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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

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9 In the Matter of the Claim of:

**Proposed Decision
(Penal Code § 4900 et seq.)**

10 **Tony Jesus Moreno, Jr.**

11 Claim Number: 16-ECO-05

12 **INTRODUCTION**

13 Tony Jesus Moreno, Jr. (Moreno) submitted his Penal Code section 4900 application on
14 August 8, 2016, and his hearing was held on April 5, 2017. Andrea Konstad was assigned to hear
15 this matter by the Executive Officer of the California Victim Compensation Board (CalVCB).

16 Moreno was represented by Kaveh Navab, Esq. and the California Department of Justice,
17 Office of the Attorney General (AG), was represented by David Lowe, Esq. Moreno did not attend,
18 but a declaration in support of his claim was submitted at the time of the hearing. Following the
19 hearing, the AG was given 14 days - until April 19, 2017 - to file a response.

20 After considering all of the evidence in the record, it is determined that Moreno has proven by a
21 preponderance of the evidence that the crime with which he was charged was not committed by him.
22 Accordingly, the Hearing Officer recommends that Moreno receive compensation in the amount of
23 \$110,180 for being wrongfully imprisoned for 787 days.

24 **CRIMINAL PROCEEDINGS**

25 On January 7, 2014, Moreno was arrested for robbery, in violation of Penal Code section 211.¹
26 On February 5, 2014, the Los Angeles County District Attorney's Office (DA) filed an information

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28 ¹ All further statutory references will be the Penal Code unless otherwise indicated.

1 charging him with two counts of robbery. It was further alleged that he had two prison priors within the
2 meaning of Penal Code section 667.5, subdivision (b).²

3 The preliminary hearing was held on January 22, 2014. At the beginning of the proceeding, the
4 People offered Moreno a plea bargain of three years in state prison in exchange for his plea to count 1
5 (robbery) of the information. In exchange for a plea, the People would dismiss the second robbery
6 count and the allegations. Moreno rejected the offer and the preliminary hearing moved forward.

7 On March 13, 2014, pursuant to a plea bargain, Moreno entered a plea of no contest to one
8 count of robbery and was sentenced to a stipulated term of three years in state prison. In exchange for
9 his plea, the remaining robbery charge and the enhancing allegations for the prior prison terms were
10 dismissed.

11 In August 2015, law enforcement received information that the victims of the robbery – Nikhil
12 and Nitin Seth (Nikhil and Nitin) - may have framed Moreno.³ Following an investigation, police
13 arrested Nikhil and Nitin for filing a false police report and forwarded the information to the DA.
14 Thereafter, the DA moved to dismiss Moreno’s case pursuant to Penal Code section 1385, stating he
15 had a reasonable doubt as to Moreno’s guilt. The judge granted the motion and ordered that Moreno
16 be released from prison on March 3, 2016. Moreno submitted his CalVCB application on August 8,
17 2016.⁴

18 **PROCEDURAL BACKGROUND**

19 **FACTS**

20 **I. Police Incident Report**

21 On November 24, 2013, Nikhil reported to police he had been robbed by an unknown suspect.
22 Police responded to the scene and made contact with Nikhil who stated that, while he was out walking,
23 he was approached by a white adult male (suspect) wearing a grey, hooded sweatshirt. The suspect
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25 ² Vehicle theft in 2006 and receiving stolen property in 2011. (Veh. Code, § 10851, subd, (a); and
26 § 496, subd. (a), respectively.)

27 ³ Nikhil and Nitin are brothers.

28 ⁴ Neither party has provided the specific date Moreno was released from prison, so it is assumed he
was released on the date the Order for Release was signed by the court’s clerk – March 3, 2016.

1 hit him four to five times and knocked him to the ground.⁵ The suspect was silent throughout the
2 incident, took approximately \$100 from Nikhil's front pants pocket, and fled. Nikhil stated he had pain
3 to his face and head area, and was transported to the hospital. Although the report indicates Nikhil
4 was one of two victims, there is no further mention of the second victim and no statement from Nitin.

