

COMPLAINT – DEREK RUSH

Entity: Derek Rush
Santa Clara Police Department

Complainant: Garrett Bondaug
[Redacted]

Police Report: 11-12465

Please note that within two weeks from this incident a **filing of an official complaint was attempted but records of the incident and a complaint form were denied Mr. Bondaug by officer Steven Ernst** who was working the front records desk at Santa Clara Police Department. A letter from Records Manager, Gina McWilliam, on behalf of the acting Police Chief, Kevin Kyle, is attached to this complaint.

A Santa Clara County Grand Jury, in its 2012-2013 Final Report, found that the City of Santa Clara and its police department (1) did not provide Public Access to Complaint Procedure and (2) did not provide either online, in the lobby or by request Public Access to Complaint Form. Subsequently, it wasn't until **September 25, 2013** when Mayor Jamie Matthews, City Manager Julio Fuentes, and Police Chief Michael Sellers confirmed that the Grand Jury's findings were acknowledged and Grand Jury recommendations for remedy implemented. A copy of the City of Santa Clara's response to *"2013-2013 Santa Clara County Civil Grand Jury, Law Enforcement Public Complaint Procedures"* is attached to this complaint.

INCIDENT/TIME: Starting December 2, 2011 - Present

INCIDENT CASE NUMBER: 11-12465

INCIDENT LOCATION: [redacted] Wilson Court, Santa Clara, CA 95051

EMPLOYEES INVOLVED (IF KNOWN): Officers Gregory Deger, Colin Stewart, Lauren Larsen (Eldridge), Derek Schneider, Tom Nelson, Cory Morgan, Chris bell, Jamie Ellis, Sergeant Derek Rush, Lieutenant Daniel Moreno, Captain Wahid Kazem, Chief Kevin Kyle

Complaint against Derek Rush and Santa Clara Police Department

1. Sgt. Derek Rush Violated California Penal Code 832.5(a)(1)
2. The Santa Clara Police Department, and its supervisory officers, Intentionally Violated Department General Order section 1.5
3. The City of Santa Clara Violated California Penal Code 135PC
4. The City of Santa Clara and its Police Department Violated Departmental Rules and Regulations Established for Responding to Assaults
5. The City of Santa Clara and its Police Department Violated Santa Clara County Domestic Violence Protocol for Law Enforcement as Subscribed to in 2009 and 2014
6. The City of Santa Clara and its Police Department Failed to Protect Citizens from False Arrest

THE FOLLOWING HAPPENED:

1. **Sgt. Derek Rush, acting as supervisor in the evening of December 2, 2012, Violated California Penal Code 832.5(a)(1).** That code requires any entity that employs peace officers establish and maintain a procedure to investigate complaints from the public against entity employees and personnel contracted in employment and that a written description of the complaint procedure be made readily available to the public. **Derek Rush Conducted Police Business in a Less Than Truthful Manner and was Uncooperative. I ask that an independent investigator consider the below facts in finding that Derek Rush intentionally violated department policy and Penal Code 832.5(a)(1).**

- a) On the evening of December 2, 2011 Ms. [Sandra] requested the name and number of a supervisor to report a complaint against officers (identities unknown at that time) that they committed acts of unwarranted assault and battery and fabricated a cause of 647(f), drunk in public, to justify their actions.
 - i. In taking a statement from Ms. [Sandra], officer Morgan noted “[Sandra] then refused to speak to me further until I checked on the status of Bontaug [sic]. I walked over to where I had last seen him, only to discover that he had already been transported to the hospital. I told [Sandra], who had walked on the sidewalk towards my location, that Bontaug [sic] had already been transported to Valley Medical Center.”
 - ii. Ms. [Sandra] provided the exact piece of paper, with SCPD officer’s hand writing on it, to attorneys. The name and phone number provided to Ms. [Sandra] is “SGT Derek Rush 615-4700.” Ms. [Sandra] called the phone number that same evening and left a message. Her call to record a statement and file a complaint was never returned.
 - iii. Also that same evening, Ms. [Sandra] and Ms. [Tatiana] went to Valley Medical Center to check on Mr. Bondaug and speak to a supervisor. They were not permitted to speak with or see Mr. Bondaug and the officer’s at the hospital wouldn’t take a statement or complaint from Ms. [Sandra] or Ms. [Tatiana].
- b) During, immediately after, and within the following days of incident 11-12465, Sgt. Rush had more than ample time to follow up on witness statements as mandated by City of Santa Clara, Santa Clara Police Department, and Santa Clara County Domestic Violence protocols but intentionally avoided that responsibility, obligation, and commitment to the community

he serves, his employer and the agencies that work tirelessly to uphold policies, procedures, and the good name of law enforcement and community service professions.

