December 31, 2011 and January 4, 2012, SHERIFF MIRKARIMI participated in and condoned efforts to dissuade witnesses from reporting this incident to police and/or cooperating with police investigators. [Amended Charges, Para. 23.]	Agree. Exh. 1 (EL & CW January 4-6, 2012 email correspondence); Exh. 4 (video); Exhs. 49-51 (EL & IM January 2-3, 2012 email correspondence); Exh. 57-60 (EL & IM January 4, 2012 text message and email correspondence); Exh. 80 (RM to EL 1/4 12:03p text message: "Left you a vm but didn't hear back. What happened?"; EL to RM 1/4 5:51p text message: "... Ivory is giving the investigators everything. ..."; RM to EL 1/4 6:01p text message: "I cannot. Neither can he. You have to reject Ivory's actions. We both do. I cannot involve new people."; EL to RM 1/4 6:05p text message: "Don't answer any other thing. Answer Linnette call. She has some advices."); Exh. 81 (LPH to RM 1/4 3:53p text message: "I need to talk to you to protect you. Call me."; LPH to RM 1/5 9:51p text message: "I had a thought. Did you run the statement by the attorneys? Please confirm you received this."; LPH & RM text messages January 5-6, 2012; LPH to RM 1/12 9:42p text message: "...It will continue to be extremely hard not to say something, but I think they will chase their tails without any interaction/evidence, and it will fade. ..."); Exh. 82 (December 31, 2011-January 13, 2012 AT&T records); Exh. 83 (January 4, 2012	Disagree. The Sheriff did not participate in or condone any effort to dissuade witnesses from reporting any incident to police. Mirkarimi Tr. 817:2-10. Peralta Haynes Decl. p. 1. Nancy Lemon's opinions are not evidence of a fact.

	Findings of Fact	Mayor’s Position and Evidence In Support	Sheriff’s Position and Evidence In Support
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28		<p>communications records); Madison Decl. Paras. 13 (except lines 18-20 (“I asked...his career.”)), 14 (except lines 7:2-3 (“My impression...ready to do.”)), 15 (except lines 14-16 (“She brought...this threat.”)), 22, 23 (except lines 4-6 (“She seemed... the police”) & lines 6-7 (“She also...and Theo”)), 25, 26 (except lines 10:27-11:8 (“When I read...several days”)), 27-28, 32, 33 (except line 1 (“Eliana does...quickly, so”)), 35 (except lines 7-9 (“, which I assumed...unlikely to me.”)), 37 (except lines 14:21-22 (“Eliana understood...her wishes.”)), 40 (except lines 3-5 (“and it was clear...she was referring to,”)), 41-42, 43(except lines 1-2 (“and it was obvious...against Ross.”)); Mertens Decl. Paras. 17-19; Williams Decl. Paras. 10, 12, 15-18; Lemon Decl. Paras. 23, 26, 38, 41, 91-92, 102-103, 105, 107- 108, 111, 114-115, 118-120, 122-123, 143-145; Lopez Tr. at 1181:8-14, 1225:5- 7, 1226:16-19, 1240:2-10, 1246:11-14, 1246:18-1247:19, 1250:13-18, 1255:17-19, 1270:20-1271:3, 1272:9-12, 1275:24-1277:13, 1279:9-11, 1284:1-8, 1285:16-17, 1286:2- 4, 1306:9-18, 1314:23-1315:23, 1326:25-1327:8, 1327:14- 1328:17, 1336:16-1337:7; Haynes Tr. at 1013:14-20, 1027:12-14, 1059:3-8, 1064:24- 1065:6, 1067:6-13, 1069:14-24, 1108:24-1109:7, 1109:15-22, 1110:4-8, 1112:21-25, 1117:10-</p>	

