Pursuant to California Penal Code 832.7, a redacted version of the documents related to this Los Angeles Port Police internal affairs investigation are required to be released as public records.

Print

Los Angeles Port Police
External Complaint Report

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
12/14/2020	12/14/2020	20:10
Record ID Number	**Event or Case No**	**Report No**
81		IA20-009
Date/Time Entered	**Entered By**	
12/22/2020 16:41	Port Police Sergeant Frank Huang - 96082	
LA Port Police Assigned Investigator	**IAPro Assigned Investigator**	
[Pending assignment]	Un-assigned	

Incident Summary

Investigative Summary:
On 12/14/2020 at approximately 2010 hours, I, Sgt. Frank Huang (#96082), was working as 2L30 for B2 Watch and receive a call from PO II M. Sanchez (#96151) on [redacted] to be report his encounter with the Los Angeles Police Department (LAPD)for an ongoing investigation.

PO II M. Sanchez provided the following information during our phone conversation. Sanchez stated that was interviewed by Detective Roberts and Detective Klotz from LAPD Newton Division for a possible [redacted] sexual assault investigation. The investigation was stemmed from his [redacted] and Sanchez is the subject in question. [redacted] the LAPD detectives can be reached at [redacted]

On 12/29/2020 at approximately 1415 hours, I spoke to LAPD Detective Klotz regarding the current status of the investigation and related documentation. According to Detective Klotz, the investigation is completed and pending filing with District Attorney. I have received a copy of the investigative Report [redacted] and is attached to this entry.

Allegation(s):
Rape Investigation.

Complainant Interview Summary:

N/A

Witness Interview Summary:

N/A

Accused Employee Interview Summary:

N/A

Additional:

The complaint has been assigned to a external contractor for investigation.

Incident Location

[redacted]

Addresses

, Los Angeles, CA

- Location of Occurrence: Outside of Port Property

Reporting/Involved Subject

[redacted]

Addresses

[redacted]

Phone Numbers

[redacted]

Role: [None Entered]

Additional Snapshot Data

Homeless at time of involvement	Perceived Limited English	Primary Language
No	No	
Sexual Orientation	**Gender Expression**	**Experiencing Mental Crisis (Officer Assessment)**
	Female	No
Experiencing Mental Crisis (Self Reported)	**Armed at Time of Incident**	
No	No	

Incident Officers

Port Police Officer II Macarlo Sanchez - 96151

Assignment at time of Incident: Port Police Officer II Emergency Management & Operations Group/Patrol Operations Division//Patrol Unit/
Role: [None Entered]

Linked Allegations

- Conduct Unbecoming -

- Violation of Federal State Local Laws Rules or Regulations -

Tasks

No tasks to show

[redacted]

Running Sheet Entries

No running sheet entries to show

Attachments

Date Attached	Attachment Description	Attachment Types
12/30/2020	0737_001 Sanchez	pdf
12/30/2020	201319170 Sanchez	pdf
12/30/2020	0736_001 Sanchez	pdf

Date: December 07, 2021

To: Deputy Chief Michael Hyams
Emergency Management and Operations Group

From: Captain Anita Hayden
Patrol Operations Division

Subject: Command Adjudication
Complaint Investigation No. IA20-009
Police Officer II Macario Sanchez (Serial No. 96151)

SUMMARY OF COMPLAINT

On October 28, 2020, victim [redacted] reported to the Los Angeles Police Department (LAPD) that [redacted] had raped her, Los Angeles Port Police (LAPP) Officer Macario Sanchez, a violation of the California Penal Code (PC) 261. [redacted]

[redacted] described to the officers an attack that occurred during the early morning hours of Saturday, October 24, 2020. She told them she let Sanchez into [redacted] at approximately 0300 hours. [redacted] told the officers that Sanchez forced her to have sexual intercourse with him on her bedroom floor.

Sanchez left [redacted] at approximately 0600 hours and returned to his home [redacted]

[redacted] filed a Crime Report with Los Angeles Police Department (LAPD) [redacted] charging Port Police Officer II Macario Sanchez Jr. with 261 PC -Rape. Sexual Assault Response Team (SART) Nurse at the [redacted] Rape Treatment Center examined [redacted] on October 28. The SART Investigation documented abrasions from a rug burn on [redacted] back and knees.

LAPD Detective Klotz responded to the Center and assumed responsibility for the criminal investigation. Klotz interviewed [redacted] further regarding the rape.

During LAPD's criminal investigation, [redacted] made a pretext phone call to Sanchez with detectives' assistance. Additionally, LAPD Detective Klotz interviewed Sanchez at his home.

On December 14, 2020, Sanchez called the Port Police Watch Commander and spoke with Sergeant Frank Huang. Sanchez reported his encounter with LAPD. Sanchez stated the LAPD Detectives interviewed him regarding [redacted] a sexual assault investigation. Sanchez said the investigation stemmed from statements made by [redacted] Sergeant Huang initiated a personnel complaint.

LAPD Detective Klotz submitted the case to the Los Angeles District Attorney on January 12, 2021 and prosecution was declined on January 28, 2021.

The Los Angeles Port Police initially assigned The Perkins Group to conduct the administrative investigation. In May of 2021, Sergeant Miguel Pasos of the LAPP Professional Standards Section assumed responsibility for the complaint.

The following is my Review and Recommendation of this Personnel Complaint Investigation:

ALLEGATION 1

The department alleges that on October 24, 2020, Officer Macario Sanchez Jr. engaged in criminal acts in the form of Rape (261 PC). A violation of:

- **LAHD Employee Manual, Section 2.130, Page 5(5) – Engaging in illegal behavior or conduct in conflict with job duties, on or off the job.**

- **LAPP Policy Manual, Standards of Conduct, Section 341.5.9(l), Page 187 – Criminal conduct, whether on-or off-duty, that adversely affects the members relationship with the Los Angeles Port Police.**

CLASSIFICATION

It is recommended that Allegation 1 be classified as SUSTAINED.

RATIONALE

Sanchez was asked by investigators, both criminal and administrative if he raped [redacted] Rather than assertively deny the attack, Sanchez told investigators that he did not remember the details of the morning of October 24, 2020.

On October 27, 2020, [redacted] texted Sanchez, telling him that he raped her on Saturday (October 24) and committed Domestic Violence [redacted] He responded to [redacted] via text message, saying, "I made a mistake by drinking too much that night." [redacted] Sanchez never denies [redacted] accusations; instead, he is apologetic and understanding.

[redacted] and Sanchez exchanged text messages on October 24, 2020, at approximately 0300 and 0600 hours. The initial messages consist of Sanchez telling [redacted] that he was coming to her apartment. At 0616 hours, Sanchez texts [redacted]

[redacted] also alleged that Sanchez had raped her in the past [redacted] A text message conversation between [redacted] and Sanchez from February 17, 2020, supports this statement. [redacted] angrily tells Sanchez that he comes to her house, intoxicated, and has sex with her when she tells him no. Sanchez replied via text, saying, "I am sorry." [redacted] directs several accusations of domestic violence towards him. Again, Sanchez never denies the claims made by [redacted]

The criminal investigators had an opportunity to speak with [redacted] friend. She told the detectives that [redacted] ad spoken to her about Sanchez. [redacted] told [redacted] hat Sanchez would have sex with her, even when she told him she did not want to.

During his interviews, Sanchez was given many opportunities to explain his words and actions. He is non-committal in his responses, frequently asserting that he does not recall. When pressed regarding his text messages with [redacted] Sanchez states that if the messages exist, he must have sent them but cannot remember sending them.

Critically, Sanchez provided no explanation for his whereabouts or behavior for the morning of October 24, 2020. He agrees that the incriminatory communications originated from his cell phone. He refuses to account for the period of time when the rape occurred, asserting that he can only remember drinking and then waking in his bed.

ALLEGATION 2

The department alleges that throughout the course of the investigation, Officer Macario Sanchez Jr. exhibited a pattern of dishonesty through inconsistent answers to multiple investigators. A violation of:

- **LAHD Employee Manual, Section 2.130, Page 17 – Standards of Conduct for Police Officers.**

- **LAPP Policy Manual, Standards of Conduct, Section 341.5.9(i), Page 187 – Dishonest conduct, whether on-or off-duty, that adversely affects the members relationship with the Los Angeles Port Police.**

CLASSIFICATION

It is recommended that Allegation 2 be classified as **SUSTAINED**.

RATIONALE

[redacted] exchanged text messages with Sanchez on October 27, 2020, three days after the attack. She told him that she had spoken to [redacted] about his actions and that he had raped her. Sanchez's reply via text was an apology for drinking too much.

On December 14, 2020, the LAPD criminal investigators asked Sanchez if [redacted] ever informed him that she spoke with [redacted] regarding the rape. [redacted]

[redacted]

During his administrative interview, investigators asked Sanchez if he was truthful with the LAPD Detectives, and he said, "Yes, sir."

The criminal investigators also spoke with Sanchez regarding the allegations of rape from October 24, 2020. Sanchez advised them that he did not recall [redacted] home in the early morning hours. Copies of the texts from October 24 show Sanchez initially texted [redacted] at 0233 hours, enquiring whether she was awake. Sanchez's final text occurs after he has left [redacted] apartment at 0636 hours.

[redacted]

[redacted]

ALLEGATION 3

[redacted]

[redacted]

ALLEGATION 4

This is an additional allegation, not found in the original complaint.
The Department alleges that Officer Macario Sanchez Jr. engaged in conduct unbecoming a member of this department. A violation of:

- **LAHD Employee Manual, Section 2.130, Page 17 – Standards of Conduct for Police Officers.**

- **LAPP Policy Manual, Standards of Conduct, Section 341.5.9 (n), Page 187 – Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members.**

CLASSIFICATION

It is recommended that Allegation 4 classified as **SUSTAINED**.

RATIONALE

During both the criminal and administrative investigations, Sanchez had numerous opportunities to provide honest answers to questions. His pattern, however, was to pare his responses to the minimum. He was untruthful with LAPP Detective Klotz and LAPP Sergeant Pasos.

I find [redacted] statements credible, supported by electronic communications between her and Sanchez, statements made by her friend, and a medical examination conducted by a SART Nurse. [redacted] honesty during multiple interviews is, by turn, courageous and heartbreaking. Sanchez, in contrast, is manipulative during the pre-text phone call, seemingly making [redacted] the responsible party for the rape.

Sanchez's abusive interpersonal behavior, his repeated sexual abuse and rape of [redacted] at least [redacted] along with his excessive alcohol consumption, and dishonesty with another Law Enforcement agency, reflect unfavorably upon himself and this agency. This investigation in its totality and a preponderance of the evidence support Conduct Unbecoming by Sanchez.

EMPLOYEE DEVELOPMENT PLAN

N/A

WORK HISTORY ISSUES

[redacted]

RELIEF FROM DUTY CONSIDERATIONS

Sanchez is currently on Administrative Leave with Pay pending the conclusion of the complaint investigation.

DEMOTION CONSIDERATIONS

N/A

DISCIPLINE

During his Basic Academy and upon receipt of the Port Police Policy Manual, Sanchez was presented the Law Enforcement Code of Ethics.

Its purpose is to ensure that all peace officers are aware of their individual responsibility to maintain their integrity and that of their Department at all times.

There is no path to career redemption in these allegations. Sanchez does not possess the necessary ethical attributes to remain a member of law enforcement.

I recommend discharging Los Angeles Port Police Officer Macario Sanchez Jr.

Anita Hayden
Captain
Patrol Operations Division

12/09/2021
Date

Date: December 16, 2021
To: Officer Macario Sanchez Jr.
From: Chief Thomas E. Gazsi
SUBJECT: Department Intent to Discipline
Complaint No. IA20-009

Personnel complaint investigated in regards to the below allegation(s):

ALLEGATION 1

The Department alleges that on October 24, 2020, Officer Macario Sanchez Jr. engaged in criminal acts in the form of Rape (261 PC). A violation of:

- LAHD Employee Manual, Section 2.130, Page 5(5) – Engaging in illegal behavior or conduct in conflict with job duties, on or off the job.

- LAPP Policy Manual, Standards of Conduct, Section 341.5.9(i), Page 187 – Criminal conduct, whether on-or off-duty, that adversely affects the members relationship with the Los Angeles Port Police.

ALLEGATION 2

The Department alleges that throughout the course of the investigation, Officer Macario Sanchez Jr. exhibited a pattern of dishonesty through inconsistent answers to multiple investigators. A violation of:

- LAHD Employee Manual, Section 2.130, Page 17 – Standards of Conduct for Police Officers.

- LAPP Policy Manual, Standards of Conduct, Section 341.5.9(i), Page 187 – Dishonest conduct, whether on-or off-duty, that adversely affects the members relationship with the Los Angeles Port Police.

[redacted]

[redacted]

ALLEGATION 4

The Department alleges that Officer Macario Sanchez Jr. engaged in conduct unbecoming a member of this department. A violation of:

- LAHD Employee Manual, Section 2.130, Page 17 – Standards of Conduct for Police Officers.

- LAPP Policy Manual, Standards of Conduct, Section 341.5.9 (n), Page 187 – Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members.

It is recommended that the allegation(s):

1 – 4 be classified as **SUSTAINED** and the case be forwarded to Human Resources with a recommendation of:

DISCHARGE FROM SERVICE WITH THE CITY OF LOS ANGELES

You will be contacted by Human Resources to schedule a Skelly Hearing.

Thomas E. Gazsi
Chief of Police

EMPLOYEE ACKNOWLEDGEMENT
I have received a copy of this document.

PROOF OF SERVICE
I have served this document to the employee.

12/27/2021
EMPLOYEE'S SIGNATURE Date

Captain Kevin Mallock
SUPERVISOR'S SIGNATURE Date
SN 9523 12-27-21
1030 HPS

Los Angeles Port Police
Professional Standards Case Disposition

Case Number: 20-009 (Police Officer Macario Sanchez Jr., Serial No. 96151)

Date Reported: December 14, 2020 **Date Occurred:** October 24, 2020

Command Staff Review: I have reviewed the Personnel Complaint for this case and the complaint(s) is classified as:

Allegation 1: **SUSTAINED**
Allegation 2: **SUSTAINED**
[redacted]
Allegation 4: **SUSTAINED**

Deputy Chief: I concur with the investigation classification.

