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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.

**SUMMARY OF STIPULATIONS AND  
REMAINING DISPUTES  
REGARDING MADISON AND  
MERTENS DECLARATIONS**

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17 The parties having met and conferred regarding the Sheriff's objections to the declarations  
18 of Ivory Madison (paragraphs 19-49) and Abraham Mertens, the following stipulations and  
19 remaining disputes are presented to the Commission:

20 **MADISON DECLARATION PARAGRAPHS 19-49**

21 **I. OBJECTIONS TO MADISON DECLARATION PARAGRAPHS 19-33**

22 **A. Stipulation And Dispute Regarding Hearsay Objection**

23 Paragraphs 19-33 include descriptions of communications between Ms. Lopez and Ms.  
24 Madison between January 1 and January 4.

25 The Sheriff objected on hearsay grounds to the portions of these paragraphs describing these  
26 communications. With regard to this hearsay objection, the Mayor stipulates that the facts contained  
27 in these communications are not offered as hearsay evidence, but rather for limited non-hearsay  
28 purposes.

1 The Mayor's purposes are: showing Ms. Lopez's state of mind (recognition that the  
2 December 31 incident was serious, and that Ms. Lopez was thinking about what to do about it,  
3 including reporting the incident); and Ms. Madison's state of mind and why she took the actions  
4 that she took (concern for Ms. Lopez's well-being and Ms. Lopez's statement of agreement about  
5 contacting the police).<sup>1</sup>

6 The remaining issue for the Commission to determine regarding this hearsay objection is  
7 whether the above purposes are relevant. The Mayor contends they are relevant, while the Sheriff  
8 contends they are not.

9 **B. Remaining Stipulations And Disputes Concerning Paragraphs 19-33**

10 **1. Paragraph 21 (Dispute)**

11 The Sheriff objects to p. 9, lines 21-22: "Eliana also asked me...by Ross." as more  
12 prejudicial than probative. The Mayor contends that this is admissible to show Ms. Lopez's state of  
13 mind.

14 **2. Paragraph 23 (Stipulation & Dispute)**

15 The Sheriff objects to p. 10, lines 4-6: "She seemed to feel...go to the police." The Mayor  
16 stipulates to this objection.

17 The Sheriff objects to p. 10, lines 6-7: "She also said...of her and Theo." as more  
18 prejudicial than probative. The Mayor contends that this is admissible to show Ms. Lopez's state of  
19 mind.

20 **3. Paragraph 24 (Stipulation)**

21 The Sheriff objects to p. 10, lines 11-14: "Throughout the day...campaign for Sheriff." The  
22 Mayor stipulates to this objection.

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25 <sup>1</sup> A speaker's statement about her current state of mind is admissible to show her state of  
26 mind or to explain her acts or conduct (Evid. Code § 1250); a statement can also be circumstantial  
27 evidence of the speaker's state of mind, *People v. Frye*, 166 Cal.App.3d 941 (1985). And, a  
28 speaker's statement is not hearsay when it is offered to show that the speaker imparted certain  
information to the hearer, and the hearer acted in response to the information provided. *Holland v.*  
*Union Pacific R.R. Co.*, 154 Cal.App.4th 940 (2007).

1                                   **4. Paragraph 25 (Dispute)**

2                   The Sheriff objects to p. 10, lines 17-18: “I said, ‘He’s isolating you....’ She agreed with  
3 my assessment.” as speculative and lacking foundation. The Mayor contends that Ms. Lopez’s  
4 verbal agreement with this statement is a statement from Ms. Lopez concerning Ms. Lopez’s own  
5 state of mind, and therefore has foundation and is not speculative.

6                                   **5. Paragraph 26 (Stipulation)**

7                   The Sheriff objects to p. 10, line 27 through p. 11, line 8: “When I read this email  
8 message... several days.” The Mayor stipulates to this objection.

9                                   **6. Paragraph 29 (Stipulation)**

10                  The Sheriff objects to p.12, line 5: “who are...your husband” (quoting from an e-mail). The  
11 Mayor stipulates to this objection. The parties agree to replace this language with an ellipsis (...).

12                                   **7. Paragraph 33 (Stipulation)**

13                  The Sheriff objects to p. 13, line 1: “Eliana does not ... quickly, so.” The Mayor stipulates  
14 to this objection.

15 **II. OBJECTIONS TO MADISON DECLARATION PARAGRAPHS 34-44**

16 **A. Stipulation and Dispute Concerning Hearsay Objections**

17                  Paragraphs 34-44 concern the January 4 communications between Ms. Madison and the  
18 police, and later communications with Ms. Lopez and Ms. Peralta Haynes on January 4.

19                  The Sheriff objected on hearsay grounds to the portions of these paragraphs describing these  
20 communications. With regard to this hearsay objection, the Mayor stipulates that the facts contained  
21 in these communications are not offered as hearsay evidence, but rather for limited non-hearsay  
22 purposes.