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
1 2 3 4		1118:19, 1142:14-25, 1143:1-8; Mirkarimi Tr. at 712:12-16, 730:17-19, 734:20-736:4, 758:20-759:7, 761:20-762:5, 765:15-766:14, 767:5-12.	
5 6 7 8 9 10 11 12 13 14	9. On January 8, 2012, shortly after his swearing-in, SHERIFF MIRKARIMI stated publicly that the December 31, 2011 incident of domestic violence was a "private matter" and "family matter." SHERIFF MIRKARIMI also publicly denied that he was ever verbally or physically abusive to his wife. [Amended Charges, Para. 24.]	Agree. Mirkarimi Tr. at 775:19-776:2, 776:22-777:5, 790:13-16, 792:19-794:1.	Disagree. The Sheriff's "private family matter" comment was in a statement given to him by his attorney at the time. He has since acknowledged it was a mistake. Mirkarimi Tr. 818:23-819:2. The evidence cited by the Mayor for this finding says nothing about any denial of abuse by the Sheriff. In fact, Ms. Lopez has stated that the Sheriff <i>never</i> hit, punched, battered or beat her. Lopez Tr. 6:24.
15 16 17 18 19 20 21 22 23 24 25 26 27 28	10. On January 13, 2012, SHERIFF MIRKARIMI was arrested by the San Francisco Police Department and booked by San Francisco Sheriff's deputies at the San Francisco County Jail. At the time that SHERIFF MIRKARIMI was arrested and booked, the San Francisco Police Department served him with an emergency protective order. That emergency protective order prohibited SHERIFF MIRKARIMI from, among other things, possessing, controlling, owning or receiving any firearms. SHERIFF MIRKARIMI agreed to locate and surrender his firearms to the San Francisco Police Department within 24 hours. Instead, SHERIFF	Agree. Exh. 6 (arrest warrant); Exh. 7 (January 19, 2012 Order regarding transfer of firearms from SFSD to SFPD); Exh. 27 (January 17, 2012 SFSD incident report regarding firearms); Exh. 79 (transcript of January 19, 2012 criminal court proceedings regarding firearms); Exh. 86 (January 13, 2012 Emergency Protective Order); Daniele Decl. Paras. 27-31; Lansdowne Decl. Para. 42.G.; Lansdowne Tr. at 931:19-933:2, 950:1-951:9; Lemon Decl. Para. 63.; V. Hennessy Decl. Para. 72; Mirkarimi Tr. at 794:5-795:8, 798:19-24, 803:11-805:13; California Penal Code § 136.2(d) (firearms prohibition).	Disagree. The Sheriff's firearms were never under his direct control or in his possession. Mirkarimi Tr. 818:2-13. The firearms were turned over to law enforcement by the Sheriff's attorney. Ex. 79, p. 5:26-28.

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
1 2 3 4 5	MIRKARIMI transferred his personal firearms to the Sheriff's Department, thereby keeping them under his own direct control. [Amended Charges, Para. 26.]		
6 7 8 9 10 11 12 13 14 15 16 17 18	11. SHERIFF MIRKARIMI stipulated that a factual basis existed for his guilty plea. The Court found a factual basis for the plea, found that SHERIFF MIRKARIMI knowingly and voluntarily waived his rights and entered his guilty plea, and accepted the plea. False imprisonment of a spouse is a crime of domestic violence. The California Penal Code considers spousal abuse to be a "crime against public decency and good morals." Cal. Penal Code, Part 1, Title 9, Ch. 2.5. Spousal abuse is also a crime of moral turpitude under California law. [Amended Charges, Para. 30]	Agree. Exh. 36 (Tr. (March 12, 2012) at 6:9-13 (guilty plea and stipulation to factual basis)); Exhs. 36-39 (transcripts and minutes from March 12 and 19, 2012 criminal court hearings); Lemon Decl. Para. 87; Mirkarimi Tr. at 686:18-25.	Partly Disagree. What constitutes a "crime of domestic violence," "spousal abuse," and/or a "crime of moral turpitude" are all legal conclusions. These statements conflate misdemeanor false imprisonment with felony false imprisonment. In fact, "violence" is the element that differentiates misdemeanor false imprisonment from felony false imprisonment. The Sheriff pleaded guilty to misdemeanor false imprisonment. Mirkarimi Decl. 2:20-21.
19 20 21 22 23 24 25 26 27 28	12. On January 13, 2012, San Francisco Police Department domestic violence inspectors served SHERIFF MIRKARIMI with a domestic violence Emergency Protective Order. The SFPD inspectors attempted to enforce the Emergency Protective Order, which prohibited SHERIFF MIRKARIMI from, among other things, possessing, controlling, owning or receiving any firearms. The SFPD inspectors advised	Agree. Exh. 7 (January 19, 2012 Order regarding transfer of firearms from SFSD to SFPD); Exh. 13 (SFSD Employee Rules and Regulations); Exh. 27 (January 17, 2012 SFSD incident report regarding firearms); Exh. 79 (transcript of January 19, 2012 criminal court proceedings regarding firearms); Exh. 86 (January 13, 2012 Emergency Protective Order); Daniele Decl. Paras. 13, 27-31; Lansdowne Decl. Para. 42.G.; Lansdowne Tr. at 922:8-22,	Disagree. Repeats Finding of Fact 10. The Sheriff's attorney located all three of the Sheriff's firearms and turned said firearms over to the Sheriff's Department, who then transferred custody to the Police Department. Ex. 79, p. 5:26-28.

