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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

**Mario Rocha**

**Notice of Decision**

On December 12, 2013, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: December 17, 2013

  
Tisha Heard  
Board Liaison  
California Victim Compensation and  
Government Claims Board

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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
9 **OF THE STATE OF CALIFORNIA**

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11 In the Matter of the Claim of:

12 **Mario Rocha**

**Proposed Decision**

**(Penal Code § 4900)**

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14  
15 **Introduction**

16 An in-person hearing on this claim was held on December 17, 2012, in Sacramento, California,  
17 by Kevin Kwong, Hearing Officer, California Victim Compensation and Government Claims Board. The  
18 claimant, Mario Rocha, appeared at the hearing but was not represented.<sup>1</sup> The California Attorney  
19 General's Office was represented by Barton Bowers and Darren Indermill, Deputy Attorneys General  
20 (AG). The record was re-opened at the request of the Hearing Officer on April 29, 2013, for the in-  
21 person testimony of Mario Rocha.

22 As explained below, Rocha has met the statutory requirements to receive compensation under  
23 Penal Code section 4900 because he has proved by a preponderance of the evidence that he did not  
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26 <sup>1</sup> Rocha was initially represented by the law firm of Latham & Watkins. It submitted Rocha's  
27 application, briefs, and numerous other evidentiary documents on Rocha's behalf. In approximately  
28 May 2011, Latham & Watkins withdrew its representation. The Hearing Officer gave Rocha numerous  
29 extensions of time to allow him to find new counsel. However, he was unsuccessful in finding  
representation.

1 commit the crimes with which he was charged. Rocha is entitled to \$305,900 in compensation for  
2 being incarcerated for 3,059 days after conviction.<sup>2</sup>

### 3 **Procedural Background**

4 On February 16, 1996, a party took place at a Highland Park residence that appeared to be  
5 attended by mostly high school aged guests. Members of a Highland Park gang attended the party  
6 and became involved in a verbal dispute with another party guest. This eventually led to a fistfight  
7 outside of the residence which then escalated into gunshots being fired. Martin Aceves was shot and  
8 killed in this incident. Anthony Moscato was also shot but survived. On February 23, 1996, claimant  
9 Mario Rocha and suspects Richard Guzman and Raymond Rivera were arrested and charged with  
10 murder and attempted murder.

11 All three defendants were tried together and on December 4, 1997, a jury found all three  
12 defendants guilty of murder and attempted murder. The jury also found that each defendant used a  
13 firearm in the commission of the crimes. Rocha was sentenced to 29 years-to-life in prison for the  
14 murder charge, with a consecutive prison term of one year and four months-to-life for the attempted  
15 murder charge. On June 29, 1999, the Court of Appeals affirmed Rocha's conviction and sentence.

16 Subsequently, Rocha filed numerous challenges including a claim for ineffective assistance of  
17 counsel. On August 11, 2004, Rocha's claim of ineffective assistance of counsel was denied by the  
18 Los Angeles County Superior Court. However, on December 28, 2005, the Court of Appeals  
19 reversed the Superior Court's decision and granted Rocha's Writ of Habeus Corpus based on  
20 ineffective assistance of counsel. Rocha was returned from prison to county jail on April 19, 2006.  
21 He was released on bail on August 24, 2006, while the Los Angeles County District Attorney's Office  
22 determined whether or not to retry Rocha.

23 On October 28, 2008, the District Attorney's Office dismissed the charges against Rocha. On  
24 April 22, 2009, Rocha filed his claim for compensation under Penal Code section 4900 with the  
25 Board.

26 \_\_\_\_\_  
27 <sup>2</sup> Although Rocha's application states he was released from prison on August 24, 2008, his vacated  
28 conviction by the Court of Appeals was denied review by the California Supreme Court on April 19,  
29 2006. On that date, he was released from state prison and was returned to county jail for possible re-  
trial. Compensation under penal code section 4900 only compensates applicants for time served in  
state prison.

1 **Summary of Evidence**

2 **I. Evidence Presented at Trial**

3 On February 16, 1996, at least 50, and possibly up to 70 people attended a party at a  
4 residence in Highland Park. Alcohol was served at the party despite the guests being of high school  
5 age. Matthew Padilla collected an entrance fee as guests arrived. Between 10:30 p.m. and 11:00  
6 p.m., an apparent Highland Park gang member knocked off the California Angels baseball cap of  
7 Arturo Torres. The cap had the Angels official "CA" logo on it, but "CA" also could signify the  
8 Cypress Avenue gang, which is a rival to the Highland Park gang. Raymond Rivera then placed a  
9 gun against the ribs of Torres and Torres' friend, Peter Barragan, and told them to remove their  
10 Angels caps because it said "CA" on it.

