

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

MARCH 16, 2023

10:00 a.m.

400 R Street, Room 330
Sacramento, CA 95811

BOARD MEETING MATERIALS

Item 1.	Approval of Minutes Minutes of the January 19, 2023, 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 Report attached	Action Item
Item 6.	Proposal to Approve Trauma Recovery Center Grant Award Copy attached	Action Item
Item 7.	Daniel Larsen (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 8.	Johnny Choinski (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 9.	Darwin Crabtree (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES JANUARY 19, 2023, 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, at 400 R Street, Room 330, Sacramento, California, on Thursday, January 19, 2023, at 10:01 a.m. Appearing via Zoom was Member Diana Becton, District Attorney, and Member Malia Cohen, State Controller.

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

Item 1. Approval of the Minutes of the November 17, 2022, Board Meeting

Member Becton moved approval of the Minutes for the November 17, 2022, Board Meeting. The motion was seconded by Chair Ravel. An aye vote being cast by Chair Ravel and Member Becton (Member Cohen abstained as she was not present at the November 17, 2022, Board meeting), the Board approved the minutes of the November 17, 2022, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment and Ms. Burrell 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.)

Margaret Petros appeared via Zoom. Ms. Petros welcomed Controller Cohen to the Board and stated she hoped she stayed as an active member of this Board rather than appoint a representative, because it is really important, it's the only program that helps victims and we need elected officials to be present and active.

Ms. Petros continued by offering comments on the Annual Report for fiscal year 2021/2022. She stated that she reviewed it a couple of days ago and was disappointed at the reductions in benefits, the actual payments to victims that have gone down statewide. She indicated it is troubling to her and not including this information in the Annual Report is also a concern for her. Ms. Petros noted that the Annual Report is listed on the CalVCB website as a Supplemental Report, and that it shows the details of every County and how much they process to crime victims. She understands two years prior to the current fiscal year Santa Clara brought crime victims \$2.2 million; in the 2021 fiscal year, \$1.5 million; and then last fiscal year only \$788,000. She asked, "How could that be?" She argued that it is not because there has been less crimes and she asked the Board to have a special hearing on this. Ms. Petros continued stating that it seemed like every county in the report had less payments to crime victims. She noted that San Mateo County has gone down to only \$230,000, compared

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to the year before at \$523,000. She stated CalVCB is paying millions more to administer this program and paying counties to help with that effort.. Ms. Petros explained that she knows this program well because she managed victim compensation in Santa Clara County and noted that in her last year with that county, they garnered approximately \$3.6 million to crime victims. She is only looking at these statistics once a year, but stated the Board management is looking at the data every day and her question is, "What has management done all along throughout last year to control it?"

Ms. Petros continued by noting that CalVCB got \$3 million dollars from the Governor's office to study this issue, but CalVCB knows where the problems are, and it is not about victims not finding out about the program. In her opinion, those that find it are not getting help. If CalVCB looks at how much they paid in funeral burial and compares that to how much was paid in support loss to those families, the Board will figure out very few are paying attention to paying families who lost a loved one who was working earning income and supporting their family. She requested the Board keep that in mind.

Ms. Petros concluded by thanking the Board for listening to comments.

Chair Ravel thanked Ms. Petros for her commentary.

Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on several items:

To start, Ms. Gledhill welcomed Controller Cohen to the California Victim Compensation Board. Ms. Gledhill stated she looks forward to Controller Cohen's participation and committed to being available to assist Controller Cohen in any way she can.

Ms. Gledhill continued by noting the first three weeks of 2023 have already been busy, and went on to provide some highlights since the last meeting.

Ms. Gledhill attended a Victim Compensation Subject Matter Expert Roundtable in Washington, D.C., hosted by the U.S. Department of Justice Office of Victims of Crime, or OVC last week. The roundtable included about eight states and various representatives of advocacy groups with an interest in victim compensation.

The meeting was to review the feedback the Office of Victims of Crime has been receiving about how state compensation programs operate. OVC is considering promulgating new federal regulations and has been soliciting feedback from various stakeholders. There was a good discussion with a variety of viewpoints at the meeting.