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p>SHERIFF MIRKARIMI that he was required to locate and surrender his firearms to the San Francisco Police Department within 24 hours. The SFPD inspectors advised SHERIFF MIRKARIMI that three firearms were registered to him. SHERIFF MIRKARIMI stated to SFPD inspectors that he still owned only two of those three firearms, and had sold the third firearm long ago. SHERIFF MIRKARIMI did not express any uncertainty to the SFPD inspectors about the accuracy of his statement that he sold his third firearm. In fact, SHERIFF MIRKARIMI's statement was false; SHERIFF MIRKARIMI still owned and possessed all three registered firearms. SHERIFF MIRKARIMI had a responsibility to give answers to the SFPD inspectors that were clear, unambiguous and that most accurately reflected the truth of the matter. SHERIFF MIRKARIMI willfully did not do so. SHERIFF MIRKARIMI had an obligation to tell the truth to the SFPD inspectors. SHERIFF MIRKARIMI knew his statement to be false and made it willfully. [Mayor's Fact No. 1]</p>	<p>923:19-924:4, 950:1-951:9; Lemon Decl. Para. 63; Mirkarimi Tr. at 689:22-690:17, 794:5-795:18, 796:1-4, 798:15-18; California Penal Code § 136.2(d) (firearms prohibition).</p>	
25 26 27 28	<p>13. SHERIFF MIRKARIMI failed to meet the basic conduct standards for a San Francisco Sheriff's Department employee, but the Sheriff is a chief law</p>	<p>Agree. Exh. 13 (SFSD Employee Rules and Regulations); Lansdowne Decl. Paras. 28-36; 39-40, 41.D., 42.F., 42.G., 43-49, 54; Lansdowne Tr. at 913:6-8,</p>	<p>Disagree. These statements are legal conclusions.</p>