5 Thereafter, on January 7, 2014, while Nikhil was at work at Malhi's Inn, he flagged down a
6 police officer who was patrolling the motel's parking lot. Nikhil told the officer he and his brother, Nitin,
7 had been robbed on November 24, 2013, and described the incident as follows:

8 The suspect had approached Nikhil and Nitin from the rear and punched Nikhil several times in
9 the back of the head before punching Nitin several times, knocking him to the ground. The suspect
10 then turned back to Nikhil and punched him in the face until he fell to the ground, as well. The suspect
11 yelled, "Give me your money," and the brothers stood up and gave him all their money.

12 Nikhil stated that, at the time of the incident, he had not known who the suspect was; however,
13 one week after it occurred, he saw the suspect walk into the motel's parking lot and enter several of
14 the rooms. Approximately one month after that, on January 2, 2014, the suspect came to the motel's
15 office to reserve a room. Two days later, the suspect showed Nikhil some counterfeit money and
16 asked whether he wanted to buy some. Nikhil declined the offer. On January 7, 2014, the suspect
17 returned to the motel's office, left his backpack by the door, and told Nikhil he would be back shortly.

18 When asked why he failed to contact police when he first saw the suspect, Nikhil stated he
19 thought the case was not going to be investigated because the detectives had not contacted him again
20 after the date of the incident. He also stated he was terrified of the suspect and he relived the incident
21 every time he saw him. Nikhil told the officer he thought Moreno was still in the area and described
22 him as six feet tall and skinny.

23 Police located Moreno and detained him. They subsequently conducted a photo lineup with
24 Nikhil and Nitin, both of whom identified Moreno as the person who robbed them. In addition, police
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28 ⁵ Nikhil did not provide any further description of the suspect.

1 interviewed Nitin to get his account of the incident. His statement matched the account Nikhil gave
2 police on January 7, 2014.

3 Moreno was advised of his *Miranda* rights and agreed to speak with police without an attorney
4 present.⁶ He stated he had just moved to the area and denied robbing anyone. He also stated he
5 knew the people who worked at Malhi's Inn and would never do anything to them.

6 **II. Preliminary Hearing Transcript**

7 *Nikhil's Testimony*

8 Nikhil testified he and his brother were walking down the street at approximately 11:30 p.m. on
9 November 24, 2013, when Moreno attacked them from behind. Moreno punched Nikhil on the back
10 and then hit Nitin in the face approximately five to six times. Nitin fell to the ground and Moreno kicked
11 him. Moreno then punched Nikhil in the face approximately four to five times before asking the
12 brothers for money. They gave him approximately \$100. Both Nikhil and Nitin were transported to the
13 hospital via ambulance.

14 On cross-examination, Nikhil stated he told police the suspect was a white male, approximately
15 six feet tall. Nikhil denied he knew Moreno at the time of the robbery and denied that Moreno had
16 rented a room at Malhi's Inn prior to the incident. Rather, he stated he saw Moreno for the first time a
17 few days prior to January 7, 2014, when he checked into the motel. When asked why he failed to call
18 police right away, Nikhil reiterated his belief they were not going to investigate and stated he "had to
19 make my peace, you know...I cannot keep on fighting with someone."

20 *Nitin's Testimony*

21 Nitin's testimony reiterated what Nikhil had said with one exception: he did not mention being
22 kicked while he was on the ground. He also indicated he spoke with the officer who responded to the
23 scene on the date of the incident.
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27 ⁶ *Miranda v. Arizona* (1966) 384 U.S. 436.
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1 On cross-examination, Nitin testified he did not know whether Moreno had stayed at Malhi's Inn
2 at any time prior to January 7, 2014. In fact, he stated the first time he saw Moreno after the robbery
3 was on January 7, 2014, when his brother pointed him out.

4 Following the testimony, Moreno was held to answer on both charges.

5 **III. Change of Plea Transcript - Factual Basis for the Plea**

6 On March 13, 2014, Moreno accepted the People's offered plea bargain, entered a plea of no
7 contest to one count of robbery, and admitted the offense was a violent felony such that it would
8 constitute a strike prior in the event he suffered another conviction in the future. In exchange for his
9 plea, he was sentenced to a stipulated term of three years in state prison, and the remaining count
10 and allegations were dismissed.

11 **IV. Informants' Statements**

12 *Bhavesh Patel's (Patel) Letter*

13 In August 2015, Patel faxed a letter to Detective Pereida (Pereida) stating he had been
14 informed that Nikhil and Nitin told several individuals they paid someone \$600 to assault them and
15 then framed another individual in order to get a U-Visa.⁷ Finally, Patel indicated that Nikhil and Nitin
16 had been involved in "many other scams where they have victimized previous employers and
17 businesses."