11 Richard Guzman, another Highland Park gang member, asked another guest for his gang  
12 affiliation. Martin Aceves and Anthony Moscato then came to defend this guest. Guzman and his  
13 group then issued a gang challenge and a fist fight started outside the residence in the backyard.  
14 Soon, gunfire erupted and Aceves was shot and fell to the ground. Numerous witnesses said that  
15 they saw Guzman point his gun downward and shoot Aceves. Expert testimony revealed that Aceves  
16 was less than five feet from the gun when he was shot. Gunfire also occurred in the driveway as  
17 guests were fleeing. Moscato was shot while running down the driveway. One week after the  
18 incident, Mario Rocha was arrested for the shooting. It was alleged that he, along with Rivera, were  
19 shooting at the guests in the driveway. Guzman was also arrested for shooting and killing Aceves in  
20 the backyard area.<sup>3</sup>

21 All three defendants were tried together. The prosecution's gang expert from the Los  
22 Angeles Police Department's C.R.A.S.H. gang unit testified that Guzman and Rivera were  
23 documented Highland Park gang members. He did not identify Rocha as a gang member. Despite  
24 this lack of identification, the prosecution presented evidence alleging that Rocha was also a  
25 Highland Park gang member. Three witnesses identified Rocha as a shooter on the driveway and  
26 Rocha's convictions were likely based upon these eyewitness identifications.

27  
28 <sup>3</sup> According to the AG, Guzman and Rivera are still incarcerated today. Neither Rocha nor the AG  
29 alleged that their convictions were incorrect.

1 Three days after the shooting, Matthew Padilla identified Rocha in a police photo lineup book  
2 as the suspect he saw shooting down the driveway. Padilla testified at trial that he heard four or five  
3 gunshots coming from the backyard and then saw a group of people run through the tarp, which  
4 separated the backyard and driveway, and head towards the street. Padilla saw Rocha pass through  
5 the tarp, kneel on his right knee in the driveway, and shoot down the driveway using his left hand.  
6 Rocha allegedly fired six or seven shots. Padilla said he was three to five feet away and parallel from  
7 Rocha while he was shooting before he ran to the backyard. Padilla had a beer to drink and was not  
8 wearing his glasses, which he needs for reading.

9 A little over a month after Rocha was arrested, Brian Villalobos identified Rocha from a photo  
10 lineup as "most like the guy I saw with a gun shooting down the driveway towards the street." On  
11 November 6, 1996, Villalobos signed a declaration stating that he was 100 percent certain that  
12 Guzman was one of the shooters, but was only about 60 percent certain that Rocha was the other  
13 shooter. At trial, Villalobos testified that he saw Guzman shoot Aceves but that he did not get a good  
14 look at the second shooter. Although he did not make an in-court identification that Rocha was a  
15 shooter, Villalobos acknowledged that he identified Rocha's photo as the person who looked most  
16 like the second shooter. Villalobos also stated that he had smoked marijuana and drank beer the  
17 night of the incident.

18 When first interviewed by the police, Lauro Mendoza stated that he did not see the shooting.  
19 Four days later, Mendoza changed his story and said that the photo of Rocha looked like the person  
20 who was shooting down the driveway. At trial, Mendoza identified Rocha as the shooter in the  
21 driveway. He also stated that he was 40 feet from the shooter, that it was a dimly lit area, that he did  
22 not get a good look at the shooter's face, and that there was a big crowd in-between him and the  
23 shooter. Mendoza stated that he had beer, vodka, and tequila-spiked Jello at the party.

24 To support his defense that he was not one of the shooters, Rocha had numerous witnesses  
25 testify on his behalf.

26 Arturo Torres was wearing an Angels baseball cap and testified that Rivera told him to take  
27 off his hat and that Rivera placed a gun on his ribs.

28 Peter Barragan also stated that Rivera placed a gun to his ribs and asked him to remove his  
29 Angels baseball cap. He described Rocha as just a guy he's known since he was a kid but that he

1 was not friends with Rocha. Barragan said that he saw the shooter on the driveway and was  
2 absolutely sure that the shooter was not Rocha. Barragan stated that he did not drink beer or take  
3 any drugs that night.