- i. On the evening of December 2, 2011 officer's collected certain personal contact information about the witnesses and Sgt. Rush testified that they executed a database confirmation of witness identities. Derek Rush, at all times, had more than enough information about Ms. [Sandra] to contact her.
- ii. Since the evening of December 2, 2011, Derek Rush has possessed ample contact information for all witnesses to have conducted a follow up investigation but intentionally refused to do so.

Regardless if Sgt. Rush has an official complaint form on hand, all officers, especially supervisors, know that any and all witness statements are important and should never be neglected or ignored. Especially in this matter as the initial call for service was an alleged domestic disturbance, Sgt. Rush intentionally avoided investigating this matter as he knew that his officers had broken protocol, their 647(f) was basis for arrest is highly inappropriate, and that credible witnesses were immediately willing to report that their officers were wrong and had violated a person's civil rights. Deger's report states that he feared one of the women were a victim of domestic violence; **I ask that an independent investigator find that neither incompetence, inexperience or inadvertence are acceptable excuses for Derek Rush violating department policy and Penal Code 832.5(a)(1).**

2. **Sgt. Derek Rush Intentionally Violated Department General Order section 1.5: Reporting and Documenting The Use of Force.** (exhibit 18) **I ask that an independent investigator consider the below facts in finding that sergeant Derek Rush intentionally violated department policy in not properly documenting Use of Force and retaining such records.**

- a) Section 1.5.3, Review of Force Reports, paragraph 3: "It is the **responsibility of the reviewing supervisor** to ensure that they **report complies with the requirements as found in General Order 1.5.2** and that the employee's use of force is consistent with Department policy, **based on the content of the report.**"
 - i. On scene, December 2, 2011, while officers were making note of witness statements were Sgt. Derek Rush and Sgt. Nicholas Richards, both supervisors at the time.
 - ii. Section 1.5.2, paragraph three, clearly states "An employee's failure to report his/her use of force, or that use of force, which he/she witnesses that is unreasonable, will subject that employee to disciplinary action." From statements

documented in Nelson and Stewart's police reports, all witnesses stated to them that there was no problem at Ms. [Daniela]'s home; no one in the residence had been threatened with, or was the victim of, violence; Mr. Bondaug never raised a hand or touched Deger, and that it was Deger who initiated contact with Mr. Bondaug. Officer Stewart also documented and testified that he never saw Mr. Bondaug reach for or grab Deger and in fact it was Deger who Stewart testified was reaching for Mr. Bondaug. Stewart saw Deger striking Mr. Bondaug. Both officers Stewart and Nelson documented and testified they never saw Mr. Bondaug swing with hands or kick at any officer or persons that entire evening.

- iii. Both Deger and Stewart recorded and testified that Mr. Bondaug's hands were under his body while their weight (combined 360+/- lbs) was on top of him and Nelson was holding Mr. Bondaug's neck and pressing down on his head. Police Use of Force Expert Witnesses for both the City and Mr. Bondaug agree that Mr. Bondaug couldn't have easily moved his hands and arms from under himself with that much weight and force pressed down on him. **Furthermore, both expert witnesses agree that Mr. Bondaug laying face down would, at worst case, be "passive resistance" rather than "active resistance" and that closed-fist, knee and ASP baton strikes to Mr. Bondaug's torso, face and head would be inappropriate in that circumstance.** Officer Stewart, Ms. [Daniela], Ms. [Sandra], Ms. [Tatiana] and Mr. Bondaug all stated and testified that Mr. Bondaug never actively resisted and that he never swung or kicked at any of the officers.
- iv. Santa Clara Police Department General Order 1.4, Less Lethal Force, and specifically section 1.4.5 states, "The police baton or expandable baton used by police officers is either a defensive or control weapon and shall be used in a manner consistent with training." Both Sgt's Rush and Richards knew at the scene that the officers they supervised had accumulated independent witness statements certifying that Mr. Bondaug had not threatened, touched, or moved towards Deger therefore Deger's action of using an ASP baton should have immediately been called into question. Additionally, any allegation that Mr. Bondaug has done such things was never conveyed to other officers or supervisors at the scene, absence of that detail is noticeable on each and every individual officer reports.