18 *Manzur Chowdhury's (Chowdhury) Statement*

19 Pereida met with Chowdhury on August 28, 2015, and interviewed him through an interpreter.
20 Chowdhury began by stating that Nikhil and Nitin filed a false report against Moreno in order to obtain
21 a U-Visa. Chowdhury then explained his relationship with Nikhil and Nitin, and how he became aware
22 of their dishonesty.

23 Chowdhury stated he had worked for the East West Motel and Malhi's Inn from August 2012 to
24 November 2013, and that the two motels were owned by the same person. While he was working at
25 the East West Motel, he met Nikhil who had approached him, stated he was homeless and had no

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27 ⁷ According to Pereida's incident report, a U-Visa is a "non-immigrant visa set aside for victims of crimes
28 who have suffered substantial mental or physical abuse and are willing to assist law enforcement and
government officials in the investigation or prosecution of the criminal activity."

1 money, and needed help to rent a room. Nikhil was reluctant to show proper identification, claiming it
2 had been stolen, but produced a California identification card when pressed. Chowdhury paid for a
3 room, allowing Nikhil to stay in the East West Motel for one night. Nikhil later asked Chowdhury for a
4 job and Chowdhury referred him to the motels' owner. Nikhil was hired and began working at Malhi's
5 Inn. Thereafter, he and Chowdhury remained in contact.

6 Approximately two weeks later, Nitin arrived in the country and obtained employment at Malhi's
7 Restaurant, which was also owned by the individual who owned the two motels. At some point,
8 Chowdhury was moved from East West Motel to Malhi's Inn where he worked for 15 days before
9 resigning his position. While there, he worked directly with Nikhil. On an unidentified Saturday night,
10 at approximately 8:00 p.m., Chowdhury saw Nikhil and Nitin leave the motel through the back door.
11 The brothers were dressed nicely and said they were going out to eat; however, Chowdhury found the
12 behavior odd. At approximately 2:00 a.m. that same night, he passed by the brothers' motel room and
13 noticed the door was open and nobody was inside. The following day, he spoke with the motel's
14 housekeeper who told him Nikhil and Nitin had been robbed at a nearby corner. Chowdhury saw
15 Nikhil return to Malhi's Inn that afternoon with bandaging on his head and a small abrasion on his
16 cheek. Nikhil told him he and his brother had been approached by a man with a knife, punched
17 several times, and robbed of approximately \$300 to \$400. They had called 911, filed a report, and
18 spent the night in the hospital. Nikhil described the suspect as a white American male. Shortly
19 thereafter, Chowdhury quit his job and moved to Los Angeles.

20 Approximately one month later, Nikhil went to Los Angeles and made contact with Chowdhury.
21 He told Chowdhury he had quit his job at Malhi's Inn because the pay was low and the owner was
22 easily angered. When the two met again about a week later, Nikhil stated he and three other
23 employees were filing a labor complaint against the owner and "heavily" pressured Chowdhury to join
24 in the complaint. He indicated they would each get about \$10,000 to \$15,000. Chowdhury asked to
25 meet with the other employees, but Nikhil refused to set up a meeting and continued to apply
26 pressure. At some point, Chowdhury filed a labor complaint against the motel's owner; however, he
27 subsequently dropped it. Approximately three to four months later, Nikhil told Chowdhury he had
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1 received \$10,000 as a result of his labor complaint. Chowdhury stated he and Nikhil had become very
2 close friends by this time.

3 Several weeks later, Patel asked Chowdhury whether he knew of anyone who might want to
4 work for him and Chowdhury called Nikhil to see if he was interested in a job. During the
5 conversation, Chowdhury warned Nikhil “not to do anything crooked with Patel” because Patel was a
6 very good friend and Chowdhury did not want to have any problems with him.

