
Victim Compensation Board Meeting Agenda
May 19, 2022
10:00 a.m.
400 R Street
Third Floor, Room 330
Sacramento, CA 95812

BOARD MEETING MATERIALS

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|----------------|--|------------------|
| Item 1. | Approval of Minutes
Minutes of the March 17, 2022, Board Meeting
DRAFT Minutes attached | Action Item |
| Item 2. | Public Comment on Items Not on the Agenda
The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.)
No materials for this item | |
| Item 3. | Executive Officer Statement
No materials for this item | Information Item |
| Item 4. | Legislative Update
Copy of Legislative Update attached | Information Item |
| Item 5. | Contract Update
Copy of Contract Update attached | Action Item |
| Item 6. | Monica Magana (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision and Response attached | Action Item |
| Item 7. | Alexander Torres (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |
| Item 8. | Juan Bautista (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |
| Item 9. | Zavion Johnson (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |

ITEM 1

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California Victim Compensation Board Open Meeting Minutes March 17, 2022, Board Meeting

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Amy Tong, Secretary of the Government Operations Agency, via Zoom, on Thursday, March 17, 2022, at 10:02 a.m. Also present via Zoom was Member Diana Becton, District Attorney, and Member Shawn Silva, Deputy State Controller and Chief Counsel, acting for and in the absence of, Betty T. Yee, Controller.

Executive Officer Lynda Gledhill, and Chief Counsel Kim Gauthier, attended in person at 400 R Street, Sacramento, California. Board Liaison, Michelle Greer, was also present and recorded the meeting.

Item 1. Approval of the Minutes of the January 20, 2022, Board Meeting

The Board approved the minutes of the January 20, 2022, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment and Ms. Greer reminded everyone that, consistent with the Bagley-Keene Open Meeting Act, items not on the agenda may not be discussed at this time but may be put on a future agenda. (Gov. Code, § 11125.7.)

There was no public comment.

Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on several items:

To start, Ms. Gledhill updated the Board on CalVCB's return-to-work plan, which started in January and has continued to operate smoothly. CalVCB has brought employees back into the office a minimum of one day a week. CalVCB employees have said that they appreciate the arrangement and are happy with the overall balance between being in office and telework.

As mentioned in January, the Governor's budget includes several proposals related to CalVCB. As part of the budget process, in February Ms. Gledhill testified before both the Assembly and Senate Budget Subcommittees to discuss CalVCB's program and the proposals. Ms. Gledhill also reminded the Board that the budget proposes increasing CalVCB's federal authority and adjusting benefit limits to accommodate the increase in

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CalVCB's federal Victims of Crime Act reimbursement rate from 60 percent to 75 percent.

Ms. Gledhill continued, stating that the additional federal funding and authority, if approved, will be used, in part, to support an increase in benefit limits for crime scene cleanup costs from \$1,000 to \$1,700, funeral and burial costs from \$7,500 to \$12,800, and relocation benefits from \$2,000 to \$3,400. This is an overdue adjustment for limits that were set in 2000 and haven't been changed since. The budget also proposes changing the way CalVCB compensates those who have been found by the Board to have been erroneously convicted. Both subcommittees had robust conversations about CalVCB and the work CalVCB does and CalVCB looks forward to continuing to update the Board with information as the process moves forward.

Ms. Gledhill reported that on January 1, CalVCB began accepting applications for the Forced or Involuntary Sterilization Compensation Program. The Legislature created the program as part of the 2021-22 budget. The program provides compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979 and to survivors of involuntary sterilizations performed on people in California prisons after 1979. CalVCB has already received 56 applications and is working to process them. It is estimated that 600 survivors of forced sterilization remain alive and are eligible for the program. CalVCB will continue to work on getting the word out and reaching all eligible survivors. The program runs through December 31, 2023.

Finally, Ms. Gledhill concluded her remarks by updating the Board on efforts made to honor CalVCB employees for Employee Appreciation Day, which included handing out a small token of appreciation to every employee. Ms. Gledhill also noted that she recently met with every unit in the organization to thank them for their hard work and to hear first-hand how things are going.

Chairperson Ravel thanked Ms. Gledhill for the updates.

Item 4. Legislative Update

The Legislative Update was provided by Deputy Executive Officer of the External Affairs Division, Andrew LaMar.

In Mr. LaMar's first Legislative Update of the calendar year, he highlighted a few key bills.

First, SB 993 by Senator Skinner, would make many significant changes to CalVCB's statutes. Among them, it would increase reimbursement limits, expand eligibility in several ways, and shorten processing times for victim compensation claims. It would also increase compensation to erroneously convicted individuals. In addition, it would

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create a pilot program under Cal OES to fund community-based organizations to provide direct cash assistance to survivors of violence.

Mr. LaMar noted that there is much included in this bill and that CalVCB will continue to watch it closely as it moves through the process.

Next, SB 877, by Senator Eggman, would authorize CalVCB to reimburse mental health providers who are licensed in states outside of California. This bill was passed by the Senate Public Safety Committee on Tuesday.

AB 2126, by Assemblymember Flora, would create a new program to be administered by CalVCB. This program, Mr. LaMar stated, would compensate the family members of those who have died from fentanyl overdoses. The benefits available would include compensation for funeral expenses and crime scene clean up, and would be funded by assessing a \$2,000 fine on certain drug charges. The bill is set to be heard next week in the Assembly Public Safety Committee.

Next, SB 632 by Senator Portantino, would appropriate \$1,807,120 from the General Fund to pay two erroneous conviction claims approved by CalVCB for George Souliotes and Guy Miles. The bill has already passed through the Senate and is now awaiting referral in the Assembly.

SB 981, by Senator Glazer, would expand the grounds for which an automatic recommendation for compensation of an erroneous conviction claim by CalVCB is required for certain claims. It would also reduce the standard to obtain a court-issued finding of factual innocence for certain claims. The bill is scheduled to be heard in the Senate Public Safety Committee on March 29, 2022.

Mr. Lamar continued by stating that AB 1599, by Assemblymember Kiley, seeks to repeal Proposition 47, which would be placed on the ballot. The bill was heard last week in the Assembly Public Safety Committee and failed passage.

In conclusion, Mr. LaMar updated the Board on AB 1733 by Assemblymember Quirk, which would authorize meetings subject to the Bagley-Keene Open Meeting Act to be held entirely by teleconference. This bill has not been set yet for a hearing.

Chairperson Ravel thanked Mr. LaMar for the updates.

Item 5. Proposal to Approve Trauma Recovery Center Grant Awards

The Proposal to Approve Trauma Recovery Center Grant Awards was presented by Deputy Executive Officer of the External Affairs Division, Andrew LaMar.

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Mr. LaMar started by saying that this staff recommendation for awarding grants to Trauma Recovery Centers (TRC)s is for the next two-year grant cycle, which begins on July 1, 2022.

TRCs are centers that provide evidence-based mental health and case management services to victims of violent crime. Since 2014, by statutory authority, CalVCB has provided grants to TRCs through a competitive application process each year. TRCs are a model of care for victims pioneered by UC San Francisco and now used across the country. The statute is quite clear on what TRCs must do. There are 10 core elements, and they include:

1. Providing assertive outreach and engagement to underserved populations;
2. Serving victims of all types of violent crimes;
3. Treating all clients with complex problems, regardless of their emotional or behavioral issues; and
4. Using a multidisciplinary treatment team that includes psychiatrists, psychologists, social workers and marriage and family therapists.

Last year, many concerns were raised about the TRC grant program, how applications were scored and how awards were determined. There was concern about continuing funding to existing TRCs and concern about providing services in all geographic areas that had great need and didn't have other, similar services, such as in the Central Valley. For 2022, CalVCB worked to address those concerns and create a model process that takes those factors into consideration.

First, CalVCB streamlined the application and made it clear in the Notice of Funds Available (NOFA) exactly how applications would be scored. The maximum point value for an application was 100 points. For the six narrative questions drawn directly from statutory requirements, CalVCB spelled out how points would be awarded – up to 10 for each question. Last year, several TRCs said they had been disqualified on technicalities. This year, CalVCB has made clear what was necessary for minimum qualifications – showing some evidence that the applicant could meet each statutory requirement.

In other words, Mr. LaMar explained, for each of the six narrative questions, if any applicant showed no evidence it understood or could meet the requirement, it received a score of zero on that question and the application was disqualified. This is important because CalVCB staff must ensure that any potential grantee can meet the TRC statutory requirements. There was concern last year about serving the Central Valley and disrupting funding to existing TRCs. CalVCB has stopped short of stipulating that TRC grants must go to applicants from certain areas or that all existing TRCs should be funded first, regardless of application score, because that is not in keeping with the statute, which calls for a competitive process that evaluates all applicants on their abilities to meet the program requirements.

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But CalVCB has made changes in the scoring rubric to more highly value serving areas with no other TRC services and being able to immediately provide services. The highest point values were awarded for applicants who could demonstrate the ability to begin providing services within 30 days of receiving their awards. CalVCB does not control who submits applications for grants or where they come from. CalVCB has a competitive grant program – not a statewide program mandated to provide TRCs in every county. Nevertheless, assessing the need of the community being served is very important, because CalVCB wants the grants to have the largest possible impact. Taking into consideration last year's discussions, CalVCB added weight to an applicant's ability to serve the greatest number of victims and address need in its service area. Such factors as crime rate and whether there were other similar services available in the area figured into the score.

Finally, Mr. LaMar said, CalVCB staff evaluated the funding levels needed for TRCs to function optimally and maximize the victims they could serve. Last May, the Board voted to award funding to all grant applicants who met minimum qualifications, regardless of their score. That meant that \$13 million was split among 12 applicants, with each receiving only a portion of what it requested. The funding level was not consistent with levels provided in previous years. While in past years all applicants meeting minimum qualifications were awarded grants, the funding available could cover amounts that came close to what each requested. That was not the case last year due to the higher number of applications meeting this threshold. For the first time, CalVCB had significantly more qualifying applicants than funding available.

The reduced funding levels created problems for the 2021 grantees. A review of the programs showed that while all TRCs reacted differently, each experienced varying impacts of budget cuts that involved eliminating positions, reducing operational expenses or delaying the opening of centers. Prior to 2021, CalVCB awarded an average of 89.7 percent of the funding requested by grant applicants. In reviewing our records, CalVCB staff found that this standard of approximately 90 percent worked well – it gave TRCs the level of funding they needed for healthy operations.

Mr. LaMar reminded the Board that there is no limit to what an applicant can request in a grant application, so that must also be taken into consideration.

The TRC grant program has grown since its inception. In 2014, CalVCB funded two applicants. Over the years, the program has generated more and more interest and drawn an increasing number of qualified applications. Funding has increased too, but it has not kept up with the growing pool of qualified applicants and their requests for funding.

In essence, by funding all applicants that met minimum qualifications last year, regardless of their scores, all received considerably less than they requested and less than they said they needed to run their programs and meet the statutory requirements.

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Given that, we have had to consider what is best, moving forward, for the TRC grant program and the victims it serves.

Mr. LaMar reiterated that the TRC grant program is based on a competitive application process. CalVCB can set priorities and weight scoring in certain ways, but CalVCB staff must evaluate all applicants on their ability to meet the statutory requirements and score them accordingly. Then, the question is what is the best way to distribute funding? CalVCB staff think funding the top applicants at healthy levels – at near 90 percent or above – is the best approach.

For this cycle, that means providing grants to the top seven applicants but not funding the lower-scoring applicants. Six of those seven are existing TRCs and one is new. Mr. LaMar noted there was a big difference in the quality of the applications, with the top seven receiving scores of more than 60 points out of the 100 possible and the others receiving scores of between 29 and 52. Notably, CalVCB did receive one application from the Central Valley for a new center that met minimum qualifications, but the applicant received a very low score and, accordingly, it is not recommended for funding.

In conclusion, Mr. LaMar stated that CalVCB encourages TRC applicants that did not receive grants in this cycle to seek other sources of funding and to apply for a TRC grant in the next cycle. A NOFA for the 2023 awards will be posted in fall or early winter. The documents for this Board item that were included in the March Board Meeting binder included a table showing the recommended grant awards, with the grantees receiving between 89 and 97 percent of what they requested, based on their scoring tier.

Chairperson Ravel thanked Mr. LaMar for his presentation and recognized the very important services that all TRCs provide for victims.

Member Silva posed a few questions to Mr. LaMar regarding the Central Valley applicants. Member Silva suggested that it would be helpful to see all of the applicants listed on a chart that was provided via PowerPoint, both who was accepted and who was denied. Member Silva specifically inquired as to the Central Valley applicant(s) score overall. Mr. LaMar said that the only Central Valley TRC that applied scored the lowest out of all the applicants.

Member Silva then asked if there was any technical assistance provided to the applicants. Mr. LaMar answered that, when the NOFA was posted, the TRCs were encouraged to reach out with any questions they may have, and then, as part of the process, CalVCB posts all questions and answers on its website to provide answers for everyone to see. After the TRCs are notified of their results, the application is reviewed by the CalVCB TRC team as to why the application was scored the way that it was.

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It is not uncommon, Mr. LaMar continued, that applications are received by new TRCs that do not score well initially, but in a subsequent cycle are awarded funding.

Member Silva thanked Mr. LaMar.

Member Becton asked whether the TRC's geographical location is considered when reviewing TRC applications so that money is more evenly distributed. Member Becton said that it appears most of CalVCB's approved TRCs are in Southern California with much smaller amounts for Northern California TRCs.

Mr. LaMar reminded the Board that what is included in their binder is only a snapshot of the approved TRCs because CalVCB funds them in two-year cycles. Presently, CalVCB is funding 18 TRCs; what is not listed in the Board meeting binders are the ones that were funded in the last cycle, which was last Spring. Mr. LaMar acknowledged that Member Becton raised a valid point with which CalVCB has struggled. The statute makes clear that CalVCB can consider need, as well as geographical need, but CalVCB is not directed to create a statewide program or ensure that all of the State of California is covered. CalVCB evaluates the application based on the requirements in the statute, the ability to meet the program criteria, and the area from which the application came originated,

Member Silva then asked for more information as to how CalVCB does take geographical location into account during the approval process. Mr. LaMar stated that there are points awarded based on geographic location and the needs of that specific area, but there is no mandate to cover certain areas of the state before addressing the needs of other areas. In a competitive application process, CalVCB looks at the application in its entirety, the need for the area that is being served and what the coverage is or services available are in that area. Mr. LaMar reminded the Board that CalVCB is limited by the program parameters as outlined in the current statute.

The Board approved the proposal to award the TRC grants as recommended by staff.

Item 6. Request for Authority to Begin Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.)

The Request for Authority to Begin the Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.) was presented by CalVCB Senior Attorney Laura Simpton.

Ms. Simpton explained that this agenda item is to request authorization to begin the rulemaking process to amend the regulations governing Penal Code section 4900 (PC 4900) claims (erroneously convicted felons). These regulations were last updated in

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2012, and, since then, the statutes for processing PC 4900 claims have changed significantly. As a result, many of the current regulations are inconsistent or in conflict with current law. A draft of the proposed regulations was attached to the Board materials for this item. Ms. Simpton noted that CalVCB did reach out to the Attorney General, the California Innocence Project, and the Northern California Innocence Project for their informal comments to the draft regulations in preparation for this meeting and before finalizing the draft before the Board.

Ms. Simpton explained that, upon approval by the Board, the draft regulations will be submitted to the Office of Administrative Law (OAL) to commence the official rulemaking process. As part of that process, all stakeholders and the general public are entitled to submit comments during a 45-day period. Any received comments will be carefully considered and, if warranted, result in additional revisions to the regulations. The revisions, in turn, would trigger an additional comment period of 15 days for minor changes or 45 days for major changes.

Ms. Simpton concluded by stating that once the comment period officially ends and the language of the proposed regulations is settled, CalVCB staff will return to the Board with a separate request to adopt the regulations and authorize filing the final rulemaking record with OAL. If granted, OAL will review the regulations and, if approved, file them with the Secretary of State.

Chairperson Ravel thanked Ms. Simpton for her presentation of the item and for reaching out to stakeholders before presenting this item to the Board.

Dina Petrushenko, Deputy Attorney General from the Attorney General's Office provided public comment on this item. Ms. Petrushenko introduced herself as being the lead coordinator for PC 4900 cases in her office. She mentioned that she informally submitted feedback regarding the proposed amendments, but it was before hearing some of the proposed legislative bills that are pending that will have a greater impact on the PC 4900 cases. Ms. Petrushenko just wanted to add that one of the things she did not consider when she provided the informal feedback to the proposed amendments was that a lot of claims that she receives in her office, after being reviewed by the Board, are by Pro Per individuals as well as individuals represented by private attorneys rather than the Innocence Project, who do not know the procedures and materials needed for submitting a PC 4900 case. Ms. Petrushenko asked that the amended rules include the step-by-step process and explanation of materials needed for submitting a PC 4900 claim.

Chairperson Ravel thanked Ms. Petrushenko for her comment.

CalVCB's Chief Counsel, Kim Gauthier, in response to the comment made by Ms. Petrushenko explained that the Legal section is currently working on revising the PC 4900 claim form posted on the CalVCB website, which should address most of Ms.

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Petrushenko's concerns. CalVCB has added additional boxes and some additional information suggesting to the claimant the type of information, both factual and documentary, that would be helpful when evaluating the claim.

Chairperson Ravel thanked Ms. Gauthier for the information.

The Board approved the Request for Authority to Begin the Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.)

Item 7. PC 4900 Claim No. 22-ECO-02, Edward Dumbrique

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by Edward Dumbrique.

On January 3, 2022, Edward Dumbrique submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Dumbrique's 1998 murder conviction in Los Angeles County, which was subsequently vacated and dismissed during state habeas proceedings in March 2021. Mr. Dumbrique's co-defendant in the case, John Klene, also filed an application for consideration at the March Board meeting.

As there was no objection filed by the Office of the Attorney General (AG) to the claim, compensation is automatic under Penal Code section 4900, subdivision (b), and the proposed decision recommends compensation of \$1,211,560, which represents \$140 per day for each of the 8,654 days Mr. Dumbrique was wrongfully imprisoned

Throughout these proceedings Mr. Dumbrique was represented by Deirdre O'Connor from the office of Seamus Law, and the Attorney General's Office was represented by Deputy Attorney General Dina Petrushenko.

Chairperson Ravel asked that counsel for Mr. Dumbrique address the Board first.

