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12 **BOARD OF SUPERVISORS**  
13 **ETHICS COMMISSION**  
14 **CITY AND COUNTY OF SAN FRANCISCO**  
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18 IN RE MAYOR EDWIN LEE'S CHARGES )  
OF OFFICIAL MISCONDUCT AGAINST )  
19 SHERIFF ROSS MIRKARIMI )  
20 )  
21 )  
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23 )

**SHERIFF ROSS MIRKARIMI'S**  
**LIST OF POTENTIAL FACT**  
**WITNESSES**

1 At the outset, it must be noted that the Mayor has proposed 25 witnesses, eight of whom  
2 are purported experts<sup>1</sup>. At this rate, the Mayor may have to put a bond on the ballot just to  
3 finance the prosecution of this misdemeanor case. Countless murders have received less  
4 attention and resources than what is being poured into the Mayor’s political attack on the Sheriff.  
5 It is shocking that the Mayor would use city funds to pay eight separate “experts” to address  
6 whether a low-level offense which is not even a crime of moral turpitude is official misconduct.

7 The Mayor’s proposed witness lists suggest the Mayor has every intention of dragging  
8 this case out as long as possible and essentially turning the whole ordeal into a circus. However,  
9 Sheriff Mirkarimi is willing to stipulate to a significant portion of what the Mayor has alleged is  
10 official misconduct (the plea agreement, for example). Thus, extensive hearings and testimony  
11 on what is neither relevant nor at issue would be a waste of time and resources. The only  
12 significant material factual dispute that remains is the allegation that the Sheriff dissuaded  
13 witnesses and/or destroyed evidence or encouraged anyone to do the same.

14 The question of whether or not the plea agreement and the facts that gave rise to it  
15 amount to official misconduct is a legal question for the Commission. The only people with  
16 direct knowledge of the facts that gave rise to the plea agreement are Sheriff Mirkarimi and  
17 Eliana Lopez. All other evidence is hearsay and should be excluded. To allow the hearsay  
18 testimony of anyone other than the individuals directly involved – when the underlying basic  
19 facts have already been stipulated to - would serve little purpose other to further humiliate and  
20 embarrass the Sheriff and his family.

21 Out of an abundance of caution, and without any certain parameters of what exactly is at  
22 issue, and without having reviewed any of the evidence, indeed if there is any evidence, in the  
23 Mayor’s possession, Sheriff Ross Mirkarimi hereby submits the following list of potential fact  
24 witnesses to the Ethics Commission. The Sheriff may not call all of these witnesses, and may  
25 not elicit testimony on all of the listed subjects. Indeed, the subject matter of the testimony of  
26 the proposed witnesses will become clearer only after the Sheriff is able to review whatever

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27 <sup>1</sup> Three of the purported experts have had a direct role in this case already: Elizabeth Aguilar Tarchi prosecuted the  
28 Sheriff; Beverly Upton has repeatedly called on the Sheriff to resign and recently admonished the Commission that  
“the whole world is watching” at the April 23<sup>rd</sup> hearing; and Hamish Sinclair publicly revealed confidential  
information regarding the Sheriff. The Mayor’s proposal to have these obviously biased individuals certified as  
experts is appalling.

1 evidence the Mayor is relying on, and only after the Sheriff is on notice as to the scope of the  
2 actual charges.

3 The Sheriff reserves the right to supplement this list, subject to Ethics Commission  
4 approval, by adding witnesses or by adding subjects that witnesses might address based on  
5 additional information gained through discovery. As identified below, certain witnesses'  
6 testimony could and should be presented via declaration, to the extent their testimony addresses  
7 subject matter that Mayor Lee does not dispute, and where their testimony *is* disputed by Mayor  
8 Lee, live testimony should only be required where the dispute is material. To the extent the  
9 testimony of a listed witness is not designated as in person or by declaration, that information  
10 will be clarified as circumstances permit.

- 11 1. **Art Agnos.** Former Mayor Art Agnos is expected to testify by declaration as to  
12 conversations he had with Mayor Lee prior to the Mayor's suspension of the Sheriff.
- 13 2. **Phil Bronstein.** Former San Francisco Chronicle Editor Phil Bronstein is expected to  
14 testify in person as to communications he had with Ivory Madison and any other  
15 individuals regarding Sheriff Mirkarimi and Eliana Lopez from January 1, 2012, to  
16 January 4, 2012, and possibly prior to that time and/or thereafter.
- 17 3. **Leni De Leon.** Leni De Leon is the proprietor of Ohana Hale Daycare. Ms. De Leon is  
18 expected to testify by declaration as to interactions she had with Eliana Lopez and the  
19 childcare she provided for the son of Ms. Lopez and Sheriff Mirkarimi between January  
20 1, 2012, and January 5, 2012.
- 21 4. **Jan Dempsey.** Retired Undersheriff Jan Dempsey is expected to testify by declaration as  
22 to her knowledge of Sheriff Mirkarimi's actions before and after January 8, 2012.
- 23 5. **Linnette Peralta Haynes.** Linnette Peralta Haynes is the Program and Policy Director of  
24 Our Family Coalition. Ms. Haynes was also Sheriff Mirkarimi's campaign manager and  
25 a former domestic violence advocate. Ms. Haynes is expected to testify as to  
26 communications she had with Eliana Lopez, Ivory Madison and Sheriff Mirkarimi on  
27 January 4, 2012.
- 28 6. **John Keane.** Inspector John Keane is expected to testify by declaration as to his  
receiving a phone call from Ivory Madison on January 4, 2012.