4 George Villareal did not know the identity of the shooter but gave a physical description of the  
5 shooter and said that he had seen this individual at the party before the shooting. He testified that he  
6 remembered Guzman and Rivera being at the party but did not see Rocha at the party.

7 Gabriel Ramirez is a friend of Rocha and went to the party with him. He testified that he was  
8 about five feet from Rocha when the first shot was fired. He along with Rocha and others went to  
9 hide behind a van. As they were hiding more shots were fired. Ramirez testified that "Rosie,  
10 Candice, Danny, and Anthony" were also hiding behind the van. There were also other people hiding  
11 behind the van that Ramirez did not know.

12 Candice Alvillar testified that Rocha was about five to ten feet from her when shots were first  
13 fired. She along with Rocha then hid behind a van as more shots were fired. Alvillar testified that  
14 "Danny, Rosie, Gabriel, Anthony, Mario, and other people" were the ones hiding behind the van.  
15 Alvillar did not know the names of the other people hiding.

16 Rosie Aldana is a friend of Rocha and testified that Rocha was about five to seven feet away  
17 from her when the first shots were fired. She along with Rocha then went to hide behind the van and  
18 heard about three or four more shots being fired. Also hiding with the two were "Danny, Candice,  
19 Gabriel, and Anthony."

20 The majority of witnesses, including those not mentioned because they testified for and  
21 against the other defendants, testified to hearing around four to six gunshots and none testified to  
22 seeing more than two shooters.

23 In addition to the eyewitness evidence, two different bullets were recovered from the scene.  
24 One of the bullets was found in murder victim Aceves and the other bullet was recovered from a  
25 kitchen wall. According to the forensic expert at trial, these two bullets came from two different guns  
26 and could not have been fired from the same gun.

27 On December 4, 1997, a jury found all three defendants guilty of murder and attempted  
28 murder. The jury also found that each defendant used a firearm in the commission of the crimes.

1 Rocha was sentenced to 29 years-to-life in prison for the murder charge, with a consecutive term of  
2 one year and four months to life for the attempted murder charge.

3 **II. Post-Trial Proceedings**

4 On June 29, 1999, the Court of Appeals affirmed Rocha's conviction and sentence.  
5 Subsequently, Rocha filed numerous challenges including a claim for ineffective assistance of  
6 counsel. On August 11, 2004, Rocha's claim of ineffective assistance of counsel was denied by the  
7 Los Angeles County Superior Court. However, on December 28, 2005, the Court of Appeals  
8 reversed the Superior Court's decision and granted Rocha's Writ of Habeus Corpus based on  
9 ineffective assistance of counsel. The court found that Rocha's trial attorney ignored the case for a  
10 prolonged period and failed to discuss the case with prior investigators. His attorney also made little,  
11 if any, effort to locate witnesses favorable to Rocha and spent very little documented time preparing  
12 for the case. The court concluded that "when trial counsel's failure to investigate is this  
13 comprehensive, it is impossible to have any degree of confidence that petitioner received a fair trial."  
14 The judgment was vacated and the Los Angeles County District Attorney's Office was free to retry  
15 Rocha for the same offenses.

16 Rocha was released on bail on August 24, 2006, while the Los Angeles County District  
17 Attorney's Office considered whether or not to retry Rocha. However, on October 28, 2008, the  
18 District Attorney's Office dismissed the charges against Rocha. It cited the unavailability of witnesses  
19 as the reason why charges were dropped.<sup>4</sup>

20 **III. Penal Code Section 4900 Hearing**

21 On December 17, 2012, a hearing was held to determine if Rocha is eligible for compensation  
22 under Penal Code Section 4900. Rocha did not testify at this hearing but gave an argument. He  
23 stated that his decision to not testify was because he did not have legal representation and because  
24 he was afraid that his innocent testimony would somehow be used against him and he did not want to  
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28 <sup>4</sup> It appears that Matthew Padilla, the key prosecution witness, has not given any statements or  
29 interviews since testifying at trial.

1 risk spending more years in prison for a crime that he did not commit. On April 29, 2013, the record  
2 was re-opened for the testimony of Rocha.<sup>5</sup>

3 Testimony

4 Rocha testified that he went to the party with Gabriel and Anthony Ramirez and that they  
5 arrived sometime between 8:00 p.m. to 9:00 p.m. This party had 70 or 80 people and everybody was  
6 outside, thus it was a very crowded party. There was a lot of dancing and alcohol, but no drugs other  
7 than marijuana. Rocha testified that he was popular at school because he helped others purchase  
8 marijuana.