Ms. Gledhill noted that California is not only the oldest state compensation program, but often the leader in many areas and that came through in last week's roundtable. It is not yet clear

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when the Federal Government will promulgate the new regulations, which are important because they could change how CalVCB uses its federal grant money. She promised to keep the Board updated on this matter.

Ms. Gledhill continued by reminding the Board that January is Human Trafficking Awareness Month and CalVCB launched a social media campaign and issued a press release highlighting the resources available to Human Trafficking victims through CalVCB.

Three years ago, CalVCB began authorizing income loss compensation for victims of sex and labor trafficking. In that time, CalVCB has approved 590 human trafficking claims and paid victims nearly 4.5 million dollars in lost wages. In addition to income loss compensation, which covers up to \$20,000 for a two-year period, CalVCB can reimburse survivors for other expenses related to human trafficking. This includes medical, dental, and mental health treatment, home security and relocation.

Ms. Gledhill next updated the Board about the Forced or Involuntary Sterilization Compensation Program and noted that on December 31, CalVCB reached the halfway point of the Program, which began taking applications on January 1, 2022, and is set to expire on December 31, 2023. 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 of people in California prisons after 1979.

CalVCB continues to work hard to get the word out about the program and to try to reach the estimated 600 survivors of forced or coercive sterilizations who remain alive and are eligible for compensation. CalVCB has sent more than 900 posters to state prisons to post in common areas and housing units. Letters have been sent to everyone the Department of Corrections and Rehabilitation has identified as having had a sterilization procedure. Also, CalVCB sent posters and fact sheets to 500 libraries across the state and 1,000 skilled nursing facilities.

Further, CalVCB contracted with a marketing firm to conduct an advertising campaign that got underway in October with social media ads. Just this week radio and TV ads were launched and will air through October of this year.

To date, more than 300 applications have been received and 57 have been approved. CalVCB knows there are more survivors out there and will continue to do everything it can to reach them.

Next, Ms. Gledhill discussed the January Budget Proposal, which was released by the Governor last week. The proposed budget includes \$39.5 million in General Fund backfill to the State Restitution Fund, which is consistent with what was originally projected last year, and

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which will ensure CalVCB has sufficient funding to continue to make payments to qualified victims.

Continuing with her discussion of the Governor's Budget, Ms. Gledhill reported that the anticipated savings from Proposition 47, a portion of which we receive to fund grants for Trauma Recovery Centers or TRCs, is significantly lower than last year. However, she reminded everyone there was extra money allocated to TRCs in the current budget that may offset this reduction. CalVCB will lay out the complete TRC picture for the Board in March.

The Legislature will start holding budget hearings now and CalVCB will continue to participate in the process and monitor any changes.

With regards to outreach, Ms. Gledhill reported that CalVCB is working on the \$3 million dollars that was received in the current year budget for a Public Awareness Campaign to help provide outreach to underserved communities. Victim applications have gone down over the last couple of years and, while CalVCB recognizes this, it believes it is mostly attributable to the pandemic. But CalVCB is always looking for ways to effectively reach more victims of crime to get them the help and services they need.

Lastly, Ms. Gledhill stated, as part of the outreach effort, CalVCB partnered with the State Office of Data and Innovation, also known as ODI, for research on how CalVCB can better reach crime victims.

After a six-week sprint, ODI delivered a report with several recommendations that are going to help guide the work of the vendor that CalVCB will be contracting with for the 3-year outreach campaign. Ms. Gledhill thanked ODI and the UC Berkeley Possibilities Lab for their work, partnership on this important topic, and valuable input. CalVCB will continue to explore ways we can work together in the future to best help victims.

Chairperson Ravel thanked Ms. Gledhill for the updates.

Item 4. Contract Update

The Contract Update was presented by Executive Officer Lynda Gledhill.

Ms. Gledhill noted the Contract Report was purely informational as all items are under the \$200,000 delegated limit.

Item 5. Approval of the 2023 Rulemaking Calendar

The Approval of the 2023 Rulemaking Calendar was presented by Chief Counsel Kim Gauthier.