Print Name: Michael Hyams Signature:

Date: 12/9/21

Chief: I concur with the investigation classification.

Print Name: Thomas E. Gazsi Signature:

Date: 12/16/21

COPY

Human Resources Division
MEMORANDUM

CONFIDENTIAL
425 S. Palos Verdes Street
San Pedro, CA 90731-0151
www.portoflosangeles.org

CONFIDENTIAL PERSONNEL MATTER

DATE: April 28, 2022

TO: Marcario Sanchez, Port Police Officer II

FROM: Angela Brown, Director of Human Resources

Angela Brown
dc=pola, dc=lahd, ou=HQ, ou=HR, ou=Users, ou=Emp, cn=Angela Brown, email=ABrownSimpson@portla.org
2022.05.02 08:09:40 -07'00'

SUBJECT: PRE-DISCIPLINARY (SKELLY) MEETING Rescheduled to 6/22/22

Please attend a Pre-Disciplinary meeting on **Thursday, May 19, 2022,** at 1:00 PM at the Harbor Administration Building, 425 S. Palos Verdes Street, San Pedro, Room 403 to discuss your proposed discharge from City service for the causes of action detailed below.

Violations of Harbor Department Employee Manual Section 2.130, Disciplinary Actions Guide:

- Misconduct, on or off the job, seriously reflecting on City employees or employment
  - *Offense No. 5*, Engaging in illegal behavior or conduct in conflict with job duties, on or off the job
- Standards of conduct for Peace Officers
  - Conduct unbecoming a Peace Officer

Violations of Los Angeles Port Police Policy Manual, Standards of Conduct, Section 341.5

- Criminal conduct, whether on- or off-duty, that adversely affects the members' relationship with the Los Angeles Port Police.
- Dishonest conduct, whether on- or off-duty, that adversely affects the members relationship with the Los Angeles Port Police
- Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members

On October 28, 2020, victim [redacted] reported to the Los Angeles Police Department (LAPD) that [redacted] Los Angeles Port Police (LAPP) Officer Marcario Sanchez, had raped her, a violation of the California Penal Code (PC) 261.

Failure to be fully forthcoming during the course of the investigation.

[redacted]

Conduct unbecoming a Peace Officer

The meeting is an opportunity to respond to the charges and proposed discipline prior to the department proceeding with any disciplinary recommendations or actions.

Discussion:
[redacted] filed a Crime Report with the LAPD [redacted], charging Port Police Officer II Marcario Sanchez with 261 PC – Rape. Sexual Assault Response Team (SART) Nurse at [redacted] Rape Treatment Center examined [redacted] on October 28. The SART investigation documented abrasions from a rug burn on [redacted] back and knees.

Port Police Officer II Marcario Sanchez exhibited dishonesty throughout the course of the criminal and administrative investigations. He failed to be fully forthcoming with both LAPD and LAPP investigators.

Prior Discipline:
[redacted]

Meeting Preparation:
A pre-disciplinary meeting has been scheduled for **Thursday, May 19, 2022**, at 1:00 pm at the Harbor Administration Building, 425 S. Palos Verdes Street, San Pedro, Room 403. The meeting may be rescheduled only at prior request by contacting Judy Salazar at [redacted]

It is your right to have a representative with you at the pre-disciplinary Skelly meeting. Your union, Los Angeles Port Police Association, is available at [redacted] or via email at [redacted] and can provide a union representative at your request.

If you choose to instead respond to the charges and proposed discipline in writing, you or your representative may submit the response to [redacted] or to

Port of Los Angeles
Human Resources Division
Attn: Judy Salazar
425 S. Palos Verdes St.
San Pedro, CA 90731

A written response must be postmarked or received by **Thursday, May 19, 2022.**

If you decide to voluntarily waive your right to a Skelly meeting, please review in detail the attached Voluntary Waiver of Skelly, and submit the completed form to Human Resources prior to the scheduled meeting.

AB:JMS:jo
HR8381.JMS

Attachments:

SKELLY PACKAGE ATTACHMENTS

N/A	Voluntary Waiver of Skelly	1
N/A	Background Data Sheet	2
11/05/2020	Notice to Correct Deficiencies	3
N/A	Receipt of Employee Manual	4
June 2006	Employee Manual, Section 2.130, Disciplinary Actions Guide	5-6
N/A	Port Police Policy Manual, Section 341.5	7-8
N/A	Employee Assistance Program Information	9
N/A	Port Police Division Internal Affairs Investigation	

Voluntary Waiver of Skelly

City of Los Angeles – Harbor Department

As an employee of the City of Los Angeles, you are entitled to a meeting (Skelly) to present your response to proposed disciplinary action as a result of any Cause(s) of Action brought against you for lack of performance or behaviors which are inconsistent with City requirements, standards or procedures.

Your response to the Cause(s) of Action may be in person, at a meeting, or in writing prior to, or at the time of the scheduled Skelly meeting. You are entitled to have one representative of your choice present at the meeting with you. Observers are not allowed unless they are paid Union representatives.

If for any reason you wish to waive attendance and/or not provide a written response to the Cause(s) of Action that may result in the proposed discipline, you should sign and date this form in the area indicated below. You will be informed of any action to be taken in person or by certified mail.

I have read and understand the foregoing and have been offered the opportunity to consult with the person(s) of my choice for consultation or advice prior to signing this waiver:

Marcario Sanchez, Port Police Officer II
Harbor Department

_____
Print Name

_____ ___/___/___
Employee Signature Date

_____ ___/___/___
Analyst Signature Date

Attachment: Notice of Intent to Take Disciplinary Action

cc: Employee folder

BACKGROUND DATA: MARCARIO SANCHEZ, EMPLOYEE ID #402070, PORT POLICE OFFICER, PORT POLICE DIVISION

EMPLOYMENT HISTORY

01/07/2019 Appointment, Port Police Officer, Harbor Department

EVALUATIONS

None in file

NOTICE TO CORRECT DEFICIENCIES

[redacted]

PREVIOUS DISCIPLINARY ACTIONS

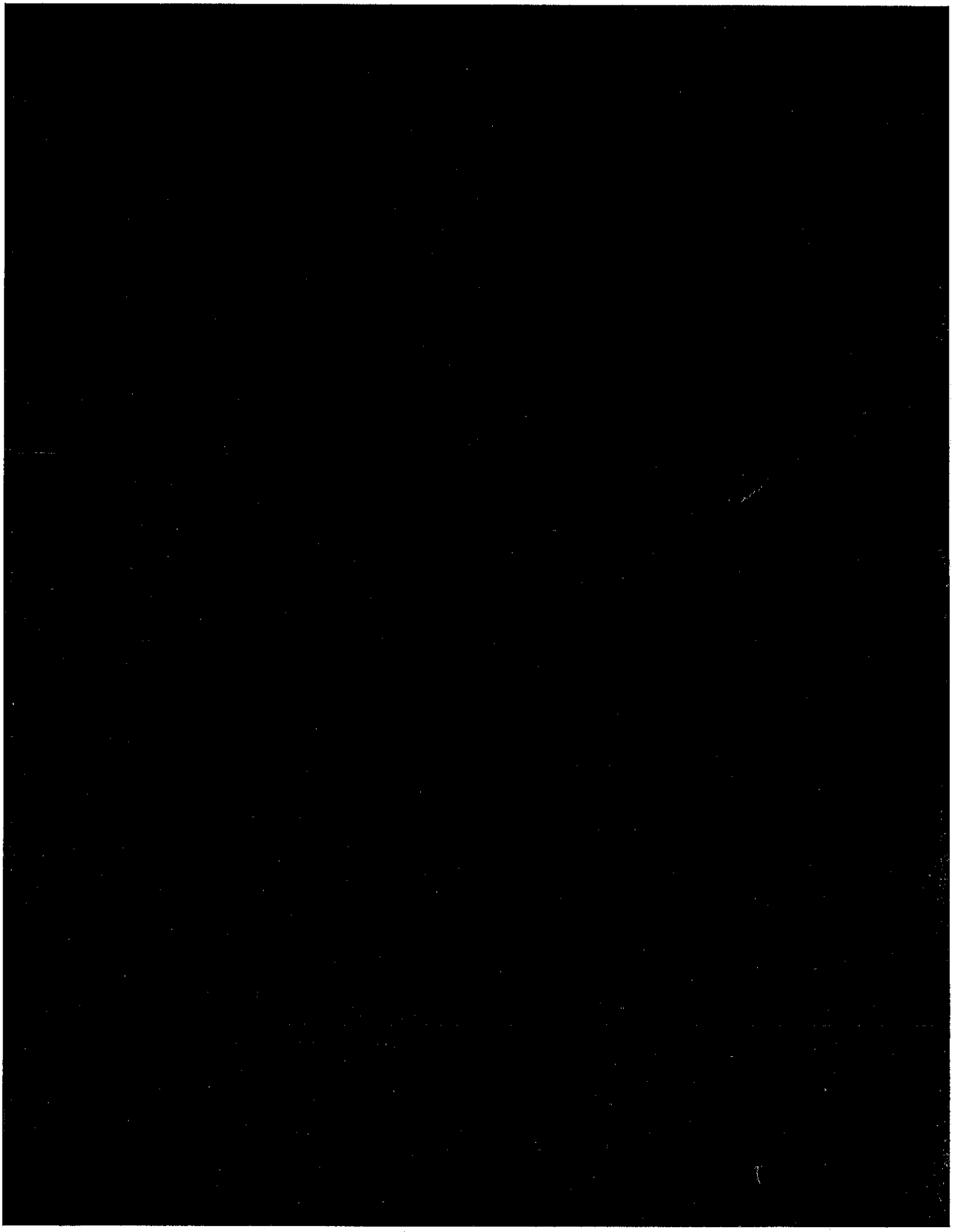
None in file

COMMENDATIONS

None in file

COUNSELINGS

None in file



EMPLOYEE MANUAL

I have received my copy of the Harbor Department's Employee Manual.

Signature _____ Date 1-8-19

Macario Sanchez
Port Police officer I
Eff. 1/7/19

33.2

MISCONDUCT, ON OR OFF THE JOB, SERIOUSLY REFLECTING ON CITY EMPLOYEES OR EMPLOYMENT

Standard: Employees must perform their duties in a manner that earns and maintains the trust and respect of their supervisors, other employees, and the public.

SUGGESTED ACTIONS

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
1. Using official position or office for personal gain or advantage	Written Notice to discharge	10 day suspension to discharge	Discharge
2. Engaging in any activity which constitutes a conflict of interest	Written Notice to 30 day suspension	6 day suspension to discharge	Discharge
3. Accepting favors or gratuities for services required on the job	Written Notice to discharge	6 day suspension to discharge	Discharge
4. Disclosing confidential information	1 day suspension to discharge	10 day suspension to discharge	Discharge
5. Engaging in illegal behavior or conduct in conflict with job duties, on or off the job	Written Notice to discharge	10 day suspension to discharge	Discharge

STANDARDS OF CONDUCT FOR PEACE OFFICERS

Standard: Employees performing functions that require peace officer status are required to conduct themselves (on and off duty) in a manner demonstrating respect for the laws they are sworn to uphold and the people and property they are employed to protect. Behavior on and off the job must not reflect negatively upon the City as their employer.

OFFENSE	SUGGESTED ACTIONS		
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
1. Use of excessive force	30 day suspension to Discharge	Discharge	
2. Falsification or destruction of evidence or reports related to investigations	15 day suspension to Discharge	30 day suspension to Discharge	Discharge
3. Failure to report or take action against officer misconduct, on or off the job	15 day suspension to Discharge	30 day suspension to Discharge	Discharge
4. Abuse or inappropriate use of Peace Officer status	15 day suspension to Discharge	30 day suspension to Discharge	Discharge

property except as expressly authorized by City policy, the Memorandum of Understanding, or the Chief of Police.

(h) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the Memorandum of Understanding, or the Chief of Police.

(i) Any act on- or off-duty that brings discredit to the Los Angeles Port Police.

341.5.9 CONDUCT

(a) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.

(b) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.

(c) Unreasonable and unwarranted force to a person encountered or a person under arrest.

(d) Exceeding lawful peace officer powers by unreasonable, unlawful, or excessive conduct.

(e) Unauthorized or unlawful fighting, threatening, or attempting to inflict unlawful bodily harm on another.

(f) Engaging in horseplay that reasonably could result in injury or property damage.

(g) Discourteous, disrespectful, or discriminatory treatment of any member of the public or any member of the Los Angeles Port Police or the City.

(h) Use of obscene, indecent, profane, or derogatory language while on-duty or in uniform.

(i) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with the Los Angeles Port Police.

(j) Unauthorized possession of, loss of, or damage to Los Angeles Port Police property or the property of others, or endangering it through carelessness or maliciousness.

(k) Attempted or actual theft of Los Angeles Port Police property, misappropriation or misuse of public funds, property, personnel, or the services or property of others, unauthorized removal or possession of Los Angeles Port Police property or the property of another person.

(l) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.

(m) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

(n) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police, is contrary to good

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order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members.

341.5.10 SAFETY

(a) Failure to observe or violating Los Angeles Port Police safety standards or safe working practices.

(b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).

(c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.

(d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.

(e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.

(f) Unsafe or improper driving habits or actions in the course of employment or appointment.

(g) Any personal action contributing to a preventable traffic collision.

(h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

341.5.11 INTOXICANTS

(a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication, or drugs, whether legal, prescribed, or illegal.

(b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.

(c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug, or non-prescribed medication to any work site.

341.6 OTHER CONTROLLING DOCUMENTS

See policy manual § 106.7 for the hierarchy of City documents.

341.7 POLICY ADMINISTRATION

Adherence to this policy is under the chain of command of the Office of the Chief of Police, Professional Standards Section Commanding Officer, or their authorized designee.

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Counseling From LifeMatters®

LifeMatters offers a variety of different ways for you to access counseling. You may initiate services via phone (and TDD/TTY), website (mylifematters.com), mobile app, and email. Ongoing assistance is available via scheduled phone call (and TDD/TTY), video, and face-to-face sessions.

