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

In the Matter of the Claim of:

Marco Milla

**Proposed Decision
(Penal Code § 4900)**

Introduction

This claim for compensation as an erroneously convicted person was decided based on the written record by considering all the evidence submitted and without a telephonic or in-person hearing. Kevin Kwong was assigned to hear this matter by the Executive Officer of the California Victim Compensation and Government Claims Board. The claimant, Marco Milla, was represented by attorney Edmont Barrett. The California Attorney General’s Office was represented by Larenda Delaini, Deputy Attorney General (AG).

In this matter, the trial court granted Milla’s writ of habeas corpus and made a finding of factual innocence pursuant to Penal Code section 1485.55(b). According to Penal Code section 1485.55(b), when a court makes a finding of factual innocence, the Board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Penal Code section 4904. Therefore, it is recommended that Milla receive compensation pursuant to Penal Code section 4900 et seq. in the amount of \$654,500 for being wrongfully imprisoned for 4,675 days from October 24, 2001, until August 11, 2014.

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2 **Procedural Background**

3 On October 24, 2001, Marco Milla was arrested and charged with one count of murder and
4 five counts of attempted murder after it was alleged that he shot at a passing vehicle during a gang-
5 related shooting. On December 23, 2002, the jury found Milla guilty on all charges and sentenced
6 him to life in prison without the possibility of parole.¹ This conviction was affirmed by the California
7 Court of Appeals on December 20, 2004. The California Supreme Court denied review on March 16,
8 2005.

9 In 2010, the Los Angeles County District Attorney's Office received a letter from the United
10 States Department of Homeland Security (DHS). DHS was conducting an unrelated investigation into
11 the criminal activities of several local gangs. During its investigation, DHS relied on a confidential
12 informant who proved to be reliable. The letter to the District Attorney's Office contained information
13 from this informant who had witnessed the shooting for which Milla was convicted.

14 The informant told DHS that on the night of the murder, several gang members gathered at a
15 home to watch a boxing match on television. A Suburban vehicle with four males circled the block
16 several times. The gang became suspicious as there had recently been a gang involved drive-by
17 shooting in the neighborhood. The informant saw one gang member hold a semi-automatic handgun,
18 stand in the middle of the street, and fire several rounds. The informant named the gang member
19 who was the shooter and then stated that Milla was not even present at the scene.

20 On January 19, 2012, Milla filed a petition for a Writ of Habeas Corpus based on the newly
21 discovered informant. At the hearing, the informant was called as a witness and testified that Milla
22 was not the shooter. On June 23, 2014, Milla's petition was granted, his prior convictions were
23 vacated, and a new trial was ordered. On August 11, 2014, Milla was released from custody, and on
24 January 9, 2015, the Los Angeles County District Attorney's Office declined to seek a second trial and
25 dismissed all charges against Milla.

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¹ Milla was also sentenced to a consecutive term of life plus 25 years to life for two of the counts of
28 attempted murder, and a concurrent term of life plus 20 years for three of the counts of attempted
29 murder. Milla also received a minimum parole eligibility term of 15 years based on a gang
enhancement.

1 On January 13, 2016, Milla received a finding of factual innocence pursuant to Penal Code
2 section 1485.55(a), based on new evidence that points unerringly to innocence. On February 1,
3 2016, Milla filed his claim for compensation with the Board as an erroneously convicted person.

4 **Determination of Issues**

5 If the provisions of Penal Code section 1485.55 apply, the California Victim Compensation and
6 Government Claims Board shall calculate the compensation for the claimant pursuant to Penal Code
7 section 4904 and recommend to the Legislature payment of that sum.² The claimant needs to show no
8 more than the court's declaration of his or her factual innocence for the Board to recommend to the
9 Legislature that compensation be paid.

10 Milla received a finding of factual innocence and the court stated that the evidence points
11 unerringly to his innocence. The court's determination was based primarily on the informant's
12 testimony that another gang member committed the crimes. Thus, the Board will recommend payment
13 to the Legislature as required by statute.

14 The AG did not offer an opinion on whether Milla was innocent of the crimes with which he was
15 convicted for, but agrees that the Board must recommend payment to the Legislature because Milla
16 received a finding of factual innocence. However, the AG contends that Milla is only eligible for
17 \$595,000³ in compensation because payment should start from December 23, 2002, Milla's date of
18 conviction, until August 11, 2014, Milla's date of release. The AG disagrees with Milla's position that he
19 is entitled to compensation for the 425 days he served in a county jail beginning on October 24, 2001,
20 the date of his arrest.

21 The AG cites Penal Code section 4904, which states that the \$140 per day in compensation
22 "shall include any time spent in custody, including in a county jail, that is considered part of the term of
23 incarceration." The AG states that the legislative history of the statute says that the \$140 per day
24 payment is meant for time served after conviction and that the statutory change in language was only
25 meant to compensate an applicant for time served between conviction and sentencing. The time Milla
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28 ² Pen. Code § 4902(a).

29 ³ This is for 4,250 days in prison.

1 served in a county jail after being arrested but before his conviction is not time that is eligible for
2 compensation, thus he cannot receive \$140 per day until his date of conviction on December 23, 2002.

3 However, the time Milla spent in county jail after his arrest became part of his incarceration
4 subsequent to his conviction. Penal Code section 2900.5(a) states, in part, that “in all felony and
5 misdemeanor convictions...when a defendant has been in custody, including, but not limited to, any
6 time spent in county jail...all days of custody of the defendant...shall be credited upon his or her days
7 of imprisonment.” Thus, the 425 days Milla spent in county jail were credited as time served upon his
8 conviction and are part of the term of incarceration. Therefore he may receive compensation for this
9 time period.

10 Milla was incarcerated for 4,675 days and it is recommended to the Legislature that an
11 appropriation be made to pay the claim in the amount of \$654,500.

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13 Dated: February 22, 2016

14 Kevin D. Kwong
15 Hearing Officer
16 California Victim Compensation and
17 Government Claims Board
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Marco Milla

Notice of Decision

On March 17, 2016, 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: March 21, 2016

Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board