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Ms. Gauthier explained that every year the Office of Administrative Law, which is the state entity responsible for reviewing and approving all regulations in the state of California, requests that state departments and entities submit for their consideration and publication a rulemaking calendar of regulations that the state entity intends to either revise and/or promulgate so that the Office of Administrative Law may calendar their work and also publish for the public information regarding what rulemaking packages will be coming before them. Item 5 is CalVCB's request for approval to submit CalVCB's 2023 Rulemaking Calendar to the Office of Administrative Law. It includes proposed changes to regulations in the areas of the Victims Compensation Program, the Good Samaritan Program, and possibly the Penal Code section 4900 cases.

Ms. Gauthier cautioned that this is just the first step in the process, and this is only the request for approval to submit the Rulemaking Calendar. CalVCB will, of course, bring back to the Board any proposed changes to the regulations for review and consideration before it is submitted to the Office of Administrative Law and the formal rulemaking process begins. The process will include a public comment period for the public as well as potentially a hearing. The Board will approve the final draft regulations before they are submitted to the Office of Administrative Law.

Finally, Ms. Gauthier requested the Board's approval of the calendar and its submission to the Office of Administrative Law.

Member Becton moved to approve the 2023 Rulemaking Calendar and authorized staff to submit the calendar to the Office of Administrative Law. The motion was seconded by Member Cohen. By a unanimous vote of the Board, the motion passed.

Item 6. Proposal to Approve Trauma Recovery Center Grant Award

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

Mr. LaMar stated the 2022-23 state budget provided \$23 million in additional funding for Trauma Recovery Centers. That included \$5 million to create a Regional Trauma Recovery Center Pilot Program.

A Trauma Recovery Center (TRC) is an organization that helps victims of violent crimes by providing trauma-informed services that include assertive outreach to underserved populations, comprehensive evidence-based mental health services, and coordinated care tailored to each victim's needs.

CalVCB presently funds 18 TRCs through grants.

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The Regional TRC Pilot Program aims to extend TRC services into rural and underserved areas by funding satellite offices to be run by existing TRCs that partner with community organizations in those areas. The budget directed that \$2.5 million be used for two such locations in Northern California and \$2.5 million for two in Central California.

Mr. LaMar reported that at the CalVCB November Board meeting, the Board approved awarding a \$2.5 million dollar grant to the Alameda County Family Justice Center to establish satellite offices in Sonoma and Sacramento Counties – neither of which currently have a TRC. They will be located in Santa Rosa and Sacramento.

Because the initial Notice of Funding Availability or NOFA, for pilot program grants did not elicit any applications to serve the Central California locations, CalVCB issued another NOFA on November 7 specifically targeting those areas. CalVCB subsequently received three applications by the December 6 submission deadline.

Staff evaluated and scored the three applications. The application from Amanecer Community Counseling Services of Los Angeles County received the highest score. Amanecer will collaborate with CommonSpirit Health, formerly known as Dignity Health, a non-profit hospital provider, to deliver TRC services at St. Joseph's Medical Center in Stockton, Mercy Hospital Downtown in Bakersfield, and Mercy Hospital Southwest in Bakersfield.

The two counties served, San Joaquin and Kern, are mostly rural with significant non-English speaking populations, including farm workers and new immigrants, and high rates of poverty and homelessness.

Mr. Lamar noted that Amanecer has an outstanding track record in Los Angeles County, and a long-standing partnership with CommonSpirit Health through the existing hospital system. The proposed satellite offices will offer on-site and virtual, evidence-based mental health and support services. Amanecer expects to service 1,800 clients and conduct 35 training courses to local organizations and law enforcement over the course of the grant.

Mr. Lamar recommended awarding the Regional TRC Pilot Program grant of \$2.5 million for the Central California Locations to Amanecer Community Counseling Services.

Chair Ravel thanked Mr. LaMar, and stated that he was particularly pleased to see that CalVCB's renewed efforts generated so much interest in the program and that there will be three centers in these underserved locations for these services.

Member Becton moved to adopt the Proposed Regional Trauma Recovery Center Grant Award. The motion was seconded by Member Cohen. By a unanimous vote of the Board, the motion passed.