During your initial contact, the LifeMatters counselor will review the services available to you and explain options for ongoing counseling. You will then be given a referral to a provider in your area based on your needs.

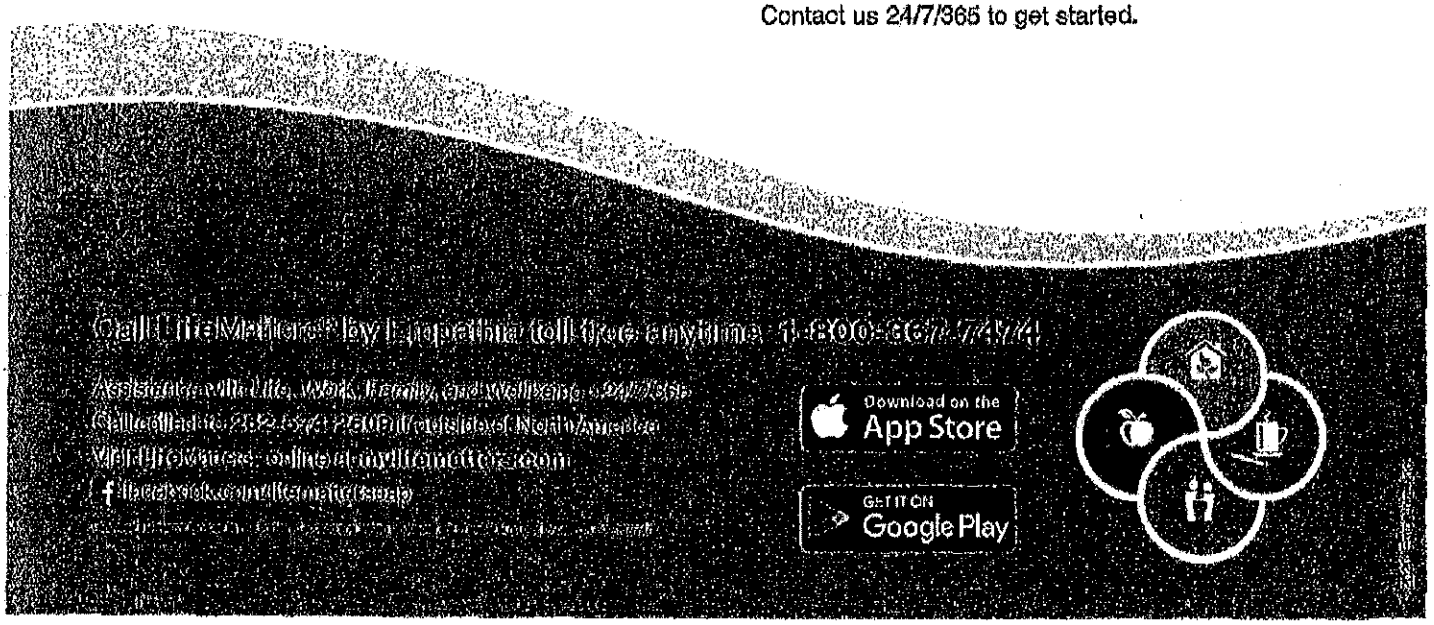
When you receive the referral:

- You will be offered a warm transfer to the provider to schedule the appointment directly. If you prefer, you can call the provider to schedule at a later time.
- The LifeMatters counselor will contact the selected provider to share pertinent information and recommendations.
- After the referral is complete, all scheduling will take place with the provider.



- In person appointments will occur at the provider's office. Virtual appointments can occur by phone or video.

LifeMatters counseling services are available to help you with any issue that may be impacting your life. Contact us 24/7/365 to get started.



To		From
	BOARD OF HARBOR COMMISSIONERS	
	EXECUTIVE DIRECTOR	
	CHIEF OF STAFF	
	DED - FINANCE & ADMIN, CFO	
	DED - PUB SAFETY & EMERG MGT, CHIEF	
	DED - MKTG & CUSTOMER RELATIONS	
	DED - DEVELOPMENT	
	DED - STAKEHOLDER ENGAGEMENT	
	SR DIR COMM & STAKEHOLDER ENGAGE	
	ACCOUNTING	
	CARGO INDUST REAL ESTATE (WHARF)	
	CARGO MARKETING	
	CITY ATTORNEY	
	COMMISSION OFFICE	
	COMMUNITY RELATIONS	
	CONSTRUCTION	
	CONSTRUCTION & MAINTENANCE	
	CONTRACTS & PURCHASING	
	DEBT & TREASURY MANAGEMENT	

CITY OF LOS ANGELES
HARBOR DEPARTMENT

February 6, 2023

To		From
	EMERGENCY MANAGEMENT	
	ENGINEERING	
	ENVIRONMENTAL MANAGEMENT	
	FINANCIAL MANAGEMENT	
	GOODS MOVEMENT	
	GRAPHIC SERVICES	
x	HUMAN RESOURCES	x
	INFORMATION TECHNOLOGY	
	INTERNAL AUDIT	
	LABOR RELATIONS & GOV AFFAIRS	
	MEDIA REL & STRATEGIC COMM	
	PLANNING & STRATEGY	
	PORT PILOTS	
	PORT POLICE	
	RISK MANAGEMENT	
	TRADE DEVELOPMENT	
	WATERFRONT/COMM REAL ESTATE	

SUBJECT: DISCHARGE – MARCARIO SANCHEZ, PORT POLICE OFFICER II

RECOMMENDATION

It is recommended that Port Police Officer II Macario Sanchez (Officer Sanchez) receive discharge from City service for conduct unbecoming a Peace Officer; dishonest conduct, whether on or off-duty, that adversely affects the member's relationship with the Los Angeles Port Police; and any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police, is contrary to good order, efficiency, or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members.

Reference: Harbor Department Employee Manual
Disciplinary Actions Guide, Section 2.130
Los Angeles Port Police Policy Manual
Standards of Conduct, Section 341.5

BACKGROUND

Officer Sanchez was appointed to the Port of Los Angeles Police Department as a Port Police Officer I on January 2, 2019, and Port Police Officer II on August 18, 2020. [redacted]

DISCUSSION

A pre-disciplinary (Skelly) package, dated April 28, 2022, was issued to Officer Sanchez proposing discharge from City service.

A Skelly meeting was held on June 22, 2022, to allow Officer Sanchez an opportunity to respond to the charges. Present at the meeting were Officer Sanchez, Christopher Torres, Esq., employee's attorney, Port Police Chief Tom Gazsi, and Judy Salazar, Sr. Personnel Analyst, Human Resources Division, who served as the Skelly Officer.

It was confirmed Officer Sanchez had received and understood the contents of the Skelly package, a copy of which is attached. The purpose of the Skelly meeting was explained and the charges and proposed disciplinary action were discussed.

Mr. Torres stated that he would address each allegation and that these allegations paint a grim picture. Mr. Torres hoped to show Officer Sanchez' side. Mr. Torres also stated that the Department was taking a harsh stance on the findings of the investigation and using very harsh language. Mr. Torres felt that more clarity was needed on the totality of the circumstances, not just the reports.

Mr. Torres explained that Officer Sanchez [redacted] he did have issues with alcohol and used it to cope. He further went on to say that, October 24 is not a day that stands out in Officer Sanchez's mind. He was drinking alcohol with friends and then he remembers drinking and waking up the next day. When Officer Sanchez was asked questions by the investigators, he could not confirm nor deny his actions and he would not be honest if he tried to deny or confirm since he could not clearly remember. Mr. Torres went on to say that the allegation that Officer Sanchez is lying is unfounded; it would be easier to deny the allegations because that would give him a defense. Further, it is not logical for Officer Sanchez to deny remembering. If he lied, there would be better lies he could make.

Mr. Torres said that when Officer Sanchez and [redacted] get upset, [redacted] lashes out and that Officer Sanchez has determined that the best way to deal with her is to apologize and let her vent. Officer Sanchez had determined that is not worth getting into a fight. He went on to say that, it may be perceived by others that by not denying the rape, he is in fact admitting to it, but that is just how he deals with her. Mr. Torres said that often [redacted] and Officer Sanchez would butt heads [redacted] Ms. [redacted]. Officer Sanchez has learned to say what he feels he must in order to reconcile and circle back later. This has become his learned response when dealing with Ms. [redacted]

Mr. Torres said there were discrepancies in [redacted] statements that speak to her credibility. At one point, she [redacted]. In addition, she said that she could tell that Officer Sanchez was drunk but she let him come into her home anyway. Mr. Torres stated it would not be reasonable to think that someone that has been raped so many times would allow the same person into her house. Mr. Torres said there were other discrepancies and that he could email a written list of all the discrepancies.

Mr. Torres also pointed out that the tone of [redacted] texts before and after the alleged rape was not typical of someone who has been forcibly raped.

Mr. Torres also said that much of the administrative investigation conducted by Port Police is surface-level and includes information that is already in the criminal investigation. The tone and comments that were made by the interviewer, Sgt. Miguel Pasos demonstrated that [redacted] was being viewed as a victim. Mr. Torres said there needs to be a level of neutrality during the investigation that was not there. Mr. Torres further explained that this has been a life-changing event for the employee. The reports included in the investigation demonstrate that a decision has already been made. He went on to say that, the report was not neutral, was one-sided, and did not include any fact-gathering. The investigator was not looking for what really happened. Mr. Torres said that Officer Sanchez was not afforded the due process that he was owed. He said that if someone from the outside was to read the investigative report, it would be hard for him or her to say that there a neutral, non-biased investigation had been conducted.

At this point Officer Sanchez spoke and thanked everyone for being present. [redacted]

Officer Sanchez said that moving forward, he would like to become a better police officer and assist other officers [redacted].

FINDINGS & ANALYSIS

Mr. Torres' written list includes as he called them "credibility issues". He believes that the inconsistencies that he found in the LAPD follow-up investigation [redacted]

1. Mr. Torres pointed out that [redacted] stated she had a phone call with Officer Sanchez at 0200 and then ten minutes later Sanchez texted her that he was outside her window and needed a glass of water. However, Mr. Torres pointed out that according to her own phone and text messages, she had one phone call at 0239 that lasted 54 minutes and no text messages about being outside a window or needing water.

2. [redacted] stated that she received two calls on October 24, 2020, from Officer Sanchez. Mr. Torres stated that Ms. [redacted] only provided evidence of one phone call from that morning.

3. [redacted]

4. There is a discrepancy as to how many times Ms. [redacted] has reported being raped [redacted]

5. [redacted]

6. [redacted]

7. [redacted] was inconsistent in reporting the timeline that Officer Sanchez arrived and then left her bedroom the night of the incident.

8. [redacted]

While discrepancies do appear, they do not substantially change the outcome or chain of events that occurred that night. [redacted] has stated that she has "gone along" with Officer Sanchez when he demanded sex of her to keep the peace and therefore it is also reasonable to believe tha[redacted] knowing that Officer Sanchez was drunk, would try to appease him to avoid him making a scene and waking up and frightening the entire household [redacted] After

reviewing both the definition of duress and menace, it is reasonable to believe that Ms. [redacted] under duress, decided to have sex with Officer Sanchez against her will or better judgment. [redacted]

Mr. Torres has also objected to the fact that the investigator's personal beliefs "slip out during questioning". He believes that the LAPD investigator did not conduct an unbiased fact-finding investigation based on some of the comments he made to [redacted] The nature of this investigation is difficult and of a very personal nature. However, it could also be seen as the investigator trying to pu[redacted] at ease and being sympathetic to her while she was in a very emotional state while recounting the events of the night.

CONCLUSION

The facts in the case are not in dispute. There were some discrepancies in the timeline as reported by [redacted] but they did not affect the facts or her credibility. Reporting the incident knowing the outcome could affect her personally, is significant. In addition, her statements are supported by electronic communications between her, and Officer Sanchez and a medical examination conducted by a Sexual Abuse Response Team (SART) Nurse.

Officer Sanchez's behavior reflects unfavorably upon him, the Port Police Department, and the City of Los Angeles. All sworn peace officers have an individual responsibility to maintain their integrity and that of their department, and the City of Los Angeles always. Officer Sanchez has failed to demonstrate this personal integrity and should not be allowed to remain a member of the Department.

These causes of action represent a first offense for Officer Sanchez. Discharge from City service falls within the discipline guidelines of the Personnel Department which are based on Civil Service Commission Policy 33 which specifies that employees performing functions that require peace officer status are required to conduct themselves (on and off duty) in a manner demonstrating respect for the laws they are sworn to uphold and the people and property they are employed to protect. Behavior on and off the job must not reflect negatively upon the City as their employer.