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	enforcement officer who must always meet the highest standards of ethical and professional conduct. A Sheriff must lead by example to earn and maintain the respect of his or her Department, other criminal justice agencies, and the public, and to avoid bringing his or her Department and office into disrepute. Among other things, this standard of conduct requires honesty, accountability, integrity, honor, self-restraint, respect for the law, adherence to regulations, conducting both private and public affairs above reproach, and the willingness to put the best interests of the Department ahead of personal concerns. [Mayor's Fact No. 2]	915:7-16, 916:4-19, 925:20-926:9, 928:15-929:7, 934:6-23, 935:21-936:13, 953:15-954:11, 958:4-9; V. Hennessy Decl. Paras. 19, 21-22, 37; Mirkarimi Tr. at 677:13-678:9, 679:6-680:5, 681:25-690:17.	
16 17 18 19 20 21 22 23 24 25 26 27 28	14. The Sheriff has duties to support and encourage victims and witnesses of domestic violence. Nevertheless, on January 8, 2012, SHERIFF MIRKARIMI made a public speech at his inauguration ceremony in which he joked about his own December 31, 2011 incident of domestic violence. Further, SHERIFF MIRKARIMI participated in and condoned efforts to vilify and intimidate the witness who reported SHERIFF MIRKARIMI's crime. SHERIFF MIRKARIMI did these things even while knowing full well that he had actually committed a violent act against his wife in that	Agree. Exh. 36 (Tr. (March 12, 2012) at 4:18-5:1 (in-court apology)); Exh. 84 (video clip from January 8, 2012 inauguration speech); Madison Decl. Para. 46, at lines 19:9-14 ("but due primarily to ... spokespeople fighting to defend him"); Mirkarimi Tr. at 767:13-774:7, 776:22-777:2-5, 806:2-17, 808:4-8, 808:15-24, 809:24-810:6, 811:5-15, 834:1-835:4; Lansdowne Decl. Paras. 20-22, 36, 40, 42.E., 52-55; Lansdowne Tr. at 940:5-941:17, 942:11-945:22, 955:17-956:8.; Lemon Decl. Paras. 60-62, 159.	Disagree. The first sentence is an opinion and/or legal conclusion. The rest of the paragraph is false. The Sheriff did not joke about domestic violence, but about the media attention at his inaugural. The Sheriff did not vilify or intimidate witnesses or condone the same and was under no obligation to defend individuals who were accusing him of wrongdoing. Chief Lansdowne's opinions are not evidence of a fact.

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
1 2 3 4 5 6 7	reported incident. SHERIFF MIRKARIMI never took any actions to defend the reporting witness until March 12, 2012, when SHERIFF MIRKARIMI entered his guilty plea and issued a public apology at the direction of the San Francisco District Attorney. [Mayor's Fact No. 3]		
8 9 10 11 12 13	15. SHERIFF MIRKARIMI's conduct brought disrepute on the Sheriff's Department and on the office of Sheriff. [Mayor's Fact No. 4]	Agree. Exh. 36 (Tr. (March 12, 2012) at 4:18-5:1 (in-court apology); Lansdowne Decl. Paras. 44-49; Lansdowne Tr. at 957:10-958:9; Mirkarimi Tr. at 679:6-8, 688:5-7, 813:24-25; Exh. 28 (March 12, 2012 memo from Sheriff Mirkarimi to SFSD employees).	Disagree. This statement is a vague opinion, not a fact.
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	16. SHERIFF MIRKARIMI knew that he committed domestic violence on December 31, 2011. Rather than immediately accepting responsibility for his actions, however, SHERIFF MIRKARIMI blamed political opponents and attacked others. [Mayor's Fact No. 5]	Agree. Exh. 80 (RM to EL 1/4 6:01p text message: "I cannot. Neither can he. You have to reject Ivory's actions. We both do. I cannot involve new people."); Exh. 81 (LPH to RM 1/4 3:53p text message: "I need to talk to you to protect you. Call me."); LPH to RM 1/5 9:51p text message: "I had a thought. Did you run the statement by the attorneys? Please confirm you received this."; LPH & RM text messages January 5-6, 2012; RM to LPH 1/12 4:14p text message: "Unbelievable! Beverly knows that I've always been a fervent supporter of the dv community. Am I really guilty until proven innocent...we know of the political forces at work here and yet, I'm advised to say nothing."; LPH to RM 1/12	Disagree. The Sheriff bruised his wife's arm on December 31, 2011. The Sheriff pleaded guilty to misdemeanor PC 236, apologized to Ms. Madison and the residents of San Francisco, was sentenced to three years' probation, was fined, and has been in counseling since. The Sheriff did not blame anyone else for his actions. As a result of his conduct on December 31, 2011, the Sheriff was barred from seeing his wife and child for several months, not allowed to go home, and suspended without pay. Mirkarimi Decl. 2:2-22.