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Item 7. Proposed Mental Health Updates - Telehealth

The Proposed Mental Health Updates regarding Telehealth item was presented by Deputy Executive Officer of the Victim Compensation Program, Vincent Walker.

To start, Mr. Walker stated CalVCB would like to propose an update to the Mental Health Guidelines that will remove the session limits when treatment is provided via Telehealth.

The California Victim Compensation Board has the authority pursuant to Government Code section 13957.2 to establish maximum rates and service limitations for reimbursement of mental health and counseling services.

Reimbursement of mental health expenses by CalVCB is based on definitions, session limitations, documentation requirements, and other criteria set forth in the CalVCB Mental Health Guidelines.

Per the Board of Behavioral Sciences, “Telehealth” means the mode of delivering health care services and public health via information communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care. There are currently no limits set forth by the various California Mental Health Licensing Boards regarding the number of telehealth sessions that can be provided.

Since January 1, 2017, the CalVCB Guidelines have limited reimbursement of telehealth sessions to five, unless a Telehealth Verification form is submitted and approved. Reasons for the form to be approved included:

- Claimant requires telehealth due to clinical necessity; or
- Claimant lives in an area where no clinical resources are available.

Mr. Walker discussed how, at the start of the COVID-19 pandemic, CalVCB suspended this requirement to accommodate clinical needs and comply with Governor Newsom’s April 2020 Executive Order N-43-20. The Executive Order helped facilitate and expand the use of telehealth services and ensure that Californians impacted by COVID-19 had access to medical care, and protected health care workers by reducing unnecessary in-person medical consultations and treatment. The Executive Order also relaxed or eliminated enforcement of methods of delivery, normal consent requirements, and liability of providers for delivery of mental health services via telehealth methods.

On October 17, 2022, Governor Newsom announced that the COVID-19 State of Emergency and associated Executive Orders will end on February 28, 2023. Active waivers issued under the State of Emergency and Executive Orders will also expire. Without Board action, CalVCB Telehealth sessions will revert to a limit of five, except in certain circumstances. CalVCB has

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heard from claimants and providers alike that telehealth has allowed easier and better access to mental health services.

Mr. Walker explained that CalVCB is requesting approval to remove telehealth session limitations from the Guidelines, effective March 1, 2023. Mental health session limits that are in place now will apply to all mental health services, regardless of how they are delivered. Removal of this requirement will increase flexibility of providers and claimants, increase access to mental health treatment for claimants, and align with California's Licensing Boards policies and requirements.

Mr. Walker noted that, upon approval, an informational copy of the updated Guidelines would be filed with the Secretary of State.

Member Becton moved to approve the proposed Mental Health Updates regarding Telehealth. The motion was seconded by Member Cohen. By a unanimous vote of the Board, the motion passed.

Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:26 a.m. pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1-205 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 10:27 a.m.

Member Becton moved to approve items 1 through 205 of the Victim Compensation Program. Member Cohen seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

***Ms. Margaret Petros requested to offer public comment regarding an item the Board considered during Closed Session. Chair Ravel informed Ms. Petros that the Board does not permit public comment for Closed Session Items. Chair Ravel explained that Ms. Petros is welcome to submit further comments and advocacy to the Board on the item in question through the normal business channels relevant to appeals and reconsiderations.*

Ms. Petros thanked the Board.

Adjournment

Member Becton moved the adjournment of the January Board meeting. Member Cohen seconded the motion. The motion was adopted by a unanimous vote of the Board and the meeting was adjourned at 10:29 a.m.

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Next Board Meeting

The next Board meeting is scheduled for Thursday, March 16, 2023.

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
MARCH 16, 2023

SB 655 (Durazo) Victim Compensation

This bill would make a number of changes to CalVCB statutes, effective July 1, 2024, but only if General Fund moneys over the multiyear forecasts beginning in the 2024–25 fiscal year are available to support ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support the actions. It would remove reasons for denial, including felony convictions, lack of cooperation with law enforcement and involvement in the events leading to the crime. The bill 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 remove CalVCB's authority to set service limitations for medical and mental health services. It would create a presumption in favor of granting an emergency award for relocation or funeral expenses. It would prohibit denial of relocation reimbursement due to the victim informing the offender of the location of the new residence. It would add requirements for CalVCB's communication of information to claimants.