Our Department discovered that the District Attorney declined to pursue Officer Sanchez' case for criminal charges. Therefore, the Skelly Officer recommends that the following violations be removed from the Form 77:

- Harbor Department Employee Manual Section 2.130, Misconduct on or off the job, seriously reflecting on City employees or employment, Offense No. 5 Engaging in illegal behavior of conduct in conflict with job duties, on or off the job
- Los Angeles Port Police Policy Manual, Standards of Conduct, Section 341.5, Criminal conduct, whether on- or off-duty, that adversely affects the members relationship with the Los Angeles Port Police

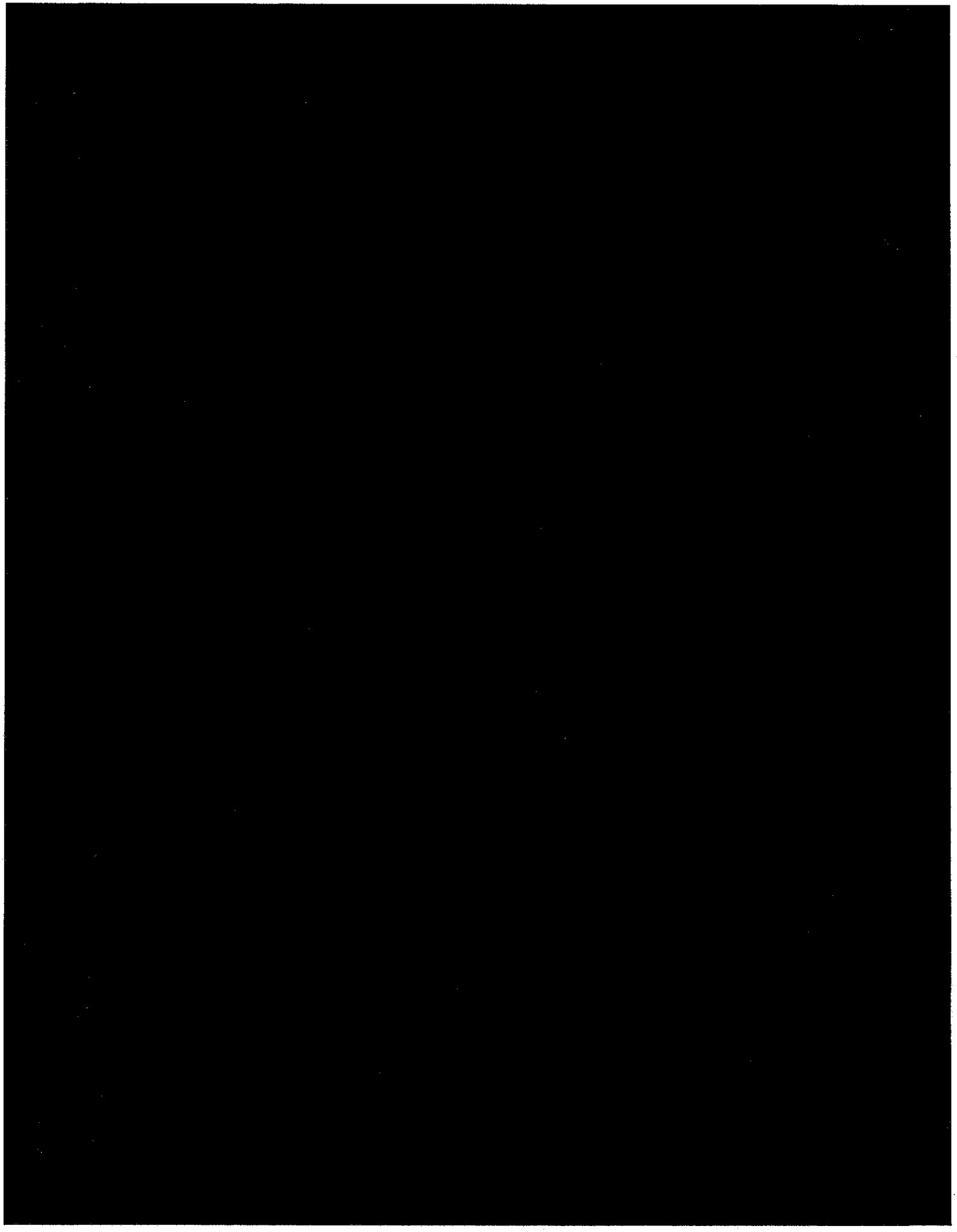
Staff weighed Officer Sanchez' employment tenure, information provided during Skelly, and the seriousness of the offenses that occurred. The Chief of Port Police and Human Resources recommend a penalty of discharge. The penalty is within the suggested range provided for in the Harbor Department Disciplinary Actions Guide and the Los Angeles Port Police Policy Manual. Concurrence with this recommendation requires authorization of an appointing authority or designee on the attached Form General 77, Notice of Discharge, Suspension, or Probationary Termination.

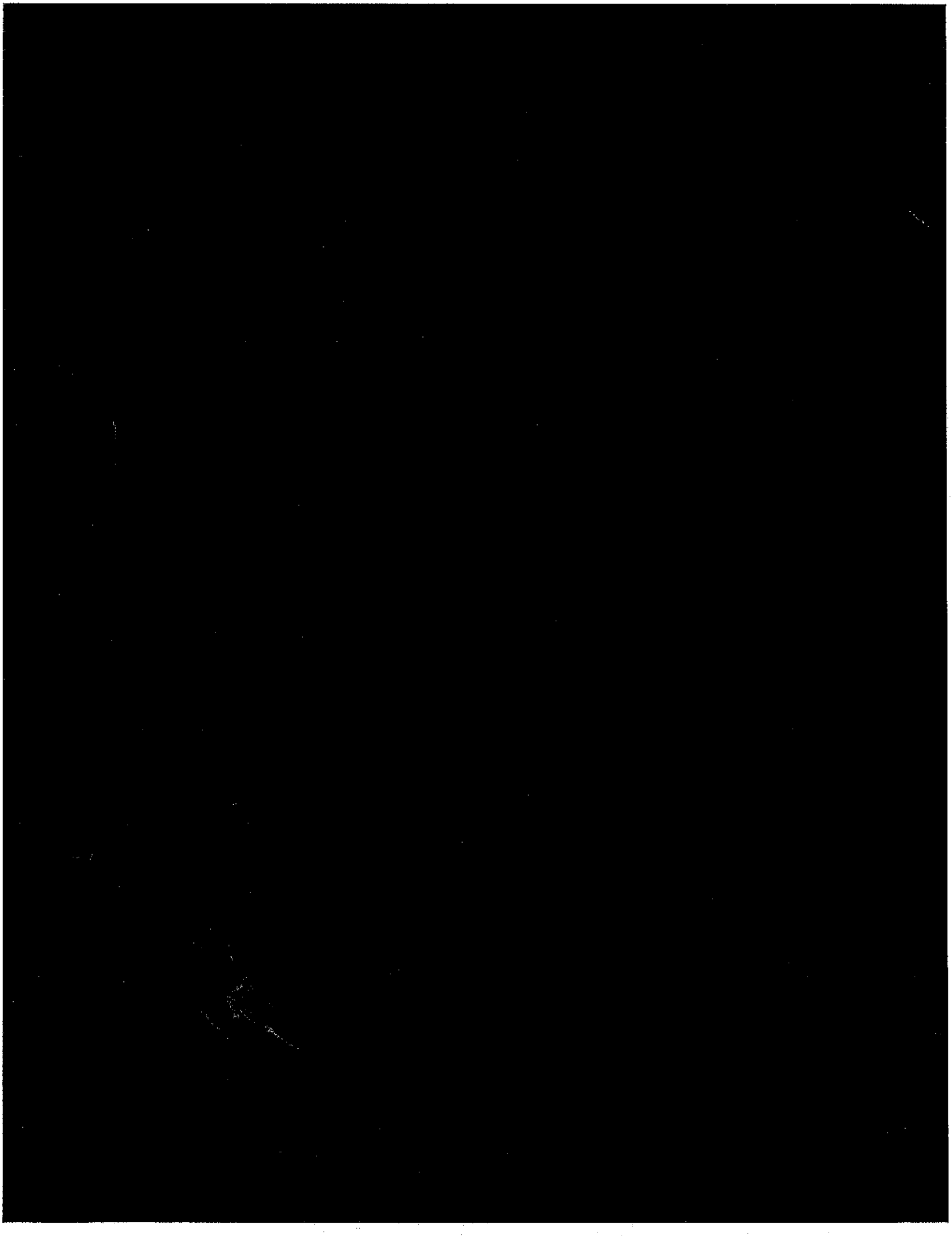
If you agree with the proposed discipline, please sign, date the attached Notice of Suspension, and return it to the Human Resources Division. Should you have any additional questions regarding this action you may call Judy Salazar of the Human Resources staff at [redacted]

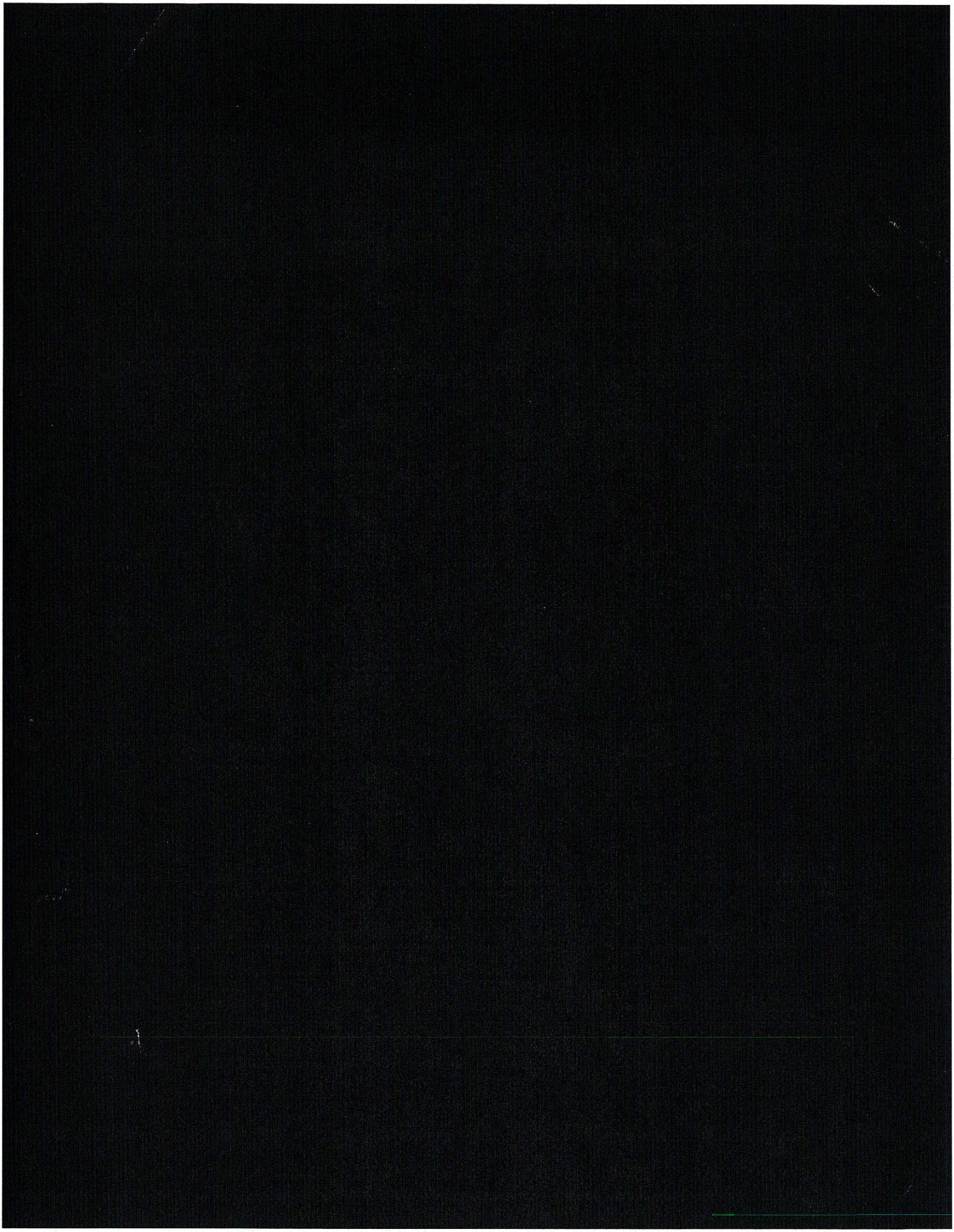
ANGELA BROWN
Director of Human Resources

AB:JMS:jo
HR8517.JMS

Attachments:
1) Notice of Discharge, Suspension, or Probationary Termination
2) Copy of Skelly – pre-disciplinary package







Form Gen. 77 (Rev. 06/02)
ORIG.– Personnel Dept.
COPY 1 – Employee
COPY 2 – Department

CITY OF LOS ANGELES

NOTICE OF DISCHARGE, SUSPENSION OR PROBATIONARY TERMINATION

1. EMPLOYEE NAME LAST	FIRST	MIDDLE	2. EMPLOYEE NUMBER
SANCHEZ	MARCARIO		402070

3. DEPARTMENT, BUREAU, OFFICE, OR MAJOR DIVISION	4. CLASS TITLE AND CODE
Harbor, Port Police Division	Port Police Officer II, 3221-2

5. [redacted]

6. TYPE OF ACTION (CHECK APPROPRIATE BOX)

☐ A. Probationary Termination.
EFFECTIVE _____
THERE IS NO APPEAL FROM THIS ACTION. However, you may request restoration of your name to the eligible list as described in Item 18c below.

☐ B. Suspension - lack of work, lack of funds or abolishment of position.
EFFECTIVE _____
THERE IS NO APPEAL FROM THIS ACTION. If you have completed probation, your name will be placed on a reserve list for preferential rehire. If you did not complete probation, your name will be placed on the eligible register until the list expires. If the list has expired at the time of layoff, it will be necessary to retake the examination.

☐ C. Suspension (disciplinary - more than 5 working days).
From _____ To _____ inclusive
YOU MAY APPEAL THIS ACTION in accordance with the procedure outlined in 18b below.

☐ D. Suspension (disciplinary - 5 working days or less).
From _____ To _____ inclusive
THERE IS NO APPEAL FROM THIS ACTION UNLESS this suspension combined with other suspensions you have received within the preceding 12 months totals more than five (5) working days in which case the appeal procedure outlined in 18b below is available to you.

☑ E. Discharge. EFFECTIVE 2/23/2023
YOU MAY APPEAL THIS ACTION in accordance with the procedure outlined in 18b below.

7. Action pending before the Workers' Compensation Appeals Board? ☐ YES ☐ NO ☑ UNKNOWN

8. Cause of action (continue on Page 2 if required):

Violations of Harbor Department Employee Manual Section 2.130, Disciplinary Actions Guide:
Standards of conduct for Peace Officers
-Conduct unbecoming a Peace Officer
Violations of Los Angeles Port Police Policy Manual, Standards of Conduct, Section 341.5
- Dishonest conduct, whether on- or off-duty, that adversely affects the members relationship with the Los Angeles Port Police
-Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members

9. TYPED NAME AND TITLE OF APPOINTING AUTHORITY	10. SIGNATURE	11. DATE
Eugene D. Seroka, Executive Director	Mark Pleasant	2-22-23

12. SERVICE OF NOTICE

INSTRUCTIONS: A copy of this notice must be served upon every person who is suspended, discharged, or terminated on probation. In accordance with Charter Section 1018, service of notice may be made by handing a copy to the person or by sending a copy by certified mail to the person's last known residence if, after due diligence, the person cannot be found. The completed original of this notice must be filed immediately with the Board of Civil Service Commissioners. If this notice is not served personally, indicate on Page 2 what efforts were made to find the employee.