Ms. O'Connor, who appeared via conference call, stated that she was grateful for the prompt actions of the Hearing Officer and the Attorney General's Office in evaluating this matter and requested that the proposed decision be approved.

Chairperson Ravel thanked Ms. O'Connor for her comments.

Chairperson Ravel then asked if Mr. Dumbrique would like to address the Board.

Mr. Dumbrique, who appeared via conference call, stated that he wanted to thank the Board personally for compensating him for all the years that he was wrongfully incarcerated.

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Chairperson Ravel thanked Mr. Dumbrique for his appearance and comment.

Chairperson Ravel then asked Ms. Petrushenko for her comments on the matter.

Ms. Dina Petrushenko, who appeared via conference call, agreed that the proposed decision should be approved by the Board.

Chairperson Ravel thanked Ms. Petrushenko for appearing before the Board.

The Board adopted the Proposed Decision.

Item 8. PC 4900 Claim No. 21-ECO-24, Jonathan Hampton

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by Jonathan Hampton.

On October 21, 2021, Jonathan Hampton submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Hampton's 2009 murder conviction, which was vacated on state habeas. Following retrial, Mr. Hampton was acquitted of murder, but found guilty of involuntary manslaughter, a lesser included offense, and resented to eight years imprisonment, after having been imprisoned for over 13 years.

As there was no objection filed by the Attorney General's Office and, therefore, compensation is automatic under Penal Code section 4900, subdivision (b), and the proposed decision recommends compensation of \$297,200, which represents \$140 per day for each of the 2,123 days Mr. Hampton was wrongfully imprisoned.

Throughout these proceedings Mr. Hampton has represented himself and the Attorney General's Office was represented by Deputy Attorney General Dina Petrushenko.

Chairperson Ravel asked if Mr. Hampton wished to address the Board.

Due to technical issues with Mr. Hampton's phone in connecting to the video conference call, Ms. Gauthier suggested that the Board move to Item 9 while Mr. Hampton's was connected to the meeting.

Item 9. PC 4900 Claim No. 22-ECO-01, John Klene

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by John Klene.

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On January 3, 2022, John Klene submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Klene's 1998 murder conviction in Los Angeles County, which was subsequently vacated and dismissed during state habeas proceedings in February 2021.

As there was no objection filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900, subdivision (b), and the proposed decision recommends compensation of \$1,202,740, which represents \$140 per day for each of the 8,591 days Mr. Klene was wrongfully imprisoned.

Throughout these proceedings Mr. Klene was represented by Deirdre O'Connor from the office of Seamus Law, and the Attorney General's Office was represented by Deputy Attorney General Dina Petrushenko.

Chairperson Ravel asked that counsel for Mr. Klene address the Board first.

Ms. O'Connor, who appeared via conference call, stated that she was grateful for the prompt processing of this application and requested that the proposed decision be approved.

Chairperson Ravel thanked Ms. O'Connor for her comments.

Chairperson Ravel then asked if Mr. Klene would like to address the Board himself.

Mr. Klene, who appeared via conference call, stated that he wanted to thank the Board, and was thankful that things are changing for the better for victims like himself.

Chairperson Ravel thanked Mr. Klene for his comment.

Chairperson Ravel then asked Ms. Petrushenko for her comments on the matter.

Ms. Petrushenko, who appeared via conference call, agreed that the proposed decision should be approved by the Board.

Chairperson Ravel thanked Ms. Petrushenko for appearing before the Board.

Margaret Petros requested to address the Board on this agenda item.

Ms. Petros thanked the Board for how it is dealing with the Innocence Project and the wrongfully accused. Ms. Petros said that the process seems very fast and well done. She stated that she wished CalVCB and the Board were this prompt for victims of

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violent crime when their applications are denied, and the notifications that CalVCB provides to let the claimant know they have been denied.

Ms. Petros continued by asking the Board to look at the denied applications that are being considered at this meeting because they, or authorized representatives, have not been notified that their application has been denied.

Chairperson Ravel thanked Ms. Petros for her comments.

The Board adopted the Proposed Decision.

Connected via audio call, Mr. Hampton (Item 8 of the Agenda) was prepared to address Board.

Item 8. PC 4900 Claim No. 21-ECO-24, Jonathan Hampton

(Continued from page 10)

Mr. Hampton, who appeared via audio call, stated that he wanted to thank the Board for this line of communication, as someone who has suffered from wrongful incarceration for so long. The fight for him to earn his freedom, like many of the gentlemen that presented today in these similar claims is daunting, but having the opportunity to be on this side of things and the opportunity of being in pursuit of freedom is great. Mr. Hampton concluded by saying that he wished to be compensated so he can start his life again on new and better grounds.

Chairperson Ravel thanked Mr. Hampton for his comment.

Chairperson Ravel then asked Ms. Petrushenko for her comments on the matter.

Ms. Petrushenko, who appeared via conference call, agreed that the proposed decision should be approved by the Board.

Chairperson Ravel thanked Ms. Petrushenko for appearing before the Board.

The Board adopted the Proposed Decision.

Closed Session

Pursuant to Government Code section 11126 (a), the Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:57 a.m., pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1-90C of the Victim Compensation Program

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Open Session

The Board reconvened in Open Session pursuant to Government Code sections 11126(a) and 11126(c)(3) at 11:04 a.m.

The Board adopted the hearing officers' recommendations for proposed decision numbers 1-90C of the Victim Compensation Program.

Adjournment

The Board meeting adjourned at 11:05 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, May 19, 2022.

ITEM 2

Public Comment

The Board will receive comments from the public on matters that are not on the agenda.

The Board may not discuss or take any action on any item raised during public comment expect to decide whether to place the matter on a subsequent agenda.

(Gov. Code, § 11125.7.)

ITEM 3

Executive Officer's Statement

ITEM 4

**California Victim Compensation Board
Legislative Update
May 19, 2022**

SB 877 (Eggman) – CalVCB: Mental Health Services: Reimbursement.

This bill would authorize CalVCB to reimburse mental health providers who are licensed outside of California.

Status: On the Suspense File in the Senate Appropriations Committee

SB 993 (Skinner) – Victims and Persons Erroneously Convicted

This bill would increase the total cap on reimbursement (from \$70,000 to \$100,000), increase the caps on relocation (from \$2,000 to \$7,500), funeral and burial (from \$7,500 to \$20,000) and crime scene cleanup expenses (from \$1,000 to \$1,700), and eliminate caps and session limits for mental health counseling services. It would add a fourth board member with experience in restorative justice. It would expand eligibility for compensation of income and support loss, including for a victim who was unemployed at the time of the crime. It would allow documentation other than a crime report to be used to verify a qualifying crime. It would shorten the time period for processing of applications and appeals and extend the time period for a victim to provide additional information, appeal a decision, request reconsideration or file a petition for a writ of mandate. It would add requirements for CalVCB's communication of information to claimants. It would remove reasons for denial, including felony convictions, lack of cooperation and involvement in the events leading to the crime. It would create a presumption in favor of granting an emergency award for relocation or funeral expenses. It would require governmental agencies to provide information to potential survivors of crime about CalVCB services and require courts to provide information to survivors about the offender's sentence. It would also increase compensation for erroneously convicted individuals to account for inflation, legal expenses, and time spent on parole or probation. Finally, it would establish a pilot program within OES to contract with community-based organizations to provide direct cash assistance to survivors of violence.

Status: Scheduled for Senate Appropriations Committee on May 9

AB 2126 (Flora) – Controlled Substances

This bill would create the Fentanyl Victim Compensation Fund and deposit into that fund one-tenth of the collections from a \$20,000 fine imposed on drug charges in cases involving fentanyl. It would also authorize CalVCB to accept applications for reimbursement for up to \$7,500 for funeral and burial expenses arising from, and up to \$5,500 for mental health counseling related to, a fatal fentanyl overdose, if those applications are submitted by a surviving parent, grandparent, sibling, child, grandchild, spouse, or fiancé of the deceased. CalVCB would be authorized to reimburse those expenses upon an appropriation of funds from the Fentanyl Victim Compensation Fund by the Legislature for this purpose.

Status: On the Suspense File in the Assembly Appropriations Committee

AB 2850 (Berman) – California Sexual Assault Response Team Advisory Council

This bill would create the California Sexual Assault Response Team (SART) Advisory Council to promote swift, coordinated, competent, and efficient sexual assault intervention in every county, whose work shall be directed by a lead agency or department to be specified by the Governor. The bill would require the council to consist of representatives from specified entities, including the California Victim Compensation Board, sexual assault forensic examination teams, law enforcement agencies, county district attorneys' offices, crime laboratories, rape crisis centers, and hospitals. The bill would establish procedures for the council and require the council to, among other things, review statewide sexual assault intervention, advise county sexual assault response team programs, and submit, beginning on November 30, 2024, a biennial report to the Governor, Legislature, relevant legislative committees, and specified state agencies.

Status: In the Assembly Appropriations Committee

SB 299 (Leyva) – Victim Compensation: Use of Force by Law Enforcement

This bill would add to the definition of a crime compensable by CalVCB an incident occurring on or after January 1, 2022, in which an individual sustains serious bodily injury, pursuant to Penal Code section 243, or death as a result of use of force by a law enforcement officer, as defined, regardless of whether the officer is arrested for, charged with, or convicted of committing a crime. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force due to the victim's involvement in the crime or failure to cooperate with law enforcement. It would require denial of a use of force claim for involvement when the victim is convicted of a violent crime, pursuant to Penal Code section 667.5, or a crime that caused the serious bodily injury or death of another person at the time and location of the incident, or if there is clear and convincing evidence that a victim who was killed by law enforcement committed such a crime. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force based solely upon the contents of a police report, or because a police report was not made, and it would require CalVCB to consider other forms of evidence, as specified, to establish that a qualifying crime occurred. Further, the bill would prohibit CalVCB from denying a claim, based on any crime that caused the death of the victim, due to the deceased victim's involvement of the crime or the victim's or a derivative victim's failure to cooperate with law enforcement. Finally, it would specify that CalVCB's determination on a claim is not to be considered in an action against a law enforcement officer.

Status: On the Assembly Inactive File

AB 1599 (Kiley) – Proposition 47: Repeal

This bill would repeal the changes and additions made by Proposition 47, except those related to reducing the penalty for possession of concentrated cannabis. The bill would become effective only upon approval of the voters at the next statewide general election. The Safe Neighborhoods and Schools Act, as enacted by Proposition 47, reduced the penalty for certain crimes and requires the Director of Finance to calculate the savings to the state as a result of the act. The amount of the savings is transferred from the General Fund to the Safe Neighborhoods and Schools Fund, to be used for specified purposes. Ten percent of those funds are administered by CalVCB to provide grants to Trauma Recovery Centers.

Status: Failed passage in the Assembly Public Safety Committee

SB 632 (Portantino) – Erroneous Conviction Claims Bill

This bill would appropriate \$1,807,120 from the General Fund to pay two erroneous conviction claims approved by CalVCB for George Souliotes and Guy Miles.

Status: In the Assembly Appropriations Committee

SB 981 (Glazer) – Criminal Procedure: Factual Innocence

This bill would expand the grounds for which an automatic recommendation for compensation of an erroneous conviction claim by CalVCB is required under subdivision (a) of Penal Code section 1485.55. It would also reduce the standard to obtain a court-issued finding of factual innocence under subdivision (b) of section 1485.55. It would also provide that the Attorney General's opportunity to object to the compensation of a claim where the underlying conviction was vacated may be extended beyond a 45-day extension for good cause, if agreed upon by stipulation between both parties.

Status: Passed off the Senate Floor and referred to the Assembly

SB 1468 (Glazer) – Factual Innocence

This bill would require the Department of Justice, when a person is found to be factually innocent, to issue to the person a certificate of innocence, annotate the person's state summary criminal history information, and request any local, state, or federal agency or entity to which the department provided that criminal record information to also annotate their records. It also would require local law enforcement agencies in those circumstances to annotate any local summary criminal history information for the person and to request that any local, state, or federal agency or entity to which the law enforcement agency provided that criminal offender record information annotate its records.

Status: Scheduled for Senate Appropriations Committee on May 9

SB 1106 (Wiener) – Criminal Resentencing: Restitution

This bill would prohibit a petition for relief, whether statutorily authorized or in the court's discretion, from being denied due to an unfulfilled order of restitution or restitution fine. The bill would also remove the prohibition against a parolee or inmate from being released on parole to reside in another receiving state if the parolee or inmate is subject to an unsatisfied order for restitution to a victim or a restitution fine with the sending state.

Status: On the Senate Floor

SB 119 (Skinner) – Budget Act of 2021

This bill amends the Budget Act of 2021, which appropriated \$300,000 to CalVCB for a contract with the Alliance for a Better Community. The amendment specifies that the contract is for study of and outreach to survivors of forced or involuntary sterilization at previously named Los Angeles County Hospital, currently named Los Angeles County + USC Medical Center in Los Angeles, California.

Status: Signed by the Governor (Chapter 9, Statutes of 2022)

AB 2600 (Dahle) – State Agencies: Letters and Notices: Requirements

This bill would require that every state agency, when sending any communication to any recipient, state, in bolded font at the beginning of the communication, whether it requires action on the part of the recipient or serves as notice requiring no action.

Status: In the Assembly Accountability and Administrative Review Committee

AB 1733 (Quirk) – State Bodies: Open Meetings

This bill would specify that a “meeting” under the Bagley-Keene Open Meeting Act, includes a meeting held entirely by teleconference.

Status: Hearing postponed in Assembly Governmental Organization Committee

AB 1795 (Fong) – Open Meetings: Remote Participation

This bill would require state bodies to provide all persons the ability to participate both in-person and remotely in any meeting subject to the Bagley-Keene Open Meeting Act and to address the body remotely.

Status: In the Assembly Governmental Organization Committee

Bills Impacting Victim Services**AB 2534 (Bryan) – Survivor Support and Harm Prevention Pilot Program Act**

This bill would, contingent upon an appropriation, establish the Survivor Support and Harm Prevention Pilot Program, to be administered by the California Health and Human Services Agency, with the purpose of funding noncarceral, nonpunitive, prevention-oriented, and therapeutic programs that support survivors of crime and otherwise support individuals who have experienced violence or trauma of any nature. The bill would require the agency to solicit applications from counties interested in hosting the pilot program and would require the agency to work with no more than 5 counties.

Status: In the Assembly Appropriations Committee

AB 2553 (Grayson) – Human Trafficking Act: California MAST

This bill would establish the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. The task force would be comprised of specified state officials or their designees and specified individuals who have expertise in human trafficking or providing services to victims of human trafficking.

Status: In the Assembly Appropriations Committee

ITEM 5

California Victim Compensation Board
Contract Report
May 19, 2022

The Board has delegated to the Executive Officer the authority to execute contracts with county victim centers for the verification of victim compensation program applications; contracts with counties for assistance in the effective collection of restitution from offenders; contracts for the review and adjustment of medical bills received by the California Victim Compensation Program; and contracts for the maintenance of the Board's information technology system.

Further, the Board has delegated to the Executive Officer the authority to execute all other contracts in an amount not to exceed \$200,000. All contracts in excess of \$200,000 require Board approval prior to execution.

For all contracts for which the Executive Officer has delegated authority, the Executive Officer reports to the Board the substance and amount of the contract at the meeting following execution of the contract.

Contractor Name and PO/Contract Number	Contract Amount and Contract Term	Good or Service Provided
Approval		
Contractor Name: Alliance for a Better Community PO/Contract Number: S22-001	Contract Amount: \$300,000.00 Term: 7/1/2022 – 6/31/2024	The Contractor shall conduct initial research of forced or involuntary sterilization that possibly took place up until 2012 at Los Angeles County + USC Medical Center, formerly known as Los Angeles County Hospital, located in Los Angeles, California. California Senate Bill 119, Chapter 9 section 19.57 (f)(28) mandates CalVCB to contract with Alliance for a Better Community through an exemption per State Contract Manual Volume 1, section 5.80(A)(11).
Informational		
Contractor Name: Kovarus Inc. PO/Contract Number: PO 2635	Contract Amount: \$96,071.65 Term: 3/24/2022 – 3/13/2023	The Contractor shall provide support and maintenance to Dell EMC Avamar system, which enables fast and efficient backup of CalVCB's data on file shares and servers, including Cares2 and OLA. This Contract was procured utilizing a DGS approved Leverage Procurement Agreement under Statewide Contracts.

ITEM 6

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

8 In the Matter of:

9 **Monica Magana**

10 Claim No. 21-ECO-13

Proposed Decision

(Penal Code §§ 4900, et seq.)

11 **I. Introduction**

12 On July 9, 2021, Monica Magana (Magana) applied to the California Victim Compensation
13 Board (CalVCB) as an erroneously convicted felon pursuant to Penal Code section 4900. The
14 application was based upon Magana's convictions for robbery in concert and burglary in concert, both
15 of which were reversed on appeal for insufficient corroborating evidence of accomplice testimony.
16 Magana seeks compensation for the duration of her imprisonment, which she calculates as 1,063
17 days, for a total amount of \$148,820.¹ The Attorney General objected, arguing that the evidence
18 failed to prove Magana's innocence by a preponderance. Both parties waived a hearing and agreed
19 to proceed on the written record. Throughout these proceedings, Magana represented herself, and
20 the Attorney General was represented by Deputy Attorney General Dina Petrushenko.

21 After considering all the evidence in the record, the application is recommended for denial
22 because Magana has failed to show by a preponderance of the evidence that she is more likely
23 innocent than guilty of her vacated convictions for robbery and burglary in concert.

24 **II. Procedural Background**

25 Magana was arrested on July 5, 2017, and subsequently charged in Kern County Superior
26 Court case number BF168932B with one count of robbery of an inhabited dwelling while acting in
27

28 ¹ Magana Application at p. 1.