23                  The Mayor’s purposes are: showing Ms. Lopez’s changed state of mind (now rejecting  
24 reporting the December 31 incident to police, and against Ms. Madison); showing Ms. Madison’s  
25 state of mind and why she took the actions that she took (her concern for Ms. Lopez’s well-being,  
26 her conflicting desires not to upset Lopez, and to cooperate with law enforcement); and showing  
27

1 Peralta Haynes' statements and actions (telling Madison to lie to police)<sup>2</sup> and Peralta Haynes'  
2 motivation, by circumstantial evidence (to protect the Sheriff from a police investigation).

3 The remaining issue for the Commission to determine regarding this hearsay objection is  
4 whether the above purposes are relevant. The Mayor contends they are relevant, while the Sheriff  
5 contends they are not.

6 **B. Remaining Stipulations And Disputes Concerning Paragraphs 34-44**

7 **1. Paragraph 35 (Stipulation)**

8 The Sheriff objects to p. 14, lines 7-9: “, which I assumed...unlikely to me.” The Mayor  
9 stipulates to this objection.

10 **2. Paragraph 36 (Stipulation)**

11 The Sheriff objects to p. 14, lines 11-17 (entire paragraph). The Mayor stipulates to this  
12 objection.

13 **3. Paragraph 37 (Stipulation & Dispute)**

14 The Sheriff objects to p. 14, lines 21-22: “Eliana understood...her wishes.” The Mayor  
15 stipulates to this objection.

16 The Sheriff objects to p. 15, lines 22-24: “I was distraught... to protect Ross.” The Sheriff  
17 objects that this is not relevant and that it is more prejudicial than probative. The Mayor contends  
18 that this statement of Ms. Madison's emotional reaction is admissible to rebut any claim that that  
19 Ms. Madison was acting based on any interest other than Ms. Lopez's well-being.

20 **4. Paragraph 40 (Stipulation)**

21 The Sheriff objects to p. 17, lines 3-5: “and it was clear...she was referring to,”. The Mayor  
22 stipulates to this objection.

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<sup>2</sup> When a person's statement is offered to show the fact that the person made the statement,  
26 it is not hearsay. *People v. Burnham*, 176 Cal.App.3d 1134 (1986). Similarly, when a statement is  
27 an order or a direction, it is not hearsay. *People v. Reyes*, 62 Cal.App.3d 53 (1976) (persons told  
28 defendant to bet on certain numbers).

1                   **5. Paragraph 43 (Stipulation)**

2                   The Sheriff objects to p. 18, lines 1-2: “and it was obvious ... against Ross.” The Mayor  
3 stipulates to this objection.

4                   **6. Paragraph 44 (Stipulation)**

5                   The Sheriff objects to p. 18, lines 3-18 (entire paragraph). The Mayor stipulates to this  
6 objection.

7 **III. OBJECTIONS TO MADISON DECLARATION PARAGRAPHS 45-49**

8                   **A. Paragraph 45 (Stipulation and Dispute)**

9                   The Sheriff objects to the entire paragraph.

10                   **1. Stipulation**

11                   The Mayor stipulates to this objection only as to p. 19, lines 1-2 (last sentence of paragraph):  
12 “They are also...after the incident.”

13                   **2. Dispute**

14                   The parties dispute the objection as to the remainder of the paragraph. The Sheriff objects to  
15 p. 18, line 19 through p. 19, line 1 (entire paragraph except last sentence). The Sheriff objects that  
16 this is cumulative, argumentative, and more prejudicial than probative. The Mayor contends that  
17 these objections should be overruled, because this testimony responds to various specific claims that  
18 Sheriff Mirkarimi has made in the media about the December 31 incident.

19                   **B. Paragraph 46 (Stipulation and Dispute)**

20                   The Sheriff objects to the entire paragraph.

21                   **1. Stipulation**

22                   The Mayor stipulates to this objection only as to p. 19, lines 15-28: “Ross has  
23 repeatedly...San Francisco.”

24                   **2. Dispute**

25                   The parties dispute the objection as to the remainder of the paragraph. The Sheriff objects to  
26 p. 19, lines 3-15: “In the aftermath...with rare exception.” The Sheriff objects that this is  
27 cumulative, argumentative, and more prejudicial than probative. The Mayor contends that these  
28 objections should be overruled, because this testimony (describing Ms. Madison’s experience as a

1 witness who reported a crime involving a public official) is relevant to the Mayor’s charge that the  
2 conduct of Sheriff Mirkarimi “falls below the standard of decency, good faith and right action  
3 impliedly required of all public officers.” S.F. Charter § 15.105.

4 **C. Paragraph 47 (Stipulation)**

5 The Sheriff objects to p. 20, lines 2-5: “I find ... to be absurd.” The Mayor stipulates to this  
6 objection.

7 **D. Paragraph 49 (Stipulation and Dispute)**

8 The Sheriff objects to the entire paragraph.

9 **1. Stipulation**

10 The Mayor stipulates to this objection only as to:

11 p. 21, lines 8-20: “The correspondence ... Ross, knows that ...”

12 p. 21, lines 22-26: “and while I ... with the investigation.”