- v. Based upon the independent statements that officers gathered from witnesses and from what they saw, it is reasonable to believe that Deger striking Mr. Bondaug with a baton and fist strikes to his head and torso is unreasonable.
- b) Sgt. Derek Rush was on scene the entire time, was knowledgeable that two of his officers had beat a person with their fists and ASP baton, and Rush directed the application of a WRAP device. Rush either intentionally avoided comparing statements of Deger and Stewart to accounts provided by witnesses or he was in fact aware of conflicting statements and immediately acted to lead officers in covering up the incident. **Section 1.3.2 Factors Used to Determine the Reasonableness of Force.**
 - i. **The conduct of the individual being confronted:** All statements from witnesses at the scene specify that it was Deger, not Mr. Bondaug, who was acting aggressive. Witnesses also state that Deger was the only one to threaten and inflict assault and battery upon anyone else. **Sgt. Rush was informed of this by his officers while they were all on scene.**
 - ii. **Employee/subject factors:** Deger knew there was only one person on the front porch with him; he also knew that both Stewart and Nelson were on scene when speaking with Mr. Bondaug. In standing 3 feet from Mr. Bondaug, Deger knew he was taller and that Mr. Bondaug weighed about the same as him. **Sgt. Rush knew this while on scene and it's confirmed by CAD reports.**
 - iii. **Influence of drugs/alcohol:** Deger told Ms. [Sandra] that he was arresting Mr. Bondaug for being drunk in public but then would change his paperwork once supervisors confirmed that he couldn't do that. Audio tapes of Mr. Bondaug and documentation from EMT, firefighter-paramedics, and nurses and doctors at Valley Medical Center confirm that Mr. Bondaug was neither drunk or on any type of drugs. **Sgt. Rush was provided EMT, fire department, and hospital records showing that no trained medical professional suspected Mr. Bondaug of being drunk or under the influence of drugs.** Rush testified that without drugs, paraphernalia, or a chemical sample there isn't enough to charge someone with HS11550.
 - iv. **Proximity of weapons:** Mr. Bondaug is clean cut and was wearing blue jeans, a polo style shirt, a black leather belt, and witnesses testified that his shirt is always tucked in. The residence is that of Ms. [Daniela], Mr. Bondaug's 63 year old (at the time)

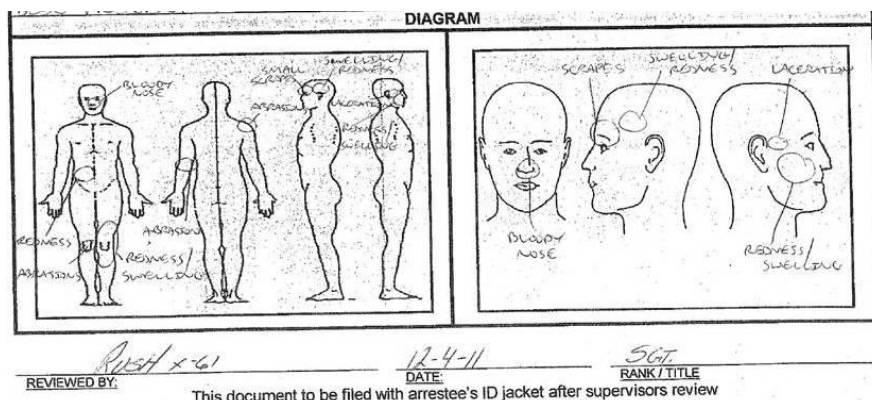
mother who does not own firearms. Deger scanned the front porch and inside of the living room and saw no evidence or suspicion of a weapon. The front porch had two plastic chairs and a plastic side table, Ms. [Daniela] doesn't keep tools on her porch. Deger never warned or indicated to other officers that he thought there were weapons or tools on the property and made no note of like suspicion in his police report. Deger never believed there were weapons available to Mr. Bondaug and he had no reason to believe Mr. Bondaug was armed. Sgt. Rush knows Mr. Bondaug didn't possess weapons of any type and he never directed any officer to attempt to locate any, he didn't even have his officers take pictures of the scene.

- v. **Availability of other options:** If Deger feared approaching the [Redacted] Wilson Court property he could have waited for the backup officers he knew were en route, Deger didn't. If Deger was scared standing on Ms. [Daniela]'s porch he could have walked back down the driveway when he ordered Ms. [Tatiana] back into the house, he didn't. If Deger was afraid of Mr. Bondaug's presence he could have easily stepped off the porch, he didn't. Deger knew other officers were on scene as he began speaking with Mr. Bondaug. **Sgt. Rush knows this.**
- vi. **Seriousness of the suspected offense(s) or reason for contact with the individual:** Deger's own police report doesn't list any type of threat or assault made to Ms. [Daniela], Ms. [Sandra] or Ms. [Tatiana]. All witnesses immediately and independently from one another told different officers that Mr. Bondaug never lifted his hand to anyone. Officer Stewart testified that he never saw Mr. Bondaug attempt to grab, punch or kick at anyone. The first acts of battery that officer Stewart witnessed was Deger grabbing at and striking Mr. Bondaug with his ASP baton. **Sgt. Rush was immediately made aware of this at the scene.**
- vii. **Training and experience of the employee:** Apparently very little and Deger is experienced with [Redacted] supervisors, command-staff, and the City Manager.
- viii. **Potential for injury to citizens, employees and suspects:** At no time did Mr. Bondaug threaten to assault or appear to batter anyone. In fact, every witness states that Mr. Bondaug was jovial all night and that he, his mother, Ms. [Sandra] and Ms. [Tatiana] were sitting peacefully in Ms. [Daniela]'s living room watching PBS until Deger arrived. The only person who threatened, battered and assaulted

anyone else was Deger, Stewart and Nelson. **Sgt. Rush knows every witness account verifies this.**