1 concert and one count of first-degree burglary with a person present while acting in concert with a
2 gang, plus enhancements for use of a firearm and serving a prior prison term.² Joseph Gonzales
3 (Gonzales), Jorge Jaimes (Jaimes), and Angie Ortiz (Ortiz) were charged as codefendants.³ Magana
4 was jointly tried before a single jury with Gonzales and Jaimes, at which Ortiz testified after settling
5 her case. Magana was convicted of all charges on April 6, 2018, along with her codefendants
6 Gonzales and Jaimes.⁴ The trial court sentenced Magana on May 4, 2018, found circumstances in
7 aggravation, denied probation, and committed Magana to state prison for the aggregate term of 15
8 years to life plus one year.⁵

9 Magana appealed to the Fifth Appellate District of the California Court of Appeal. She argued
10 that both of her convictions must be reversed because the accomplice testimony was not sufficiently
11 corroborated as required by Penal Code section 1111.⁶ The People conceded this issue.⁷ On
12 February 23, 2021, the appellate court reversed both counts pursuant to Penal Code section 1111
13 with directions to the superior court to enter a judgment of acquittal for each count upon remand.⁸
14 On June 18, 2021, the Kern County Superior Court held a hearing after the remittitur on appeal
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17 ² Pen. Code §§ 212.5, subd. (a) (robbery of an inhabited dwelling), 460, subd. (a) (burglary), 667.5,
18 subd. (c)(21) (person other than accomplice present during burglary), 213, subd. (a)(1)(A) (acting in
19 concert), 186.22, subd. (b)(1) (gang enhancement), 12022.53, subd. (b) and (e)(1) (one principal
20 intentionally and personally used a firearm during the commission of the offense), 667.5, subd. (b)
21 (prior prison term); AG Ex. 10 at pp. 2272-2274 and 2284. See also Kern County Superior Court
22 docket for *People v. Monica Magana*, case number BF168932B, accessible online at https://itsapps.kerncounty.com/iframe/nonCMS/crimindex/crimcal/crim_index_case_detail.asp (confirming arrest date
23 and criminal charges); Cal. Code Regs., tit. 2, § 617.8 (official notice).

24 ³ The co-defendants' convictions and appellate court proceedings are not at issue in Magana's
25 application and as such are not discussed in this decision.

26 ⁴ AG Ex. 10 at pp. 2272-2274 and 2284.

27 ⁵ AG Ex. 11 at pp. 1048-1049, 1061-1062, 2306.

28 ⁶ AG Ex. 14 at p. 2418. See also Pen. Code, § 1111 ("A conviction can not be had upon the testimony
of an accomplice unless it be corroborated by such other evidence as shall tend to connect the
defendant with the commission of the offense").

⁷ AG Ex. 14 at p. 2418.

⁸ AG Ex. 14 at p. 2426.

1 issued and entered a judgment of acquittal for both counts.⁹ Magana was apparently released from
2 imprisonment during these proceedings on or about June 1, 2020.¹⁰

3 On July 9, 2021, Magana submitted an application to CalVCB seeking compensation as an
4 erroneously convicted offender pursuant to Penal Code section 4900.¹¹ Magana requested
5 compensation for the duration of her confinement, which she calculates as 1,063 days, from her
6 arrest on July 5, 2017, up to but excluding the date of her release on June 1, 2020. Thus, Magana
7 seeks compensation in the amount of \$148,820, representing \$140 per day of her imprisonment.

8 On July 15, 2021, after reviewing the claim for jurisdiction, CalVCB requested a response
9 letter from the Attorney General pursuant to Penal Code section 4902, subdivision (a).¹² Following
10 two requests for an extension of time, the Attorney General timely submitted a response letter on
11 December 9, 2021, along with 15 supporting exhibits. In it, the Attorney General opposed Magana's
12 application for failing to prove her innocence by a preponderance of the evidence.

13 Both parties subsequently waived submission of a pre-hearing brief and appearance at an
14 evidentiary hearing before a hearing officer. Consequently, the record closed on January 13, 2022,
15 and the matter was assigned to CalVCB Senior Attorney Sara Harbarger.

16 **III. Factual Summary**

17 On the morning of June 27, 2017, Duron awoke to find two unknown men in his home, one of
18 whom was armed with a firearm.¹³ The pair soon left with several items of Duron's property. They
19 fled the scene in a black, older model Expedition, driven by a female, which was captured on a
20 neighbor's surveillance camera. Days later, police detained Ortiz in a matching vehicle, and she
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22 ⁹ Magana's Application at p. 1; see also Kern County Superior Court docket for *People v. Monica*
23 *Magana*, case number BF168932B.

24 ¹⁰ Magana's Application at p. 1. While on its face this date is in direct conflict with the timeline of actions
25 taken by the courts, this release date is the one that was provided by Magana in her application and the
26 Attorney General's Response Letter and Exhibits do not address the date of Magana's release or the
length of her confinement.

27 ¹¹ Magana did not submit any evidence or exhibits with her application.

28 ¹² CalVCB letter to parties, dated July 15, 2021.

¹³ The victim and witnesses are referred to by their first name only in an effort to preserve their privacy.

1 implicated Gonzales and Jaimes as the intruders and Magana as the mastermind. Duron
2 subsequently identified Gonzales and Jaimes as the intruders, but he denied ever meeting Magana
3 or Ortiz.

4 **A. Trial Transcript**

5 The following facts are summarized from the trial transcript provided in the Attorney General's
6 Exhibit six.¹⁴

7 1. Duron's Testimony

8 On June 26, 2017, Duron was out drinking with his friend. He did not receive a call from a
9 woman attempting to meet him or asking him for money.¹⁵ On June 27, 2017, at approximately 10
10 a.m., Duron was asleep in his living room.¹⁶ He lay on a sofa bed located directly facing the front
11 door.¹⁷ Duron awoke when two men kicked in his front door.¹⁸ One of the men, identified as
12 Gonzales, pointed a revolver at Duron's face and the other man, identified as Jaimes, ran through the
13 house grabbing items.¹⁹ Gonzales told Duron not to move or he would shoot him.²⁰ Gonzales and
14 Jaimes stole his Yamaha stereo receiver, pair of paradigm house speakers, Milwaukee work light,
15 Bosch chipping hammer, Xbox, cell phone, and keys from his home.²¹ Jaimes and Gonzales touched
16 his television in the living room in an unsuccessful attempt to remove it from his wall.²² As the men
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20 ¹⁴ The extensive testimony regarding the gang enhancements is not summarized in this decision
21 because only Magana's convictions for robbery and burglary of an inhabited dwelling acting in concert
22 are at issue, not the enhancements.

23 ¹⁵ AG Ex. 6 at 1348.

24 ¹⁶ AG Ex. 6 at p. 1296.

25 ¹⁷ *Ibid.*

26 ¹⁸ *Ibid.*

27 ¹⁹ AG Ex. 6 at pp. 1296-1297.

28 ²⁰ AG Ex. 6 at p. 1300.

²¹ AG Ex. 6 at pp. 1300-1301.

²² AG Ex. 6 at pp 1317, 1320, 1400-1401.

1 left, they told Duron not to call the cops.²³ Duron saw the men leave in a black, older model
2 Expedition driven by a female.²⁴

3 On July 4, 2017, Duron identified Gonzales in a photographic lineup.²⁵ Duron did not identify
4 Jaimes in any photographic line up because he was focused on the person holding the firearm,
5 Gonzales.²⁶ At trial, Duron identified both Jaimes and Gonzales as the men who entered his home
6 and took his possessions.²⁷ Duron testified he did not know nor did he invite into his home Magana,
7 Jaimes, or Gonzales.²⁸ A month prior to the incident, Duron separated from his wife and she moved
8 out of their home.²⁹ Duron was in the process of moving out of the home but still resided there at the
9 time of the crime.³⁰ Duron's children were not staying at the home at the time of the crime.³¹ Duron
10 was in a relationship with a woman named Kim at the time of the robbery.³²

11 2. Officer Thomas Hernandez's Testimony

12 On July 2, 2017, Officer Thomas Hernandez (Hernandez) located a 2002 black Ford
13 Expedition with a California license plate that matched the description of the robbery suspect's
14 vehicle.³³ Hernandez located Angie Oritz (Ortiz) inside the vehicle and placed her under arrest.³⁴
15 During the traffic stop, Jaimes came to the scene, and he was placed under arrest.³⁵

18 ²³ AG Ex. 6 at p. 1303.

19 ²⁴ AG Ex. 6 at pp. 1304, 1345.

20 ²⁵ AG Ex. 6 at pp. 1325-1326.

21 ²⁶ AG Ex. 6 at p. 1328.

22 ²⁷ AG Ex. 6 at pp. 1326, 1333-1334.

23 ²⁸ *Ibid.*

24 ²⁹ AG Ex. 6 at p. 1340.

25 ³⁰ *Ibid.*

26 ³¹ AG Ex. 6 at p. 1320.

27 ³² AG Ex. 6 at 1349.

28 ³³ AG Ex. 6 at p. 1423.

³⁴ AG Ex. 6 at p. 1424.

³⁵ AG Ex. 6 at p. 1425.

1 3. Ortiz's Testimony

2 In exchange for a plea deal, Ortiz testified at trial against all three defendants. Ortiz stated
3 she had been spending time with Magana because they resided at the same motel and had mutual
4 friends.³⁶ According to Ortiz, Magana told her on June 26, 2017, that she (Magana) was dating
5 someone at Duron's address.³⁷ Magana previously spoke with Duron on the phone.³⁸ Duron was
6 supposed to give her some money, but when she drove by his house, he did not show up to give her
7 money.³⁹

8 Ortiz further testified that, on June 27, 2017, Magana came to her room and said they should
9 go back to Duron's home to pick up the television to pay for the motel room.⁴⁰ Magana told Ortiz that
10 she owned the television.⁴¹ Magana told Ortiz that Duron was at work and would not be home.⁴²
11 Magana asked Ortiz to pick up Jaimes so that they could enter Duron's home because she could not
12 kick down the door to get inside.⁴³ Ortiz agreed to the plan.⁴⁴ Ortiz and Magana drove to Jaimes'
13 mom's house.⁴⁵ When they arrived at Jaimes' location, both Jaimes and Gonzales were outside.⁴⁶
14 Magana asked Gonzales and Jaimes if they wanted to pick up a television, and they responded yes.⁴⁷

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19 ³⁶ AG Ex. 6 at pp. 1616-1617.

20 ³⁷ AG Ex. 6 at p. 1617.

21 ³⁸ *Ibid.*

22 ³⁹ AG Ex. 6 at p. 1619.

23 ⁴⁰ AG Ex. 6 at p. 1621.

24 ⁴¹ AG Ex. 6 at p. 1589.

25 ⁴² AG Ex. 6 at p. 1621.

26 ⁴³ *Ibid.*

27 ⁴⁴ AG Ex. 6 at p. 1588.

28 ⁴⁵ AG Ex. 6 at pp. 1589-1590.

⁴⁶ AG Ex. 6 at p. 1623.

⁴⁷ AG Ex. 6 at pp. 1590;1624.

1 The four of them drove to Duron's house, which they believed was empty.⁴⁸ Ortiz knew
2 Magana did not have permission to enter Duron's home.⁴⁹ When they arrived, Ortiz and Magana
3 stayed in the vehicle, and Gonzales and Jaimes went in the house.⁵⁰ Magana did not enter the house
4 because she knew Duron and did not want to be identified.⁵¹ At some point, Magana and Ortiz exited
5 the vehicle.⁵² Jaimes made multiple trips to take items out of the home, handed the possessions to
6 Magana and Ortiz, and Magana and Ortiz put the stolen goods in the vehicle.⁵³ Ortiz heard Jaimes
7 tell Magana, "he wasn't supposed to be here."⁵⁴ Ortiz saw a woman from a nearby house approach
8 and obtain her license plate number.⁵⁵

9 After the items were loaded into the vehicle, the same four people entered the vehicle and
10 drove away.⁵⁶ As they were driving, Ortiz heard a description of her vehicle occupied by two men and
11 two women on the police scanner.⁵⁷ Gonzales told Ortiz to drop him, Jaimes, and the gun at his
12 grandmother's home because they were looking for four people.⁵⁸ Ortiz dropped Gonzales and
13 Jaimes off, Magana stayed in the vehicle, and they drove back to the motel.⁵⁹ On the drive back to
14 the motel, Magana told her to pull over and they took the license plates off her vehicle.⁶⁰ Later that
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18 ⁴⁸ AG Ex. 6 at p. 1590.

19 ⁴⁹ AG Ex. 6 at p. 1591.

20 ⁵⁰ AG Ex. 6 at pp. 1592-1593.

21 ⁵¹ AG Ex. 6 at p. 1648.

22 ⁵² AG Ex. 6 at p. 1664.

23 ⁵³ AG Ex. 6 at pp. 1593-1594, 1664.

24 ⁵⁴ AG Ex. 6 at p. 1594.

25 ⁵⁵ AG Ex. 6 at p. 1595.

26 ⁵⁶ AG Ex. 6 at pp. 1595-1596.

27 ⁵⁷ AG Ex. 6 at p. 1596.

28 ⁵⁸ *Ibid.*

⁵⁹ AG Ex. 6 at pp. 1597-1598.

⁶⁰ AG Ex. 6 at p. 1598.

1 day, Gonzales and Jaimes picked up the stolen items.⁶¹ Neither Magana nor Ortiz received money
2 from the sale of the stolen items.⁶²

3 The Prosecutor played a video surveillance recording of the night of the incident. Ortiz
4 identified Gonzales and Jaimes on a video surveillance recording exiting her vehicle at 9:40. At 9:43
5 on the videotape, Ortiz identified Jaimes exit Duron's home and Magana exit the vehicle.⁶³

6 **B. Crime Report**

7 The following facts are summarized from the Bakersfield Police Department's crime reports
8 provided in the Attorney General's Exhibit 15.

9 **1. Magana's Statement**

10 On July 4, 2017, Officer Jones placed Magana under arrest, read her Miranda rights, and
11 interviewed her.⁶⁴ Magana stated she never committed a robbery or went to someone's residence to
12 retrieve items.⁶⁵ She stated one week prior, Jaimes was at an unknown residence with non-descript
13 items.⁶⁶ She and Ortiz arrived in Ortiz's black Expedition to pick him up.⁶⁷ They took Jaimes to an
14 unknown residence to sell the items.⁶⁸ She stated Jaimes was not in possession of any high value
15 items like an Xbox.⁶⁹ She stated Gonzales was not with them and she had not seen him in several
16 weeks.⁷⁰ She rode with Ortiz to Ortiz's hotel and removed the license plates from the vehicle at that
17 time because they were expired.⁷¹ She denied directing anyone to obtain a television for her.⁷²

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19 ⁶¹ AG Ex. 6 at p. 1603.

20 ⁶² *Ibid.*

21 ⁶³ AG Ex. 6 at pp. 1601-1602.

22 ⁶⁴ AG Ex. 15 at p. 2506.

23 ⁶⁵ AG Ex. 15 at p. 2508.

24 ⁶⁶ *Ibid.*

25 ⁶⁷ *Ibid.*

26 ⁶⁸ *Ibid.*

27 ⁶⁹ *Ibid.*

28 ⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

Officer Woessner and Barajas conducted a second interview on the same day.⁷³ The officers explained the investigation, video surveillance, and asked for her side of the story.⁷⁴ Magana stated she did not know what they were talking about and she did not wish to make a statement which could get her in trouble.⁷⁵

2. Ortiz's Statement

On July 2, 2017, Officer Woessner arrested Ortiz and transported her to the Bakersfield Police Department.⁷⁶ Officer Hernandez and Officer Woessner advised Ortiz of her Miranda rights and asked her to tell them about the robbery.⁷⁷ Ortiz stated Magana asked her for and she provided a ride to a friend's (Duron's) residence the night prior to the robbery.⁷⁸ On the day of the robbery, Magana asked to go to Duron's residence with Jaimes and Gonzales to retrieve a television.⁷⁹ Magana told Ortiz she owned the television and Duron would not be at the residence.⁸⁰ Ortiz transported Magana, Jaimes, and Gonzales to Duron's residence and parked her vehicle in front.⁸¹ Ortiz remained in the vehicle with Magana while Jaimes and Gonzales exited the vehicle, walked to the front door, kicked open the door, and entered Duron's residence.⁸² Jaimes exited the residence with a stereo receiver.⁸³ Magana stepped out of the vehicle, took the stereo receiver from Jaimes, and placed it in the rear seat of the vehicle.⁸⁴ Jaimes returned to the residence and exited with an

⁷³ AG Ex. 15 at p. 2512.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ AG Ex. 15 at p. 2500.

⁷⁷ AG Ex. 15 at p. 2501.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

1 Xbox gaming system.⁸⁵ At the vehicle, Jaimes told Magana that she said he would not be home.⁸⁶
2 Ortiz told everyone to enter her vehicle because she was leaving.⁸⁷ Ortiz stated she did not know
3 about a firearm until after the incident, when Gonzales asked her to take him to a location to conceal
4 the firearm.⁸⁸ Ortiz dropped off Gonzales and Jaimes and drove Magana back to the motel.⁸⁹ On the
5 way to the motel, after hearing a law enforcement broadcast of Ortiz's license plates, Magana asked
6 her to stop, Magana exited the vehicle, and removed the license plates.⁹⁰

7 3. Jaimes Statement

8 On July 1, 2017, Officer Hernandez arrested Jaimes, transported him to the Bakersfield Police
9 Department, and read his Miranda Rights.⁹¹ During the interview, Jaimes asked what Ortiz stated
10 and then said it was whatever she said.⁹² Officer Hernandez asked if what happened at the
11 residence was not supposed to happen and Jaimes nodded his head side to side.⁹³ Officer
12 Hernandez stated he interpreted this motion to indicate it was not how it was planned.⁹⁴ Throughout
13 the interview, Jaimes felt he was misled by the involved females but did not mention Magana by
14 name.⁹⁵

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20 ⁸⁵ AG Ex. 15 at p. 2501.

21 ⁸⁶ *Ibid.*

22 ⁸⁷ *Ibid.*

23 ⁸⁸ AG Ex. 15 at p. 2502.

24 ⁸⁹ *Ibid.*

25 ⁹⁰ *Ibid.*

26 ⁹¹ AG Ex. 15 at p. 2504.

27 ⁹² AG Ex. 15 at p. 2505.