13. I hereby certify that a copy of this notice was served on the subject employee on DATE 2-23-2023 at TIME 10:15 ☒ A.M. ☐ P.M.

14. ☒ Served Personally ☐ Certified Mail

15. EMPLOYEE'S LAST KNOWN RESIDENCE

16. PRINTED NAME OF PERSON WHO SERVED NOTICE: LT. NATHAN BLAZER

17. SIGNATURE OF PERSON WHO SERVED NOTICE

UNEMPLOYMENT INSURANCE / APPEAL / RESTORATION PROCEDURE

18. a. **UNEMPLOYMENT INSURANCE ELIGIBILITY.**
See Page 2 for statement regarding your right to apply for unemployment insurance benefits.

b. **DISCHARGE FOLLOWING PROBATION OR DISCIPLINARY SUSPENSION.**
YOUR SIGNED WRITTEN APPEAL MUST BE FILED WITH THE CITY OF LOS ANGELES CIVIL SERVICE COMMISSION, ROOM 360, 700 EAST TEMPLE STREET, LOS ANGELES, WITHIN FIVE (5) CALENDAR DAYS, INCLUDING SATURDAY, SUNDAY, AND HOLIDAYS, AFTER THIS NOTICE WAS SERVED ON YOU. (Section 1016 of the Los Angeles City Charter, governing discharges and disciplinary suspensions, is reprinted on Page 2.

c. **RESTORATION TO ELIGIBLE LIST FOLLOWING PROBATIONARY TERMINATION.**
Your signed written request must be filed with the Personnel Department within five (5) calendar days, including Saturday, Sunday, and holidays after receiving this notice. Restoration may be made if your eligible register is still active. If the list has expired, it will be necessary to retake the examination.

CHARTER OF THE CITY OF LOS ANGELES

Sec. 1016. Discharge or Suspension.

(a) **Discharge or Suspension for Cause.** Any board or officer having the power of appointment shall have the power to suspend or discharge any officer, member or employee of the office or department. No person in the classified civil service shall be discharged or suspended except for cause, which shall be stated in writing by the board or officer having the power to make such discharge or suspension.

(b) **Statement of Cause.** The written statement of cause shall be filed with the Board of Civil Service Commissioners, with certification that a copy has been served upon the person so discharged or suspended, in accordance with Section 1016. Upon filing with the board, the discharge or suspension shall take effect.

(c) **Application for Hearing.** Within five days of service of the written statement upon any person so discharged or suspended, the person shall file a written application with the board in order to require the board to hold a hearing to investigate the grounds for the discharge or suspension. In the event that the person does not file an application, the board may, but is not required to, within 15 days after the filing of the written statement with the board, determine to hold a hearing to investigate the grounds for the discharge or suspension.

(d) **Reinstatement; Restoration.** If, after an investigation and hearing as required by law is held, the board finds, in writing, that the grounds stated for the discharge or suspension were insufficient or were not sustained, the board shall order the person to be reinstated or restored to duty. With the consent of the appointing authority, the board may also reduce the length of the suspension, or may substitute suspension for discharge, if the board makes a written finding that such action is warranted. The order of the board with respect to the discharge or suspension shall be promptly certified to the appointing board or officer, and shall be final and conclusive.

(e) **Compensation.** If the board orders reinstatement or restoration to duty of a person who has been discharged or suspended, the person shall be entitled to receive compensation from the City the same as if he or she had not been discharged or suspended by the appointing board or officer.

(f) **Change of Disciplinary Review.** The Council may, by ordinance, provide for an alternative system for impartial review of employee discipline as set forth in subsections (b) through (e) of this section, provided that such a system conforms with due process standards for a fair hearing, and provided there remains a process for review of employee discipline in which costs are borne by the City.

(g) **Finality of Order of Suspension for Lack of Funds.** The order of any appointing board or officer suspending any person because of lack of funds or lack of work in the department shall be final and shall not be subject to review by the Board of Civil Service Commissioners.

(h) **Applicability.** The procedure for review of discipline set forth in this section shall not apply to:

(1) those members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers who are subject to the provisions of Section 1070 of the Charter.

(2) those members of the Fire Department appointed under civil service rules and regulations to perform the duties of regular firefighters who are subject to the provisions of Section 1060 of the Charter.

(3) any suspension of five working days or less in any 12 month period for personal delinquency. The reasons stated in writing for any suspension shall be furnished to the suspended employee and promptly filed with the board. Any suspension which results in an employee having a total suspended time by reason of the exercise of authority under this subsection in excess of five working days in any 12 month period shall be subject to all of the provisions of this section.

(See also Charter Section 1017)

RIGHT TO APPLY FOR UNEMPLOYMENT INSURANCE BENEFITS

Under State law, an individual who has worked for the City MAY be eligible for unemployment insurance benefits.

If you wish to apply, do the following:

1. Go to the State of California Employment Development Department (EDD) office nearest your home.

TAKE WITH YOU TO THE EDD OFFICE:

2. Official notice of your separation from City Employment (resignation, discharge or layoff statement).
3. A recent City paycheck stub.
4. This notice. IMPORTANT: If EDD requests a City work address, use only one of the two listed below. All employees except those from Water and Power are to use the address on the left. Department of Water and Power employees are to use the address on the right.

PERSONNEL DEPARTMENT
City of Los Angeles
Room 867, City Hall
200 N. Spring Street
Los Angeles, CA 90012

DEPARTMENT OF WATER AND POWER
P.O. Box 111
Los Angeles, CA 90051
ATTN: Personnel Office
Room 546

Failure to use the correct address may unnecessarily delay the processing of your claim.

If you apply, EDD will determine whether or not you are eligible to receive benefits. It is not necessary for you to contact any City office.

8. Cause of Action (Continued from Page 1 - If required):

12. Service of Notice (Continued from Page 1 - If required):

BEFORE THE BOARD OF THE CIVIL SERVICE COMMISSIONERS

OF THE

CITY OF LOS ANGELES

STATE OF CALIFORNIA

STEPHEN BIERSMITH, HEARING EXAMINER

In the Matter of the Discharge of MACARIO SANCHEZ,	**FILE NO. 55836**

CLOSING ARGUMENT BRIEF

Submitted by:

DEBORAH DORNY,
Deputy City Attorney

On behalf of the City of Los Angeles
Harbor Department

INTRODUCTION—STATEMENT OF THE CASE

A Form 77 was filed with the City of Los Angeles, Board of Civil Service Commissioners concerning the discharge of Port Police Officer II Macario Sanchez (Sanchez or Appellant). Sanchez appealed his discharge. At the hearing on Sanchez's appeal, the Harbor Department of the City of Los Angeles (Department) through compelling witness testimony and documentary evidence demonstrated that just cause existed for the discharge and that proper procedures were followed in accordance with the Civil Service Rules.

PROCEDURAL BACKGROUND

Pursuant to the appeal filed by Sanchez, the Board of Civil Service Commissioners, Executive Director appointed Stephen Biersmith as the Hearing Examiner and scheduled the hearing to take place on May 16, 2024. A second hearing day was held on October 2, 2024 (the Hearing).

STATEMENTS OF THE DEPARTMENT'S POSITIONS

1. The evidence from the Port Police Internal Affairs Investigation—which includes the full investigative file from the Los Angeles Police Department, witness interviews, and the testimony presented at the Hearing are sufficient to sustain all causes of action. The Hearing Examiner should therefore recommend to the Board of Civil Service Commissioners that all causes of action be sustained.
2. The Department had just cause to support Sanchez's termination, and the Department presented evidence at the Hearing sufficient to sustain Sanchez's termination. The Hearing Examiner should therefore recommend to the Board of Civil Service Commissioners the discharge be sustained.

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STATEMENT OF FACTS

A. The Allegations and Discipline

Sanchez was terminated from the Port Police for violating the following policies:

1. Violations of Harbor Department Employee Manual Section 2.130, Disciplinary Actions Guide: Conduct unbecoming a Peace Officer.
2. Violations of Los Angeles Port Police Policy Manual, Standards of Conduct, Section 341.5: Dishonest conduct, whether on- or off-duty, that adversely affects the members relationship with the Los Angeles Port Police.
3. Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Police, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members. [Exh. 1, SANCHEZ – 001 (Form 77)[1].]

B. The Incident Giving Rise to Discipline

On October 28, 2020, victim [redacted] reported to the Los Angeles Police Department (LAPD) that [redacted], Officer Macario Sanchez, had raped her. [Exh. 21, SANCHEZ – 415; Transcript of Proceedings, Thursday, May 16, 2024 (Tr. 1), 31:23-32:16[2].]

In the early morning hours of Saturday, October 24, 2020, Sanchez texted [redacted] and reported that he was at the end of the block near [redacted]. [Exh. 25, SANCHEZ – 444.] He had been drinking alcohol earlier in the evening. [Exh. 11, 171:27- 174:9.] [redacted] let him into [redacted] for some water. She reported that Sanchez forced her to have sexual intercourse with him on her bedroom floor [redacted]. [Exh. 21, SANCHEZ – 415-419; Exh. 22, SANCHEZ - 430; Exh. 9, SANCHEZ – 101-102; Exh. 27, SANCHEZ – 447-449; Tr. 1, 35:20-23.] Sanchez left the [redacted]

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[1] At the Hearing, the Department offered a binder with Exhibits numbering 1-39. These Exhibits are cited here as "Exh. 1." The Department's Exhibits are also Bates labeled "SANCHEZ-___" for easy reference. Appellant did not offer any exhibits at the Hearing.

[2] A separate Transcript of Proceedings was prepared for each day of the Hearing: May 16, 2024, cited here as Tr.1, __ :__; October 2, 2024, cited here as Tr. 2, _:_.

[redacted] She then filed a Crime Report with the Los Angeles Police Department (LAPD), charging Sanchez with 261 PC-Rape. [Exh. 21, SANCHEZ – 415; Tr. 1, 31:23-32:16.] She submitted to a Sexual Assault Response Team examination. [Exh. 21, SANCHEZ – 420-428; Tr. 1, 39:2-24.] The SART investigation documented abrasions from a rug burn on [redacted] A.'s back and knees, consistent with her report of the rape. [Id.]

Three days after the incident, [redacted] and Sanchez exchanged text messages:

[redacted]

Sanchez How did it go?

[redacted] What you are doing is psychological abuse towards me.

Sanchez I am sorry, I was drunk.

[redacted] That's always your excuse. And that's the problem.

Sanchez You know I am trying to stop. I hadn't drank in a while.

[redacted] What you do is not only rape, [redacted]

Sanchez I made a mistake by drinking too much that night.

***

Sanchez [redacted]

***

[redacted] Being drunk is not excuse [sic] to be a shitty person towards me. So far all I've done is looked out for you [redacted] I have been ignoring my own safety and I know now that safety is the one thing I cannot compromise anymore.

Sanchez I understand and I am really sorry.

[Exh. 26, SANCHEZ – 447-448]

//

In the text messages, Sanchez did not deny that the rape occurred. [Id.] Instead, he apologized multiple times. [Id.] Ultimately, [redacted] decided not to move forward with the charges, and the criminal case was not pursued by the District Attorney. [Tr. 1, 41:1-15.]

C. **Dishonesty During the Investigation.**

Two investigations were conducted. One was conducted by the LAPD, led by Detective Kristine Klotz. The other was and internal investigation at the Harbor Department. Sanchez was interviewed by Detective Klotz and two investigators from the Harbor Department. [Tr. 1, 44:9-10; Exh. 22, SANCHEZ – 440-441; Tr. 1, 79:17-25; Exh. 30, SANCHEZ – 30; Tr. 103:9-13; Exh. 11, SANCHEZ – 155-266.] Instead of expressing remorse, as he did in the text messages to [redacted]., he claimed that he had no memory of the night of the incident. He recalls going to bed after having some drinks and then waking up the next morning. [Exh. 11, SANCHEZ – 181:23-182:14; Tr. 1, 32-39; Tr. 1, 75:12-78:4; Tr. 1, 78:19-79:7.]

Detective Klotz, Investigator Perkins and Lieutenant Pasos did not find Sanchez's black-out defense credible. [Exh. 22, SANCHEZ – 441; Tr. 1, 45:16-21; 78:15-18; 103:19-104:1.] and believed he was being dishonest because he knew that [redacted] had text messages that would corroborate her account of the rape. [Tr. 1, 45:16-21.] The nature of Sanchez's texts, specifically the statement, [redacted] does not support Sanchez's invention that his consumption of alcohol caused memory loss. There is a perceived lucidity in his text [redacted]. It is not believable that an individual would be so intoxicated to forget entire hours of their life yet comprehend the consequences of their actions and provide timely resolutions.

D. [redacted]

[redacted]

C. Uncontroverted Facts and Sanchez's Lack of Credibility

The uncontroverted evidence presented at the hearing supports the claim that Sanchez had sex with [redacted] without her consent on October 24, 2024. [redacted] provided text messages from that night and early morning, she told [redacted] about the rape, she reported it to the LAPD, and she submitted to a SART exam which revealed injuries consistent with her account of the rape.

At no time has Sanchez denied that the rape occurred. However, he claimed that he had no memory of anything that occurred that night and into the next day. He stated in interviews that he does not remember walking to [redacted] does not remember having sex with her, does not remember going home afterward, does not remember [redacted], which [redacted] does not remember texting [redacted] several times that night. Multiple witnesses testified that his defense was not credible.

[redacted]

After reviewing all evidence compiled during the investigation in this matter Chief Gazsi—tasked with recommending appropriate discipline based on that evidence—testified that Officer Sanchez's defense lacked any credibility. In short, Sanchez knew the incident occurred. He knew that he could not deny it given the weight of the evidence. His best defense was to simply state he blacked out and had no memory of the night.

ARGUMENT

Port Police Officers are sworn to uphold the laws, regulations, and policies of the United States, the State of California, the City of Los Angeles, and the Harbor Department. This is required

in order to serve and protect the public. Sanchez, on October 24, 2020 and throughout the investigation that followed, demonstrated a total disregard of and disrespect for those laws, regulations, and policies. And for that, the Department had no choice but to fire him.