Status: Introduced

SB 838 (Menjivar) Use of Force by a Law Enforcement Officer

This bill would require CalVCB to compensate individuals who were killed or injured by law enforcement notwithstanding current eligibility requirements. It would add documentation that describes or demonstrates that a person suffered serious bodily injury or death as a result of a law enforcement officer's use of force to the definition of sufficient evidence establishing that the person is a victim eligible for compensation. 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. 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 in the crime or the victim's or a derivative victim's failure to cooperate with law enforcement.

Status: Introduced

AB 56 (Lackey) Victim Compensation: Emotional Injuries

This bill would expand eligibility for compensation by CalVCB to include solely emotional injuries from felony violations including, among other crimes, attempted murder, rape and sexual assault, mayhem, and stalking.

Status: Amended and referred to the Assembly Appropriations Committee

AB 1187 (Quirk Silva) Victim Compensation: Certified Child Life Specialists

This bill would authorize CalVCB to reimburse mental health counseling services provided by a Certified Child Life Specialist.

Status: Introduced

AB 1186 (Bonta) Juveniles: Restitution

This bill would remove provisions that require juvenile offenders to pay restitution, instead requiring them to participate in various restorative justice programs. The courts would determine the amount of restitution owed and transmit it to CalVCB, which would be required to pay the amount to the victim upon appropriation by the Legislature.

Status: Introduced

AB 1551 (Gipson) Vehicular Manslaughter While Intoxicated

This bill would require a defendant in a case of vehicular manslaughter while intoxicated to be ordered to pay restitution in the form of child maintenance to each of the victim's children until they reach the age of 18. The bill states that the unpaid portion of child maintenance would be enforceable as any other restitution order under CalVCB statutes.

Status: Introduced

AB 855 (Jackson) Criminal Procedure: Fines, Fees, and Restitution

This bill would change the annual interest rate on restitution orders and the annual interest rate charged by the Franchise Tax Board on certain delinquent payments, including fines, fees, and restitution, to no more than one percent.

Status: Introduced

SB 78 (Glazer) Criminal Procedure: Factual Innocence

This bill would provide that, for defendants whose convictions were reversed on habeas and the district attorney fails to object and provide clear and convincing evidence of guilt, the court shall issue a finding that they are entitled to compensation by CalVCB under Penal Code

section 4900. The bill also makes statutory changes to conform to CalVCB's new payment process for erroneous conviction claims that was enacted in 2022.

Status: Introduced

SB 530 (Bradford) Exoneration: Compensation

This bill, effective January 1, 2024, would remove the requirement that erroneous conviction compensation claimants prove injury and instead state that they would be compensated for incarceration served solely as a result of the former erroneous conviction. In addition, it would add to a list of provisions that are scheduled to take effect July 1, 2024, but only if it is determined that sufficient General Fund monies exist, and an appropriation is made. The additional provisions would require compensation of \$70 per day for time that a claimant spent on the sex offender registration list due to an erroneous conviction and compensation of reasonable attorney fees for all successful claimants.

Status: Introduced

AB 997 (Gipson) Exoneration: Mental Health Services

This bill would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims, up to the length of time that they were incarcerated.

Status: Introduced

AB 335 (Alanis) 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: Introduced

AB 433 (Jackson) State- and County-Funded Grants: Advance Payments

This bill would require state and county departments that offer grants to nonprofit organizations to advance a payment of 10 percent of the total grant amount awarded to the nonprofit organization, upon request of the nonprofit administrators.

Status: Introduced

AB 330 (Dixon) Domestic Violence: Victim's Information Card

This bill would require the Victims of Domestic Violence card to be a different color than other cards issued by officers, to include a disclaimer, to be available in languages other than English, and to include various information such as the definition of domestic violence and the statute of limitations for domestic violence.

Status: Introduced

AB 1402 (Dahle) Medical Evidentiary Examinations: Reimbursement

Existing law requires the Office of Emergency Services to establish a protocol for the examination and treatment of victims of sexual abuse and attempted sexual abuse, including child sexual abuse, and the collection and preservation of evidence. This bill would declare the intent of the Legislature to enact legislation relating to reimbursements for child abuse forensic examinations.