9 Rocha recognized Guzman and Rivera as Highland Park gang members and knew that they  
10 were friends of his brother, Danny. Rocha testified that Danny was a gang member and that he  
11 knew other friends who were gang members, and this often led to him mistakenly being classified as  
12 a gang member.

13 There were two cars in the driveway, one parked in front of the other with a somewhat wide  
14 gap separating the two vehicles. He was standing in the gap and talking to his friends: Gabriel  
15 Ramirez, Anthony Ramirez, Danny Rocha, Rosie Aldana, Jeff Amaya, and others. He then walked to  
16 the center of the yard to fill up his cup with beer at the keg. From here, he could see and hear  
17 Guzman and Rivera asking an unknown male what gang he was affiliated with. This person  
18 responded by stating a gang different than Highland Park. A fight started, punches were thrown, and  
19 major chaos began. Rocha testified on cross-examination that he might have said something like  
20 "fight back" but that he did not approach the fight. Rocha began to run to the gap near the cars  
21 because that was where his "family" was still standing. He was almost near this gap when he heard  
22 one gunshot. Rocha later testified on cross-examination that it might have been two shots. He then  
23 ducked behind the bumper of a car and held on as he heard the second succession of shots. Rocha  
24 described the first shot as a softer shot, maybe a warning shot, and then about four to six louder  
25 shots in succession. Rocha said he never saw the shooter because he was ducking the entire time  
26

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28 <sup>5</sup> In February 2013, the Hearing Officer determined that the record would be more complete with  
29 Rocha's testimony and offered Rocha a second chance to testify if he desired. Rocha agreed to  
testify.

1 and did not want to peak out from behind the vehicle. After the shooting, Rocha got into a car with  
2 his friends and they left the party.

3 On cross-examination, Rocha stated that in the weeks prior to being arrested he attended  
4 school. This is despite his probation report stating that he did not attend school for the three weeks  
5 prior to being arrested. Rocha also acknowledged being written-up in prison eight times from 2000-  
6 2005. Rocha stated that write-ups in prison are common and can be for minor offenses such as  
7 grooming standards or having cigarettes. However, in 2005, Rocha was determined to have been  
8 involved in a battery against another inmate. Rocha testified that this was a staged fight so that he  
9 and the inmate could get "into the hole" to speak with another inmate.

10 Much of the cross-examination was focused on Rocha's alleged gang affiliation. Rocha  
11 stated that he is unaware that his probation report stated that he was a member of the Highland Park  
12 gang. He also said that as a juvenile, he might have said he was involved in a gang but that he was  
13 not really a gang member. Any involvement in a gang was due to his brother, his friends, and being  
14 convicted for crimes with gang members. Also, Rocha has one tattoo symbol of three dots in a  
15 triangle formation on his finger. Finally, Rocha denied gang membership of his friends Anthony  
16 Ramirez and Gabriel Ramirez.

17 Dana Orent testified telephonically on behalf of Rocha. Orent is a retired police officer who  
18 currently works as a private investigator. He was hired by Rocha's defense attorneys as an  
19 investigator while Rocha was facing retrial.

20 Orent reviewed previously conducted witness interviews and also interviewed his own  
21 witnesses. He stated that 27 witnesses were interviewed either by him personally or through other  
22 hearings, and only two of them (Padilla and Mendoza) identified Rocha as the shooter. Many more  
23 witnesses stated that Rocha was not the shooter. Additionally, none expressed that there were two  
24 shooters on the driveway. There were conflicting descriptions of the shooters which may have led to  
25 the theory of multiple shooters. Orent believes that there was one shooter. In addition to witness  
26 testimony, Orent supplements his "one shooter" theory with official reports that only list one suspect,  
27 the short distance between where the first and alleged second shooter would be, and if multiple gang  
28 members were shooting at a crowd there would be more than the four to six gunshots fired as was  
29 reported.

1 Orent also testified that there are varying levels of gang membership. Documented gang  
2 members would have tattoos on their body showing their gang affiliation. Besides documented gang  
3 members, people can also be associated with a gang which is a lower degree of affiliation than a  
4 documented gang member. Other times people are friends with gang members but do not have any  
5 connection to the gang. Associates and documented members usually have a gang moniker or  
6 nickname.