- 1 7. **Edwin Lee.** Mayor Lee is expected to testify in person as to the reasons for his  
2 suspension of Sheriff Mirkarimi, the absence of any investigation he undertook prior to  
3 the suspension, and his lack of consultation with others prior to the suspension.
- 4 8. **Eliana Lopez.** Eliana Lopez is the wife of Sheriff Mirkarimi. Ms. Lopez is expected to  
5 testify regarding the facts of the underlying case: what occurred from December 31,  
6 2011, to the present, as well as any other relevant information.
- 7 9. **Ivory Madison.** Ivory Madison is the neighbor of Eliana Lopez and Sheriff Mirkarimi  
8 and is married to Abraham Mertens. Ms. Madison is expected to testify in person as to  
9 her communications with Eliana Lopez, Abraham Mertens, Phil Bronstein and others as  
10 to the facts of the underlying case.
- 11 10. **Abraham Mertens.** Abraham Mertens is the neighbor of Eliana Lopez and Sheriff  
12 Mirkarimi and is married to Ivory Madison. Mr. Mertens is expected to testify in person  
13 as to his communications with Ivory Madison, Eliana Lopez and others as to the facts of  
14 the underlying case.
- 15 11. **Nancy Miller.** Nancy Miller is the Interim Executive Officer of the San Francisco Local  
16 Agency Formation Commission (LAFCo). Ms. Miller is expected to testify by  
17 declaration as to her knowledge of Sheriff Mirkarimi's presence at a LAFCo event on  
18 January 4, 2012.
- 19 12. **Ross Mirkarimi.** Sheriff Mirkarimi is expected to testify in person regarding the facts of  
20 the underlying case.
- 21 13. **Evelyn Nieves.** Evelyn Nieves is the former San Francisco Bureau Chief and columnist  
22 for the New York Times. Ms. Nieves lived with Sheriff Mirkarimi for several years and  
23 is expected to testify by declaration as to her knowledge of Sheriff Mirkarimi as a friend  
24 and partner.
- 25 14. **Lidia Stiglich.** Lidia Stiglich is an attorney and represented Sheriff Mirkarimi during  
26 criminal proceedings from January through March 2012. Ms. Stiglich is expected to  
27 testify in person as to her knowledge of the criminal proceeding and subsequent plea  
28 agreement.

1       15. **Emen Tekin.** Emen Tekin is the head chef at Hayes Kebab, a restaurant in Hayes  
2       Valley. Mr. Tekin is expected to testify by declaration as to his knowledge of Eliana  
3       Lopez ordering and picking up food from Hayes Kebab on December 31, 2011.

4       16. **Callie Williams.** Callie Williams is a neighbor of Sheriff Mirkarimi and Eliana Lopez.  
5       Ms. Williams is expected to testify by declaration as to any communications she had with  
6       Ivory Madison, Abraham Mertens, Sheriff Mirkarimi, Eliana Lopez or others regarding  
7       the underlying facts of this case.

8       17. **Andrea Wright.** Andrea Wright is Sheriff Mirkarimi's Probation Officer. Ms. Wright is  
9       expected to testify by declaration as to her knowledge of Sheriff Mirkarimi's successful  
10      participation in the probation program.

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12      The foregoing list is based on available information to date. The Mayor and City  
13      Attorney have yet to provide the Sheriff with any evidence upon which the charges are based.  
14      As acknowledged by Deputy City Attorney Peter Keith on April 23, 2012, the Mayor suspended  
15      the Sheriff without evidence and is now making an attempt to gather evidence after the fact. As  
16      the charges change with each new filing from the Mayor and City Attorney, it is impossible for  
17      Sheriff Mirkarimi to provide a comprehensive witness list at this time, as the Mayor and City  
18      Attorney continue to threaten to add and/or change the charges as they see fit.

19      Sheriff Mirkarimi remains at a distinct disadvantage in these proceedings, as the Mayor  
20      and City Attorney have asserted the authority to issue subpoenas on their own prerogative,  
21      outside the authority or jurisdiction of the Ethics Commission. The Sheriff respects the authority  
22      of the Ethics Commission over all aspects of the case, and will await Ethics Commission  
23      direction as to further discovery procedures. After the Ethics Commission gives the parties clear  
24      discovery guidelines, and the Mayor and City Attorney finalize their witness lists and provide  
25      whatever evidence they have to the Sheriff, the Sheriff may add fact witnesses as appropriate and  
26      with the permission of the Ethics Commission.

27      Finally, although the Sheriff has diligently sought to meet his disclosure guideline in all  
28      regards, the Sheriff is currently unable to finalize this list and anticipates making a supplemental  
disclosure of any additional witnesses as circumstances permit.

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Dated: May 10, 2012

By: /s/ David P. Waggoner  
DAVID P. WAGGONER

/s/ Shepard S. Kopp  
SHEPARD S. KOPP

Attorneys for  
SHERIFF ROSS MIRKARIMI