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Chairman Hur and Commissioners
through Executive Director John St. Croix
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: *Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco*

Honorable Commissioners:

We write to notify the Commission and counsel of our intent to request on Thursday that the Commission reconsider its ruling excluding Inspector Daniele's testimony (¶¶ 27-31) concerning the following facts: his arrest of Sheriff Mirkarimi and service of an Emergency Protective Order on Sheriff Mirkarimi; Sheriff Mirkarimi's inaccurate statements to police regarding the guns he owned; the Sheriff's agreement to convey his guns to the San Francisco Police Department; the Sheriff's delivery of his guns to the Sheriff's Department instead; and the Superior Court's order that the Sheriff's Department turn over the guns to the Police Department. The Commission excluded this testimony as irrelevant. For the reasons explained below, we respectfully request that the Commission change its ruling. We further notify Sheriff Mirkarimi of our intent to cross-examine him regarding his gun-related conduct, so that the Commission and Board will have a full record concerning this issue.

Although there were a number of rulings by the Commission with which we disagreed, we believe there are compelling reasons why the Commission should reconsider this one ruling in particular. First, as the expert declarations that are newly before the Commission make clear, Sheriff Mirkarimi's conduct in regard to his guns is not just *relevant* to the charges; it is *material*. On pages 11 and 12 of his declaration, law enforcement expert Chief Lansdowne testifies that the Sheriff's carelessness and/or dishonesty in regard to firearms is a significant breach of the expected standard of conduct of a law enforcement officer, much less a chief law enforcement officer; that the Sheriff's conduct represented a professionally unacceptable lack of cooperation with a law enforcement investigation; and that it was an abuse of his office for the Sheriff to order his staff to involve themselves in the police investigation. Domestic violence expert Nancy Lemon also considers the Sheriff's gun-related conduct material to her analysis, in that it is consistent with batterer behavior to own firearms and to try to manipulate situations to maintain control, and because the Sheriff's conduct circumvented the legal requirement that an accused batterer disarm. (Lemon Dec. ¶¶ 82-83).

Second, the evidence goes to Sheriff Mirkarimi's overall credibility, and such evidence is always relevant. Evidence that Sheriff Mirkarimi was not truthful and ethical in his dealings in regard to serious matters like firearms, his obligation to disarm, and his representations to police officers are important considerations as the Ethics Commission and the Board of Supervisors decide what weight to give his testimony in regard to other serious matters.

Third, the gun-related conduct was properly alleged in paragraphs 26 and 27 of the Amended Charges, and it is incorporated by reference as one of the factual bases for Count 3

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(Impeding A Police Investigation), Count 5 (Breach Of Required Conduct – Sheriff and Sheriff-Elect), and Count 6 (Breach of Required Conduct – Member of the San Francisco Board of Supervisors) . There is no further requirement that the aspects of the conduct that go to credibility be separately alleged. The credibility of witnesses is always in dispute; that is why evidence that goes to witness credibility is always relevant, whether dishonesty is separately alleged or not.

Finally, restoring paragraphs 27-31 of Inspector Daniele's testimony in recognition of its relevance does not prejudice Sheriff Mirkarimi. The Sheriff will remain free to challenge, explain or deny the testimony, and each Commissioner and Board member will remain free to determine the weight and significance of the evidence in light of the full record as he or she sees fit. The only cost of admitting the testimony is the small amount of additional time it will take the parties to examine Sheriff Mirkarimi, Chief Lansdowne, and possibly Sheriff Hennessey on this issue. This small cost is well outweighed by the benefit of a full record with which to evaluate a material allegation and the Sheriff's credibility. For these reasons, we respectfully request that you reconsider this limited ruling.

Very truly yours,

DENNIS J. HERRERA
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/s/ Sherri Kaiser

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