7 Declarations

8 After Rocha's criminal trial, Laurie Nevarez was interviewed by Rocha's defense team. She  
9 signed a declaration stating she was at the party in the backyard with Matthew Padilla's girlfriend,  
10 Christine Aragon. Nevarez said that Padilla, the prosecution's strongest eye witness against Rocha,  
11 came to the backyard because Aragon was calling for him. When Padilla was in the backyard away  
12 from the driveway, the gunshots were fired from the driveway.

13 In February 2000, Brian Villalobos, another eye witness who testified for the prosecution at  
14 trial, provided a declaration stating that the second shooter had a similar physical appearance to  
15 Rocha but that he cannot and could not identify Rocha as the shooter with any certainty. Villalobos  
16 stated that he never said that Rocha was actually the shooter.

17 In March 2009, James Parra signed a declaration stating he was present at the party the night  
18 of the incident. Parra states in his declaration that Lauro Mendoza, another eye witness testifying for  
19 the prosecution, admitted soon after the incident that he did not know who the shooters were.  
20 However, since he was good friends with both the victims, he did not care if he identified the wrong  
21 person and he just wanted somebody to pay for the shootings. Parra tried to talk Mendoza out of  
22 misidentifying the shooters but was unsuccessful.

23 In March 2008, Jeff Amaya submitted a declaration stating that he was at the party and that at  
24 the time the shooting took place he was having a conversation with Rocha. He felt that it was  
25 impossible for Rocha to have been involved in the shooting.

26 In March 2000, Monet Martinez submitted a declaration stating that she was at the party and  
27 tried to break-up the fight as it was starting by holding back the fighters. She believes she saw  
28 Guzman firing a gun but did not see Rocha involved in the fight and he was not the person firing the  
29 gun.

1 In October 1999, Anthony Ramirez submitted a declaration stating that he was at the party  
2 and that when shots were first fired he, along with Rocha and "Danny and Gabriel," went to go hide  
3 behind two parked vehicles.

4 In March 1998, Rosemarie Ashamalla, a juvenile hall volunteer who worked with Rocha, met  
5 with Ricky Farias. Ashamalla stated that Farias, who was at the party, did not want to get involved in  
6 the case or give a statement. However, Ashamalla stated in her declaration that Farias told her that  
7 when the shooting began he saw Rocha looking confused and he did not see Rocha with a gun.

#### 8 Rocha's Argument

9 Rocha argued at the hearing and in his submitted written materials that there were no more  
10 than two shooters at the party. Sixteen witnesses who attended the party testified at trial. Not one of  
11 these witnesses testified to seeing more than two shooters. Additionally, only Padilla testified to  
12 hearing more than six shots fired while most witnesses testified to hearing between four to six shots.  
13 Rocha argued that if there were more than two shooters, it would be reasonable to expect more than  
14 four to six shots to be fired. Corroborating the "two shooter" theory is the evidence that only two  
15 different bullets, not three different bullets, were found at the scene of the incident.

16 The evidence also shows that Guzman and Rivera were armed and involved in gang  
17 challenges. Nobody testified that Rocha was involved in any gang activity, challenges, or fights that  
18 night. Guzman was clearly responsible for shooting and killing Aceves. In addition to witnesses  
19 testifying that Rivera was the second shooter, both Barragan and Torres testified at trial that Rivera  
20 knocked off their Angels cap and placed a gun to their ribs. This shows that Rivera was armed,  
21 previously involved in gang challenges, and corroborates the witness identification of Rivera as the  
22 shooter.

23 Rocha then questioned the reliability of the three witnesses who identified him as the shooter:

24 Matthew Padilla had the strongest belief that Rocha was the shooter. However, Rocha is  
25 right handed while Padilla testified that he saw the shooter firing the gun with his left hand. Post-trial,  
26 Rocha's defense team interviewed Laurie Nevarez. Nevarez was at the party in the backyard with  
27 Padilla's girlfriend, Christine Aragon. Nevarez said as the fighting continued, Padilla came to the  
28 backyard because Aragon was calling for him. Once Padilla was in the backyard the driveway  
29

1 gunshots were fired. If Padilla was not in the driveway at the time of the shooting then he would be  
2 unable to see the shooter

3 Brian Villalobos identified Rocha's picture in a photo lineup as the person who looked most  
4 like the shooter in the driveway but did not identify Rocha in court at the trial. In February 2000,  
5 Villalobos provided a declaration stating that the second shooter had a similar physical appearance to  
6 Rocha but that he cannot and could not identify Rocha as the shooter with any certainty. Villalobos  
7 stated that he never said that Rocha was actually the shooter.