7 Nikhil started working for Patel in early September of 2014. Two months later, Nitin also got a
8 job with Patel. Shortly thereafter, Chowdhury and Nikhil met for dinner to celebrate Nikhil’s new job.
9 During the conversation, Nikhil asked Chowdhury how long he had been in the United States and
10 whether he had obtained citizenship. When Chowdhury told him he had been in the country for 25
11 years and had a work Visa, Nikhil told him about a U-Visa and indicated Chowdhury could easily get
12 one if he followed Nikhil’s instructions. Nikhil then told him to stage a robbery by paying someone to
13 tie him up and thrown him in a motel room. Following that, he should file a police report and seek
14 medical attention. When Chowdhury told Nikhil he did not want to do anything that would jeopardize
15 his ability to stay in the United States, Nikhil told him there were a lot of benefits to the “scam” and that
16 he was receiving “plenty of government help such as welfare and food stamps.” When Chowdhury
17 asked whether he was serious, Nikhil responded, “[n]o risk, no gain.”

18 Over the next several weeks, Chowdhury and Nikhil had several conversations about the
19 “scam” and Nikhil eventually admitted he and his brother had staged the November 24, 2013, robbery.
20 He stated they had paid “some random male” to assault and rob them, and then they “dirtied up” their
21 clothing. He subsequently told medical personnel he had injuries to his neck and back to make the
22 incident seem serious. Nikhil and Nitin later decided to frame an Hispanic male who had stayed at
23 Malhi’s Inn because they thought he sold drugs and would make an easy target. They reported him to
24 police and later identified him from a photographic line-up. Nikhil then contacted an attorney who filed
25 for U-Visas on their behalf during the two-month period between Moreno’s arrest and his entry of plea.
26 The attorney was also able to obtain food stamps and welfare for both of them. Chowdhury told Nikhil
27 he did not want to have anything to do with that type of conduct.
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1 Finally, Chowdhury stated that Nikhil had recently threatened him to prevent him from reporting
2 the staged robbery. Nikhil stated he knew Chowdhury was being paid in cash at the motel and said he
3 would have Chowdhury deported Chowdhury went to police. The two men had not spoken again
4 since then.

5 *Patel's Statement*

6 Patel stated he had employed Nikhil from September 2014 to April 2014, and Nitin from
7 November 2014 to May 2015, and that the two had recently filed labor complaints against him. When
8 he talked to Chowdhury about it, Chowdhury disclosed the "scams" Nikhil and Nitin had been involved
9 in and they decided to report the brothers to the police.

10 *Malhi's Statement*

11 On February 19, 2016, Pereida contacted Malhi, who stated Nikhil had stayed at one of his
12 father's motels in October 2013. At his father's request, Malhi gave Nikhil a job at the motel and
13 allowed him to stay there. When Nitin arrived from India, Malhi gave him a job at Malhi's Restaurant.
14 At some point, Malhi had a falling out with Nikhil and asked Nikhil to leave. He subsequently agreed to
15 let him stay for another month so he would have time to find new accommodations. After Nikhil moved
16 out of the motel, he, Nitin, and a third individual filed labor complaints against Malhi. As a result, Malhi
17 was required to pay \$14,000 to Nikhil; \$5,000 to Nitin; and \$3,000 to the third individual.

18 Shortly thereafter, a frequent tenant of the motel named "Julie" told Malhi that Nikhil had asked
19 her how to find out whether someone had a prison record and she showed him how to do it.
20 Subsequently, a black male in his 40s, who also frequented the motel, told Malhi the brothers had paid
21 someone to beat them up and stage a fake crime scene. Malhi stated he had no way to contact either
22 of these individuals because he had sold the motel and no longer had access to the records.

23 *Nikhil and Nitin's Arrest and Subsequent Statements*

24 On April 11, 2016, Pereida obtained a warrant for Nikhil and Nitin's arrest for perjury and filing
25 a false police report. He subsequently interviewed both individuals on May 3, 2016, at which time they
26 waived their *Miranda* rights and agreed to speak without the presence of an attorney. Both brothers
27 denied they had staged a robbery and framed Moreno. They also provided the following additional
28 information:

1 Nikhil stated Moreno would come to Malhi's Inn to sell drugs, but did not provide a timeframe in
2 which he allegedly observed these activities. In addition, Nikhil stated that Chowdhury was lying about
3 his allegation the robbery was staged, and asserted that Patel and Malhi knew each other and were
4 behind Chowdhury's lie. As asserted proof, Nikhil stated he had recorded a phone conversation with
5 Chowdhury in which Chowdhury allegedly told him he had to say whatever Patel wanted in order to
6 keep his job. Chowdhury also indicated he was going to contact law enforcement and tell them a false
7 story. Nikhil indicated the recording was on his phone and that the conversation was in Hindi. He also
8 indicated his brother Nitin had a recording, as well. Pereida took custody of Nikhil's phone and stated
9 he was going to have it translated and transcribed; however, there is no indication as to whether the
10 phone contained a recording of a conversation between Nikhil and Chowdhury and, if so, whether it
11 was ever translated.