28 ⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

1 4. Amanda's statement

2 On June 27, 2017, Officer Weyer interviewed Amanda, Duron's neighbor.⁹⁶ Amanda stated at
3 approximately 10 a.m., she heard a vehicle stop in front of Duron's property.⁹⁷ She described the
4 vehicle as a black Ford Expedition.⁹⁸ She observed a Hispanic female, heavy set, with long black
5 hair seated in the driver's seat.⁹⁹ She went back inside her home for a few minutes until she heard
6 numerous footsteps running.¹⁰⁰ She came back outside and observed three additional suspects, two
7 Hispanic males and a Hispanic female running from Duron's residence carrying items.¹⁰¹ The three
8 people squeezed through a hole in the wrought iron fence and handed the items to one another.¹⁰²
9 Amanda believed the suspects burglarized Duron's home so she ran to the vehicle and obtained the
10 license plate number.¹⁰³ She watched the vehicle flee the scene with both men and both women
11 inside.¹⁰⁴ She had not seen the suspects or vehicle prior to that date.¹⁰⁵ Amanda was unable to
12 identify Ortiz in a photographic line up.¹⁰⁶ Officers did not show Amanda a photographic line up with
13 Jaimes, Gonzales, or Magana.¹⁰⁷

14 5. Video Surveillance

15 Officers James and Martinez obtained and reviewed the video surveillance of a camera that
16 partially faced Duron's home.¹⁰⁸ The video showed a black sport utility vehicle parked in front of
17 _____

18 ⁹⁶ AG Ex. 15 at p. 2483.

19 ⁹⁷ *Ibid.*

20 ⁹⁸ *Ibid.*

21 ⁹⁹ *Ibid.*

22 ¹⁰⁰ *Ibid.*

23 ¹⁰¹ *Ibid.*

24 ¹⁰² *Ibid.*

25 ¹⁰³ *Ibid.*

26 ¹⁰⁴ AG Ex. 15 at p. 2484.

27 ¹⁰⁵ *Ibid.*

28 ¹⁰⁶ AG Ex. 15 at p. 2491.

¹⁰⁷ AG Ex. 15 at pp. 2491-2492.

¹⁰⁸ AG Ex. 15 at p. 2489.

Duron's home.¹⁰⁹ Two male subjects exited the vehicle and entered Duron's home.¹¹⁰ One male exited the residence and stood along the fence.¹¹¹ A third female subject exited the vehicle and retrieved property from the male subject at the fence.¹¹² The male subject continued to retrieve property from inside Duron's residence.¹¹³ A fourth subject, female with a heavy build, exited the front driver's side of the vehicle.¹¹⁴ All four subjects re-entered the vehicle.¹¹⁵ Amanda exited her residence and tried to contact the subjects.¹¹⁶ The vehicle drove away from the scene.¹¹⁷

6. Fingerprint Analysis

Latent Print Examiner Harrelson obtained latent prints from the television inside Duron's home in the living room.¹¹⁸ One of the latent fingerprints from the television was identified as belonging to Jaimes.¹¹⁹

C. Magana's Statements in her Penal Code section 4900 Application

In Magana's application, she stated Duron testified that he did not know her and she was not there the day the crime was committed. She stated the video of the crime shows it was not her or that you cannot identify anyone in the video. Additionally, Amanda did not identify her. Magana asserted that Ortiz lied continuously on the stand. Magana stated she went to trial and did not plead guilty. During the trial, she filed a motion to dismiss due to insufficient evidence that the court denied. Magana stated her appeal was granted due to insufficient evidence and she never should have been

¹⁰⁹ AG Ex. 15 at p. 2489.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² AG Ex. 15 at p. 2489; see also AG Ex. 4 at pp. 1029-1031 (CDCR records describing Magana in 2015 as Hispanic female, five feet tall, weighing 140 pounds).

¹¹³ AG Ex. 15 at p. 2489.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ AG Ex. 15 at p. 2490.

¹¹⁸ AG Ex. 15 at p. 2518.

¹¹⁹ *Ibid.*

1 incarcerated. Magana lost her mother on December 16, 2018, and she was not allowed to attend her
2 funeral because of her incarceration. Besides these statements, Magana did not provide any other
3 evidence to support her application.

4 **Determination of Issues**

5 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
6 for a felony offense, to apply for compensation from CalVCB.¹²⁰ Once an application has been properly
7 filed, CalVCB typically requests a written response from the Attorney General pursuant to Penal Code
8 section 4902, and then an informal administrative hearing ensues in accordance with Penal Code
9 section 4903.¹²¹ Throughout these proceedings, the claimant bears the burden to prove, by a
10 preponderance of the evidence, that (1) the crime with which she was charged was either not
11 committed at all, or, if committed, was not committed by her, and (2) she sustained injury through her
12 erroneous conviction and imprisonment.¹²² If the claimant satisfies her burden of persuasion for both
13 elements, then pursuant to Penal Code section 4904, CalVCB shall recommend to the Legislature an
14 award of compensation equal to \$140 per day of incarceration, including pre-trial confinement in county
15 jail.¹²³

16 When determining whether the applicant has satisfied her burden of proof, the Board may
17 consider the “claimant’s denial of the commission of the crime; reversal of the judgment of conviction;
18 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
19 crime....” However, none of these circumstances may be deemed sufficient evidence to warrant a
20 recommendation for compensation “in the absence of substantial independent corroborating evidence
21 that claimant is innocent of the crime charged.” The Board may also “consider as substantive evidence
22 the prior testimony of witnesses [that] claimant had an opportunity to cross-examine, and evidence
23 admitted in prior proceedings for which claimant had an opportunity to object.” Ultimately, the Board
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25 ¹²⁰ Pen. Code, § 4900.

26 ¹²¹ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

27 ¹²² Pen. Code, §§ 4903 subd. (a), 4904; Cal. Code Regs., tit. 2, § 644, subd. (c).

28 ¹²³ Pen. Code, § 4904.

1 may consider “any other information that it deems relevant to the issue before it,” even if inadmissible
2 under the traditional rules of evidence, so long as “it is the sort of evidence on which reasonable
3 persons are accustomed to rely in the conduct of serious affairs.”¹²⁴

4 CalVCB’s broad authority to consider all relevant evidence when deciding a claimant’s
5 application for compensation is expressly limited by Penal Code section 4903. Specifically, subdivision
6 (c) of section 4903 provides:

7 In a hearing before the board, the factual findings and credibility determinations establishing the
8 court’s basis for writ of habeas corpus, a motion to vacate pursuant to Section 1473.6 or
9 paragraph (2) of subdivision (a) of Section 1473.7, or an application for a certificate of factual
10 innocence as described in Section 1485.5 shall be binding on the Attorney General, the
11 factfinder, and the board.¹²⁵

12 Plainly understood, section 4903 binds CalVCB to any factual finding rendered by a court when
13 considering a habeas petition or other, enumerated post-conviction remedies but omits any findings
14 rendered by an appellate court on direct appeal.

15 Nonetheless, CalVCB may be bound by an appellate court’s determinations on direct appeal
16 under the doctrine of res judicata. Res judicata bars relitigation of claims that were, or could have
17 been, raised in a prior proceeding.¹²⁶ The related doctrine of collateral estoppel similarly precludes
18 relitigation of the same issues and arguments that were already decided in the prior proceeding.¹²⁷
19 Thus, an appellate court’s determination of an issue or claim between a claimant and the Attorney
20 General is binding in a subsequent CalVCB proceeding and may not be reconsidered on the same or
21 different grounds that were, or could have been, previously presented on appeal. Despite these
22 binding determinations, the claimant continues to bear the burden of proof to demonstrate innocence by
23 a preponderance of the evidence.

24 ¹²⁴ Cal. Code Regs., tit. 2, § 641, subds. (a)-(c).

25 ¹²⁵ Pen. Code, § 4903, subd. (c); see also Pen. Code, § 1485.5, subd. (c) (rendering “express factual
26 findings made by the court, including credibility determinations, during proceedings on a petition for
27 habeas corpus, a motion to vacate judgment pursuant to Section 1473.6, or an application for a
28 certificate of factual innocence ... binding on ... the California Victim Compensation Board”).

¹²⁶ *Noble v. Draper* (2008) 160 Cal.App.4th 1, 10-12.

¹²⁷ *Ibid.*; see also 7 Witkin, Cal. Proc. 5th, Judgement: Res Judicata, § 413 (Supp. 2008).

1 **A. Binding Court Determinations**

2 CalVCB recognizes the appellate court's binding determination that "there was no evidence
3 connecting Magana to the crime independent of Ortiz's testimony."¹²⁸ Specifically, no witness identified
4 Magana and no forensic evidence linked her to the crime scene.¹²⁹ "The only evidence close to
5 corroborating Ortiz's testimony was the 911 caller describing two females involved in the crime and a
6 surveillance video showing the same."¹³⁰ This evidence showed Ortiz was at the crime scene, but it did
7 not independently connect Magana to the crime.¹³¹ Accordingly, as conclusively found by the appellate
8 court, the trial evidence was legally insufficient to prove the crimes charged against Magana beyond a
9 reasonable doubt.¹³²

10 However, this binding determination does not amount to an affirmative finding of innocence.
11 Insufficient proof of guilt beyond a reasonable doubt is not equivalent to persuasive proof of innocence.
12 Moreover, the administrative record before CalVCB includes additional evidence not presented at trial.
13 Thus, CalVCB remains free to determine whether, in its view, the weight of evidence presented in this
14 administrative proceeding satisfies Magana's burden to prove her innocence by a preponderance of
15 evidence.

16 **B. Automatic Compensation Provision of Penal Code section 4902 does not apply**

17 Under Penal Code section 4902, an applicant is entitled to an automatic recommendation for
18 compensation if they obtained a finding of factual innocence under Penal Code section 851.865 or
19 1485.55 for each and every conviction underlying their conviction.¹³³ Magana did not pursue a motion
20 for a finding of factual innocence, and the appellate court's reversal on appeal for insufficient evidence
21 of guilt does not constitute one. Accordingly, Magana is ineligible for automatic compensation.

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24 ¹²⁸ AG Ex. 14 at p. 2426.

25 ¹²⁹ *Ibid.*

26 ¹³⁰ *Ibid.*

27 ¹³¹ *Ibid.*

28 ¹³² *Ibid.*

¹³³ Pen. Code, § 4902, subd. (a).

1 **C. Shifted Burden Provision of Penal Code section 4900, subdivision (b), does not apply**

2 Under recently enacted subdivision (b) of Penal Code section 4900, a recommendation for
3 compensation is mandated for certain claimants whose convictions were vacated either by a writ of
4 habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), unless the
5 Attorney General presents clear and convincing evidence of guilt.¹³⁴ Significantly, reversal on appeal is
6 not one of the three, enumerated events that may trigger application of subdivision (b). Because the
7 appellate court reversed Magana's conviction on appeal, the burden shifting provision of subdivision (b)
8 does not apply.

9 **D. Penal Code section 1111 is not applicable to this proceeding**

10 In a criminal trial, a conviction cannot be had upon the testimony of an accomplice unless it is
11 corroborated by other evidence that connects the defendant to the commission of the offense.¹³⁵ Penal
12 Code section 1111 reflects the Legislature's determination that because of the questions of the
13 reliability of accomplice testimony, the testimony by itself is insufficient to support a conviction.¹³⁶ This
14 does not affect the admissibility of accomplice testimony, but rather the legislative determination of how
15 accomplice testimony must be treated.¹³⁷ Accomplice testimony requires corroboration not because
16 such evidence is factually insufficient to permit a reasonable trier of fact to find the accused guilty
17 beyond a reasonable doubt, but because of the Legislature's concerns regarding the reliability of said
18 testimony.¹³⁸ This requirement of corroboration applies by its terms to conviction of an offense.¹³⁹ The
19 corroboration requirement for accomplices is vital to the jury's consideration of the evidence.¹⁴⁰

20 The determination to grant or deny an application for a recommendation for compensation in
21 this administrative proceeding does not constitute a criminal conviction. To the contrary, a claim under
22 _____

23 ¹³⁴ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

24 ¹³⁵ Pen. Code, § 1111.

25 ¹³⁶ *People v. Jones* (2018) 26 Cal.App.5th 420, 438.

26 ¹³⁷ *People v. Maldonado* (1999) 72 Cal.App.4th 588, 597.

27 ¹³⁸ *People v. Najera* (2008) 43 Cal.4th 1132, 1137.

28 ¹³⁹ *People v. Maldonado, supra*, 72 Cal.App.4th at 597.

¹⁴⁰ *People v. Najera, supra*, 43 Cal.4th at 1137.

1 Penal Code section 4900 does not implicate any fundamental vested interest.¹⁴¹ As such, Penal Code
2 section 1111 is inapplicable to this proceeding. Accordingly, the Board may consider Ortiz's
3 accomplice testimony as relevant evidence so long as "it is the sort of evidence on which reasonable
4 persons are accustomed to rely in the conduct of serious affairs."¹⁴²

5 **E. Weight of Evidence Fails to Prove Innocence**

6 After considering all the evidence detailed above and taking into consideration the binding
7 determinations by the appellate court, Magana has failed to prove that she is more likely innocent than
8 guilty of her vacated convictions. While the sworn testimony from Ortiz alone is insufficient to support a
9 conviction beyond a reasonable doubt, this testimony strongly suggests that Magana is more likely
10 guilty than not. Specifically, Ortiz's testimony showed Magana planned the robbery and burglary by
11 choosing the victim, picking the vehicle and driver, finding the location, obtaining the victim's schedule,
12 suggesting the accomplices, and proposing an item of value to steal. During the commission of the
13 robbery and burglary, Magana assisted Jaimes and Gonzales by loading the stolen items into the
14 vehicle. After the robbery/burglary, Magana continued to assist in the robbery and burglary by listening
15 to the police scanner, asking to stop the vehicle, and changing the license plates. Additionally, while
16 Magana denied her involvement in the robbery/burglary, she did admit she knew and spent time with
17 Ortiz, Gonzales, and Jaimes, rode in Ortiz's vehicle, and removed Ortiz's license plates. These
18 admissions directly link Magana to the codefendants and the vehicle used during the commission of the
19 crime.

20 Additional evidence bolstered Ortiz's incriminating testimony against Magana, even if insufficient
21 to uphold her criminal convictions under Penal Code section 1111. Specifically, the surveillance video
22 confirms the robbery was committed by two men and two women, as does Amanda's 911 call
23 describing the two Hispanic men and two Hispanic women. As confirmed by Magana's California
24 Department of Corrections and Rehabilitation records, she is a Hispanic woman, and by Magana's own
25 admission, she was riding in Ortiz's car with Jaimes after picking up Jaimes at an unknown residence
26

27 ¹⁴¹ *Tennison v. California Victim Comp. & Government Claims Bd.* (2007) 152 Cal.App.4th 1164, 1182.

28 ¹⁴² Cal. Code Regs., tit. 2, § 641.

1 while in possession of multiple property items. Magana also admitted, as claimed by Ortiz, that she
2 removed the license plate from Ortiz's car shortly thereafter, supposedly because the registration was
3 expired. Ortiz's version of events is supported by Duron's identifications of Gonzales and Jaimes.
4 Perhaps most significantly, Ortiz's account is supported by the latent fingerprint analysis confirming
5 Jaimes was present in Duron's home and specifically touched the television. Regardless of Penal
6 Code section 1111, a reasonable person conducting serious affairs may rely upon Ortiz's accomplice
7 testimony under these circumstances.¹⁴³

8 While Magana alleged Ortiz provided false testimony, Magana did not provide any evidence to
9 support this assertion. Under this scenario, Ortiz would have truthfully implicated herself, Jaimes, and
10 Gonzales in Duron's robbery and burglary, but then falsely implicated Magana to protect some other
11 unidentified Hispanic female who was the real culprit. This unlikely scenario appears even less
12 plausible after considering Magana's admission to riding with Ortiz and Jaimes from an unknown
13 residence while Jaimes was in possession of multiple property items and then accompanying Jaimes to
14 another unknown residence to sell them. By comparison, it is noted that Magana suffered a prior felony
15 conviction for receipt of stolen property and identity theft, both of which involve acts of moral turpitude
16 that generally undermine her credibility.¹⁴⁴ Additionally, the appellate court did not make any findings
17 regarding the credibility or veracity of Ortiz's testimony to support Magana's assertion.

18 Magana mistakenly relies on Duron's testimony that he did not know her as proof of her
19 innocence. While Duron's denial contradicts Ortiz's understanding of Magana and Duron's relationship,
20 it remains possible that either Magana misrepresented their relationship to Ortiz or Duron did not want
21 to admit to any relationship with Magana. This readily explained discrepancy fails to outweigh the
22 incriminating evidence detailed above.

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26 ¹⁴³ Cal. Code Regs., tit. 2, § 641, subd. (c).

27 ¹⁴⁴ AG Ex. 1 at p. 16; Ex. 4 at p. 1030; see also *Evid. Code*, § 788 (allowing impeachment by felony
28 conviction); *People v. Rodriguez* (1986) 177 Cal.App.3d 174, (confirming crime of receiving stolen
property involves moral turpitude).

1 Further, Magana has not provided any independent, exculpatory evidence. While she stated
2 her conviction was overturned for insufficient evidence, she offered no witnesses or documentary proof
3 to support her innocence. For example, she does not deny knowing Ortiz, Jaimes, or Gonzales, nor
4 does she offer an explanation of her whereabouts when her acquaintances robbed Duron. Instead, her
5 own admissions to police place her in the same car with Ortiz and Jaimes, whose fingerprints were
6 found in Duron's home, while Jaimes was still in possession of items after leaving an unknown
7 residence. The fact that there is insufficient evidence pursuant to Penal Code section 1111 to support
8 the criminal conviction beyond a reasonable doubt does not prove Magana's factual innocence by a
9 preponderance of the evidence. Moreover, Magana's reliance on the dismissal of her convictions
10 pursuant to Penal Code section 1111 is misplaced as this section does not bar the reliance on
11 accomplice testimony in administrative Penal Code section 4900 proceedings.

12 Regardless, the appellate court's decision to overturn the convictions due to insufficient
13 evidence pursuant to Penal Code section 1111 alone is insufficient to prove Magana did not commit the
14 alleged crimes. Pursuant to Cal. Code Regs., tit. 2, § 641, "substantial independent corroborating
15 evidence" is required beyond the "claimant's denial of the commission of the crime" or "reversal of the
16 judgment of conviction..." Thus, Magana's assertion of innocence, without more, is patently insufficient
17 to meet her burden of proof.

18 On balance, the evidence fails to prove that Magana is more likely innocent, than guilty, of the
19 robbery and burglary of an inhabited dwelling acting in concert. This conclusion is consistent with the
20 binding appellate court decision, which only found insufficient evidence to prove Magana's guilt beyond
21 a reasonable doubt pursuant to Penal Code section 1111. Given all the evidence detailed above, it is
22 just as likely, if not more, that Magana committed the robbery and burglary in concert.