During the investigation, Sanchez never denied that the rape occurred. [Tr. 1, 42:17-18; 44:22-45:7.] He knew his own words in his text messages would incriminate him. He deleted his own text messages and call logs. His actions reveal a lack the self-restraint and integrity necessary to be a Port Police Officer.

Sanchez attempted to discredit the investigation, claiming that the investigating officers from the Harbor Department conducted a biased investigation intended to paint him in a negative light. The evidence does not support this claim. Detective Klotz has investigated dozens of rape and sexual assault cases in her career. The LAPD investigation conducted by Detective Klotz was thorough and extensive. When the District Attorney decided not to proceed with the charges due to [redacted] decision to not continue with the charges, the Harbor's internal investigators pursued it. Their investigation included review of the LAPD file, interviews of [redacted] a lengthy interview of Sanchez, interviews of the individuals who were with Sanchez on the night of the incident, and reviews of text messages. [Exh. 8, SANCHEZ – 033-063.]

Cause 1: Sanchez's conduct on October 24, 2020 was conduct unbecoming a peace officer in violation of Harbor Department Employee Manual Section 2.130, Disciplinary Actions Guide: Standards of Conduct for Peace Officers.

While the District Attorney chose not to charge Sanchez, there has been no finding of factual innocence. At issue here is whether there is enough evidence for the Department to discipline Sanchez as the Department's policies require—that is, to ensure that employees act in compliance with policies and are either disciplined to correct noncompliance or fired if the conduct cannot be corrected. Under a system of prosecutorial discretion, a person may "engage in illegal conduct" and not be arrested or convicted. Here, all testimony and evidence indicate that Sanchez raped [redacted] He has never denied it. Under its policies, the Department cannot ignore these actions.

Cause 2: Sanchez engaged in dishonest conduct during the LAPD and internal investigations that adversely affected his relationship with the Los Angeles Port Police in violation of the Los Angeles Port Police Policy Manual, Standards of Conduct, Section 341.5.

Knowing that the evidence weighed heavily against him, Sanchez claimed that he "blacked out" and did not remember any of the events of the night other than drinking alcohol and going to bed. The claimed blackout period covers an extended time period where Sanchez walked several blocks to [redacted] called her on the phone and asked to come in for water, went into the home and engaged in sexual intercourse, [redacted] All three of the investigators who interviewed Sanchez did not believe him.

[redacted]

Cause 3: Sanchez engaged in off-duty conduct that he knew or reasonably should have known is unbecoming a member of the Los Angeles Port Police, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members.

The Port Police supervisors testifying in this matter all agreed that there can be no reasonable explanation or justification for Sanchez's behavior that night. Becoming so drunk that one does not remember or comprehend one's actions is no excuse for harming someone. He had an absolute obligation to cooperate with LAPD and the internal investigators at the Harbor Department. While he was cooperative, no investigator found him credible. He intentionally deleted text messages and phone logs. On previous occasions, he had asked [redacted] to do the same. He

engaged in a cascade of conduct that epitomizes conduct unbecoming a police officer.

A. Termination Is the Appropriate Discipline

The facts of this case are not in dispute. [redacted] reported the rape to [redacted] the LAPD knowing the outcome could affect her personally. Her statements were supported by text messages and a medical examination conducted by a Sexual Abuse Response Team (SART) nurse. Sanchez's claim that he blacked out and does not remember anything about the rape or the events that occurred afterward are simply not credible, nor does this defense negate the fact that [redacted] was seriously harmed. Sanchez's behavior reflects unfavorably upon him, the Port Police Department and the City of Los Angeles.

These causes of action represent a first offense for Sanchez. Discharge from City service falls within the discipline guidelines of the Personnel Department which are based on Civil Service Commission Policy 33 which specifies that employees performing functions that require peace officer status are required to conduct themselves (on and off duty) in a manner demonstrating respect for the laws they are sworn to uphold and the people and property they are employed to protect.

B. The circumstances of this case do not align with the policy of progressive discipline

Section 33.1(A) of the Policies of the Personnel Department City of Los Angeles (Discipline Policies) provides, "The primary goal of this disciplinary policy is to correct employee behavior or performance." This policy assumes that an employee's behavior can be corrected in a measurable way upon which the Department can rely. The policy, however, concedes, "Some infractions . . . may require proceeding directly to more severe levels of discipline." [Discipline Policies, section 33.1(E).] Accordingly, the discipline recommendations include discharge even as a first offense. Under Section 33.2, for example, all City employees may face discharge on a first offense for "Engaging in illegal behavior *or conduct in conflict with job duties on or off the job*." [Emphasis added.] Section 3.2's Standards of Conduct for Peace Officers allows for discharge for "off duty"

and "off the job" violations. Thus the level of discipline is left to the discretion of the Department based on the egregiousness of the conduct and whether the Department believes the employee's behavior can be corrected.

Officer Sanchez's behavior cannot be corrected in a manner upon which the Department can rely. As discussed above, abuse of alcohol is not a reasonable explanation or excuse for his conduct. In addition, his lack of credibility with his lack of memory [redacted] does not favor progressive discipline.

CONCLUSION

It is respectfully urged that the Hearing Examiner report to the Board of Civil Service Commissioners that the Harbor Department complied with Policy 33.1D and 33.1E.3, that the evidence submitted in support of the charges is adequate, and that the grounds for termination are sufficient. The termination of Officer Sanchez was just. Further, the Department urges the Hearing Examiner to recommend to the Board of Civil Service Commissioners that they find the following: (1) all of the charges are sufficient and sustained, or alternatively that some of the charges are sufficient and sustained; and (2) the termination is sustained.

Dated: November 12, 2024

Respectfully Submitted,
OFFICE OF THE CITY ATTORNEY
Hydee Feldstein Soto, City Attorney
Steven Otera, General Counsel

By: Deborah Dorny
DEBORAH DORNY, Deputy City Attorney
Attorneys for the City of Los Angeles, Harbor Department

BOARD OF CIVIL SERVICE COMMISSIONERS

Room 360, PERSONNEL BUILDING

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GRAYCE LIU
INTERIM GENERAL MANAGER

CONFIDENTIAL

NOTICE

March 17, 2025

To: Appellant: Macario Sanchez (in pro per)

Respondent: Eugene Seroka, Executive Director
Los Angeles Harbor Department
Post Office Box 151
San Pedro, California 90733-0151

Re: Appeal from Discharge of Macario Sanchez, Port Police Officer, Harbor Department.
Commission File 55836

You are hereby notified that the Report of the Board's Hearing Examiner Stephen Biersmith, has been received and will be presented to the Board for its consideration at its regular meeting on **Thursday, April 24, 2025,** at 10:00 a.m., Room 350, Personnel Building, 700 East Temple Street, Los Angeles.

You are required to appear. Failure to appear in-person at the Personnel Department Commission Board Room will result in consideration of the matter in your absence.

Written submissions in support of, or taking exception to, the Hearing Examiner's Report, should be filed electronically to the Commission Executive Director (bruce.whidden@lacity.org) by 9:00 a.m. Monday April 14, 2025. Timely filed written submissions will be included in the materials sent to each Commissioner prior to the scheduled meeting.

No written submissions shall exceed 20 single sided pages in length, double space, using a common font at no less than 12pt. Documents that have already been admitted as an Exhibit during the evidentiary hearing before the Hearing Officer should not be included as part of a party's written submission; instead, the exhibit should be referenced in the written submission by Exhibit Number. Similarly, transcripts of witness testimony should be limited to (1) the first page of the transcript including the witness's name and date of testimony; and (2) the relevant pages of the transcript with the original transcript page number at the bottom of each page, with the relevant portions of the testimony highlighted. Witness transcript pages will NOT count toward the 20-page limit.

A party may apply to the Commission office, with written notice to the opposing party, at least two business days before the exceptions are due for permission to file a longer written submission. The application must state reasons why the argument cannot be made within the stated limit and must state how many additional pages are needed. If an exception to the page limit is granted, the submission will continue to be due according to the original submission deadline. Pages submitted in excess of the approved page limit will not be considered by the Board.

Simultaneous exchange of written submissions between the parties will be done electronically by the Commission staff no later than Friday, April 18, 2025.

Visitor parking, if available, *is located in the Medical Services Building across from the Personnel Department, 520 East Temple Street. The vehicle entrance to the lot is on Temple Street at North Garey Street. Use this link,* https://go.citygrows.com/city-of-la-personnel/parking-permit-personnel-department-0ef6f092-2d60-4ade-ab74-77689694ac62 to request parking by entering vehicle information as requested. Once approved, a permit will be sent which you may print. Place on the dash of your vehicle and park on the top level of the structure.

Very truly yours,
BOARD OF CIVIL SERVICE COMMISSIONERS

BRUCE WHIDDEN
Commission Executive Director

cc: Deborah Dorny, Harbor Department
Judy Salazar, Personnel Director, Harbor Department
Jorge Orlano, Deputy City Attorney
Stephen Biersmith, Hearing Examiner

Form Gen 77 (Rev 6/06)
ORIG – Personnel Dept
COPY 1 – Employee
COPY 2 – Department

CITY OF LOS ANGELES

NOTICE OF DISCHARGE, SUSPENSION OR PROBATIONARY TERMINATION

1 EMPLOYEE NAME LAST	FIRST	MIDDLE	2 EMPLOYEE NUMBER
SANCHEZ	MARCARIO		402070

3 DEPARTMENT, BUREAU, OFFICE OR MAJOR DIVISION	4 CLASS TITLE AND CODE
Harbor, Port Police Division	Port Police Officer II, 3221-2

5 [redacted]

6 TYPE OF ACTION (CHECK APPROPRIATE BOX)

A Probationary Termination

EFFECTIVE _____

THERE IS NO APPEAL FROM THIS ACTION However you may request restoration of your name to the eligible list as described in Item 18c below

B Suspension - lack of work, lack of funds or abolishment of position

EFFECTIVE _____

THERE IS NO APPEAL FROM THIS ACTION If you have completed probation, your name will be placed on a reserve list for preferential rehire. If you did not complete probation your name will be placed on the eligible register until the list expires. If the list has expired at the time of layoff, it will be necessary to retake the examination

C Suspension (disciplinary - more than 5 working days)

From _____ To _____ inclusive

YOU MAY APPEAL THIS ACTION in accordance with the procedure outlined in 18b below

D Suspension (disciplinary - 5 working days or less)

From _____ To _____ inclusive

THERE IS NO APPEAL FROM THIS ACTION UNLESS this suspension combined with other suspensions you have received within the preceding 12 months totals more than five (5) working days in which case the appeal procedure outlined in 18b below is available to you

☑ E Discharge EFFECTIVE 2/23/2023

YOU MAY APPEAL THIS ACTION in accordance with the procedure outlined in 18b below

7 Action pending before the Workers' Compensation Appeals Board? ☐ YES ☐ NO ☑ UNKNOWN

8 Cause of action (continue on Page 2 if required):

Violations of Harbor Department Employee Manual Section 2 130, Disciplinary Actions Guide:
Standards of conduct for Peace Officers
- Conduct unbecoming a Peace Officer

Violations of Los Angeles Port Police Policy Manual, Standards of Conduct, Section 341.6
- Dishonest conduct, whether on- or off-duty, that adversely affects the members relationship with the Los Angeles Port Police
- Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon the Los Angeles Port Police or its members

9 TYPED NAME AND TITLE OF APPOINTING AUTHORITY	10 SIGNATURE	11 DATE
Eugene D. Seroka, Executive Director	[signature]	1-23-23

12 SERVICE OF NOTICE

INSTRUCTIONS A copy of this notice must be served upon every person who is suspended, discharged or terminated on probation In accordance with Charter Section 1018, service of notice may be made by handing a copy to the person or by sending a copy by certified mail to the person's last known residence If, after due diligence, the person cannot be found The completed original of this notice must be filed immediately with the Board of Civil Service Commissioners If this notice is not served personally, indicate on Page 2 what efforts were made to find the employee

13 I hereby certify that a copy of this notice was served on the subject employee on DATE 2-23-2023 at TIME 10:45 AM PM

14	15 EMPLOYEE'S LAST KNOWN RESIDENCE
X Served Personally ☐ Certified Mail	
16 PRINTED NAME OF PERSON WHO SERVED NOTICE: LT. NATHAN BLAZER	17 SIGNATURE OF PERSON WHO SERVED NOTICE: [signature] BC

UNEMPLOYMENT INSURANCE / APPEAL / RESTORATION PROCEDURE

18 a **UNEMPLOYMENT INSURANCE ELIGIBILITY.**
See Page 2 for statement regarding your right to apply for unemployment insurance benefits

b **DISCHARGE FOLLOWING PROBATION OR DISCIPLINARY SUSPENSION:**
YOUR SIGNED WRITTEN APPEAL MUST BE FILED WITH THE CITY OF LOS ANGELES CIVIL SERVICE COMMISSION ROOM 360 700 EAST TEMPLE STREET, LOS ANGELES WITHIN FIVE (5) CALENDAR DAYS INCLUDING SATURDAY SUNDAY AND HOLIDAYS AFTER THIS NOTICE WAS SERVED ON YOU (Section 1016 of the Los Angeles City Charter governing discharges and disciplinary suspensions is reprinted on Page 2

c **RESTORATION TO ELIGIBLE LIST FOLLOWING PROBATIONARY TERMINATION.**
Your signed written request must be filed with the Personnel Department within five (5) calendar days including Saturday Sunday and holidays after receiving this notice Restoration may be made if your eligible register is still active If the list has expired it will be necessary to retake the examination

1016 Discharge or Suspension.

(a) **Discharge or Suspension for Cause.** Any board or officer having the power of appointment shall have the power to suspend or discharge any officer, member or employee of the office or department. No person in the classified civil service shall be discharged or suspended except for cause, which shall be stated in writing by the board or officer having the power to make such discharge or suspension.

(b) **Statement of Cause.** The written statement of cause shall be filed with the Board of Civil Service Commissioners with certification that a copy has been served upon the person so discharged or suspended, in accordance with Section 1018. Upon filing with the board, the discharge or suspension shall take effect.