- ix. **Risk of escape:** Mr. Bondaug had done nothing wrong, he has no criminal past, was satisfied sitting and visiting with his mother that evening, and his vehicle was parked on the driveway where it is always parked when visiting his mother. **Sgt. Rush knows this and no one has challenged these facts.**
- x. **Other exigent circumstances:** There were none, Sgt. Rush knows this.

There is absolutely no logical reasoning for Sgt. Rush to have signed off on the Arrestee Injury Report, visually inspecting it for correctness, and individual officer police reports and miss the fact that officer Stewart's single closed-fist strike to the face is the only reported instance of a strike to Mr. Bondaug's head. Simple deduction from his own paperwork would reveal that Sgt. Rush has yet to account for at least four strikes to Mr. Bondaug's head and face area.



Furthermore, elementary investigation techniques should have lead Sgt. Rush to evaluate these factors..

- Officer Greg Deger wrote in his report and testified that his ASP baton was in his right hand as he struck Mr. Bondaug and additionally, his baton was still in his right hand when he was on Mr. Bondaug's back landing vicious closed fist strikes into his head and upper torso.
- Deger documented in his report and testified that he landed 2-4 strikes on Mr. Bondaug with his ASP baton. There is one baton strike to Mr. Bondaug's left arm and two to his left leg, Sgt. Rush needs to account for one more ASP baton strike.
- Prior to hearing the audio that officer Larsen (Eldridge) surreptitiously recorded, Mr. Bondaug made declaration under the penalty of perjury and testified that he had been struck in the head with a hard metallic object.
- On that surreptitiously recorded audio, officer Chris Bell can be heard telling Mr. Bondaug that he has "quite a large lump" on his head.

It is absolutely not believable that anyone, especially a police supervisor, could both miss the opportunity and responsibility of a person that was suspected of being a victim of domestic violence AND miss properly documenting every single strike to a person's head from the same incident. **I ask that an independent investigator consider the above facts in finding that sergeant Derek Rush intentionally violated department policy in not properly documenting Use of Force.**

3. Sgt. Derek Rush Violated California Penal Code 135PC, Destroying and/or Concealing Evidence in a Crime. Below is a list of chronological events proceeding, during, and after the intentional and negligent destruction of evidence. **I ask that an independent investigator consider the below facts in finding that the Sgt. Derek Rush intentionally violated department policy in destroying or concealing evidence in a crime.**

- a) Sgt. Derek Rush and Santa Clara Police Department immediately knew there were questionable circumstances and events detailed in the police reports of officers Deger, Stewart, Nelson, Morgan, Larsen (Eldridge), Schneider and destroyed or manipulated evidence necessary to competently and completely investigate matter 11-12465.
 - i. Deger's own report clearly states that the women told Deger that there was no problem at the residence. Mr. Bondaug told Deger the same. Deger goes on to write that he believed no one else was at the residence. While at the scene, Rush's subordinates collected statements that Mr. Bondaug never lifted a hand or kicked towards anyone nor did he threaten anyone. **There are only two reasons why Sgt's Rush or Richards wouldn't personally investigate these discrepancies, (1) they are incompetent or (2) they immediately new Deger had violated established protocol and they went into cover-up mode. I believe it was #2.**
 - ii. After Stewart participated in the physical assault of Mr. Bondaug, a competent supervisor would have immediately established justification for the use of force. Stewart's report and testimony is that he never saw Mr. Bondaug reach towards or assault anyone, including Deger. Furthermore, Stewart collected statements from Ms. [Tatiana] that Mr. Bondaug never threatened, assaulted or yelled at anyone. It is rational to believe that Stewart would attempt to investigate the circumstances as to why he was drawn into a physical altercation on a private residence. **It is absolutely justified for SCPD and City of Santa Clara to demand from supervisor**