23 Accordingly, Magana's application under Penal Code section 4900 must be denied.

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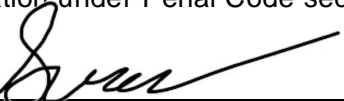
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1 **V. CONCLUSION**

2 Magana's claim for compensation is denied. She failed to demonstrate by a preponderance of
3 evidence that she is innocent of the felony offenses with which she was charged and convicted.

4 Magana is, therefore, ineligible for compensation under Penal Code section 4900.

5 Date: April 20, 2022

6 
7 Sara Harbarger
8 Senior Attorney
9 California Victim Compensation Board
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RESPONSE RECEIVED

This is regards to Claim No. 21-ECO-13
In the matter of
Monica Magana

I thank God and all of you for the opportunity to allow me to plead my case before you. I will be giving a few points and to bear the burden of proof to demonstrate my innocence by a preponderance of evidence.

On July 4, 2017 I was arrested for numerous charges that I ended up going to trial for. During the trial as all the evidence was being presented I started to notice how there was nothing that was tying me to the case except for one witness, Angie Ortiz. Ms. Ortiz gave a statement to the cops when she first got arrested that changed numerous times when she got on the stand to testify. During the trial her lawyer had to take a recess to have Ms. Ortiz recollect herself and to help her answer her questions better because she kept changing her answers from what she originally stated. While on the stand Ms. Ortiz stated that she never exited the vehicle and that she stayed in her car during the commission of the crime. However, when presented with the video surveillance to Ms. Ortiz, she was asked to identify the suspects in the video. She stated she was the driver and when the video was played my lawyer, Monica Bermudez, pointed out when the driver exited the vehicle if this image of the person getting out of the vehicle from the driver's seat was her she then confessed she did exit the vehicle. Also Ms. Ortiz stated that I, Monica Magana, was in contact with the victim and that we had a sexually relationship going on. The night prior to the commission of the crime Ms. Ortiz stated that I called her and asked her for a ride to the victims house to go pick up \$100 that the victim was going to give to me. However, when Mr. Duran, the victim, was

put on the stand to testify, he was asked if he knew of a Monica Magana or a woman by the name of Bella and he stated no he didn't. As I sat in the courtroom they pointed in my direction of where I was seated and asked Mr. Duran to take a good look at me to see if he could identify me and he stated that he had never seen me before. He was asked the night prior to the commission of the crime if I had contacted him or if anyone had contacted him to ask him for a \$100 he stated no, no one did. Ms. Ortiz also stated to the police during investigation that on the day of the crime that I had called her to pick me and take me to get my T.V. from the victims house, but on the stand she stated that I stayed the night with her and that the next morning is when I decided I wanted to go pick up my T.V. from the victims house.

These are just some of the things that Ms. Ortiz did during our trial. She lied so many times during trial and was also given a plea deal to testify. I didn't understand how someone could be considered a credible witness if her testimony constantly was changing. Also her supposed facts about the case could not be corroborated with any evidence against me. I also wanted to bring up in trial the fact that Ms. Ortiz and her daughter Savannah Ortiz had been committing crimes together for a while now. I know that during the trial it was brought up that Ms. Ortiz and Mr. Jaimes had been involved in crimes together along with Mr. Jaimes' girlfriend, who is Ms. Ortiz's daughter. I am presenting a crime report that I was able to find and will be attached as (2) documents named Criminal Case Details for Angie and Savannah Ortiz. I feel and believe that Ms. Ortiz used me as an alibi for her daughter Savannah Ortiz who could have easily been a hispanic female that was identified in the video also could have been identified by the witnessing of the neighbor at the commission of the crime.

In conclusion I believe that if I didn't have the burden of proof to prove my innocence in this case that I would still be sitting in a prison cell at the moment. I feel that during the trial all of this could have been handled in a better manner. When my lawyer and I filed the motion of dismissal for the lack of evidence it was definitely overlooked and not handled properly. I wouldn't have to have served time in jail or prison for as long as I did if the job was done correctly. I feel it wasted the government more money to throw me into the system instead of following the law. This all could have been avoided if the matter was looked thoroughly into during trial. While I was incarcerated in the state prison I also paid off my restitution for this case during my time spent there. I feel I should be compensated for the restitution I paid in this case and for all expenses that I acquired during my time of imprisonment. As I have stated before, while I was in prison for this crime I didn't commit I suffered the loss of my mother. I was high level maximum security which made me unable to attend services for my mothers funeral. I feel it is unfair that I had to miss out on the opportunity to mourn with my family and be there for a major tragedy that occurred in our lives. Thank God I was released a year and a half after my mothers death, but again if laws were being followed I would have had no problem attending my mothers funeral however since the matter was overlooked during trial I dealt with the pain and suffering inside institutional walls.

I am currently in a Victory Outreach Women's home where I'm training to be a woman's home director. I've been in the home going on 14 months now. I'm not going to portray that I am this perfect person. I know that for the actions that I have done in my past I personally had to suffer the consequences for every wrong doing that I did. However I was punished for this crime which I can

honestly state I did not do. The facts show here today that I am not guilty for this crime. I was wrongfully convicted. Again I thank the Lord and to whom this may concern for the ability to share my views and facts on this case.

Sincerely,

Monica Agripina Magana

Criminal Case Information - Case Details[criminal case information/calendar menu](#) / [defendant search](#) / [search results](#) / case details

Defendant Information: Name: **ORTIZ, SAVANNAH** Birth Year: **1996**

Case Information: Court Case #: **DM089580B** Filing Date: **11/25/15** Related Case #: **NONE**
Arrest Date: **11/22/15**
Bail Amount: **NO BAIL** Bail Status: **EXONERATED** Bail Type: **SURETY BOND**

Charges/Dispositions						
Count	Type	Code	Section	Charge Description	Charge Disposition	Disposition Date
001	M	PC	496(A)>950	RECEIVE/ECT KNOWN STOLEN PROPERTY	DISM - FURTH. OF JUSTICE	12/21/15
002	M	PC	459.5>MISD	SHOPLIFTING	PLED GUILTY	12/21/15
003	M	PC	853.7	FAIL TO APPEAR AFTER WRITTEN PROMISE		

Sentence Information		
** Sentence may not be complete. **		
ACTION ON BAIL/BOND EXONERATED		

Scheduled Hearings	
** None found **	

Aliases	
Defendant name	ORTIZ, SAVANNAH
Aliases	** None **

If you need more case information than what is listed above, please contact the [specific court location](#).

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Criminal Case Information - Case Details[criminal case information/calendar menu](#) / [defendant search](#) / [search results](#) / case details

Defendant Information: Name: **ORTIZ, ANGIE RENNEE** Birth Year: **1974**

Case Information: Court Case #: **DM089580A** Filing Date: **11/25/15** Related Case #: **NONE**
 Arrest Date: **11/22/15**
 Bail Amount: **NO BAIL** Bail Status: **EXONERATED** Bail Type: **SURETY BOND**

Charges/Dispositions						
Count	Type	Code	Section	Charge Description	Charge Disposition	Disposition Date
001	M	PC	496(A)>950	RECEIVE/ECT KNOWN STOLEN PROPERTY	PLED NOLO CONTENDERE	12/21/15
002	M	PC	459.5>MISD	SHOPLIFTING	DISM - FURTH. OF JUSTICE	12/21/15

Sentence Information		
JAIL/PRISON 360 DAYS,		
SUSP/STAYED 180 DAYS,		
TOTAL CREDIT 0033 TIME SERVED 17 DAYS GOOD BEHAVR 16 DAYS,		
CONFINEMENT LOCATION JAIL		
SUMMARY PROBATION GRANTED FOR 3 YRS,		
CHARGE	FINE AMOUNT	
PC 496(A)>950	611.00	
FINE TOTALS	611.00	
ACTION ON BAIL/BOND EXONERATED		

Scheduled Hearings
** None found **

Aliases	
Defendant name	ORTIZ, ANGIE RENNEE
Aliases	ORTIZ, ANGIE RENEE
	ORTIZ, ANNIE BENAVIDEZ
	HERNANDEZ, ANGIE ORTIZ
	GARCIA, ANGELA
	ORTIZ, ANGIE RENE
	ORTIZ, ANGIE
	HERNANDEZ, ANGIE RENE
	ORTIZ, ANGIE R
	ORTIZ, ANGIE RENE

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ITEM 7

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

8
9 In the Matter of:

10 **Alexander Torres**

11 Claim No. 22-ECO-14

Proposed Decision

(Penal Code §§ 4900 et seq.)

12 **I. Introduction**

13 On April 19, 2022, Alexander Torres (Torres) submitted a claim for compensation to the
14 California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900. The claim is based upon Torres' imprisonment for a 2001 murder
16 conviction, of which he was found to be factually innocent after 20 years of incarceration. Torres is
17 represented by counsel Audrey McGinn of the California Innocence Project. No appearance has been
18 requested from the Office of the Attorney General. CalVCB Senior Attorney Laura Simpton was
19 assigned to this matter. After reviewing the claim and supporting documentation, CalVCB
20 recommends, as required by the automatic provision of Penal Code section 1485.55, that the
21 Legislature appropriate \$1,061,200 as compensation to Torres for his erroneous conviction and
22 imprisonment for 7,580 days.

23 **II. Procedural History**

24 On January 18, 2001, Torres was arrested for murder in Los Angeles County Superior Court
25 case number TA058744 with an enhancement for personal use of a firearm.¹ Following a jury trial,
26

27 ¹ Pen. Code, §§ 187, 12022.53, subd. (d); Torres Application ("App.") at pp. 1, 3, 16. The pagination
28 for Torres' application refers to the continuous page numbers for a 53-page PDF file comprised of all
documents submitted by email on April 19, 2022, including the Erroneously Convicted Person Claim

1 Torres was convicted as charged on June 12, 2001.² At the sentencing hearing on August 23, 2001,
2 the trial court imposed an indeterminate term of 40 years to life.³ The Court of Appeal affirmed the
3 judgment on April 16, 2003, and the California Supreme Court denied review on June 25, 2003.⁴
4 Torres did not pursue habeas relief.⁵

5 On August 3, 2017, Torres submitted a pro se letter to the Conviction Integrity Unit of the Los
6 Angeles County District Attorney's Office (LADA) requesting a review of his case for factual innocence.
7 In support, Torres attached a report from a private investigator, dated December 18, 2006, which
8 implicated a third-party culprit and exonerated Torres.⁶

9 On October 19, 2021, following additional investigation, LADA filed a joint motion with Torres
10 for habeas relief.⁷ By then, Torres was represented by the California Innocence Project.⁸ The joint
11 motion maintained that newly discovered evidence warranted habeas relief pursuant to Penal Code
12 section 1473, subdivision (b)(3), as it likely would have changed the outcome at trial, and requested
13 Torres' immediate release from prison.⁹ The superior court granted the motion and Torres was
14 released the same day.¹⁰ By then, Torres had been continuously imprisoned for a total of 7,580 days
15
16

17 Form (App. at pp. 1-3), the supporting memorandum (*id.* at pp. 3-7), transcript of dismissal hearing (*id.*
18 at pp. 8-12), joint motion for habeas relief (*id.* at pp. 13-26), joint motion for finding of factual innocence
19 (*id.* at pp. 31-50), and court orders (*id.* at 26-30, 51-53).

20 ² Torres App. at pp. 1, 3, 13.

21 ³ Torres App. at pp. 1, 13, 20.

22 ⁴ Torres App. at p. 20; *People v. Alexander Torres*, Second District Court of Appeal case number
23 B154328, opinion filed Apr. 16, 2003, available at 2003 WL 1880156; *People v. Alexander Torres*,
California Supreme Court case number S115947, docket available at Appellate Courts Case
Information at [https:// appellatecases.courtinfo.ca.gov/](https://appellatecases.courtinfo.ca.gov/). (See Cal. Code Regs., tit. 2, §. 617.8 (official
notice).)

24 ⁵ Torres App. at p. 20.

25 ⁶ Torres App. at p. 13.

26 ⁷ Torres App. at pp. 13-25.

27 ⁸ Torres App. at p. 4.

28 ⁹ Torres App. at pp. 24-25.

¹⁰ Torres App. at pp. 1, 26-30.

1 from the date of his arrest on January 18, 2001, to and including the date of his release on October 19,
2 2021.¹¹

3 On April 7, 2022, LADA and Torres filed a joint motion for a finding of factual innocence
4 pursuant to Penal Code section 1485.55 in case number TA058744. The parties agreed that “there is
5 not a single reliable or credible piece of evidence that Torres committed the crime for which he was
6 convicted and served over twenty years in prison.”¹² The superior court granted the motion on April
7 13, 2022, and issued a finding of factual innocence for Torres pursuant to Penal Code section
8 1485.55, subdivision (b). The court specifically determined that “Torres has demonstrated by a
9 preponderance of the evidence that he is factually innocent of the crime for which he was charged and
10 convicted and that such crime was not committed by him.”¹³

11 On April 19, 2022, Torres submitted his claim via email to CalVCB seeking compensation as an
12 erroneously convicted person under Penal Code section 4900. Based upon the superior court’s
13 finding of factual innocence, Torres requested an automatic recommendation for compensation in the
14 amount of \$1,061,200, representing \$140 for each of the 7,580 days that he was wrongfully
15 imprisoned in case number TA058744. After confirming compliance with Penal Code sections 4900
16 and 4901, CalVCB filed the claim on April 20, 2022, without requesting a response from the Attorney
17 General in accordance with Penal Code section 4902, subdivision (a). The administrative record
18 closed the same day.¹⁴

24 ¹¹ Torres App. at pp. 1, 3, 6-7; see also Pen. Code, § 2900.5 (credit for days spent in custody); *People*
25 *v. King* (1992) 3 Cal.App.4th 882, 886 (construing “days” for custody credit to include partial days.)

26 ¹² Torres App. at pp. 31-32, 50.

27 ¹³ Torres App. at pp. 51-52.

28 ¹⁴ CalVCB email to parties, entitled “*Alexander Torres, PC 4900 Claim 22-ECO-14*,” dated April 20, 2022.

III. Factual Background¹⁵

On the evening of December 31, 2000, Martin Guitron (Guitron) was fatally shot eight times while walking with a friend on El Camino Avenue in Los Angeles County.¹⁶ Guitron, who went by the moniker “Casper,” was a member of the Compton Varrio Segundo (CVS) street gang. Before firing, the shooter stepped out of a blue Chevy Caprice, approached Guitron, and repeatedly asked him if he was “Casper.” Afterwards, the shooter returned to the Chevy, whose driver remained seated inside with the engine running, and drove off. Guitron died from his injuries. Multiple, .45-caliber bullet casings were recovered at the scene.¹⁷

Guitron’s friend Enrique V. (Enrique) initially told responding officers that he did not recognize the shooter and only provided a general description of the assailant’s physical appearance.¹⁸ But one week later, Enrique identified Torres by name as the shooter. Torres was a member of the Compton Varrio Tortilla Flats (CVTF) gang, and he lived with his family in CVS territory. Torres and Guitron had a prolonged and well-known adversarial history, which included graffiti with the name “Casper” on Torres’ mother’s car just a few months earlier, followed by a fistfight over the graffiti a few weeks before Guitron’s death.¹⁹

Based upon Enrique’s identification, police arrested Torres on January 18, 2001. A search of Torres’ home did not uncover any physical evidence linking him to Guitron’s murder. When interviewed by police, Torres emphatically denied shooting Casper. However, Torres appeared to be evasive when questioned about having been observed in possession of a firearm a couple of days before his arrest on January 16, 2001.²⁰

¹⁵ This factual summary is based upon the application and supporting documents, as well as the appellate court’s opinion in *People v. Torres, supra*, 2003 WL 1880156, to the extent it is consistent with the superior court’s finding of factual innocence.

¹⁶ Although Torres describes Guitron and his friend as riding a bicycle, CalVCB relies upon the binding representation in the joint motions for habeas relief and factual innocence that the two were walking. (Torres App. at pp. 5, 14, 33.)

¹⁷ Torres App. at pp. 5, 14, 33, 37; *People v. Torres, supra*, 2003 WL 1880156 at p. *1.

¹⁸ The witnesses are referred to by their first names only in an effort to preserve their privacy.

¹⁹ Torres App. at pp. 5, 14, 32-35; *People v. Torres, supra*, 2003 WL 1880156 at p. *1.

²⁰ Torres App. at pp. 3, 16, 36.

1 At trial, Enrique identified Torres as the shooter. A bystander who witnessed the shooting also
2 testified that Torres “looks like” the shooter.²¹ Torres did not testify in his defense. Instead, several
3 alibi witnesses, including his mother, testified that Torres was home, at his New Year’s Eve party,
4 when the shooting occurred.²² The defense also presented evidence that Torres, who was right-
5 handed, was physically unable to fire a gun on the night of the murder because his right arm was in a
6 hard cast that extended from his elbow to his thumb. Torres removed the cast himself sometime after
7 the party but before his arrest.²³ The jury ultimately sided with the prosecution and convicted Torres
8 as charged on June 12, 2001.

9 In 2006, a friend of Torres’ brother arranged a meeting with “Individual 1” to obtain information
10 about Guitron’s murder. During the discussion, Individual 1 admitted that he had been driving the car
11 when his passenger (i.e., “Individual 2”) fatally shot Guitron. Individual 1 noted that Individual 2 was
12 currently imprisoned for other offenses. Torres’ brother subsequently hired a private investigator, who
13 spoke to Individual 1 on December 16, 2006. As documented in the investigator’s report, dated
14 December 18, 2006, Individual 1 acknowledged driving Individual 2, whom he identified only by his
15 moniker, but Individual 1 refused to admit to the shooting. Nevertheless, Individual 1 became visibly
16 distressed when acknowledging that Torres was innocent and serving a life sentence for Guitron’s
17 murder.²⁴ When speaking to the investigator, Individual 1 only provided his first name, but
18 approximately one month later, the investigator received a letter from an attorney that identified
19 Individual 1 by his full name and directed the investigator not to contact Individual 1 again.²⁵

20 After Torres forwarded this report to LADA in 2017, their investigators confirmed that Individual
21 1 had been arrested approximately one month after Guitron’s murder while driving a blue Chevy
22

23 ²¹ Torres App. at pp. 17-18, 38; *People v. Torres, supra*, 2003 WL 1880156 at pp. *1-2

24 ²² Torres App. at pp. 18-19; *People v. Torres, supra*, 2003 WL 1880156 at p. *2.

25 ²³ Torres App. at pp. 6, 19, 24, 39-41; *People v. Torres, supra*, 2003 WL 1880156 at p. *2.