8 In March 2009, James Parra signed a declaration stating he was present at the party the night  
9 of the incident. Parra states in his declaration that Lauro Mendoza, who first stated he did not see  
10 the shooting but at trial identified Rocha as the shooter in the driveway, admitted soon after the  
11 incident that he did not know who the shooters were. However since he was good friends with both  
12 the victims he did not care if he identified the wrong person and he just wanted somebody to pay for  
13 the shootings. Parra tried to talk Mendoza out of misidentifying the shooters but was unsuccessful.

14 Rocha also argued that he was not a gang member like Guzman and Rivera were. First and  
15 foremost, the Los Angeles Police Department gang expert at trial identified Guzman and Rivera as  
16 gang members but did not identify Rocha as a gang member. Rocha did not have any tattoos that  
17 showed gang affiliation. Finally, Rocha was not involved with the gang challenges at the party  
18 involving the Angels caps like Guzman and Rivera were.

#### 19 AG's Argument

20 The AG's office argued that three witnesses independently identified Rocha as the shooter  
21 and the only evidence that Rocha offered are his friends and associates.

22 In May 2003, Laurie Nevarez was interviewed by the Los Angeles County District Attorney's  
23 Office. Subsequent to the trial, Nevarez told Rocha's defense team that Matthew Padilla was with her  
24 in the backyard when shots were fired from the driveway. Yet in the 2003 interview, Nevarez said  
25 that she did not know exactly where Padilla was during the events. When the shooting began she  
26 and Aragon ducked in the backyard by a fence and did not see Padilla. At the 2003 evidentiary  
27 hearing related to Rocha's ineffective assistance of counsel claim, Nevarez testified that Padilla  
28 walked to the backyard before the gunshots began. However, she also admitted that she did not  
29 remember Padilla being in certain locations that were previously discussed and that the events of the

1 night of the shooting were not fresh in her mind. She also contradicted certain statements in her  
2 declaration and admitted that certain statements in the declaration were wrong. The judge  
3 determined that Nevarez was not a credible witness.

4 Additionally, Lauro Mendoza never has stated that his testimony was untrue. James Parra's  
5 statement that Mendoza told him he didn't know who the shooters were before testifying against  
6 Rocha at trial simply aims to impeach Mendoza's testimony. However Parra has never testified at  
7 any trial or the current hearing. He simply stated his allegations in a declaration.

8 The AG questioned the credibility of many of Rocha's other witnesses. Candice Alviljar, who  
9 testified Rocha was with her when shots were fired, was Rocha's brother's girlfriend. She was seen  
10 leaving the party with Rocha and was friends with him. Rosie Aldana and Gabriel Ramirez, who also  
11 testified that Rocha was with them when shots were fired, were friends of Rocha and Rocha's  
12 brother. The Court of Appeals stated that their friendship with Rocha diminished their value as  
13 witnesses. Also, testimony by other witnesses showed that Anthony and Gabriel Ramirez were  
14 Highland Park gang members. Both of them are friends with Rocha and came to the party with  
15 Rocha. Jeff Amaya, who stated in a declaration that he was talking to Rocha when shots were fired,  
16 has a felony conviction for forgery and robbery. Thus, his credibility must be doubted. Monet  
17 Martinez, who stated in a declaration that Rocha was not the person firing the gun in the driveway,  
18 was determined by the judge at the evidentiary hearing to have had limited observations on the  
19 evening.

20 The AG's office also contends that Rocha was a Highland Park gang member and that this is  
21 relevant to show Rocha's lack of credibility and that the shootings were gang motivated. The AG  
22 cites Rocha's probation report and police interviews with witnesses who state that Rocha was a gang  
23 member. These witnesses also stated that Rocha's brother, his friends Gabriel and Anthony  
24 Ramirez, along with Guzman and Rivera were also gang members. Since Rocha's brother, Guzman,  
25 and Rivera were later proven to be documented gang members it tends to show these witness  
26 statements are reliable. Rocha also had a gang moniker of "Downer." The three dot tattoo on  
27 Rocha's finger has been found to be a gang symbol but also could be a symbol of Hispanic culture.  
28 Finally, Rocha was under supervision by the Los Angeles Gang Specialization Unit at the time of the  
9 crime, and as part of his probation he was ordered to not associate with gang members.