12 Nitin told police that the robber had spoken only in Spanish and that neither he nor his brother
13 understood Spanish. When Pereida subsequently asked Nitin whether he had a recording on his
14 phone of a conversation with Chowdhury, Nitin replied that he was not sure.

15 *The DA's Decision Not to Pursue Charges*

16 The matter was then referred to the DA who declined to prosecute in light of the lack of
17 evidence to corroborate Chowdhury, Patel, and Malhi's allegations.

18 **V. Additional Evidence Submitted by Moreno's Counsel**

19 *Receipts*

20 As asserted proof of his contention he had stayed at Malhi's Inn prior to the robbery, Moreno
21 submitted three registration receipts dated October 24, 2013; October 28, 2013; and October 31 of an
22 unidentified year. The receipts are generic in that they do not bear the name of the property they
23 concern or the employee who handled the transaction.

24 *Esther Samudio's (Samudio) Statement*

25 In February 2014, an investigator from the Public Defender's Office (PD) spoke with Moreno's
26 sister, Samudio.⁸ Samudio stated she had known Nikhil since approximately January 2014, when she

27 ⁸ The interview was conducted in preparation for Moreno's criminal defense.
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1 went to Malhi's Inn to obtain a room. She was homeless at the time and he allowed her to stay at the
2 motel for free. Although he asked whether he could come to her room to talk, she always declined,
3 believing he was seeking sexual favors in exchange for the room. Following Moreno's arrest, Nikhil
4 contacted her several times, both in person and by phone, to talk to her about the robbery. Although
5 he told her Moreno had robbed him with another male, he stated he did not report the other individual
6 to police.

7 **VI. Moreno's Declaration - Submitted at the Hearing**

8 Moreno stated he had rented a room at Malhi's Inn and spoken with both Nikhil and Nitin prior
9 to, and after, the robbery, and that he has never had an issue with either of them. On the date of the
10 incident, which he believed was Thanksgiving Day, he was staying with Samudio and her boyfriend.⁹
11 He then asserted he did not see, speak to, rob, or assault either Nikhil or Nitin on November 24, 2013.
12 Moreno stated he accepted the plea bargain because his attorney convinced him he would not receive
13 a fair trial. Finally, he talked about his employment before and after his conviction and incarceration.

14 **DETERMINATION OF ISSUES**

15 Penal Code section 4900 provides that an innocent person who has been erroneously convicted
16 of, and imprisoned for, a felony can apply for compensation from the state for every day he was
17 imprisoned, for injury he sustained as a result of the erroneous conviction and imprisonment. In order
18 to establish a successful claim for relief, a claimant must prove, by a preponderance of the evidence
19 that: 1) the crime with which he was charged was either not committed at all, or, if committed, was not
20 committed by him; and 2) he sustained an injury through his erroneous conviction and imprisonment.¹⁰

21 "Preponderance of the evidence" means evidence that has more convincing force than that
22 opposed to it.¹¹ "That standard is met when 'evidence on one side outweighs, preponderates over, is
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25 ⁹ In 2013, Thanksgiving Day was on November 28 – four days after the robbery.

26 ¹⁰ *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal.App. 4th 1164.

27 ¹¹ § 4903; *People v. Miller* (1916) 171 Cal. 649.

1 more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its
2 effect on those to whom it is addressed.”¹²

3 In reaching a determination of the merits of a Penal Code section 4900 claim, the Board may
4 consider the claimant’s mere denial of commission of the crime for which he was convicted, reversal
5 of the judgment of conviction on appeal, acquittal of the claimant on retrial, or the failure of the
6 prosecuting authority to retry the claimant for the crime.¹³ However, none of these factors will be
7 deemed sufficient evidence to warrant a recommendation for compensation in the absence of
8 “substantial independent corroborating evidence that the claimant is innocent of the crime charged.”¹⁴
9 The Board may also consider as substantive evidence the prior testimony of witnesses the claimant
10 had an opportunity to cross-examine, and evidence admitted in prior proceedings to which the
11 claimant had an opportunity to object.¹⁵