- Sgt. Rush that he personally look into the discrepancies of each police officers report and witness statements. Derek Rush intentionally eluded this process.**
- iii. Officer Tom Nelson reported to hold Mr. Bondaug's head and neck as Deger and Stewart landed multiple closed fist and baton strikes to Mr. Bondaug while both Deger and Stewart were physically on top of him. From Nelson's vantage point he had the best view as to which one of them were striking Mr. Bondaug's head, torso and back and it is reasonable to expect that Nelson include those facts in his report. The injuries to Mr. Bondaug's head and face do not comport with Stewart's testimony of one single strike to the face. **In reviewing and signing the Arrestee Injury Report and reviewing Deger, Stewart, and Nelson's police report specifying their use of force, Derek Rush should have immediately recognized the discrepancies and held his subordinate officers accountable and drafted supplemental injury reports to fill in the omissions. Sgt Rush intentionally never did that to cover up the violation of Department, City, and County protocol.**
- iv. Part of the Arrestee Injury Report is the Valley Medical Center staff observations and care of Mr. Bondaug. Supplementing VMC's documentation are firefighter/paramedic and EMT reports that identify Mr. Bondaug's vital statistics as "normal" and of no cause for alarm. Additionally, the doctors and nurses at VMC provided Mr. Bondaug with 800mg of Ibuprofen which is never administered to anyone the staff suspects of legitimately being under the influence of a central nervous stimulant (CNS). Officer Larsen (Eldridge) states that she spoke to Dr. Jan Vobeky but she never once consulted with him, or any other staff, as to their professional medical evaluation of Mr. Bondaug being under the influence of alcohol or some type of CNS. Larsen would go on to testify that in making her observations of Mr. Bondaug's eyes, skin, lips, and pulse she never noticed that he had multiple wounds to both eyes both temple areas, both cheeks, his neck, and a large, swollen, lump on this head. It was Larsen (Eldridge) herself that was holding her personal iPhone up to her and Mr. Bondaug's mouth as officer Chris Bell identified Mr. Bondaug's head wounds. **Even given Larsen's own recorded evidence, she still testified that she somehow never noticed Mr. Bondaug's head and face were swollen when every other police officer, the EMT's, firefighters and hospital staff did. Not only was Larsen with Mr. Bondaug at VMC, she was one of**

the officers who helped put the WRAP device on Mr. Bondaug and she helped EMT staff load him into the ambulance. Sgt. Rush was in fact aware of these inconsistencies but hid Larsen's incompetence, in evaluating Mr. Bondaug for HS11550, from supervisors and management of SCPD, the City of Santa Clara and the District Attorney's office.

- v. David Schneider was sent to the reporting party's residence to gather more information for his police report to support Deger and Stewart's actions on Wilson Court. In his report, Schneider used terms like "yelling and screaming," and "ramping himself up" and that "physical injury was imminent." Having read this in Schneider's reports and the fact that Nelson and Stewart received first-hand witness accounts that none of those actions ever happened, **it is reasonable to believe that any competent supervisor would have immediately recognized the discrepancies in accounts and conducted further investigation. The reporting party, [Kristopher], would testify that he never said any of those things officer Schneider had quoted and Schneider himself would admit under testimony that those words were in fact his own and not that of Mr. [Kristopher]. Sgt. Rush did in fact recognize these discrepancies but committed himself to ignoring all of it to cover up the violation of Departmental, City and County protocols, and the false arrest of Mr. Bondaug.**
- b) Sgt. Derek Rush intentionally allowed for the destruction of evidence, namely the Use of Force (UOF) reports to try and keep those reports from reaching the Chief's office, City Manager's office, or the Professional Standards Unit.
 - i. On December 4, 2011 at 01:26 AM, Rush composed an email to supervisors, Jake Malae, Steve Bures, Randy Bourbon, Nicholas Richards and Dan Moreno specifically asking them not to use their authority and capability of "supervisor approving" police reports pertaining to incident 11-12465. This action strikes at the heart of independent reporting and signifies the opportunity of coercion.
 - ii. On December 19, 2011 officer Ernst takes note that Mr. Bondaug is attempting to obtain any and all records pertaining to the incident 11-12465 including reasoning for the use of force against him. On December 22, 2011 records department manager Gina McWilliam confirms Mr. Bondaug's request with a letter on behalf of acting police chief Kevin Kyle.

