INVESTIGATIVE RESPONSIBILITY

The Investigating Officer (I/O) for this case was Sergeant I Zackery Wechsler, Serial No. 39792, Internal Affairs Division (IAD), Workplace Investigation Section (WIS). The I/O can be telephonically contacted, at (213) 996-2764. Any requests for supplemental investigation must be approved by the Commanding Officer (C/O), IAD, via an Intradepartmental Correspondence, Form 15.02.00.

STATUTE

On May 13, 2022, Captain I Clifford Humphris, Serial No. 31226, C/O Newton Patrol Division (NEWT) was notified that Sergeant I Gabriel Gaxiola, Serial No. 35056, NEWT, had been arrested by the California Highway Patrol (CHP). As such, the statute date was established as **May 13, 2023**.

INTERVIEWS[1]

1. On October 31, 2022, the I/O interviewed Gaxiola.

BACKGROUND

On May 13, 2022, at approximately 2000 hours, Gaxiola, while off-duty, consumed alcoholic beverages at a restaurant in downtown Los Angeles. Shortly after, while driving home, he became involved in a traffic collision on State Route 110.

SUMMARY

On May 13, 2022, at approximately 2030 hours, Gaxiola drove his privately-owned vehicle northbound on State Route 110 in the area of the north Avenue 52 overpass. Gaxiola's vehicle collided with two vehicles that were stopped in the number three lane of traffic. Gaxiola then contacted emergency services. CHP Officer Eric Hernandez, Identification No. 22088, responded to the collision and determined that based on his training and experience that Gaxiola had been driving while under the influence of alcohol and was unable to safely operate a motor vehicle. Gaxiola was placed under arrest.

ALLEGATION 1. The Department alleged that on May 13, 2022, Sergeant Gaxiola, while off-duty, operated his private vehicle while under the influence of an alcoholic beverage resulting in his arrest.

Officer Hernandez[2] was employed by the CHP for approximately four years and was assigned to Central Los Angeles (CLA). On May 13, 2022, at approximately 2035 hours,

[1] All interviews were recorded and subsequently uploaded into the Complaint Management System (CMS).
[2] Hernandez' statements were paraphrased from the reports he completed. The I/O determined interviewing him was unnecessary for the completion of this investigation because it would have little probative value and to avoid any effect on the pending criminal charges.

he was on-duty and dispatched to a traffic collision on State Route 110 north of the Avenue 52 overcrossing. Hernandez arrived on scene at approximately 2045 hours and observed three vehicles which appeared to have been involved in a collision along with several people standing in the area. Hernandez observed major damage to the front of Gaxiola's private vehicle, moderate damage to the front and rear of the vehicle he collided with, and minor damage to the rear of the frontmost vehicle. His investigation revealed that the front vehicle was disabled in the lane of traffic with the middle vehicle stopped directly behind it prior to Gaxiola's vehicle colliding with the rear of the middle vehicle causing its front end to impact the rear of the front-most vehicle. (Addendum 1) (Addendum 2)

During Hernandez' investigation he spoke with Gaxiola and observed Gaxiola displayed signs and symptoms of intoxication including red and watery eyes, an odor of an alcoholic beverage emitting from his breath and person, unsteady gait while walking around the traffic collision scene, and delayed slurred speech. Hernandez did not observe any signs or symptoms of intoxication on any of the other involved parties in the collision. Gaxiola's passenger [redacted] advised Hernandez that Gaxiola was an employee of the Los Angeles Police Department. [redacted] also complained of pain to her knee from the traffic collision at the time. [redacted] was asked if she wished a Rescue Ambulance to be called to the scene and declined.

> **Note:** [redacted] later stated that she was not injured in the collision. (See Addendum 1M). The I/O made multiple attempts to contact her for interview and did not receive any response.

Gaxiola told Hernandez that he had consumed alcohol prior to driving and becoming involved in the traffic collision. Hernandez conducted Standardized Field Sobriety Tests on Gaxiola at the scene. Hernandez determined that based on his training and experience that Gaxiola had been driving while under the influence of alcohol and was unable to safely operate a motor vehicle.

Gaxiola was placed under arrest by Hernandez who also recovered a handgun in a holster from Gaxiola's waistband. Gaxiola later refused to submit to chemical testing leading to Hernandez completing and executing a search warrant to obtain a blood sample. (Addendum 3)

On May 14, 2022, at 0122 hours, approximately five hours after the collision, a blood sample was taken from Gaxiola. On May 17, 2022, Hernandez received a Laboratory Report indicating that analysis of the blood sample from Gaxiola resulted in an average of 0.155 Blood Alcohol Concentration (BAC). (Addendum 4)

> **Note:** The I/O contacted Department Subject Matter Expert Sergeant I+II Greg Fuqua, Serial No. 30581, Traffic Group, Officer In Charge Drug Recognition Expert (DRE) Unit, who calculated that an average male would have had an approximate BAC of .23 five hours prior to a .155 sample being collected. This

was based on scientific research and his experience in conducting over 200 wet labs. Fuqua had been a DRE and a DRE Instructor for over 20 years.

Sergeant Gaxiola was assigned Newton Division Gang Enforcement Detail. On May 13, 2022, at approximately 2000 hours, he was off-duty and went out to DAMA Restaurant at 612 East 11th Street, Los Angeles, with [redacted], who is not a Department employee. At the restaurant, he ate appetizers and oysters. Gaxiola drank two margaritas and two shots of whiskey over the course of approximately one hour. He did not recall what kind of whiskey he consumed. A little after 2100 hours, he left the location and drove his vehicle with [redacted] in the front passenger seat intending to go to his residence. At the time he believed he was in a condition where he could drive but had later realized in retrospect the that he was too intoxicated to drive. Gaxiola believes that drinking may have influenced his perception of how intoxicated he was at the time.