12 Because the purpose of these administrative hearings is to determine whether the claimant has
13 met his burden of proving he is innocent of the crime for which he was convicted and incarcerated, all
14 relevant evidence is admissible, irrespective of whether it would be admitted at a criminal jury trial, or
15 in a civil or administrative proceeding, so long as the evidence is probative to the claimant’s assertion
16 he is innocent.¹⁶ The formal hearing rules of the Administrative Procedures Act are not applicable.¹⁷

17 If a claimant meets his burden of proof, the Board shall recommend to the legislature that an
18 appropriation of \$140.00 be made “per day of incarceration served, and shall include any time in
19 custody, including in county jail, that is considered to be part of the term of incarceration.”¹⁸

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21 ¹² *People v. Esparza* (2015) 242 Cal.App.4th 726, 743; citing to *People v. Miller, supra*, at p. 652.

22 ¹³ Cal. Code Regs., tit. 2, § 641, subd. (a).

23 ¹⁴ Cal. Code Regs., tit. 2, § 641, subd. (a); *Tennison v. Victim Compensation and Government Claims*
24 *Board, supra*.

25 ¹⁵ Cal. Code Regs., tit. 2, § 641, subd. (b).

26 ¹⁶ Cal. Code Regs., tit. 2, § 641, subd. (d).

27 ¹⁷ Cal. Code Regs., tit. 2, § 615.1.

28 ¹⁸ § 4904.

1 ***I. Evidence Showing Nikhil and Nitin Filed a False Report***

2 The crux of the issue before the Board is not so much whether Nikhil and Nitin knew Moreno
3 prior to November 24, 2013, but whether they, at some point, decided to frame him for the reported
4 robbery. That being said, the brothers' knowledge of Moreno prior to the robbery is evidence that
5 supports the determination they framed him for the alleged crime.

6 *Chowdhury's Statement*

7 The evidence showing that Nikhil and Nitin framed Moreno for the robbery comes from
8 Chowdhury's statement to police, and ultimately, Nikhil himself. Chowdhury and Nikhil had
9 established a friendship. They had meals together and Chowdhury helped both Nikhil and Nitin obtain
10 employment. Under this umbrella of friendship, Nikhil told Chowdhury about an alternate, illegitimate
11 way in which to gain permanent citizenship through the U-Visa program. He also talked about how to
12 get money from employers by filing false labor complaints. Ultimately, he confided that he and his
13 brother had framed Moreno for the robbery they alleged had occurred on November 24, 2013.

14 Although Nikhil and Nitin have contended Chowdhury was lying about their admission they had
15 filed a false crime report, there are details in Chowdhury's account, and in the circumstances
16 surrounding the recounting, which suggest he was telling the truth. Prior to Nikhil's arrest, neither
17 brother had ever said anything to police about a belief Moreno may have been selling drugs at Malhi's
18 Inn. The first time it was mentioned was when Nikhil was being interrogated after his arrest. Yet, nine
19 months prior to that revelation, Chowdhury told police the brothers had targeted Moreno to take the fall
20 because they believed he was dealing drugs at Malhi's Inn and would make an easy target. If Nikhil
21 had not mentioned this information to Chowdhury, there would have been no reason for Chowdhury to
22 tell police this was the reason the brothers chose Moreno as their patsy. They specifically chose him
23 because they thought his illegal activities would make him a believable suspect for the robbery.

24 Further, Chowdhury went to police about the brothers' false crime report despite the potential
25 legal risks he faced. According to Chowdhury, Nikhil had threatened to tell police Chowdhury was
26 being paid cash at Malhi's Inn in order to have him deported. Even though we only have Chowdhury's
27 word on this, Nikhil did attempt to destroy Chowdhury's credibility by telling police Chowdhury was
28 participating in some sort of medical "scam." If, in fact, Chowdhury was engaging in illegal activities,

1 he faced prosecution and deportation. In the event Chowdhury was not doing anything illegal, Nikhil's
2 allegation would certainly have focused law enforcement's attention on him.