26 ²⁴ Torres App. at pp. 5, 21, 43-44.

27 ²⁵ Torres App. at pp. 21, 44-45. The record does not disclose when Torres first learned of the
28 shooter’s identity. But on January 19, 2001, Torres told a relative during a recorded conversation, “I
was on the – on the bus with the guy that did it.” (Torres App. at p. 36.) Torres insisted he was
innocent and would reject any deals. (*Id.* at pp. 36-37.)

1 Caprice.²⁶ In addition, investigators uncovered Individual 2's identity, based on his gang moniker, and
2 confirmed that Individual 2 was imprisoned for a series of robberies committed in August 2001 with a
3 .45 Colt handgun, the same caliber used in Guitron's murder in January 2001.²⁷ Unfortunately, the
4 handgun had been destroyed by law enforcement and, therefore, could not be tested.²⁸ Furthermore,
5 Individual 2 "very closely resembles Torres in age, height, weight, and overall physical appearance,"
6 and he lived "around the corner from the location of the murder."²⁹ Investigators also obtained medical
7 records to confirm Torres' injury, which were under a different name given by Torres at the hospital
8 because he lacked insurance.³⁰ Finally, during a recorded undercover operation, Individual 1 never
9 once denied accusations of his prior admissions about Guitron's murder and expressed fear of the
10 repercussions for himself if he were to come forward with the truth.³¹

11 Police arrested Individual 1 on November 30, 2021, but he refused to speak and invoked his
12 right to an attorney.³² Investigators attempted to speak to Individual 2, who was still in custody, but he
13 also invoked his right to an attorney.³³ During monitored jail conversations between Individuals 1 and
14 2, Individual 2 chastised Individual 1 for talking to detectives and added, "I know you're doing it for
15 Alex...."³⁴ Individual 1 was detained for just 48 hours until his release on December 2, 2021.³⁵ Based
16 upon all of the new information detailed above, investigators were "convinced Individual 1 and
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20 ²⁶ Torres App. at pp. 5, 21-22, 45.

21 ²⁷ Torres App. at pp. 6, 22, 45, 47.

22 ²⁸ Torres App. at pp. 22; 45.

23 ²⁹ Torres App. at p. 45.

24 ³⁰ Torres App. at pp. 6, 19, 22-23, 47-48.

25 ³¹ Torres App. at pp. 6, 22-23, 45-46.

26 ³² Torres App. at pp. 6, 48.

27 ³³ Torres App. at p. 48.

28 ³⁴ Torres App. at p. 48.

³⁵ Torres App. at p. 48; see also Pen. Code § 849, subd. (b) (requiring arrestee's release, without undue delay, if, inter alia, law enforcement has insufficient grounds to file criminal complaint).

Individual 2 are the true perpetrators and further investigative efforts to gather the evidence to support a criminal filing against the individuals are ongoing.”³⁶

IV. Determination of Issues

Penal Code section 4900 allows a person who, being innocent of a felony offense for which they were convicted and imprisoned, to submit a claim to CalVCB for the injury sustained by their erroneous conviction and imprisonment.³⁷ The claim must be submitted at least 60 days following a grant of habeas relief or dismissal of the case, and no more than 10 years after release from custody or dismissal of charges.³⁸

Typically, claimants bear the burden to prove by a preponderance that (1) the crime with which they were convicted either did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous conviction.³⁹ If the claim is ultimately approved, it results in a recommendation by CalVCB to the Legislature to make an appropriation for compensation for the person’s sustained injury, which is calculated at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.⁴⁰

An exception to CalVCB’s typical procedure occurs when a claimant has obtained a finding of factual innocence for each and every conviction underling their incarceration. As set forth in subdivision (a) of Penal Code section 1485.55:

...if the court has granted a writ of habeas corpus ..., and if the court has found that the person is factually innocent, under any standard for factual innocence applicable in those proceedings, that finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904.⁴¹

³⁶ Torres App. at p. 49.

³⁷ Pen. Code, § 4900.

³⁸ Pen. Code, § 4901.

³⁹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

⁴⁰ Pen. Code, § 4904.

⁴¹ Pen. Code, § 1485.55, subd. (a).

1 This procedure applies regardless of whether the finding is rendered by the court either during the
2 habeas proceeding or afterwards upon a motion demonstrating innocence by a preponderance of
3 evidence.⁴² In effect, section 1485.55 compels CalVCB to assume both requisite elements of
4 innocence and injury for a successful claim under Penal Code section 4900 and to recommend
5 compensation accordingly.

6 This construction is confirmed by Penal Code section 4902, subdivision (a), which provides in
7 relevant part:

8 If the provisions of Section 851.865 or 1485.55 apply in any claim, the California Victim
9 Compensation Board shall, within 30 days of the presentation of the claim, calculate the
10 compensation for the claimant pursuant to Section 4904 and recommend to the
Legislature payment of that sum.⁴³

11 Consequently, not only must CalVCB automatically recommend payment without a hearing or
12 response from the Attorney General whenever a claimant has obtained the requisite finding of factual
13 innocence, but CalVCB must do so within 30 days thereafter. Moreover, a finding of factual innocence
14 issued pursuant to section 1485.55 is not appealable by the prosecution.⁴⁴

15 Here, Torres timely submitted his application for compensation on April 19, 2022, more than 60
16 days but less than 10 years after October 19, 2021, when his conviction was reversed, all charges
17 dismissed, and he was released from custody. At the time of his release, Torres had been
18 continuously confined for 7,580 days. This confinement included 145 days pre-conviction from Torres'
19 arrest on January 18, 2001, until the jury's guilty verdict on June 12, 2001. It additionally included
20 7,435 days post-conviction from June 12, 2001, to and including Torres' release on October 19, 2021.
21 The entire duration of Torres' confinement, both pre- and post-conviction, was solely attributable to his
22 erroneous conviction for murder in case number TA058744.

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26 ⁴² Pen. Code, § 1485.55, subds. (a) & (c).

27 ⁴³ Pen. Code, § 4902, subd. (a).

28 ⁴⁴ *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89; *In re Anthony* (2015) 236 Cal.App.4th 204, 215.


1 The Los Angeles County Superior Court expressly found, by a preponderance of the evidence,
2 that Torres was factually innocent in case number TA058744.⁴⁵ This determination was based upon
3 the parties' stipulation that persuasive evidence implicated solely Individuals 1 and 2 in the Guitron's
4 murder and exonerated Torres. This evidence included multiple inculpatory statements by Individual 1,
5 the details of which were independently corroborated by several sources, as well as Torres' medical
6 records indicating he was physically unable to commit the crime.⁴⁶

7 The superior court's declaration of Torres' innocence binds CalVCB in this administrative
8 proceeding.⁴⁷ CalVCB unequivocally accepts that Torres is actually innocent of Guitron's murder, for
9 which he was erroneously incarcerated over 20 years. CalVCB recognizes that, but for this conviction,
10 Torres would not have spent 7,580 days "illegally behind bars, away from society, employment, and
11 [his] loved ones."⁴⁸ Therefore, Torres is entitled to a recommendation of compensation in the amount
12 of \$1,061,200, representing \$140 for each day of his erroneous incarceration.

13 **V. Conclusion**

14 CalVCB grants Torres' claim for compensation under Penal Code section 4900 as mandated
15 by Penal Code section 1485.55 and, therefore, recommends that the Legislature make an
16 appropriation in the amount of \$1,061,200 to compensate Torres for the injury sustained through his
17 erroneous conviction and imprisonment for 7,580 days.

18 Date: April 28, 2022

19 
20 _____
21 Laura Simpton
22 Hearing Officer
23 California Victim Compensation Board
24

25 _____
26 ⁴⁵ Torres App. at p. 51.

27 ⁴⁶ Torres App. at pp. 31-50.

28 ⁴⁷ Pen. Code, §§ 1485.55, subd. (c); 4902, subd. (a).

⁴⁸ *Holmes v. Cal. Victim Comp. & Gov't Claims Bd.* (2015) 239 Cal.App.4th 1400, 1405.

ITEM 8

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

8
9 In the Matter of:

10 **Juan Carlos de Jesus Bautista**

11 Claim No. 22-ECO-06

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On February 3, 2022, Juan Carlos de Jesus Bautista (Bautista) submitted a claim for
14 compensation as an erroneously convicted person to the California Victim Compensation Board
15 (CalVCB) pursuant to Penal Code section 4900. The claim is based upon Bautista's 2011 related
16 convictions for attempted murder, assault with a firearm, and street terrorism, all of which were
17 vacated and dismissed during a state habeas proceeding, without a finding of factual innocence.
18 Bautista seeks compensation in the amount of \$617,680 for having served 4,412 days imprisonment
19 for these convictions. Bautista is represented by Melissa O'Connell of the Northern California
20 Innocence Project.

21 The Office of the Attorney General is represented by Deputy Attorney General Ian Whitney. By
22 letter dated May 4, 2022, the Attorney General declined to object to Bautista's claim. The
23 administrative record closed that same day, and the matter was assigned to CalVCB Senior Attorney
24 Laura Simpton. As required by subdivision (b) of Penal Code section 4900,¹ CalVCB is mandated to
25 grant Bautista's unopposed claim and recommend that the Legislature appropriate \$617,680 to
26 Bautista for the injury sustained by his vacated convictions.

27 _____
28 ¹ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

II. Procedural History

On May 26, 2009, Bautista was arrested for attempted murder in San Joaquin County Superior Court case number LF011367A, with additional charges for assault with a firearm, street terrorism, and enhancements for personal use of a firearm resulting in great bodily injury.² Following a jury trial, Bautista was found guilty as charged. On November 7, 2011, Bautista was sentenced to 40 years to life imprisonment.³

The judgment was affirmed by the California Court of Appeal, Third Appellate District, on March 20, 2013, and the California Supreme Court denied review on July 24, 2013.⁴ Meanwhile, on June 29, 2012, Bautista filed a petition for writ of habeas in the San Joaquin County Superior Court, claiming his brother Adrian Bautista (Adrian) was the actual shooter.⁵ The petition was denied on September 6, 2012, because, under the legal standard at that time, the uncorroborated evidence failed to point unerringly to innocence and completely undermine the prosecution's case.⁶

On October 2, 2019, with the assistance of the Northern California Innocence Project, Bautista filed another habeas petition in the San Joaquin County Superior Court, claiming again that Adrian was the actual shooter. The petition included additional information from several sources implicating Adrian. Citing this new evidence and a recent change in the law, the petition sought reversal of Bautista's convictions because a jury likely would have reached a different outcome had it heard this

² Pen. Code, §§ 667/187, subd. (a) (attempted murder), 245, subd. (a)(2) (assault), 186.22, subd (a) (street terrorism), 12022.53, subd. (d) (firearm enhancement).

³ Bautista Application ("App.") at pp. 1, 605-608 (Exhibit "Ex." G). The pagination for Bautista's application refers to the continuous page numbers for the entire, 608-page PDF file, which includes the Erroneously Convicted Person Claim Form (App. at pp. 1-3), the supporting memorandum (*id.* at pp. 4-23), as well as the petition for writ of habeas corpus with supporting exhibits (*id.* at pp. 25-271), the trial court's orders granting habeas relief and dismissing the case (*id.* at pp. 593-598), and abstract of judgment (*id.* at pp. 605-608).

⁴ *People v. Juan Carlos DeJesus Bautista*, Third District Court of Appeal case number C069652, opinion filed May 20, 2013, available at 2013 WL 2234003; see also *People v. Juan Carlos De Jesus Bautista*, California Supreme Court case number S211523, docket available online at Appellate Courts Case Information at [https:// appellatecases.courtinfo.ca.gov/](https://appellatecases.courtinfo.ca.gov/). (See Cal. Code Regs., tit. 2, § 617.8 (official notice).)

⁵ Bautista App. at pp. 112, 185-198 (Ex. 16). For clarity, Bautista's brother is referred to solely by his first name Adrian, as both brothers share the same last name.

⁶ Bautista App. at pp. 9, 200-202 (Ex. 17) (referring to *In re Lawley* (2008) 42 Cal.4th 1231).

1 evidence within the meaning of Penal Code section 1473, subdivision (b)(3), and the prosecutor's
2 contrary trial evidence was materially false within the meaning of Penal Code section 1473, subdivision
3 (b)(1).⁷ The petition finally claimed that Bautista was factually innocent.⁸

4 On July 22, 2020, the court issued an order to show cause.⁹ The following year, a two-day
5 evidentiary hearing ensued.¹⁰ At the conclusion of the evidentiary hearing on June 18, 2021, the trial
6 prosecutor conceded that habeas relief was warranted solely under Penal Code section 1473,
7 subdivision (b)(3). The prosecutor opposed the remainder of Bautista's claims.¹¹

8 By order filed June 24, 2021, the court agreed with the prosecution and vacated all of
9 Bautista's convictions in case number LF011367A, solely on the basis of subdivision (b)(3) of Penal
10 Code section 1473.¹² The court denied relief under subdivision (b)(1) of section 1473 for false
11 evidence and further declined to find Bautista factually innocent.¹³ After the prosecution declined to
12 retry Bautista, the court dismissed the entire case and ordered his immediate release.¹⁴
13 Consequently, Bautista was released from custody on June 24, 2021.

14 On February 3, 2022, Bautista submitted his claim to CalVCB seeking compensation as an
15 erroneously convicted person under subdivision (b) of Penal Code section 4900. Bautista requested
16 compensation in the amount of \$617,680 for 4,412 days of incarceration from the date of his arrest on
17 May 26, 2009, up to but excluding the date of his release on June 24, 2021.¹⁵ After confirming
18 compliance with Penal Code sections 4900 and 4901, CalVCB filed the claim and requested a
19

20 ⁷ Bautista App. at pp. 9-11, 25-71 (Ex. A).

21 ⁸ Bautista App. at pp. 72-73 (Ex. A).

22 ⁹ Bautista App. at pp. 11-14, 277-591 (Ex. B).

23 ¹⁰ Bautista App. at pp. 11-14, 594-595 (Ex. D).

24 ¹¹ Bautista App. at p. 538 (Ex. C).

25 ¹² Bautista App. at pp. 538-539 (Ex. C), 595-596 (Ex. D).

26 ¹³ Bautista App. at p. 546 (Ex. C). In accordance with Penal Code section 1485.55, subdivision (d), no
27 presumption exists in this proceeding from the denial of a motion for factual innocence.

28 ¹⁴ Bautista App. at p. 598 (Ex. D).

¹⁵ Bautista App. at pp. 1, 5, 21-22. CalVCB accepts and relies upon Bautista's unopposed custodial
calculation. (Cf. Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3
Cal.App.4th 882, 886 (construing "days" for custody credit to include partial days).)

1 response from the Attorney General within 45 days. Following a single request for an extension of
2 time, the Attorney General timely submitted a declination letter on May 4, 2022. In it, the Attorney
3 General declined to object to Bautista's claim "in the amount of \$617,680 for 4,412 days of
4 incarceration" because he "will not be able to prove that claimant was the actual perpetrator by clear
5 and convincing evidence as required by newly enacted Penal Code section 4902, subdivision (d)."¹⁶
6 The administrative record closed the same day.

7 **III. Factual Background**¹⁷

8 **A. The Shooting**

9 Shortly after midnight on May 9, 2009, 17-year-old Anthony P. was shot.¹⁸ The bullet entered
10 his left leg, fractured his femur, and shattered. The shooting occurred at an apartment complex
11 located on McCoy Court in Lodi, where a party was taking place at the home of 17-year-old
12 Christopher H.¹⁹ Moments earlier, Anthony P. and Christopher H. had been standing together outside
13 of the apartment with some of the partygoers, including 17-year-old Michael N. Two men and a female
14 approached the group. One of the men yelled at Michael N., pulled out a firearm, and fired two shots.
15 The second shot struck Anthony P. Paramedics arrived shortly thereafter and transported Anthony P.
16 to a hospital, where he underwent surgery for his injury.²⁰

17 Roughly 30 minutes before the shooting, a physical altercation occurred between Michael N.
18 and the shooter, who at that time was solely accompanied by the female. Michael N. was affiliated
19 with the Norteno gang, and the shooter was affiliated with the Sureno gang. The two knew each other
20 from prior incidents. Anthony P. helped break up the fight. The shooter finally walked away with the
21 female.²¹

22
23 ¹⁶ Letter from Deputy Attorney General Ian Whitney, dated May 4, 2022, submitted via email.

24 ¹⁷ This factual summary is based upon the application and supporting documents, which includes
25 transcripts from the evidentiary hearing on the habeas petition, as well as multiple police reports.

26 ¹⁸ The victim and witnesses are referred to by their first names only in an effort to protect their privacy.

27 ¹⁹ Bautista App. at pp. 7, 93 (Ex. 2), 128-129 (Ex. 8), 155 (Ex. 14).

28 ²⁰ Bautista App. at pp. 6-8, 129 (Ex. 8), 133 (Ex. 9), 139 (Ex. 10), 155 (Ex. 14), 192 (Ex. 16), 240 (Ex. 19).

²¹ Bautista App. at pp. 7, 93 (Ex. 2), 129 (Ex. 8), 133-134 (Ex. 9), 155 (Ex. 14).

1 Christopher H. described the shooter as a Hispanic male, 18 to 19 years old with a husky build,
2 approximately 6'2" or 6'1" tall and 200 to 250 pounds, with a goatee.²² Anthony P. described the
3 shooter as a Hispanic male, approximately 18 to 20 years old, with a medium build, approximately 5'7"
4 tall, with short hair and no facial hair that he remembered.²³ Michael N. confirmed the shooter was the
5 same person with whom he had fought earlier that night, but Michael N. would only describe the
6 shooter as a Hispanic male, approximately 5'6" to 5'8" tall.²⁴ Other witnesses gave varying
7 descriptions of the shooter's physical appearance.²⁵

8 **B. Bautista's Trespass**

9 Later that night, at 10:29 p.m. on May 9, 2009, police encountered Bautista, who was a known
10 Sureno, wandering inside the apartment complex on McCoy Court. Bautista offered no explanation for
11 his presence and denied knowing anyone who lived there.²⁶ The officers admonished Bautista to stay
12 away or be arrested for trespass. They allowed Bautista to leave, ostensibly to call his mother to pick
13 him up. But a few hours later at 1:05 a.m. on May 10, 2010, officers encountered Bautista again at the
14 apartment complex. When asked why he was still there, Bautista claimed he had forgotten something
15 but refused to say what it was. The officers arrested Bautista for trespass and transported him to the
16 local jail.²⁷ He was released the next morning.²⁸

17 At the time of his arrest, Bautista, who is a Hispanic male, was 19 years old, 5'6" tall, 250
18 pounds, with short hair and facial hair. Significantly, Bautista's 17-year-old brother Adrian, was the
19 same height and weight, with the same haircut and similar facial hair.²⁹

22 ²² Bautista App. at pp. 11, 138 (Ex. 10).