Note: Gaxiola' s recollection of the time he left the restaurant is inconsistent with the time of the traffic collision as determined by Hernandez' investigation which revealed that the collision occurred at approximately 2035 hours.

Approximately five minutes after leaving the restaurant, Gaxiola became involved in a traffic collision. Gaxiola was driving, at approximately 55-60 miles per hour, northbound on State Route 110 and transitioned into the number three lane intending to exit. The State Route 110 has a blind curve near the north Ave 52 overpass. Two disabled vehicles with their lights off suddenly appeared around the curve in front of Gaxiola' s vehicle creating a situation where he was unable to stop in time and collided with the rear of one of the vehicles. Gaxiola observed that the two disabled vehicles appeared unoccupied and individuals were standing on the shoulder alongside the vehicles. Gaxiola believes that the two vehicles may have been involved in a collision prior to him colliding with them. Gaxiola observed significant damage to the front of his vehicle. Gaxiola was not injured in the collision. After the collision, Gaxiola asked his passenger, [redacted], if she was injured and she said she was not. Gaxiola then checked with all of the individuals on scene and verified no other people were injured before he called 911 for emergency services to respond.

Upon the arrival of CHP officers, Gaxiola was given a Field Sobriety Test. He was later placed under arrest by CHP. Gaxiola recalled refusing to submit to a breath test, but he did not recall being asked to submit to a blood test or refusing to submit to it. Gaxiola recalled having a blood sample taken from him. Gaxiola had no reason to believe that the blood sample analysis would be inaccurate.

Note: Body Worn Video shows Hernandez ask, "Will you take a breath test?" Gaxiola replied, "No." Hernandez then asks, "Will you take a blood test?" Gaxiola also replied, "No."

Gaxiola weighed approximately 200 lbs. Prior to the incident, Gaxiola drank on days off, approximately two or three times a month, to the point of intoxication. Whiskey was his drink of choice. He considered himself to have a moderate tolerance for alcohol.

Gaxiola believed that in retrospect his assumptions of how he interacted with alcohol prior to the incident were incorrect. Gaxiola believed that he has a drinking problem and shortly after the incident he checked into a 90-day recovery program for alcohol addiction. He discovered that he had been in denial about his addiction and has been regularly attending Alcoholics Anonymous meetings since the incident. Gaxiola has also been meeting with Behavioral Services Section and a Department Peer Support Member from the Alcohol Abuse Unit since the incident. (Addendum 5) (Addendum 6)

Gaxiola apologized for his actions and provided a letter to the Department he wished to be included with this investigation. (Addendum 7)

INVESTIGATOR'S NOTES

1. On May 14, 2022, at approximately 0256 hours, the I/O ordered Gaxiola to submit to an Administrative Chemical Test at CHP CLA Station. Police Office III Jason Cho, Serial No. 33452, Central Traffic Division, conducted two Pass Kit Breath Tests resulting in the results of 0.112 BAC and 0.111 BAC, approximately six and a half hours after the collision.

2. The Los Angeles City Attorney's Office filed the following charges on Gaxiola under case number 2MN02194:
   - One count of California Vehicle Code (CVC) Section 23152 (A), Driving Under the Influence (DUI) of Alcohol,
   - One count of CVC Section 23152 (B), Driving with a Blood Alcohol Level of .08 or higher,
   - One count of CVC 16028 (C), Failure to Provide Evidence of Financial Responsibility at Scene of Traffic Collision

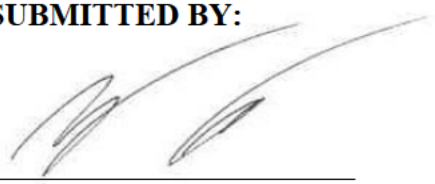
   As of the completion of this investigation the criminal case is in Discovery.

3. I/O reviewed the recordings of the incident from Hernandez' police vehicle's Wireless Mobile Video Audio Recording System and his Body Worn Video. They were consistent with what was described in the CHP reports and Hernandez' statements. CHP provided the Department with a disclaimer which indicated that the video recordings should be protected as confidential and not released without a court order. Due to this disclaimer and the pending criminal case, the recordings have not been included in this investigation. The recordings will be stored in the investigation package.

ADDENDA

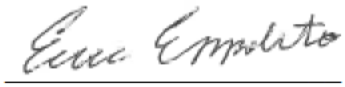
1A-M.	Copy of CHP Arrest Report, Case No. 202200766590
2A-M.	Copy of CHP Collision Report, Case No. 9535-2018-01835
3A-B.	Copy of Search Warrant and Search Warrant Return
4A-B.	Copy of Laboratory Report, Division of Record No. 2299-13551
5.	90-Day Recovery Program Completion Letter
6A-E.	Log for Alcoholics Anonymous and Behavior Science Service
7.	Letter from Gaxiola

SUBMITTED BY:



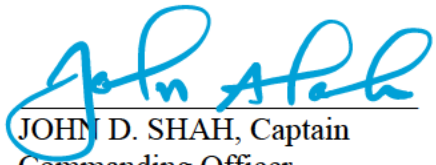
ZACKERY WECHSLER, Sergeant — October 31, 2022
Workplace Investigation Section — DATE
Internal Affairs Division

APPROVED BY:



ERIC EPPOLITO, Lieutenant — October 31, 2022
Officer in Charge — DATE
Complaint Investigation Section, WIS-II
Internal Affairs Division

APPROVED BY:



JOHN D. SHAH, Captain — November 3, 2022
Commanding Officer — DATE
Internal Affairs Division