3 Finally, Nikhil's contention that Chowdhury lied in order to keep his job with Patel is completely
4 unsupported by any corroborating evidence. While Nikhil told police that both he and his brother had
5 recordings on their cell phones of a conversation with Chowdhury in which Chowdhury told them he
6 would assert false claims against them, there is no evidence in the record this recording even existed
7 or, if so, what was said. In addition, when police asked Nitin whether he had a recording on his phone,
8 as represented by Nikhil, Nitin replied that he was not sure. The only thing Nitin told police about
9 Chowdhury was a vague assertion that Chowdhury had lied because he was being influenced by
10 "someone else." In any event, given that Nikhil made his allegations during a police interrogation
11 following his arrest, there is reason to suspect the veracity of his unsupported statements.

12 *Nikhil and Nitin's Credibility*

13 Because nobody witnessed the reported robbery and there is no video footage, no suspect
14 admission, and no physical evidence linking Moreno to the incident, the entire case against Moreno
15 rested on Nikhil and Nitin's statements. Based on the numerous inconsistencies in their statements,
16 their allegation that Moreno was the robber lacks credibility.

17 First, Nikhil's description of the suspect, the robbery, and his subsequent contacts with Moreno
18 significantly changed over time and he continued to add more and more details as time went by in an
19 apparent attempt to bolster his allegations against Moreno.

20 On the date of the incident, when the circumstances would have been fresh in his mind, Nikhil
21 gave an extremely vague description of the suspect and the incident to police: the suspect was a
22 white adult male with a grey hooded sweatshirt. The suspect hit him four to five times and never said
23 a word during the robbery. During Nikhil's subsequent contact with police, after he saw Moreno at
24 Malhi's Inn following the crime, he elaborated on his first description by adding that the suspect was
25 approximately six feet tall and skinny, and that he had demanded the brothers' money in English.¹⁹ In
26 this statement, he added that his brother was also beaten, and that he (Nikhil) was hit in the head both

27 ¹⁹ Because the January 7, 2014, crime report contains Nikhil's quote of what the suspect said during the
28 robbery, it is assumed that the suspect spoke in English.

1 before and after the suspect attacked his brother. At Moreno's preliminary hearing, Nikhil reiterated
2 that the suspect had demanded their money. He then stated the suspect hit him on his back before
3 punching Nitin in the face five to six times, kicking Nitin after he fell to the ground, and coming back to
4 punch Nikhil in the head several more times.

5 In addition, Nikhil's statement regarding his post-crime interactions with Moreno also changed
6 significantly. When he first told police about Moreno, he indicated the two had had a non-threatening,
7 relatively comfortable, albeit trusting, contact following the incident. According to Nikhil's January
8 2014 statement told police, he saw Moreno at Malhi's Inn one week after the incident; however there is
9 no mention of any trouble between them. Thereafter, when Moreno returned to the motel during the
10 first week of January 2014, he offered to sell Nikhil counterfeit money, and left his backpack in Nikhil's
11 care. However, when Nikhil was subsequently arrested for perjury approximately one year and four
12 months later, he told Pereida, Moreno had become increasingly aggressive and threatening towards
13 him as time went on, he was scared of Moreno, and that he continued to relive the crime every time he
14 saw him. Not only do these two representations as to the nature of their contacts conflict, but the
15 circumstances in which Nikhil presented this information – after his arrest - suggests he was
16 fabricating additional information in order to support his allegations against Moreno and, ultimately,
17 defend himself against the perjury charge. Of note, his new information about their contacts was
18 extremely vague and unsupported by a detailed factual description – information that would be
19 indicative of credibility.

20 Second, there are significant discrepancies between the brothers' statements as to what the
21 suspect said during the robbery. Nikhil stated the suspect demanded their money; however, Nitin
22 stated the suspect spoke only in Spanish and that neither he nor his brother understood Spanish.
23 Because these two statements necessarily contradict each other, it raises doubt as to both brothers'
24 credibility, their statement as to what actually happened to them on November 24, 2013, and who
25 committed the crime.

26 Third, contrary to Nikhil and Nitin's statements, the evidence shows that, at the very least,
27 Nikhil knew Moreno prior to the incident. According to Moreno, he stayed at Malhi's Inn before the
28 robbery occurred. Nikhil worked at the motel, and both he and Nitin stayed in one of the rooms there.