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19		9:42p text message: "...It will continue to be extremely hard not to say something, but I think they will chase their tails without any interaction/evidence, and it will fade. ..."; RM to LPH 1/12, last text message before 10:05p message: "Quite agree. Neither Eliana nor I should talk but a loud drum beat needs to vibe that this is a political witch hunt. So evident based on all the tactics they're using. Text book."); Exh. 82 (December 31, 2011-January 13, 2012 AT&T records); Exh. 83 (January 4, 2012 communications records); Madison Decl. Para. 46, at lines 19:9-14 ("but due primarily to ... spokespeople fighting to defend him"); Mirkarimi Tr. 693:1-20, 695:21-25, 700:14-17, 711:10-12, 712:12-16, 809:24-810:6; Exh. 36 (Tr. (March 12, 2012) at 4:18-5:1 (in-court apology)); Lansdowne Decl. Paras. 41.C., 42.E., 45-46, 60, Lansdowne Tr. 926:10-928:7, 951:10-952:18.	
20 21 22 23 24 25 26 27 28	17. Neither the District Attorney nor the Mayor made any attempt to talk with Ms. Lopez before charging or suspending the Sheriff; Ms. Lopez's wishes that the Sheriff not be charged, convicted or removed from office have been effectively ignored or disregarded. [Sheriff's Fact No. 1]	Agree in part that the Mayor did not personally attempt to speak with Ms. Lopez before suspending the Sheriff. Disagree with remainder. Daniele Decl. Para. 16; Lansdowne Decl. Paras. 21, 22; Lee Tr. at 897:16-25, 899:21-900:11. Objection to citation of excluded portions of the Lopez Declaration: para. 5, lines 2:1-3 ("and that Ivory ... were	Agree. Lee Tr. 892:2-3; Lopez Decl. 1:26-4:5.

	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
		privileged."); para. 6, line 7 ("and that her ... an attorney"); para. 7, lines 10-11 ("Ivory dispensed ... to me."); para. 10, lines 3:1-2 ("I believed Ivory Madison."); para. 12; para. 13, lines 3:22-24 ("because this had ... woman for him."), line 3:25 ("Ivory ignored me."), lines 3: 25-26 ("as my attorney,"), lines 3: 28-4:1 ("Ivory did not listen to me."), lines 4:1-2 ("That was the only statement that stopped her, and").	
18.	Many individuals have served honorably in San Francisco law enforcement agencies who have been convicted of crimes. [Sheriff's Fact No. 2]	Disagree. Lansdowne Tr. at 924:13-926:9, 933:4-935:6, 939:2-13. Objection to citation to M. Hennessey Declaration due to his non-appearance for demanded cross-examination.	Agree. M. Hennessey Decl. pp. 1-3.
19.	Between January 8, 2012, and March 12, 2012, the Sheriff effectively communicated with other law enforcement personnel and otherwise carried out the duties of his office. [Sheriff's Fact No. 3]	Agree that Sheriff Mirkarimi carried out some duties of his office between January 8, 2012 and March 12, 2012. Disagree with remainder. Daniele Decl. Paras. 27-31; Exh. 7 (January 19, 2012 Order regarding transfer of firearms from SFSF to SFPD); Exh. 79 (transcript of January 19, 2012 criminal court proceedings regarding firearms); Lansdowne Decl. Paras. 41.C., 41.D., 42.E., 42.F., 42.G., 60; <i>see generally id.</i> Paras. 28-36, 40-60.	Agree. Mirkarimi Tr. 821:1-826:10.
20.	Mayor Lee never spoke with Ms.Lopez before suspending the Sheriff, but he did speak to with Ivory Madison. [Sheriff's Fact No. 4]	Agree.	Agree. Lee Tr. 892:2-3; 887:20-22;

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	Findings of Fact	Mayor's Position and Evidence In Support	Sheriff's Position and Evidence In Support
21.	<p>Mayor Lee believes that the decision to suspend for alleged official misconduct is discretionary and made on a case-by-case basis. Mayor Lee believes that the official misconduct in this case was the Sheriff's plea to misdemeanor PC 236; he does not believe that improperly turning over firearms to police warrants removal from office. [Sheriff's Fact No. 5]</p>	<p>Agree with first sentence. Disagree with second sentence. Lee Tr. at 881:16-882:10; Charges; Amended Charges.</p>	<p>Agree. Lee Tr. 856:22-857:5; 885:5-13; 880:16-881:10.</p>