(c) **Application for Hearing.** Within five days of service of the written statement upon any person so discharged or suspended, the person shall file a written application with the board in order to require the board to hold a hearing to investigate the grounds for the discharge or suspension. In the event that the person does not file an application, the board may, but is not required to, within 15 days after the filing of the written statement with the board, determine to hold a hearing to investigate the grounds for the discharge or suspension.

(d) **Reinstatement; Restoration.** If, after an investigation and hearing as required by law is held, the board finds, in writing, that the grounds stated for the discharge or suspension were insufficient or were not sustained, the board shall order the person to be reinstated or restored to duty. With the consent of the appointing authority, the board may also reduce the length of the suspension or may substitute suspension for discharge if the board makes a written finding that such action is warranted. The order of the board with respect to the discharge or suspension shall be promptly certified to the appointing board or officer, and shall be final and conclusive.

(e) **Compensation.** If the board orders reinstatement or restoration to duty of a person who has been discharged or suspended, the person shall be entitled to receive compensation from the City the same as if he or she had not been discharged or suspended by the appointing board or officer.

(f) **Change of Disciplinary Review.** The Council may, by ordinance, provide for an alternative system for impartial review of employee discipline as set forth in subsections (b) through (e) of this section, provided that such a system conforms with due process standards for a fair hearing and provided there remains a process for review of employee discipline in which costs are borne by the City.

(g) **Finality of Order of Suspension for Lack of Funds.** The order of any appointing board or officer suspending any person because of lack of funds or lack of work in the department shall be final and shall not be subject to review by the Board of Civil Service Commissioners.

(h) **Applicability.** The procedure for review of discipline set forth in this section shall not apply to:

(1) those members of the Police Department appointed under civil service rules and regulations and sworn in as provided by law to perform the duties of regular police officers who are subject to the provisions of Section 1070 of the Charter;

(2) those members of the Fire Department appointed under civil service rules and regulations to perform the duties of regular firefighters who are subject to the provisions of Section 1060 of the Charter;

(3) any suspension of five working days or less in any 12 month period for personal delinquency. The reasons stated in writing for any suspension shall be furnished to the suspended employee and promptly filed with the board. Any suspension which results in an employee having a total suspended time by reason of the exercise of authority under this subsection in excess of five working days in any 12 month period shall be subject to all of the provisions of this section.

(See also Charter Section 1017)

RIGHT TO APPLY FOR UNEMPLOYMENT INSURANCE BENEFITS

Under State law, an individual who has worked for the City MAY be eligible for unemployment insurance benefits.

If you wish to apply, do the following:

1. Go to the State of California Employment Development Department (EDD) office nearest your home.

TAKE WITH YOU TO THE EDD OFFICE:

2. Official notice of your separation from City Employment (resignation, discharge or layoff statement).
3. A recent City paycheck stub.
4. This notice. IMPORTANT: If EDD requests a City work address, use only one of the two listed below. All employees except those from Water and Power are to use the address on the left. Department of Water and Power employees are to use the address on the right.

PERSONNEL DEPARTMENT City of Los Angeles Room 867, City Hall 200 N. Spring Street Los Angeles, CA 90012	DEPARTMENT OF WATER AND POWER P.O. Box 111 Los Angeles, CA 90051 ATTN: Personnel Office Room 546

Failure to use the correct address may unnecessarily delay the processing of your claim.

If you apply, EDD will determine whether or not you are eligible to receive benefits. It is not necessary for you to contact any City office.

8 Cause of Action (Continued from Page 1 - if required)

12 Service of Notice (Continued from Page 1 - if required)

BOARD OF CIVIL SERVICE COMMISSIONER'S CITY OF LOS ANGELES

Appellant	Macario Sanchez
Department	Port Police Officer Harbor, Port Police Division
Type of Action	Discharge Effective February 23, 2023
	Commission File No. 55836
Hearing Dates & Place	May 16, 2022 & October 2, 2024 Personnel Department 700 East Temple Street Los Angeles, CA. 90012
Hearing Examiner	Stephen M. Biersmith, Esq.
Representing the Department	Deborah Dorny Deputy City Attorney
Representing the Appellant	In pro per
Commission Executive Assistant Secretary	Bruce Whidden
Hearing Reporter	Kennedy Reporters

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To: Board of Civil Service Commissioners

From: Stephen M. Biersmith

Subject: Appeal of the discharge of Marcario Sanchez
Commission File No. 55836

CAUSES OF ACTION

"Violations of Harbor Department Employee Manual Section 2 –30 Disciplinary Action Guide Standards of Conduct for Police Officers

- Conduct unbecoming a Police Officer

Violations of Los Angeles Port Policy Manual, Standards of Conduct, Section 341.5

- Dishonest conduct, whether on or off-duty that adversely affect the members relationship with Los Angeles Port Police

-Any other off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Los Angeles Port Police is contrary to good order, efficiency or morale or tends to reflect unfavorably upon the Los Angeles Port Police or its members."

PROCEDURAL MATTERS

During the hearing the parties stipulated to the fact the *Skelly* due process provisions were adhered to by the Department.

WORK HISTORY

1. On January 2, 2019 the Appellant began his employment with the City of Los Angeles as a Port Police Officer I.
2. On August 18, 2020 the Appellant was promoted to the position of Port Police Officer II.
3. [redacted]

WITNESSES

Called by the Department:

1. Frank Huang
2. Kristine Klotz
3. Lt. Miguel Pasos
4. Lt. Jonathan Octeau

Called by the Appellant:

1. The Appellant

EXHIBITS

Department's Exhibits:

1. Form77 Notice of Discharge, Suspension, Probationary Termination
2. Memorandum from Angela Brown to Executive Director, Dated February 6, 2023
3. Memorandum from Human Resources to Port Police Office Marcario Sanchez, dated April 28, 2022
4. Port Police Professional Sandards, Case Disposition
5. Excerpts Port Police Manual
6. Excerpts from Harbor Department Employee Manual
7. Memorandum from Captain Hayden to Deputy Chief Hyams, dated December 7, 2021, Recommending all Allegations Be Sustained
8. Memorandum from Sgt. Pasos to Captain Hayde, dated November 2, 2021 Summarizing Investigation.
9. Klotz – DA Interview Transcript: [redacted] dated November 5, 2020
10. Pretext Call Transcript
11. Interview Transcript: Port Police Officer Macario Sanchez
12. Interview Transcript: [redacted] dated June 21, 2021
13. Interview Transcript: [redacted] dated July 1, 2021
14. Interview Transcript: [redacted] dated October 7, 2021
15. Interview Transcript: [redacted] dated June 23, 21
16. Interview Transcript: [redacted] dated June 23, 2021
17. Interview Transcript: [redacted], dated September 3, 2021
18. Case Addendum 1: Extremal Complaint Report
19. Case Addendum 2: Administrative Leave Letter from M. Sanchez
20. Case Addendum 3: Fiscal Ops Receipt of Sanchez Property
21. Case Addendum 4: LAPD Crime Report and SART Exam.
22. Case Addendum 5: LAPD Detective Follow-up Report
23. Case Addendum 6: LAPD Supplemental Follow-up Report
24. Case Addendum 7: L.A. County Charge Evaluation Worksheet
25. Case Addendum 8: Screenshots from October 24, 2020

26. Case Addendum 9: Screenshots from October 27, 2020
27. Case Addendum 10: Screenshots from February 12, 2020
28. Case Addendum 11 Sanchez Notice of Interview Letter
29. Case Addendum 12: Sanchez Miranda Forms
30. Case Addendum 13: Sanchez Interview Summary by Perkins
31. Case Addendum 14: Evens Sored by Primary Officer Sanchez
32. Case Addendum 15: Policy Acknowledgment Report Sanchez
33. Case Addendum 16: Lexipol DTB Summary Report Sanchez
34. [redacted]
35. Case Addendum 19: Perkins Conversation with [redacted]
36. Case Addendum 20: Perkins Conversation with Detective Klotz
37. Case Addendum 21: LAPD Audio Files
    a. Audio 20-009 Klotz initial rape interview with [redacted]
    b. Audio 20-009 Klotz pretext call
    c. Audio 20-009 Klotz interview with Sanchez
    d. Audio: 20-009 Klotz [redacted] DA Interview
38. Chronological Record to Investigation: Notes and Emails; Research
39. Credibility Issues Found after a Review of [redacted] Responses to Investigators; Provided by Employee Representative at *Skelly* Meeting

Appellant's Exhibits:

None

POSITION OF THE PARTIES

It was the Department's position the evidence from the Port Police Internal Affairs investigation (which include the full investigative file from the LAPD), witness interviews, and testimony presented during the hearing were sufficient to sustain all causes of action and sufficient support to uphold the discharge.

It was the Appellant's position the allegations in the disciplinary notices were unfounded and could not be proven without reasonable doubt. He did not consider a lack of denial or an apology the same as an admission. He acknowledged making a mistake but believed the investigation into the incident was unfair and biased.

TESTIMONY PRESENTED

Frank Huang

Huang has served as a Sargent with the Department's Marine Division since 2019. In that capacity, Huang assigns, supervises, and evaluates personnel. He received training on domestic violence at the academy and every two years during a post certified course. During such training officers are made aware if they engage in such behavior, discipline could result. He worked with the Appellant briefly for one deployment period when he was on the patrol side.

On December 14, 2020 and as the field supervisor, he did an intake after taking information over the phone. The Appellant called to say he had been interviewed by two LA detectives for [redacted] an assault involving his [redacted] He did not say it was a rape investigation. [redacted] An officer was to report not only any law enforcement contact but anything that may lead to a possible investigation which could put the Department in a bad light. In this case the Appellant did not do so until two months after he was contacted by the LAPD.

Kristine Klotz

Since 2012 Klotz has served as a detective with the LAPD in the Van Nuy Division. She was formerly assigned to work in "Special Assault" under Robbery/Homicide Division which handled cases which included rape. As part of her investigation in this case, she reviewed several texts between the victim and the Appellant including [redacted]. She did a follow-up investigation report which included some admissions by the Appellant that he was drunk [redacted]. He did not say anything about the rape.

As part of her investigation Klotz interviewed the victim who had been interviewed three times before by others. During her conversation with the victim, she was generally calm and articulate but at times would sob when talking about what happened. The victim told her she was hesitant to report the rape and that there had been other such incidents. On one occasion the victim said she was raped 8-10 times but when giving a statement at another time, said it happened two to three times a week or month. She clarified this discrepancy and said there were times when it was consensual. She was trying to recall how many times he was intoxicated and wanted to have sex. Klotz noted such inconsistencies were common in these types of cases and for that reason they did not diminish the fact the incidents may have occurred. In this case the findings of SART when examining the victim were consistent with what the victim reported that night.

Klotz prepared a chronological investigation log which included an interview with [redacted]. The victim had confided to her about this incident and another which occurred before. Theirs statement were consistent. There was a pretext phone call which Klotz and the victim were on with the Appellant. Initially, they talked about the

[redacted] and also confronted him with the rape. [redacted] The Appellant did not tell her to drop the matter. At one point the victim said she did not want to file charges after the phone call because there was already a lot of stress associated with the D.A. and the Appellant.

When Klotz interviewed the Appellant at his home, he was nervous and cooperative. She felt the Appellant was being deceitful based on his answers, some of which were conflicting and/or vague. He was unable to remember when showed text message between the victim and himself. The Appellant did not deny what the victim claimed, but said he could not remember. [redacted]

After the investigation was completed, Klotz submitted the case to the D.A. They did not move forward with the case after the victim said she did not wish to pursue it criminally. She also gave her report to the Port Police. Klotz concluded the Appellant had sex with the victim without consent. She also felt he manipulated the victim on their subsequent phone call.

There were texts between the victim and he Appellant about psychological abuse, including one which said he was sorry and that he had been drunk. The report did not include the word "scabbing" but she concluded there was some based on a photograph of the victim.

Jonathan Perkins

Perkins was hired as a contractor to conduct an internal investigation in this matter. In doing so he reviewed all the documents provide, polices, manuals, and reports from LAPD detectives.

He interviewed the Appellant for several hours with his attorney and an I.A. officer present from the Department. During that interview, he felt the Appellant's credibility was somewhat challenged in that he was unable to recall some facts but conveniently remembered others. As an example, when he asked about how much he drank, his response was a few drinks and then conveyed what he had to drank the night before. As to the latter, the Appellant said he and several others consumed alcohol at his parent's house [redacted]

Perkins did not feel the Appellant was credible when he said he did not remember [redacted], knocking on her door, asking for water, sending texts, having sex with the victim after she said "no,", [redacted], or that he spoke to the victim's mother. According to other reports and the texts, he was there 3-6 a.m. The Appellant could not recall leaving and then returning that afternoon [redacted]. The Appellant said he deleted his text and phone messages. He believed some of the Appellant's responses during his interview were inconsistent. Alcohol was not an excuse for the misconduct. Her agreed individuals have different tolerances to alcohol.

Perkins felt the Appellant was aware of the standards required based on his training log and a signed acknowledgement as to having received the Departments policies and procedures. Based on the totality of the information obtained, including the texts, Perkins believed what the victim represented did occur. He tried to reach out to the victim, but she did not get back to him.

It is his understanding the other investigator did contact and get a statement from her after his report was turned in.

Perkins agreed one might not be able to always specifically recall all of the policies and procedures presented during training, but an employee should still be able to adhere to the Department's ethics and those types of standards expected of an officer.

Lt. Miguel Pasos

Pasos, who currently serves as a lieutenant of patrol operations, formerly was a sergeant and investigator with Internal Affairs. He has received training on domestic abuse which included making officers aware they were not to engage in such conduct and to be honest in all investigations The Appellant had the same training which also covered sexual assault and domestic violence. As part of his investigation in this matter Pasos read documents from the LAPD, line up witnesses, videos, and audio. He also spoke to the LAPD detective who worked on this case after the criminal investigation was completed. He did not believe some of the Appellant's interview statements were not credible.