1 While both brothers dispute any suggestion they saw Moreno at the motel prior to the robbery,
2 Moreno's subsequent actions indicate he had no reason to be concerned about running into, and
3 speaking with, them. According to Nikhil's preliminary hearing testimony, Moreno was at Malhi's Inn
4 just one week after the robbery. Then, approximately five weeks after that, Moreno returned to the
5 motel, rented a room, attempted to sell Nikhil counterfeit money, and temporarily entrusted his
6 backpack to Nikhil in the motel's office while he went to one of the rooms to meet someone. Logic
7 would dictate that, had he been guilty of the crime, he would have avoided the motel and the brothers,
8 and not given them any further reason to contact police. Further, from the moment Moreno was first
9 detained for questioning on January 7, 2014, he told police he knew Nikhil and Nitin, and there would
10 have been no reason for him to lie. If anything, it would seem to have been more likely for him to
11 steadfastly deny having seen either of the brothers before.

12 Beyond the inferences that can be drawn from these facts, there is documentary evidence,
13 albeit weak, which suggests Moreno frequented Malhi's Inn prior to the crimes. Moreno produced two
14 motel receipts from October 2013, the month before the crimes were committed.²⁰ While these
15 receipts do not bear any indication of the name of the establishment or the employee who registered
16 Moreno on those dates, they do lend some credence to Moreno's consistent assertion he was
17 acquainted with Nikhil and Nitin before the incident.

18 Fourth, when Nikhil was questioned by police following his arrest for perjury, he told Pereira
19 that Moreno used to sell drugs at Malhi's Inn; however, he made no mention of these activities to
20 police on January 7, 2014, when he hailed an officer in the motel's parking lot; or at Moreno's
21 preliminary hearing; suggesting he had additional contacts with, or observations of, Moreno that he
22 was not willing to admit. Because he told police about Moreno's offer to sell him counterfeit money in
23 January 2014, it would seem likely he would have also reported any illegal drug transactions at the
24 same time.

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27 ²⁰ A third receipt was submitted; however it does not indicate the year in which it was issued.
28 Therefore, it is of little value here.

1 Fifth, Nikhil's five-day delay in reporting Moreno's presence at Malhi's Inn to police suggests
2 his assertions he was fearful of the suspect is less than accurate – a concern that is shared by the AG.
3 As stated in the Office's response to Moreno's claim, "the Attorney General acknowledges that it is
4 somewhat troubling that Nikhil waited a number of days to call the police after initially seeing claimant
5 at the motel. This behavior appears to be somewhat inconsistent with a crime victim who claimed he
6 was terrified of claimant..." Moreover, Nikhil's rationale for the delay - that he had "made [his] peace"
7 because he could not "keep fighting with someone" – is simply unreasonable.

8 *Patel and Malhi's Credibility*

9 Arguably, Patel might have had a reason to lie about Nikhil and Nitin to retaliate for the labor
10 complaints they filed against him; however, his role in Pereida's investigation was simply that of
11 intermediary between Chowdhury and police.

12 Likewise, Malhi may also have had reason to lie about Nikhil and Nitin. However, it is
13 significant that he did not approach the police with Patel and Chowdhury, and only made a statement
14 to police when Pereida contacted him approximately six months after he interviewed Patel and
15 Chowdhury. Accordingly, it does not appear he was conspiring with Patel and Chowdhury or that he
16 was out to retaliate against Nikhil and Nitin. Although the information Malhi provided to bolster the
17 perjury allegations against Nikhil and Nitin came from two other individuals who cannot be identified or
18 located and constitutes multiple layers of hearsay, the circumstances surrounding his statement to
19 police lends an air of credibility to the information. While admittedly weak, this information does
20 support what Chowdhury told police about the faked robbery.

21 **CONCLUSION**

22 Based on a thorough review of the evidence, it is determined that Moreno has proven, by a
23 preponderance of the evidence, he did not commit the crime with which he was charged, convicted,
24 and served time for in prison. Accordingly it is recommended to the Legislature that an appropriation
25 be made in the amount of \$110,180 for the 787 days he was erroneously incarcerated.

26 Date: April 14, 2017

27 _____
28 Andrea L. Konstad
Hearing Officer
California Victim Compensation Board

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**BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:
Tony Jesus Moreno, Jr.
Claim Number: 16-ECO-05

Notice of Decision

On June 15, 2017, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: June 19, 2017

Tisha Heard
Board Liaison
California Victim Compensation Board