13 p. 21, line 28 through p. 22, line 1: removing the text “the correspondence between  
14 us before and after the conversation demonstrates that” and “was not only comfortable with but”;  
15 after this text is removed, the sentence reads: “Regarding the letter’s assertion that I told Eliana our  
16 conversation would be confidential, whether in a binding or non-binding sense, not only is this  
17 untrue, but Eliana actively encouraged me to tell people I thought could be helpful to her, and never  
18 expressed any concern whatsoever about whom or how many people I discussed the matter with.”

19 p. 22, lines 6-16: “It is a matter ... to do it: Ross.”

20 **2. Dispute**

21 The parties dispute the objection as to the rest of the paragraph. The Sheriff objects that this  
22 paragraph is argumentative, irrelevant, and more prejudicial than probative.

23 The Mayor contends that these objections should be overruled. The above stipulations cure  
24 the objection that this paragraph is argumentative. This testimony (which concerns attacks on Ms.  
25 Madison by counsel for Ms. Lopez) is relevant to the Mayor’s charge that the conduct of Sheriff  
26 Mirkarimi “falls below the standard of decency, good faith and right action impliedly required of all  
27 public officers.” S.F. Charter § 15.105.

## MERTENS DECLARATION

### I. PARAGRAPHS 6-9 (DISPUTED)

These paragraphs describe information that Mr. Mertens observed or learned about Sheriff Mirkarimi and Ms. Lopez's domestic relationship before December 31, and actions that he and Ms. Madison took to assist Ms. Lopez during that time.

The Sheriff objects to these paragraphs as irrelevant, more prejudicial than probative, and argumentative; and the Sheriff also objects to paragraph 7 as hearsay.

The Mayor disputes these objections. Ms. Lopez's statements in paragraph 7 are offered for a non-hearsay purpose: to show that Ms. Madison's and Mr. Mertens' actions toward Ms. Lopez have been motivated by a concern for Lopez's (and her son's) safety and well-being. The other paragraphs (6, 8, and 9) are likewise offered for the relevant purpose of showing Ms. Madison's and Mr. Mertens' concerns, and that they took actions consistent with those concerns. Paragraphs 6-9 are also relevant to Ms. Lemon's discussion of Sheriff Mirkarimi's economic abuse, which is part of a pattern of domestic abuse. (Lemon Decl. p. 2; *id.* ¶¶ 29, 128.)

Finally, as to the objection that this testimony is unfairly prejudicial, it may be prejudicial, but it is not unfairly so. Domestic abuse is ugly, and an accurate description of all the ways in which an abuser wields power over a victim is likely to be unflattering to an abuser.

### II. PARAGRAPH 13 (STIPULATION)

The Sheriff objects to p. 4, lines 8-16: "After Eliana...could do it." as double hearsay. The Mayor stipulates that this testimony (regarding what Ms. Madison told Mr. Mertens on January 1 after Ms. Lopez left their home) is not offered for a hearsay purpose, it is only offered to rebut the Sheriff's claim (if any) of later fabrication by Ms. Madison.

The Sheriff objects to p. 4, line 17: "Since I was well aware...with Theo." The Mayor stipulates to this objection.

### III. PARAGRAPH 20 (STIPULATION)

The Sheriff objects to p. 6, lines 7-8: ", and I have ... Callie either." The Mayor stipulates to this objection.

1 **IV. PARAGRAPHS 21-28 (STIPULATION AND DISPUTE)**

2 These paragraphs contain Mr. Mertens’ testimony about the harassment that he and Ms.  
3 Madison experienced during the criminal proceedings against Sheriff Mirkarimi. Sheriff Mirkarimi  
4 objects to all of these paragraphs as irrelevant and prejudicial, as well as argumentative.

5 **1. Stipulation**

6 The Mayor stipulates to these objections only as to:

7 Paragraph 21: p. 6, lines 12-16: “An example of ... persecute her husband.”

8 p. 6, line 17: “Ross”

9 p. 6, lines 19-24: “A recent example...cruel.”

10 Paragraph 22: p. 7, lines 10-12: “The correspondence...demonstrated that.”

11 Paragraph 23: p. 7, lines 20-25: “The letter was ... her legal work.”

12 Paragraph 24: p. 8, lines 7-14: “It is unlikely...conduct his defense.”

13 Paragraph 25: p. 8, lines 20-25: “In the op-ed, ... his plea deal.”

14 Paragraph 26: p. 8, line 27 through p. 9, line 6: “I was glad...like Ross.”

15 Paragraph 27: p. 9, lines 10-17.

16 Paragraph 28: p. 9, line 28 through p. 10, line 7: “She thought...representing him.”

17 **2. Dispute**

18 The Mayor contends that the remainder of these objections should be overruled. This  
19 testimony is not irrelevant or prejudicial, and the above stipulations address Sheriff Mirkarimi’s  
20 objection that this testimony is argumentative.

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1 This testimony, which describes Mr. Mertens' and Ms. Madison's experience after Ms.  
2 Madison reported a crime involving a public official and the personal and business consequences  
3 they suffered, is relevant to the Mayor's charge that the conduct of Sheriff Mirkarimi "falls below  
4 the standard of decency, good faith and right action impliedly required of all public officers." S.F.  
5 Charter § 15.105.

6 DATED: June 26, 2012

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