1 claimant's burden in the absence of substantial independent corroborating evidence that the claimant is  
2 innocent of the crime charged.<sup>10</sup> Here, Rocha's claim should be approved because there is a  
3 preponderance of the evidence that he did not commit the crime with which he was charged.

4 It is difficult to determine exactly what occurred in this case because the majority of the  
5 evidence is based on inconsistent eye witness testimony. Three witnesses, with varying degrees of  
6 credibility and confidence, claim Rocha was likely the shooter in the driveway. Nine other witnesses,  
7 again with varying degrees of credibility and confidence, claim Rocha was not the shooter in the  
8 driveway. What all witnesses do agree on is that there were no more than two shooters at the party:  
9 one shooter in the backyard area and one shooter in the driveway.

10 Weighing most in determining Rocha's innocence is the fact that the evidence shows that there  
11 were no more than two shooters at the party and there were two men convicted for these crimes who  
12 remain in prison. There is no evidence that the convictions of these two men were improper. Both  
13 Rivera and Guzman were seen with handguns at the party. Both Rivera and Guzman were involved in  
14 gang intimidation activity at the party. Guzman was seen shooting and killing Aceves in the backyard  
15 area. Witnesses testified that Rivera fired shots from the driveway.

16 The only strong identification of Rocha being a shooter was made by Matthew Padilla. In his  
17 testimony he was sure that Rocha was the shooter and he was only a few feet away from Rocha while  
18 he was shooting. However, there are two concerns regarding Padilla's testimony in addition to the fact  
19 that it was dark and Padilla had been drinking. First, Padilla said the shooter was firing his weapon  
20 with his left hand. Rocha is right handed, and although Rocha could have fired with his non-dominant  
21 hand, this fact seems unlikely. Second, Padilla testified that he heard at least 10-12 total gunshots.  
22 This number is different than the testimony by all other witnesses and would mean that between eight  
23 to ten bullets completely missed hitting people, walls, or objects, and were never found. These facts  
24 raise skepticism to the accuracy of Padilla's testimony.

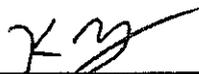
25 Rocha's testimony was similar to other witnesses who testified. Rocha testified that he was  
26 hiding behind the car at the time of the shooting. Three other witnesses previously testified that Rocha  
27

28 <sup>10</sup> Cal. Code of Regs., title 2, § 641. All regulations citations are to California Code of Regulations, title  
29 2.

1 was hiding behind the cars at the time of the shooting. This tends to support Rocha's testimony,  
2 although Rocha's friendship and the fact that he called these witnesses "family" cannot be overlooked.  
3 Much of Rocha's testimony and cross-examination was focused on his alleged gang affiliation and not  
4 about the crime itself.<sup>11</sup>

5 When looking at the totality of the evidence, the forensic evidence shows that only two guns  
6 were fired and no witness named three different shooters. There was simply no evidence whatsoever  
7 that there was a third shooter. Two documented gang members who brought weapons to the party  
8 were convicted of murder and attempted murder and are still in prison. Nine witnesses state that  
9 Rocha was not the shooter while only one solidly states that Rocha was the shooter, another witness  
10 thinks that Rocha looks like the shooter, and a third witness originally told law enforcement he did not  
11 see the shooter. Based on this evidence Rocha has met his burden of proving by a preponderance of  
12 the evidence that he did not commit the crimes of murder and attempted murder.<sup>12</sup>

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14 Dated: October 28, 2013

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16 \_\_\_\_\_  
17 Kevin D. Kwong  
18 Hearing Officer  
19 California Victim Compensation and  
20 Government Claims Board  
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25 <sup>11</sup> Due to conflicting evidence, it is unknown if Rocha was a gang member or merely friends with gang  
26 members. However, the issue of gang membership has little probative value compared to the  
27 eyewitness and forensic evidence in determining the merits of this claim.

28 <sup>12</sup> Additionally, despite the AG's argument, Rocha did not contribute to his own arrest or conviction by  
29 violating the terms of his probation by attending a party with gang members. Rocha was arrested and  
charged with murder and attempted murder. At most, Rocha violated the terms of his probation which  
was significantly different than being arrested and convicted of murder and attempted murder.