- iii. **Records Retention Schedule: Police** No.'s PD-035, PD-036, and PD-038 through PD-040 **state that crime reports are to be kept for 2 years at minimum.** A note to each Office of Record (OFR) directive states **"Retentions begin when the act is completed, and imply a full file folder** (e.g. last document +2 years) since destruction is normally performed by the file folder. **Litigation, complaints, claims, public records act requests,** audits and/**or investigations suspend normal retention periods** (retention resumes after settle or completion). Derek Rush, at all times, knew that the HS11550 against Mr. Bondaug was bogus and not applied in good faith therefore it was never sent to the District Attorney's office but the PC148 survived and was sent to the DA. Therefore, **according to the Records Retention Schedule above and the monolithic sized discrepancies in the police reports of Rush's subordinates, no reasonable or competent supervisor would have ever allowed for any and all Use of Force reports to be destroyed. Derek Rush allowed for the UOF reports to be destroyed. Officer's Nelson, Morgan, and Stewart recorded statements from independent witnesses at the scene that immediately contradicted Deger's stated and reasoning** for his actions.
- iv. **Section 1.5.3 Review of Force Reports** states: **"Copies of all use of force reports will be forwarded to the Assistant Chief and filed by date of occurrence. A the end of each calendar year, these reports shall be purged, after statistical review."** Long before that one year period was up the City's attorney; City Manager; City Mayor and Council; Police Chief; police command staff; police supervisors; police officers Deger and Stewart; the City CIO; City IT managers, and others all knew there was a pending claim and lawsuit against the City of Santa Clara and its police officers relating specifically to the arrest and use of force against Mr. Bondaug. **All participants listed intentionally ignored the City of Santa Clara's own policy of retaining records and dismissed attorney Brenot's Preservation of Evidence letter.**

It is unconscionable to believe that Sgt. Rush emails other supervisors, with the ability to individually approve police reports, asking them to refrain from executing one of their primary functions so that he can get everyone together collude their reports. Yet, that's what he did and he testified to it. Neither Rush or Sgt. Richards walks a to the subject property to speak to the women, Rush doesn't return calls to women who tried to call him, he doesn't account for every UoF strike on Mr. Bondaug's body and head, and he doesn't prepare a separate Use of Force report for Mr. Bondaug being put into the WRAP.

Now he wants the City Manager, Mayor, Councilmembers, police command staff, and the citizens of the community to believe that destroying the stamped UOF reports was an accident? Simple retention policy states that UOF reports are to be kept for at least a year to satisfy statistical measurement and even longer for incidents that evolve into a claim or lawsuit. The City of Santa Clara, its Police Department, and the officers involved, including Sgt. Rush, knew all of these actions were in motion before the UOF report relating to 11-12465 was destroyed. **I ask that an independent investigator consider all the facts above in finding that the Sgt. Derek Rush intentionally violated department policy in destroying or concealing evidence in a crime.**

4. **Sergeant Derek Rush Violated Departmental Rules and Regulations Established for Responding to Alleged Assaults and Alleged Domestic Violence and Failed to Ensure that the Peace Officers in his command were Properly Trained to Respond to Such Calls. I ask that an independent investigator consider the below facts in finding that Sergeant Rush allowed one or more of its officers to violate department policy.**

- a) On December 20, 2014 officer Deger was deposed by retired police officer, and attorney, Steven Usoz. Deger testified that he was hired by SCPD September 2007.

Q: ***“Have you ever received training that instructs you to wait for your backup unit prior to going into a call of this type absent exigent or eminent threats to the parties?”***

A: ***“Not that I remember”***. (Page 72, line 22 – page 73, line 23)

- b) **Responding to Alleged Assaults:** minimum 2-officer response or officer safety. Sgt. Derek Rush knew Deger, Stewart and Nelson were en route. **Knowing that Deger had recently [Redacted], supervisor Derek Rush never implemented measures to ensure Deger [Redacted] guarantee a strict adherence to regulations and policy** set forth by the City Manager and Chief of Police. By Rush allowing Deger to respond to the call unsupervised, it would be [Redacted] that Deger intentionally, knowingly, and in disregard of [Redacted] Police Department superiors willingly broke from policy and procedure. Deger’s failure to follow protocol lay directly on Rush.
- c) **Responding to Alleged Domestic Violence:** minimum 2-officer response or officer safety. Derek Rush knew that in addition to Deger, Stewart and Nelson were en route. **Knowing that Deger [Redacted], Sgt. Rush never satisfied measures to ensure Deger rehabilitate [Redacted] guarantee a strict adherence to regulations and policy** set forth by the City Manager, Chief of Police, and Santa Clara County District Attorney’s office.