23 ²³ Bautista App. at p. 129 (Ex. 8).

24 ²⁴ Bautista App. at pp. 9, 133 (Ex. 9), 139 (Ex. 10).

25 ²⁵ Bautista App. at pp. 7-8, 30-31 (Ex. A).

26 ²⁶ Bautista App. at p. 147 (Ex. 13).

27 ²⁷ Bautista App. at pp. 6, 8-9, 147-148 (Ex. 13).

28 ²⁸ Bautista App. at p. 9.

29 ²⁹ Bautista App. at pp. 6, 28 (Ex. A).

1 **C. Bautista Identified as Shooter**

2 Prompted by Bautista's arrest for trespass, police assembled a photographic lineup that
3 included Bautista, but not Adrian, and showed it to Christopher H. and Anthony P. Both separately
4 identified Bautista as the shooter.³⁰ Police also showed the lineup to Michael N., who stated that he
5 did not recognize any one as the shooter.³¹

6 Police subsequently searched Bautista's home. No items related to the shooting were
7 discovered. When interrogated by police, Bautista denied attending a party at the McCoy Court
8 apartment on the night of the shooting. He claimed, instead, to have been drinking with "homies" but
9 declined to provide any other details. Bautista specifically denied fighting with Michael N. or
10 attempting to shoot him. Bautista admitted to having met Michael N. once previously at a library, after
11 his brother pointed him out.³² Police arrested Bautista for the shooting on May 26, 2009.³³

12 At trial, Christopher H. and Anthony P. again identified Bautista as the shooter.³⁴ No other
13 physical evidence tied Bautista to the shooting. The defense argued mistaken identity.³⁵ After
14 deliberating for two days, the jury convicted Bautista of all charges, and he was sentenced to life
15 imprisonment on November 7, 2011.³⁶

16 **C. Adrian's Admission as the Shooter**

17 On November 15, 2011, Adrian spoke to Bautista's trial attorney and stated that he, not
18 Bautista, was the shooter. Adrian claimed to have attended a separate party in the same apartment
19 complex on McCoy Court that was hosted by an unidentified "home girl," when he happened to
20 encounter Michael N. while walking with another unidentified female that he had "barely met" that
21 night. Adrian and Michael N. exchanged words, and the two started fighting. After about a minute,

22 _____
23 ³⁰ Bautista App. at pp. 6, 9, 59 (Ex. A), 261-265 (Ex. 22).

24 ³¹ Bautista App. at p. 134 (Ex. 9), 265 (Ex. 22).

25 ³² Bautista App. at pp. 134-135 (Ex. 9).

26 ³³ Bautista App. at pp. 5, 18, 93 (Ex. 2), 193 (Ex. 16).

27 ³⁴ Bautista App. at pp. 10-11.

28 ³⁵ Bautista App. at p. 11.

³⁶ Bautista App. at pp. 1, 11, 605 (Ex. G).

1 Adrian and the female walked away together. Adrian and the female returned to their party, where
2 Adrian obtained a gun from someone else whom he declined to identify. Adrian left the party in search
3 of Michael N., joined by the same female and another unidentified “homie.” Adrian claimed he only
4 intended to scare Michael N., but the gun accidentally fired twice. Adrian denied that Bautista had
5 been present during any of the events and only arrived at the apartment complex afterward.³⁷

6 **D. Habeas Proceedings**

7 Based upon Adrian’s statement to his trial attorney, Bautista filed a petition for a writ of habeas
8 corpus in the San Joaquin County Superior Court. The petition was denied on September 6, 2012,
9 based upon the legal standard at that time, which required new evidence that pointed unerringly to
10 innocence and undermined the prosecution’s case.³⁸

11 On October 2, 2019, with the assistance of the Northern California Innocence Project, Bautista
12 filed a second habeas petition in the San Joaquin County Superior Court.³⁹ Among its numerous
13 exhibits, the petition included a declaration from Adrian. In it, Adrian identified Letitia P. as the female
14 who was present during the fight and shooting, and he identified Alvaro S. as the individual who
15 provided the gun at the party, but Adrian still declined to identify the other male who was present
16 during the shooting. Adrian admitted firing two shots, the first accidentally. Adrian denied any memory
17 of seeing Bautista during these events.⁴⁰ The petition also included a declaration from Bautista, in
18 which he admitted attending the same party as Adrian but denied seeing him there. Bautista claimed
19 that he left the party with Rafael G. and walked to a nearby liquor store when Rafael G. heard shots
20 fired and they both ran off in separate directions.⁴¹ Neither Bautista nor Adrian’s declaration disclosed
21 when Bautista first heard about Adrian’s admission as the shooter.

22 In addition, the habeas petition included a report from the district attorney’s investigator who
23 spoke to Letitia P. on April 29, 2019. During that conversation, Letitia P. admitted accompanying

24
25 ³⁷ Bautista App. at pp. 163-183 (Ex. 15).

26 ³⁸ Bautista App. at pp. 185-202 (Exs. 17 and 18).

27 ³⁹ Bautista App. at pp. 14, 26-77 (Ex. A).

28 ⁴⁰ Bautista App. at pp. 109-111 (Ex. 5), 205-207 (Ex. 18) .

⁴¹ Bautista App. at pp. 85-89 (Ex. 1).

1 Adrian when he fought with a Norteno, returned to the party, obtained a gun, left the party in search of
2 the Norteno, and then fired the gun.⁴² However, Letitia identified her then-boyfriend Rafael G. as the
3 individual who provided the gun to Adrian and who was present during the shooting.⁴³ Letitia P.
4 specifically denied that Alvaro S. was present.⁴⁴ Letitia P. recalled that Bautista was at the same party
5 with her and Adrian but Bautista did not join them during the fight or shooting.⁴⁵

6 The habeas petition further included a declaration from Christopher H., who acknowledged
7 that, on February 10, 2018, he had selected a photograph of Adrian over Bautista as the shooter when
8 shown both pictures together.⁴⁶ Finally, the petition included a declaration from a privately retained
9 polygrapher who opined that Adrian was truthful when he denied lying about his admission to firing
10 both shots.⁴⁷

11 The superior court issued an order to show cause on July 22, 2020, after which an evidentiary
12 hearing commenced on June 14, 2021, and resumed on June 17, 2021. Bautista did not testify, nor
13 did Adrian, who invoked his Fifth Amendment right against self-incrimination. Instead, Christopher H.
14 testified in accordance with his declaration that he had recently selected a photograph of Adrian as the
15 shooter, adding that he had felt certain while testifying at trial that he had correctly identified the
16 shooter and his memory had “faded a little bit.”⁴⁸ Leticia P. also testified in accordance with her
17 statement to the investigator, confirming that she was present during the fight and shooting, Rafael G.
18 provided the gun to Adrian and was present during the shooting only, and Bautista attended the party
19 but was not present during the fight or shooting.⁴⁹ Finally, Bautista’s mother Maria V. testified, during
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22 ⁴² Bautista App. at pp. 217-225 (Ex. 19).

23 ⁴³ Bautista App. at p. 216, 218-220 (Ex. 19)

24 ⁴⁴ Bautista App. at p. 223 (Ex. 19)

25 ⁴⁵ Bautista App. at pp. 220-221 (Ex. 19).

26 ⁴⁶ Bautista App. at pp. 120-126 (Ex. 7), 211 (Ex. 18).

27 ⁴⁷ Bautista App. at p. 252 (Ex. 20).

28 ⁴⁸ Bautista App. at pp. 458-486 (Ex. C).

⁴⁹ Bautista App. at pp. 289-301, 318-321, 329-331, 489, 496-497 (Ex. C).

1 which she provided inconsistent statements as to whether and when Adrian told her that he was the
2 shooter.⁵⁰

3 At the start of the third day of the hearing on June 18, 2021, the prosecutor informed the court
4 that, even though “I still believe [Bautista] is the person who committed this crime, with the state of the
5 evidence as we have it right now, ... I’m not convinced that there’s enough evidence beyond a
6 reasonable doubt to convict Mr. Bautista.”⁵¹ The prosecutor therefore conceded that reversal was
7 warranted under Penal Code section 1473, subdivision (b)(3), because “had this evidence that has
8 come out in this proceeding in the last few days been presented to the jury, that it more than likely
9 would have altered a potential verdict.”⁵² The prosecutor emphasized that the People “are not
10 conceding that he’s factually innocent.”⁵³

11 The court accepted the prosecutor’s concession and further found that the new statements
12 from Letitia P. and Christopher H. were sufficiently credible and material as to warrant habeas relief
13 under subdivision (b)(3) of Penal Code section 1473.⁵⁴ The court declined to render any findings as to
14 Adrian and denied any relief pursuant to subdivision (b)(1) of Penal Code section 1473 for false
15 evidence. The court noted that, if Adrian actually was the shooter, then “he should have come forward
16 much earlier” instead of waiting until after Bautista’s conviction and sentence.⁵⁵ The court also found
17 that Maria V.’s claims that she could not remember whether or when Adrian admitted the shooting
18 were “not believable” and motivated by a desire “to protect both of her sons.”⁵⁶ The court finally
19 denied Bautista’s claim of factual innocence, explaining that “I cannot say by a preponderance of the
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23 ⁵⁰ Bautista App. at pp. 506-521 (Ex. C).

24 ⁵¹ Bautista App. at pp. 537-538 (Ex. C), 595 (Ex. D).

25 ⁵² Bautista App. at p. 538 (Ex. C).

26 ⁵³ Bautista App. at p. 538 (Ex. C).

27 ⁵⁴ Bautista App. at pp. 544-545, 595 (Ex. C).

28 ⁵⁵ Bautista App. at pp. 541-542 (Ex. C).

⁵⁶ Bautista App. at p. 524 (Ex. C)

evidence that that is accurate.”⁵⁷ On these limited grounds, the court vacated all of Bautista’s convictions in case number LF011367A and dismissed the case in its entirety.⁵⁸

During his 12 years of incarceration for this case, Bautista earned a GED and completed several college courses. He also worked as a prison porter. After his release from custody on June 24, 2021, Bautista obtained employment and is currently working two separate jobs.⁵⁹

IV. Determination of Issues

Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned for a felony offense, to submit a claim for compensation to CalVCB.⁶⁰ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with which they were convicted either did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous conviction.⁶¹ If the claim is ultimately approved, it results in a recommendation by CalVCB to the Legislature to make an appropriation for compensation for the person’s sustained injury, which is calculated at the rate of \$140 per day of imprisonment that resulted from the erroneous conviction.⁶²

In limited circumstances, both of the elements for innocence and injury may be presumed, if a court has found the claimant factually innocent under any standard applicable in a proceeding to grant habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.⁶³ To obtain such a finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence that the crime which with they were charged was either not committed at all or, if committed, was not committed by the claimant.⁶⁴ If the claimant received a finding of factual innocence for each and every

⁵⁷ Bautista App. at p. 546 (Ex. C).

⁵⁸ Bautista App. at pp. 595-596 (Ex. D).

⁵⁹ Bautista App. at pp. 20-21, 600-603 (Ex. F).

⁶⁰ Pen. Code, § 4900.

⁶¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

⁶² Pen. Code, § 4904.

⁶³ Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

⁶⁴ Pen. Code, § 1485.55, subd. (b).

1 conviction underlying the period of their incarceration, CalVCB must automatically recommend
2 compensation, within 30 days and without a hearing.⁶⁵

3 Alternatively, under subdivision (b) of Penal Code section 4900, a recommendation for
4 compensation is mandated for certain claimants, even without a preponderance of evidence that the
5 claimant did not commit the crime for which they were convicted.⁶⁶ Specifically, subdivision (b)
6 compels a recommendation for compensation, without a hearing and within 60 days, when the
7 following three elements are met. First, the claimant's conviction must have been vacated either by a
8 writ of habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second,
9 the charges underlying the vacated conviction must have been dismissed on remand, or the claimant
10 must have been acquitted upon retrial. Third, the Attorney General must decline to object to the
11 application in this administrative proceeding.⁶⁷ If all three of these elements are satisfied, and CalVCB
12 finds that the claimant sustained injury through their erroneous conviction, then CalVCB shall
13 recommend that the Legislature make an appropriation for the purpose of indemnifying the claimant for
14 the injury.⁶⁸ The recommendation is required, regardless of whether or not the evidence proves the
15 claimant is more likely innocent than guilty.

16 If the Attorney General objects, he must do so in writing, within 45 days from when the claimant
17 files the claim, and with clear and convincing evidence that the claimant is not entitled to
18 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney
19 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the
20 acts constituting the offense.⁶⁹ To meet that burden, the Attorney General may not rely solely on the
21 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.⁷⁰

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24 ⁶⁵ Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

25 ⁶⁶ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

26 ⁶⁷ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

27 ⁶⁸ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

28 ⁶⁹ Pen. Code, § 4902, subd. (d).

⁷⁰ Pen. Code, § 4903, subd. (d).

1 If the claim is ultimately approved, it results in a recommendation by CalVCB to the Legislature
2 to make an appropriation for compensation for the claimant's sustained injury. Injury is calculated at
3 the rate of \$140 per day for the pre- and post-conviction confinement that resulted from the erroneous
4 conviction.⁷¹ Compensation is disbursed to the claimant if the Legislature passes a bill to appropriate
5 the funds that is then signed by the Governor.⁷²

6 Here, Bautista's claim falls within the mandatory recommendation provision of subdivision (b) of
7 Penal Code section 4900, as all three of the required elements are met. First, all of Bautista's
8 convictions in case number LF011367A for attempted murder, assault with a firearm, and street
9 terrorism were vacated by a writ of habeas corpus.⁷³ Second, all charges against Bautista in case
10 number LF011367A were subsequently dismissed on remand.⁷⁴ Third, the Attorney General declined
11 to object. Consequently, CalVCB is required by subdivision (b) to recommend compensation for the
12 injury sustained by Bautista's claim in this administrative proceeding.⁷⁵

13 As calculated by Bautista,⁷⁶ the injury sustained amounts to 4,412 days imprisonment for his
14 vacated conviction in case number LF011367A. Given the manner by which compensation is
15 calculated, the requisite injury contemplated by Penal Code section 4904 is "each day ... spent illegally
16 behind bars, away from society, employment, and [] loved ones."⁷⁷ But-for his vacated convictions for
17 attempted murder, assault with a firearm, and street terrorism, Bautista would have been free for all
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20 ⁷¹ Pen. Code, § 4904.

21 ⁷² Pen. Code, § 4904; see also Assembly Bill 1593 (2020-2021) (appropriating compensation for
22 multiple PC 4900 claimants); (Senate Bill 417 (2019-2020) (appropriating compensation over minority
23 dissent for PC 4900 claimant); *cf.* Assembly Bill 1273 (2007-2008) (declining to appropriate
24 compensation for PC 4900 claimant); Capitol Weekly, *GOP Senators Targeting Mods on Criminal
Justice*, posted July 12, 2007, accessible at <https://capitolweekly.net/gop-senators-targeting-mods-on-criminal-justice/> (explaining AB 1273).

25 ⁷³ Bautista App. at pp. 593-596.

26 ⁷⁴ Bautista App. at p. 598.

27 ⁷⁵ Pen. Code, §§ 4900, subd. (b), 4904.

28 ⁷⁶ Bautista App. at pp. 1, 5, 21-22.


⁷⁷ *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

1 4,412 days from the date of his arrest on May 26, 2009, until his release on June 24, 2021.⁷⁸
2 Bautista is therefore entitled to a recommendation for compensation in the amount of \$617,680.

3 **V. Conclusion**

4 The undersigned Hearing Officer recommends that CalVCB grant Bautista's unopposed claim
5 for compensation, as mandated by subdivision (b) of Penal Code section 4900, with a
6 recommendation that the Legislature appropriate \$617,680 as payment for his 4,412 days of
7 incarceration that were solely attributable to his vacated convictions for attempted murder, assault with
8 a firearm, and street terrorism.

9
10 Date: May 6, 2022



11 Laura Simpton
12 Hearing Officer
13 California Victim Compensation Board
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27 ⁷⁸ Bautista App. at pp. 1, 4-5, 21-22; see also Letter from Deputy Attorney General Ian Whitney, dated
28 May 4, 2022, (declining to object to Bautista's claim in the amount of \$617,680 for 4,412 days imprisonment).

ITEM 9

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

8
9 In the Matter of:

10 **Zavion Johnson**

11 Claim No. 22-ECO-05

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On January 31, 2022, Zavion Johnson (Johnson) submitted a claim for compensation as an
14 erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to
15 Penal Code section 4900, which was supplemented on February 1, 2022. The claim is based upon
16 Johnson's 2002 convictions for murder and assault of a child resulting in death, which were vacated
17 and dismissed during a state habeas proceeding without a finding of factual innocence. Johnson
18 seeks compensation in the amount of \$818,720 for having served 5,848 days imprisonment for these
19 convictions. Johnson is represented by Supervising Attorney Paige Kaneb of the Northern California
20 Innocence Project.

21 The Office of the Attorney General is represented by Deputy Attorney General John Merritt. By
22 letter dated April 4, 2022, the Attorney General declined to object to Johnson's claim. The
23 administrative record closed that same day, and the matter was assigned to CalVCB Senior Attorney
24 Laura Simpton. As required by subdivision (b) of Penal Code section 4900,¹ CalVCB is mandated to
25 grant Johnson's unopposed claim and recommend that the Legislature appropriate \$818,720 to
26 Johnson for the injury sustained by his vacated convictions.