Status: Introduced

AB 1215 (Carrillo) Pets Assistance with Support Grant Program

This bill would require the Department of Housing and Community Development to develop and administer the Pets Assistance With Support Grant Program (PAWS), to award grants to qualified homeless shelters and qualified domestic violence shelters. It would require grant recipients to meet certain availability and service requirements as they relate to the pets of people experiencing homelessness and people escaping domestic violence. The bill would provide that the program would only become operative upon appropriation by the Legislature.

Status: Introduced

SB 86 (Seyarto) Crime Victims: Resource Center

Existing law requires the establishment of a resource center that operates a statewide, toll-free information service, consisting of legal and other information, for crime victims and providers of services to crime victims, as defined. This bill would require the resource center to additionally provide the information through an internet website and to the families of crime victims. The bill would require that the internet website include a summary of victims' rights and resources.

Status: Introduced

ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD
CONTRACT REPORT
MARCH 16, 2023

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 more than \$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: Government Operations Agency Contract Number: S23-041	Contract Amount: \$300,000.00 Term: 7/1/2023 – 6/30/2026	The Contractor shall provide administrative services to CalVCB, including but not limited to, Legal, Budget, Personnel, Legislative, and Information Technology Services, and Policy and Communication oversight. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 5.80 (A)(4) (Interagency agreement).
Informational		
Contractor Name: HBS Solutions PO Number: PO 2870	Contract Amount: \$425,979.15 Term: N/A	This Information Technology procurement is for Pure Storage data and protection for brand new servers at CalVCB Headquarters and Department of Technology,

		<p>Office of Technology Services. This procurement allows CalVCB to accelerate business critical workloads on a unified storage server.</p> <p>This was procured utilizing the Statewide Contract #1-19-70-19Q-1.</p>
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ITEM 6

**California Victim Compensation Board
Proposal to Approve Trauma Recovery Center Grant Awards**

March 16, 2023

Background

Trauma Recovery Centers (TRCs) are organizations that help victims of violent crime by providing trauma-informed services that include assertive outreach to underserved populations, comprehensive evidence-based mental health services, and coordinated care tailored to each victim's needs. TRCs serve victims of all types of violent crime, including those with complex needs, with a multidisciplinary team to promote resiliency and recovery. TRCs also provide training to local law enforcement and other community partners on the identification and effects of violent crime.

Government Code section 13963.1, enacted July 1, 2013, directs the California Victim Compensation Board (CalVCB) to administer a program to evaluate applications for and award grants to TRCs in California to provide services to victims of crime. The statutory requirements provide a clinical model for the TRCs and who they must serve, and direct CalVCB to award the grants through a well-defined grant application process. A grantee is not guaranteed continued funding but may apply for a consecutive grant to prevent a lapse in funding. Presently, CalVCB has grant agreements with 18 TRCs across California.

In this cycle, grantees will provide services consistent with the Notice of Funds Available (NOFA) released December 5, 2022. The grant awards provide funding for a two-year cycle effective July 1, 2023, through June 30, 2025.

Estimated Funding

Pursuant to statute, the sources from which funds are appropriated for the TRC program are the Restitution Fund and the Safe Neighborhood and Schools Fund (SNSF). This grant cycle also includes a General Fund appropriation from the Budget Act of 2022.

FY 2023-24 Estimated TRC Funding	
Amount	Source
\$10,150,417.50	SNSF will provide an estimated \$10,684,650.00 less five percent of the allocated funds that may be utilized for administrative costs per statute. The SNSF is an annual appropriation calculated by the Department of Finance. If the SNSF appropriation in the final Governor's Budget is more or less than originally estimated, the proposed award amounts must be adjusted accordingly.
\$9,702,582.50	Budget Act of 2022 (General Fund) which includes amounts allocated for the FY 2023-24 grant cycle plus the remaining balance from FY 2022-23 grants that were not fully expended.
\$2,000,000.00	Restitution Fund
\$21,853,000.00	TOTAL Estimated TRC Funding

Each year, there is a finite amount of funding available to grant TRCs but also no statutory or other limit as to the amount of funding that may be requested by applicants. Early in the program, CalVCB was able to fund all qualified applicants at a high level. However, in more recent years, the applications and correlating funds requested for grants have gone up disproportionately to the funding available. CalVCB has no obligation to grant a specific amount to each grant applicant. TRCs may also receive funding from other sources.