- i. First Priority: Assist victims in obtaining medical assistance, if needed. Upon arriving on scene, Rush never observed anyone besides Mr. Bondaug with injuries and no one else had been identified as a potential 415(d) victim. The reporting party never stated that someone had been injured or threatened immediately with injury. In fact, all witnesses independently testified that everyone including Mr. Bondaug was in a jovial mood and that there were no problems at Ms. [Daniela]'s residence. **Sgt. Rush intentionally refused to speak to anyone Deger suspected as being a victim of domestic violence, as Deger fictitiously stated in his report.**
- ii. Officer Safety: A minimum two officer response. Deger never saw or heard anyone in need of immediate assistance; he knew other officers were on scene as he was at the door speaking with Ms. [Daniela] and Ms. [Sandra]. **Sgt. Rush either incompetently failed to determine why Deger didn't wait for back up or Rush did find out but has been attempting to hide Deger's violation of Departmental policy and protocol.**
- iii. SCPD General Order 91.1.3 states officers shall make an arrest when there is probable cause to believe...
 - that a felony had occurred
 - **a misdemeanor occurred in the officer's presence**
 - a violation of a court order occurred

In Deger's police report, he states, "As the front door swung open, a female subject, who I believed at the time could be a potential domestic violence victim...Garrett Bondaug interrupted my conversation with the female by pushing the female subject aside to her right." The City of Santa Clara's Domestic Violence field training guide also directs that "**any exceptions to the pro-arrest provision must be made by a supervisor present at the scene, and if allowed, the reasons documented in the investigating officer's report.**" If Deger's report were true, responding to a 415(d) call for service followed by a subject's pushing of a person whom the officer believes to be a victim of domestic violence would qualify as 243(e)(1)PC.

- Rush never asked officers on scene if they witnessed a woman being pushed. Or Rush knows no woman was pushed and is covering it up.
- Notice in officer Nelson's report that he never asked Ms. [Daniela] if she had been pushed. Rush refuses to document why Nelson didn't ask.

- Officers Stewart and Morgan also weren't told that Mr. Bondaug pushed anyone or they certainly would have asked Ms. [Sandra] and Ms. [Tatiana] about it. Rush clearly read in their reports that witnesses state Mr. Bondaug did nothing to threaten anyone else.
 - **Sergeants Rush and Richards never directed that Domestic Violence Protocol be initiated, neither of them approached the women to offer assistance.**
 - **Lt. Moreno was never notified that Deger had witnessed a physical interaction between Ms. [Sandra], Ms. [Tatiana], or his mother Ms. [Daniela].**
- d) After Mr. Bondaug has been assaulted and extracted from a private residence, no less than twelve officers, including at least two supervisory sergeants, arrived on scene the Wilson Court scene. Officers included Greg Deger, Colin Stewart, Lauren Larsen (Eldridge), David Scheider, Tom Nelson, Cory Morgan, Kiet Nguyen, Rene-John Otico, Tyson Green, Jamie Ellis, and sergeants Derek Rush and Nicholas Richards. Arriving at Valley Medical Center, and the thirteenth officer dispatched, was Chris Bell. **None of the officers evaluated, questioned or offered assistance to someone they believed were a victim of domestic violence.** Officer Larsen (Eldridge) surreptitiously recorded a conversation between her, Mr. Bondaug and officer Bell, none of them spoke about a potential domestic violence incident. In that recording, Mr. Bondaug is heard clearly stating that no one had done anything wrong. **Derek Rush immediately knew Deger and Stewart messed up this investigation and Rush intentionally refused to personally look into witness claims.**

Let's look to our friends at Merriam-Webster so that we're all on the same page here, "*supervise: to be in charge of (someone or something); to watch and direct (someone or something).*" If Derek Rush wasn't supervising officer Deger to ensure that he responds to every call for service by the book, what was he doing? Upon arriving on scene and finding out that Deger didn't wait for his back up per departmental, City, and County protocol, what did Sgt. Rush do? When he first heard from Deger that there were women at [redacted] Wilson Court who he believed were possible victims of domestic violence, what was Derek Rush's policy response? When two of Sgt. Rush's officers secretly recorded Mr. Bondaug stating that "*we hadn't done anything wrong*" and he "*doesn't know why the officers showed up,*" what was Sgt. Rush's response? When sitting at police headquarters, looking at the pictures clearly showing PC148, and knowing that his officer's claim Mr. Bondaug never swung, kicked,

or threatened them, who did Sgt. Rush immediately notify of the inconsistencies? **Without a doubt, Sergeant Derek Rush Violated Departmental Rules and Regulations Established for Responding to Alleged Assaults and Alleged Domestic Violence and Failed to Ensure that the Peace Officers in his command were Properly Trained to Respond to Such Calls. I ask that an independent investigator consider the above facts in finding that Sergeant Rush allowed one or more of its officers to violate department policy.**

5. **Sgt. Derek Rush Violated Domestic Violence Protocol for Law Enforcement as Subscribed to in 2009 and 2014 by Santa Clara Police Chief Stephen Lodge. I ask that an independent investigator consider the below facts in finding that both the City and its Police Department allowed one or more of its officers to violate the Domestic Violence Protocol of Santa Clara County.**

a) “When a misdemeanor domestic violence assault or battery has been committed outside the officer’s presence, and the victim is the suspect’s spouse, former spouse, cohabitant, former cohabitant, fiancée, parent of his or her child, or a person with whom the suspect has had or is having an engagement relationship or a current or prior dating relationship, a peace officer may arrest the suspect without the need of a private person’s arrest. This will also apply if the assault or battery involved a person age 65 or older where the elderly victim is related to the suspect by blood or legal guardianship (PC 836(d)). PC836(d) makes it possible for officers to arrest when the crime does not take place in their presence where both of the following circumstances apply. The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.”