27 _____
28 ¹ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

II. Procedural History

On December 4, 2001, Johnson was arrested for the death of his infant child Nadia Johnson (Nadia) in Sacramento County Superior Court case number 01F09500. On December 12, 2002, a jury found Johnson guilty of second-degree murder (Pen. Code, § 187) and assaulting a child resulting in death (Pen. Code, § 273ab).² He was sentenced on January 17, 2001, to 25 years to life for assault of a child resulting in death, plus a stayed term of 15 years to life for second-degree murder.³

The judgment was affirmed by the California Court of Appeal, Third Appellate District, on September 24, 2004, and the California Supreme Court denied review on December 1, 2004.⁴ Johnson filed several habeas petitions in pro per, some of which asserted actual innocence, all of which were denied.⁵

On April 11, 2017, with the assistance of the Northern California Innocence Project, Johnson filed a habeas petition in the Sacramento County Superior Court. Citing new scientific evidence concerning the victim's cause of death, the petition raised the following three claims: (1) the prosecutor's contrary trial evidence was materially false within the meaning of Penal Code section 1473, subdivision (b)(1); (2) the new scientific evidence likely would have altered the verdict within the meaning of section 1473, subdivision (b)(3); and (3) the admission of unreliable scientific evidence at

² The crime of assault of a child resulting in death does not require malice or specific intent to kill but does require the commission of a willful act that is objectively likely to result in great bodily injury. (Pen. Code, §273ab, subd. (a); see also *People v. Wyatt* (2010) 48 Cal.4th 776, 786 (explaining elements).)

³ Johnson Application (App.) at pp. 1-2, 12-13, 135; see also Johnson Abstract of Judgment (AOJ), submitted via email attachment on February 1, 2022. For convenience, the pagination for Johnson's application refers to the continuous page numbers for the entire 149-page PDF file, starting with the Erroneously Convicted Person Claim Form (App. at p. 1-2), the supporting memorandum (*id.* at pp. 3-15), followed by supporting exhibits including a juror's email (*id.* at p. 17), habeas petition (*id.* at pp. 20-129), the district attorney's return (*id.* at pp. 135-145), the court order granting habeas relief (*id.* at p. 147), and the court order dismissing the case (*id.* at p. 149).

⁴ *People v. Zavion Johnson*, Third District Court of Appeal case number C043174, opinion filed Sept. 24, 2004, available at 2004 WL 2137625; see also *People v. Zavion Johnson*, California Supreme Court case number C043174, docket available online at Appellate Courts Case Information at <https://appellatecases.courtinfo.ca.gov/>. (See Cal. Code Regs., tit. 2, §. 617.8 (official notice).)

⁵ Johnson App. at pp. 12, 36-37.

1 trial violated due process.⁶ On June 30, 2017, the court issued an order to show cause on the first two
2 claims only.⁷ In the response filed October 31, 2017, the prosecution admitted the first and second
3 claims, while still rejecting Petitioner's overall contention that the sole evidence of guilt consisted of the
4 now-repudiated expert testimony of shaken baby syndrome.⁸ Nevertheless, based upon the statutory
5 language in section 1473, subdivisions (b)(1) and (b)(3), the prosecution conceded that habeas relief
6 was warranted.⁹

7 At a hearing on December 8, 2017, the court granted the habeas petition "as more fully stated
8 on the record," presumably based upon the first and second claims in the petition.¹⁰ Johnson was
9 released from prison that same day, after having been continuously confined for over 16 years solely
10 as a result of the vacated convictions in case number 01F09500 for murder and assault of a child
11 resulting in death.¹¹ The prosecution did not retry Johnson for any of the original or lesser-included
12 charges. Instead, on January 19, 2018, the court granted Johnson's motion to dismiss all charges in
13 case number 01F09500, without objection from the prosecution.¹² The court did not render any
14 determination as to Johnson's factual innocence.¹³

15 Four years later on January 31, 2022, Johnson submitted his claim via email to CalVCB
16 seeking compensation as an erroneously convicted person under the recently enacted provision of
17 Penal Code section 4900, subdivision (b), which he supplemented on February 1, 2022. Johnson
18 specifically requested compensation in the amount of \$818,720 for 5,848 days of incarceration from
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20 ⁶ Johnson App. at pp. 20-129.

21 ⁷ Johnson App. at pp. 131-132.

22 ⁸ Johnson App. at p. 137.

23 ⁹ Johnson App. at p. 141.

24 ¹⁰ The application does not include a transcript of the hearing or further documentation concerning the
basis for the court's grant of habeas relief.

25 ¹¹ Johnson App. at pp. 1, 10, 12-13; see also Addendum to Application submitted by email on February
1, 2022.

26 ¹² Johnson App. at pp. 1, 10, 12-13; see also Addendum to Application submitted by email on February
1, 2022.

27 ¹³ In accordance with Penal Code section 1485.55, subdivision (d), no presumption exists in this
28 proceeding from the absence of such a determination.

1 the date of his arrest on December 4, 2001, up to but excluding the date of his release on December 8,
2 2017.¹⁴ After reviewing for jurisdiction, CalVCB deemed the claim filed on February 1, 2022, and
3 requested a response from the Attorney General within 45 days pursuant to Penal Code section 4902,
4 subdivision (d). Following the Attorney General's single request for an extension of time, the Attorney
5 General timely submitted a declination letter on April 4, 2022. In it, the Attorney General declined to
6 object to Johnson's claim "in the amount of \$818,720 for 5,848 days of incarceration."¹⁵ The
7 administrative record closed the same day.

8 **III. Factual Background**¹⁶

9 At 3:20 p.m. on November 24, 2001, paramedics arrived to assist Johnson's four-month-old
10 daughter Nadia, who was not breathing and had no pulse. The paramedics immediately administered
11 oxygen and undertook cardiopulmonary resuscitation. Johnson was present, but the paramedics were
12 unable to elicit much information from him about what had occurred. Nadia was transported by
13 ambulance to a nearby hospital, where she remained unresponsive on life support. Nadia died two
14 days later. The official cause of death was blunt force trauma to her head.¹⁷

15 When police initially questioned Johnson at the hospital, his only explanation for Nadia's
16 condition was that his one-year-old brother may have hit Nadia with a toy, which left a cut on her lip.¹⁸
17 It was not until the following day on November 25, 2001, that Johnson first told anyone that he had
18 accidentally dropped Nadia in the bathtub the day before, sometime after 9:30 a.m.¹⁹ Afterwards,
19

20 ¹⁴ Johnson App. at pp. 13-14. CalVCB accepts and relies upon Johnson's unopposed custodial
21 calculation. (Cf. Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3
22 Cal.App.4th 882, 886 (construing "days" for custody credit to include partial days).)

23 ¹⁵ Letter from Deputy Attorney General John Merritt, dated April 4, 2022, submitted via email.

24 ¹⁶ This factual summary is based upon the application and supporting documents, as well as portions
25 of the decision in *People v. Johnson, supra*, 2002 WL 2137625, to the extent it is consistent with the
26 recent habeas decision to vacate the underlying convictions. (Cal. Code Reg., tit. 2, § 617.8 (official
notice)). A portion of this decision is included as an attachment to Johnson's claim. (Johnson App at
pp. 143-143.)

27 ¹⁷ Johnson App. at pp. 26-30, 102, 137; *People v. Johnson, supra*, at 2002 WL 2137625, *1-2.

28 ¹⁸ Johnson App. at pp. 27, 118; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

¹⁹ Johnson App. at pp. 27, 30, 103; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

1 Nadia appeared unusually sleepy and was “breathing strangely....”²⁰ Johnson waited until 2:15 p.m. to
2 seek medical care, when he traveled with Nadia to two nearby clinics, which were both closed.
3 Johnson finally called 911 shortly before 3:20 p.m. when Nadia stopped breathing.²¹ Following
4 Nadia’s death two days later after being removed from life support, Johnson was arrested for her
5 murder on December 4, 2001.²²

6 **A. Trial Evidence**

7 At trial, the prosecution presented three medical experts, who all opined that Nadia’s fatal
8 injuries were caused by severe shaking (i.e., shaken baby syndrome), in addition to a traumatic blow
9 to the head.²³ The experts denied that Nadia’s injuries could have resulted from a single, accidental
10 fall in the shower as described by Johnson.²⁴ Primarily based upon this expert evidence, as well as
11 Johnson’s initial failure to disclose to medical personnel, the police, and others the cause of Nadia’s
12 injuries, the prosecution urged the jury to find Johnson guilty of both murder and assaulting a child
13 resulting in death.²⁵

14 In his defense, Johnson testified that he had accidentally dropped Nadia in the shower, causing
15 her to fall and hit her head on the tub. Specifically, he had been holding Nadia at chest level, while
16 rinsing her off in the shower, when she kicked out of his grasp and fell three to four feet, striking the
17 back of her head on the rounded edge of the cast-iron tub. Nadia cried but quieted down once he held
18 her. Johnson did not detect any bump or bleeding on Nadia’s head. He acknowledged that he failed
19 to tell anyone about the fall until the next day, when he first informed Nadia’s mother, even though his
20 sister, mother, grandmother, and cousin were all present that day. Johnson, who was 18 years old at

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23 ²⁰ Johnson App. at pp. 27-30, 103; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

24 ²¹ Johnson App. at pp. 6, 28-29, 102, 116; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

25 ²² Johnson App. at pp. 12-13, 31-32; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

26 ²³ Johnson App. at pp. 6-7, 21, 32; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

27 ²⁴ Johnson App. at pp. 32-34; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

28 ²⁵ Johnson App. at pp. 5, 137-139; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

1 the time, explained that he had been in shock, scared, and emotional, and he hoped that the fall was
2 not the reason for Nadia's condition.²⁶

3 Nadia's mother, along with other members from Johnson's family and his friends, testified for
4 the defense. They all described Johnson as a loving and caring father, who was never aggressive with
5 Nadia.²⁷ Nadia's mother added that Johnson told her, on the day after Nadia's fall, that Nadia had
6 slipped out of his hand when he had turned around to turn off the shower.²⁸

7 A biomechanical expert, who specialized in the study of the amount of force necessary to
8 damage certain parts of the body, testified that all of Nadia's injuries were consistent with, and could
9 have been caused by, a single accidental fall as described by Johnson.²⁹

10 The jury ultimately sided with the prosecution and found Johnson guilty as charged on
11 December 12, 2002. Johnson was sentenced to 25-years-to-life.³⁰

12 **B. New Medical Evidence**

13 In 2017, after much debate in the medical and scientific communities regarding the symptoms
14 of shaken baby syndrome, two of the medical experts who had testified against Johnson recanted their
15 testimony. Specifically, Dr. Gregory Reiber, a forensic pathologist, opined that "there is at least an
16 equal possibility that the head injury is accidental."³¹ In addition, Dr. Claudia Greco, a
17 neuropathologist, opined that Nadia's neck injury, which she originally believed to be the most
18 convincing evidence of violent shaking, "does not prove that Nadia Johnson was violently shaken or
19 that her injuries were intentionally inflicted."³² Two more medical experts reviewed the evidence, and
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23 ²⁶ Johnson App. at pp. 6, 24, 26-31; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

24 ²⁷ Johnson App. at pp. 4-5, 24, 27; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

25 ²⁸ Johnson App. at p. 138.

26 ²⁹ Johnson App. at pp. 34-35; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

27 ³⁰ Johnson App. at p. 1; Johnson AOJ; *People v. Johnson, supra*, at 2002 WL 2137625, *2.

28 ³¹ Johnson App. at pp. 100-107 (Reiber, M.D.).

³² Johnson App. at pp. 110-111 (Greco, M.D.).

1 both likewise concluded that Nadia's injuries were consistent with an accidental fall as described by
2 Johnson.³³

3 Based upon the revised opinions by Drs. Reiber and Greco, the prosecution conceded their
4 contrary expert testimony during Johnson's trial amounted to "false evidence" within the meaning of
5 Penal Code section 1473, subdivision (b)(1), for which reversal of the conviction was statutorily
6 required. The prosecution similarly conceded that the doctors' revised expert opinions amounted to
7 "new evidence" within the meaning of section 1473, subdivision (b)(3), for which reversal was also
8 required.³⁴ The trial court agreed and vacated Johnson's convictions for murder and assault of a child
9 resulting in death on December 8, 2017.³⁵ The prosecution declined to retry Johnson on any charges,
10 and the entire case was dismissed on Johnson's motion, without objection from the prosecution, on
11 January 19, 2018.³⁶

12 **IV. Determination of Issues**

13 Penal Code section 4900 allows a person, who has been erroneously convicted and
14 imprisoned for a felony offense, to submit a claim for compensation to CalVCB.³⁷ Typically, claimants
15 bear the burden to prove by a preponderance that (1) the crime with which they were convicted either
16 did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous
17 conviction.³⁸ If the claim is ultimately approved, it results in a recommendation by CalVCB to the
18 Legislature to make an appropriation for compensation for the person's sustained injury, which is
19 calculated at the rate of \$140 per day of imprisonment that resulted from the erroneous conviction.³⁹

20 In limited circumstances, both of the elements for innocence and injury may be presumed, if a
21 court has found the claimant factually innocent under any standard applicable in a proceeding to grant
22

23 ³³ Johnson App. at pp. 113-121 (Melinek, M.D.), 126-129 (Haut, Ph.D.).

24 ³⁴ Johnson App. at p. 141.

25 ³⁵ Johnson App. at pp. 1, 10, 147.

26 ³⁶ Johnson App. at pp. 1, 10, 149.

27 ³⁷ Pen. Code, § 4900.

28 ³⁸ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

³⁹ Pen. Code, § 4904.

1 habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.⁴⁰ To obtain such a
2 finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence
3 that the crime which with they were charged was either not committed at all or, if committed, was not
4 committed by the claimant.⁴¹ If the claimant received a finding of factual innocence for each and every
5 conviction underlying the period of their incarceration, CalVCB must automatically recommend
6 compensation, within 30 days and without a hearing.⁴²

7 Alternatively, under recently enacted subdivision (b) of Penal Code section 4900, a
8 recommendation for compensation is mandated for certain claimants, even without a preponderance of
9 evidence that the claimant did not commit the crime for which they were convicted.⁴³ Specifically,
10 subdivision (b) compels a recommendation for compensation, without a hearing and within 60 days,
11 when the following three elements are met. First, the claimant's conviction must have been vacated
12 either by a writ of habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision
13 (a)(2). Second, the charges underlying the vacated conviction must have been dismissed on remand,
14 or the claimant must have been acquitted upon retrial. Third, the Attorney General must decline to
15 object to the application in this administrative proceeding.⁴⁴ If all three of these elements are satisfied,
16 and CalVCB finds that the claimant sustained injury through their erroneous conviction, then CalVCB
17 shall recommend that the Legislature make an appropriation for the purpose of indemnifying the
18 claimant for the injury.⁴⁵ The recommendation is required, regardless of whether or not the evidence
19 proves the claimant is more likely innocent than guilty.

20 If the Attorney General objects, he must do so in writing, within 45 days from when the claimant
21 files the claim, and with clear and convincing evidence that the claimant is not entitled to
22 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney
23

24 ⁴⁰ Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

25 ⁴¹ Pen. Code, §§ 1485.55, subd. (b).

26 ⁴² Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

27 ⁴³ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

28 ⁴⁴ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

⁴⁵ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

1 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the
2 acts constituting the offense.⁴⁶ To meet that burden, the Attorney General may not rely solely on the
3 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.⁴⁷

4 If the claim is ultimately approved, it results in a recommendation by CalVCB to the Legislature
5 to make an appropriation for compensation for the claimant's sustained injury. Injury is calculated at
6 the rate of \$140 per day for the pre- and post-conviction confinement that resulted from the erroneous
7 conviction.⁴⁸ Compensation is disbursed to the claimant if the Legislature passes a bill to appropriate
8 the funds that is then signed by the Governor.⁴⁹

9 Here, Johnson's claim falls within the mandatory recommendation provision of subdivision (b)
10 of Penal Code section 4900, as all three of the required elements are met. First, Johnson's
11 convictions in case number 01F09500 for murder and assault of a child resulting in death were both
12 vacated by a writ of habeas corpus pursuant to Penal Code section 1473.6. Second, all charges
13 against Johnson in case number 01F09500 were subsequently dismissed on remand. Third, the
14 Attorney General declined to object. Consequently, CalVCB is required by subdivision (b) to
15 recommend compensation for the injury sustained by Johnson's claim in this administrative
16 proceeding.⁵⁰

17 As calculated by Johnson,⁵¹ the injury sustained amounts to 5,848 days imprisonment for his
18 vacated conviction in case number 01F09500. Given the manner by which compensation is
19 calculated, the requisite injury contemplated by Penal Code section 4904 is "each day ... spent illegally
20

21 ⁴⁶ Pen. Code, § 4902, subd. (d).

22 ⁴⁷ Pen. Code, § 4903, subd. (d).

23 ⁴⁸ Pen. Code, § 4904.

24 ⁴⁹ Pen. Code, § 4904; see also Assembly Bill 1593 (2020-2021) (appropriating compensation for
25 multiple PC 4900 claimants); (Senate Bill 417 (2019-2020) (appropriating compensation over minority
26 dissent for PC 4900 claimant); *cf.* Assembly Bill 1273 (2007-2008) (declining to appropriate
27 compensation for PC 4900 claimant); Capitol Weekly, *GOP Senators Targeting Mods on Criminal
Justice*, posted July 12, 2007, accessible at <https://capitolweekly.net/gop-senators-targeting-mods-on-criminal-justice/> (explaining AB 1273).

27 ⁵⁰ Pen. Code, §§ 4900, subd. (b), 4904.


28 ⁵¹ Johnson App. at pp. 1, 13.

1 behind bars, away from society, employment, and [] loved ones.”⁵² But-for his vacated convictions for
2 murder and assault of a child resulting in death, Johnson would have been free for all 5,848 days from
3 the date of his arrest on December 4, 2001, up to the date of his release on December 8, 2017.⁵³
4 Johnson is therefore entitled to a recommendation for compensation in the amount of \$818,720.

5 **V. Conclusion**

6 CalVCB grants Johnson’s unopposed claim for compensation as mandated by subdivision (b)
7 of Penal Code section 4900 and, therefore, recommends that the Legislature appropriate \$818,720 as
8 payment for his 5,848 days of incarceration that were solely attributable to his vacated convictions for
9 murder and assault of a child resulting in death.

10 Date: April 11, 2022

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12 _____
13 Laura Simpton
14 Hearing Officer
15 California Victim Compensation Board
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25

26 ⁵² *Holmes v. Calif. Victim Comp. & Gov’t Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

27 ⁵³ Johnson App. at pp. 1, 13; Addendum to Application submitted by email on February 1, 2022; see
28 also Letter from Deputy Attorney General John Merritt, dated April 4, 2022, submitted via email
(declining to object to Johnson’s claim in the amount of \$818,720 for 5,848 days imprisonment).