[redacted]

As to the present incident, the Appellant was specific about the kind of alcohol he had consumed. He could not recall how he got to the home that night, but texts showed he had [redacted] He said he deleted texts messages from his phone. There were texts from the victim's phone which were inconstant with him not recalling certain facts including whether the incident occurred, whether a condom was used, [redacted] and/or what time he left the home. During the interview he stated the number of mixed drinks and beers he had but at another time said he was unable to recall. He said there were three or four times when he drank so much alcohol that he could not remember, including on this occasion. The victim had let him come into the house because the neighborhood was dangerous and that he just wanted a glass of water

The Department also interviewed others who were with the Appellant at his home that evening. They could not recollect that occasion but knew the Appellant would go on the patio that night and that the he normally did not drink too heavily. They would watch each other and not one another drive. When Pasos met the victim, he did not go into the incident with her. The purpose was to let victim know they were not going to continue the criminal investigation, to offer her services and to have her clear up some things.

The Department reviewed texts from the Appellant which asked the victim to delete some messages. He did not feel the Appellant was up to standard and that he was dishonest in his response.

Lt. Jonathan Octeau

Octeau is the Executive Officer for Maritime Operations. Formerly she was the commanding officer for Internal Affairs. Sometimes they use a contract investigator because of manpower, complexity of the case or security issues. One the case was concluded it was his responsibility to ensure the investigation report went up to Command and then to HR. He knew Perkins before the incident, but he did not have involvement with him in this case. He does not know who made the decision to bring Perkins on. He characterized Posas' investigations as considered outstanding.

Octeau believed being dishonest in an interview during a criminal investigation was unbecoming a police officer. Putting words into another or drinking so you can't recall what you did non-consensual sex would also be the same. Officer goes through six months of training which includes some on domestic violence. He does not know how much training they get in Maritime.

Julie Salazar

Among other tasks as a Senior Personnel Analyst II, Salazar handles discipline. In this case she also served as the *Skelly* officer. During that process the Appellant did not ask for additional documents. Neither Appellant nor his counsel referenced a policy, but both believed the language used by Department was too harsh. They felt Pasos should have done more of an investigation.

The Appellant did not deny the allegations. Torres said it would have been better for the Appellant had he just said he lied rather than say he could not remember. During the same meeting they did provide a document which raised some credibility issues about the victim's statement.

Salazar did not believe the Appellant's right to due process was violated in any way. The investigation was not superficial but thorough and . fair. In making his disciplinary recommendation Salazar considered the Appellant's tenure, the serious of the allegations, past counseling, and the totality of the record.

Chief Thomas Gazsi

As the Chief of the Department his role in the disciplinary process is to ensure there is accountability. After an investigation is conducted and reviewed by command staff, a recommendation is made which is then forwarded to the Executive Director for implementation. He considered the evidence and the Appellant's *Skelly* before recommending the penalty of discharge. An allegation of rape and/or getting so intoxicated that one is unable to remember can bring embarrassment to the Department.

In this case the D.A. chose not to file charges because the victim decided not to pursue it. Gazi felt the Appellant was dishonest when he said he could not remember anything about the incident until later that morning. He believes the Appellant was lying with statements he could not remember going to the victim's home, having sex, leaving after three hours later [redacted]. Gazsi was aware there were emails regarding the incident and that the victim claimed the Appellant had done this before. There were texts where the Appellant said he was sorry. There was also a general apology in the Appellant's interview transcript. The misconduct was overwhelming.

The Appellant

The Appellant believed it was important to note the victim chose not to pursue the case. He also felt during the investigation the Department took steps to try and make the findings more favorable to them. In this case, she initially did not want to talk, but the Department continued to contact her even if after the case was refused by the DA. By doing so, they attacked his character.

He acknowledged there was a screen shot where the victim claimed she was rape and that the response he was drinking too much. He has never denied there was consensual sex between them. On the day of the incident, he was living [redacted] The Appellant does not know how he arrived at her home, how long he stayed there, or when he left the residence. [redacted]

He felt the Department tried to validate the victim's side of what happened more than his version. Even though she took everything back, they still went back to her under the guise of wanting to give her help when really, they were trying to get more information.

He recalled on December 14, 2020 calling the Watch Commander's phone line to report he was under investigation. 14, 2020. He told the Sgt he was being investigated due to statements his ex-girlfriend made [redacted] that the investigation had been going on for a couple of weeks. [redacted]. He made them aware as soon as he found out.

DISCUSSION

Section 2.130 -Conduct Unbecoming a Police Officer

A review of the administrative record supported the Department's assertion the Appellant had sex with [redacted] without her consent during the early morning hours of October 24, 2020. Although the victim did not testify, the Department's witnesses and several documents substantiated what she reported to the LAPD several days later after the encounter [redacted] The Appellant admitted that he did not notify the Department of this incident until December 14th when he called the Watch Commander to report the LAPD had contacted him. Even at this time he did not fully disclose the fact the victim's complaint was in regard to [redacted] and a sexual assault.

The victim was the only [redacted] witness to what she claimed had been a rape. For his part the Appellant never denied such an incident occurred. His response to this and the other allegations during the *Skelly* and the hearing was that he was unable to recall what happened that night. The reason the Appellant gave for being unable to do so was that he had been drinking earlier in the day with some friends and had blacked out. This explanation was not exculpatory, and unconvincing. It is well-established intoxication is not a defense. In addition, the assertion he was unable to recall what happened may have been the case in part, but given his actions that day, it was more likely than not that he knew had been over to the victim's house and had engaged in non-consensual sex [redacted]

Supporting the victim's statement to the LAPD were several emails including one from her to the Appellant on October 27th stating he had rape her. In his response, the Appellant not did not deny it but acknowledged he did something wrong when he wrote "I made a mistake drinking too much that night." When he asked the victim why she felt the incident also rose to

[redacted]. Further confirmation was provided in a text exchange later after he left her residence in which the [redacted]

Although not part of the allegations in this case, there were the texts from February 17, 2020 which indicated the Appellant had raped her on several different occasions prior to this incident. The victim said the Appellant came and had sex with her even after she told him no. Further indication this comment was true was the Appellant's response he was sorry.

The Appellant disagreed with the Department's characterization these and other texts were effectively admissions. His explanation for sending them was that he felt it was the best way to handle her and that it was not worth getting into a fight over [redacted] It had been his experience to just let her vent rather than have her get upset and start an argument. Given the seriousness of the subject matter and the content of his transmitted responses, more likely than not these texts were indeed confirmations something along the lines of what the victim represented did occur.

The Appellant also pointed to what he believed were credibility problems with what the victim reported. The Appellant made this claim even though he continued to maintain he did not remember much of the evening to counter what she said. He pointed to such comments as the number of times the victim said he raped her. On one occasion the victim said during the last two years it occurred once a month but when asked at a different time, said it was 8 – 10 times. He noted she let him into the home when she knew he was intoxicated. He also pointed to her inconsistent statements as to number of calls between them that evening as well as the time, she said he came to and left her residence that night.

For the most part, there were satisfactory explanations for what she said. The victim said she let him into the home rather than have the Appellant wake up the entire household, including her parents. In addition, the Department noted victims of sexual assault are often unable to accurately recall certain events. With the Appellant claiming he was unable to confirm or deny what occurred, the Department was right to conclude he was sexually assaulted his [redacted] even though there were some factual discrepancies her statements. Her claims as to what occurred were both supported by the medical examination conducted by the Sexual Abuse Response Team (SART) after the assault and the electronic statements between the victim and the Appellant.

In support of his assertion Policy Section 2.130 was not violated, he noted that on January 12, 2021 the case was referred to the District Attorney and that after reviewing the material, decided not to file criminal charges. This decision against moving forwards with a prosecution was harmful to the Department's case. In addition to the higher standard of proof required in a criminal case, the D.A.'s decision was at least in part, due to the victim's preference not to pursue the matter.

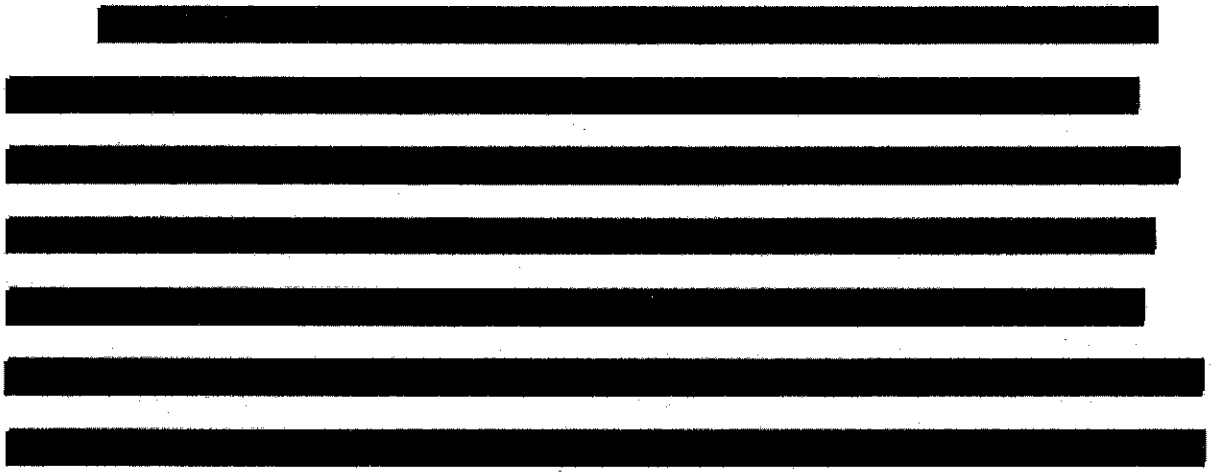
The Appellant also argued the investigation was biased in that the Department made up its mind before hand and was not really interested in looking for what really happened (Ex 2 p, 4). As an example, he pointed to the investigators trying to talk to the victim again even though they knew she did not want to pursue the matter any further. The Department's response was they did to meet with her again to clarify a few things, but primarily to be sympathetic and put her at ease while she was in such an emotional state (Ex 2 p. 3). This was a reasonable explanation and was not indicative of his employer trying to bolster a decision to discipline the Appellant. The Appellant did not point to any witness or document evidencing bias or give an

explanation why the Department would want to remove him for service other than for the reasons cited in the disciplinary letter.

L.A. Port Policy Manual Section 341.5 (Conduct Contrary to Good Order, Efficiency, Morals or tends to Reflect Unfavorably upon the L.A. Port Police

The record was persuasive in showing the Appellant knowingly made false statements to Klotz and Pasaso when asked about what occurred on the night of the incident. Given the texts produced and the victim statements, he was not credible in representing that he blacked out and was unable to remember what occurred beyond having consumed alcohol and going to bed. The record showed that although intoxicated, there was an extended period of time when he was aware of what he was doing and made judgements to go to and from her home over a period of several hour, sending coherent texts and then afterwards say [redacted] In addition, the victim's statements were substantiated not only by the electronic communications, but also statements from her friend about the Appellant's past history of abuse with the victim. Again, there was also the medical examination conducted by the SART medical professional supporting the victim's claim she had been raped.

[redacted]



The Appropriateness of the Discipline

With all of the allegations in the disciplinary notice supported by the record, the next question was whether the Department's decision to discharge the Appellant was appropriate. The record supported such was the case including that this level of discipline was within the Department's recommended range for each even if it was just the first violation (Ex 3 pages 15 & 16).

The Director of HR, testified she considered his tenure and other aspects of his work history in making the disciplinary determination. Other possible mitigating factors were that the Appellant apologized for his actions and represented he would become a better officer if he was allowed to return. [redacted]

Despite taking these remedial steps, discharge was still appropriate. As the Department noted, these charges were very serious and reflected badly on the Department and himself. While in training the Appellant was made aware of the Department policies and standards expected of those in law enforcement. On January 19, 2019 he signed an acknowledgement as having received those written policy requirements.

Employees, especially those in his classification, have a duty to maintain act responsibly and maintain their integrity. His actions both the night and later when interviewed about what occurred, clearly fell short of those professional standards. The Department was right to be concerned about returning an individual with such credibility issues to a position where one is responsible for maintaining the safety and security of those they serve.

FINDINGS OF FACT

1. The Department complied with the due process provisions of *Skelly*.
2. On January 7, 2019 the Appellant was appointed to the position of Port Police Officer for the Harbor Department. He was still in that position when he was discharged with an effective date of February 23, 2023.
3. A pre-disciplinary (*Skelly*) meeting was held on June 22, 2022 during which the Appellant was given copies of the information relied on by the Department when it decided to discharge him.
4. On October 28,2020 the Appellant sexually assaulted his [redacted] the Appellant reported the incident to the LAPD. A subsequent physical exams and texts between the Appellant and the victim subconfirmed this assulat occurred.
5. The Appellant had been drinking alcohol earlier in the evening. After leaving the Victim's hone, [redacted]
6. During an examination by the LAPD Sexual Assault Response Team the Victim was found to have injuries consistent with a sexual assault.
7. Three days after the event, the Appellant acknowledged in an exchange of text messages apologized to the Victim, but did not deny the claim a rape had occurred.
8. On January 12, 2021 the case was submitted to the DA. Seven days later they made to determination not to prosecute due to the victim not wishing to pursue the matter.
9. The Appellant was dishonest both during the investigation regarding the event which occurred on October 24, 2020 [redacted]

10. The Department's investigation was fair and unbiased.

11. The Department's witnesses were more credible than the Appellant.

12. The discipline assessed was consistent with Department guidelines

RECOMMENDATIONS

It is recommended that the Board of Civil Service Commissioners:

1. FIND - the *Skelly* due process provisions were met.
2. FIND- the Appellant violated Harbor Department Employee Manual Section 2 –30 Disciplinary Action Guide: Standards of Conduct for Police Officers - Conduct unbecoming a Police Officer
3. FIND - the Appellant violated Los Angeles Port Policy Manual, Standards of Conduct, Section 341.5 - Dishonest conduct, whether on or off-duty that adversely affect the members relationship with Los Angeles Port Police
4. FIND – the Appellant engaged in off duty conduct which he knew or reasonably should know was unbecoming a member of the Los Angeles Port Police and contrary to good order, efficiency or morale or tends to reflect unfavorably upon the Los Angeles Port Police or its members.
5. FIND -The discipline imposed by the Department was appropriate and that it BE SUSTAINED.

ss// Stephen M. Biersmith
Stephen M. Biersmith
Hearing Officer