- i. The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.
- ii. The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

b) On page 3, paragraph 2, of Deger’s police report he writes, **“*I began to suspect Bondaug was attempting to hide a crime...I also believed one of the female subjects in the house was a victim of domestic violence.*”** Given Santa Clara County’s and the City of Santa Clara’s Domestic Violence Protocol for Law Enforcement and the statements in Deger’s report, if true, Mr. Bondaug could have been arrested for misdemeanor domestic violence.

We know today from both Deger and Sgt. Rush's deposition that accusations of suspected domestic violence didn't surface on scene with a dozen other officers around or on the arrestee booking sheet, Deger's accusations only appeared in his report after he and other officers gathered together over the weekend to write them.

- c) In the *Patrol Officer Response/Investigation* section "*C*" *Investigation of Domestic Violence Cases* steps 1 through 12 are noticeably absent from any and all police reports concerning incident 11-12465. Contrary to claims in Deger's report, other officers on scene note statements from witnesses that there was never a disturbance at Ms. [Daniela]'s home and they all three women, Ms. [Daniela], Ms. [Sandra], Ms. [Tatiana], and Mr. Bondaug conveyed that to Deger.
- d) At the scene, Ms. [Sandra] asked officer Cory Morgan for a name of a supervisor and phone number to report Deger's aggression, Deger's unwarranted assault upon and false arrest of Mr. Bondaug. A officer on scene complied and provided Ms. [Sandra] with SCPD's main number and Sgt. Derek Rush's name. He, however, refused to tell Ms. [Sandra] that Sgt. Rush was already on scene along with supervisor Sgt. Richards. Neither sergeants Rush or Richards took steps to ensure a domestic violence investigation or follow up occurred not did they instruct others to do so. Lt. Moreno, also aware of the incident that night and approver of Deger's report and Use of Force report, never attempted to contact any of the witnesses or potential victims nor did he instruct anyone else to do so.

If officer Deger witnessed Mr. Bondaug pushing a woman out of the way and he believed that at least one of the women was the victim of domestic violence, why wasn't Mr. Bondaug booked for a misdemeanor or felony appropriate under those guidelines? Certainly with Deger's firsthand account that would be much easier to charge Mr. Bondaug with rather than a bogus HS11550 that doesn't have blood, paraphernalia, or drug evidence, correct? **Sgt. Rush was obligated to finish the 415(d) call for service but not knowing how to rectify this enormous mistake he instead opted to intentionally dismiss Domestic Violence Protocol for Law Enforcement as Subscribed to in 2009 and 2014 by Santa Clara Police Chief Stephen Lodge. I ask that an independent investigator consider the above facts in finding that Sgt. Derek Rush, the City and its Police Department allowed one or more of its officers to violate the Domestic Violence Protocol of Santa Clara County.**

6. **Omission of Facts, Embellishment of a Police Report, False Testimony.** Throughout this entire ordeal, every police officer's report has been contradicted by the witnesses they purport to have

interviewed. All officers intentionally and incompetently failed to distinguish facts from fiction in an attempt to seem credible. Even if independent from other acts of misconduct found in this complaint, **Derek Rush's failure to competently and accurately supervise reports - either orally or in writing as required by Santa Clara Police Department Policy – is grounds for termination. I ask that an independent investigator consider the enclosed facts in finding that SCPD supervisor Derek Rush colluded to omit facts, embellished police reports, and knowingly testified falsely.**

- a) **See attached Complaint - Greg Deger.** In addition to Complaint – Deger: On or about May 3, 2012 Deger further lied to Deputy District Attorney, Tamalca Harris, by repeating his fictitious “sweeping of Ms. [Sandra]’s body as a protective motion.”
- b) **See attached Complaint – Colin Stewart**
- c) **See attached Complaint – Lauren Larsen (Eldridge)**
- d) **See attached Complaint – David Schneider**
- e) **See attached Complaint – City of Santa Clara and Santa Clara Police Department**

As guaranteed by Santa Clara Police Department’s policy for responding to citizen Commendation, Inquires or Complaints policy: I expect to receive written notification every 30 days regarding the progress of the investigation all the way through completing a findings report.

Garrett Bondaug
[Address and Contact Information Redacted]