Once a recommendation is made by staff and adopted by the Board, grantees are advised of what amount has been approved. Given that approved amounts may be less than requested, applicants have the option to either accept or decline the grant. Once an agreement is made, grant agreements are executed between the grantee and CalVCB. These contractual agreements oblige the grantee to deliver the outcomes set forth in the agreement for managing all grant funds appropriately.

Scoring

In keeping with statute, which requires CalVCB to award TRC grants through a well-defined application process, grant applications were carefully evaluated and scored. A determination was made as to whether applicants could meet the minimum qualifications, as detailed in the statutory requirements. The scoring this year added weight to the organization's experience and ability to serve the greatest number of victims of a wide range of crimes based on geographic location and the need in the area served. These criteria accounted for 10 percent of the application score.

Scoring was also made more transparent by explicitly stating in the NOFA how answers to narrative questions would be scored and how the points would be awarded in each category of the application. These considerations were assessed using a point system that provided values consistent with the following level of responses to narrative questions:

- **Not Qualified** (zero points, disqualified) Responses do not provide demonstrated ability to meet requirement.
- **Less Qualified** (1-2 points) Responses provide little to no direct experience or understanding of how qualifications have or will be met.
- **Qualified** (3-6 points) Responses provide direct experience and complete knowledge of how qualifications have or will be met with comprehensive examples.
- **Highly Qualified** (7-10 points) Responses meet the 'Qualified' standard and provide direct experience and comprehensive examples of qualification and ability to begin providing services within 30 days of receiving award.

Applicants with responses that were ranked as "Not Qualified" were given zero points for the question and disqualified, as each question represented a statutory requirement. The criteria and point values are listed in the NOFA. The maximum point value for an application was 100 points. A copy of the NOFA is attached for reference.

Scoring the applications allows for an assessment of the ability to perform statutorily required functions. While the lower-scoring applications demonstrated that the applicants could meet the minimum statutory requirements for operating a TRC, they lacked the details, examples and clarity provided by higher-scoring applications. The differences in score were significant this cycle, with scores ranging from 23 to 76 points.

CalVCB Recommendation

For FY 2023-24, a total of 16 applications were received in response to the NOFA. One application was disqualified because of one missing required application component and did not meet the minimum qualifications. Fifteen applications demonstrated they could meet minimum qualifications with varying degrees of proficiency and are recommended for funding. Out of the 15 candidates, 11 are current TRCs, one is a previously funded TRC, and three are new TRC grantees.

Given the amount of funds available and the number of applicants, CalVCB recommends capping the maximum funding for all applicants at \$2,200,000.00 for the two-year grant period. The final grant amount is calculated using a tiered percentage system based on the final application score received by the applicant. Any unallocated remaining funds will then be equally distributed to the 15 grantees.

Application Score	Funding Tier	Funding Formula
70 points or higher	1	100% up to \$2.2 M
60-69 points	2	85% of request up to a maximum of \$2.2 M
50-59 Points	3	70% of request up to a maximum of \$2.2 M
49 points or less	4	50% of request up to a maximum of \$2.2 M

The formula, as applied, results in the following funding allocations, with no applicant receiving more than \$2.2 M.

Applicant	County	New or Existing	Original Funds Requested	Funding Tier	Award Amount
Rady Children's Hospital	San Diego	Existing	\$3,511,619.00	1	\$2,200,000.00
Contra Costa Family Justice Center	Contra Costa	Existing	\$1,986,535.00	1	\$1,986,506.45
Special Service for Groups	Los Angeles	Existing	\$1,433,701.59	1	\$1,433,673.04

The University Corporation	Los Angeles	Existing	\$1,733,357.00	2	\$1,473,324.90
Olive View-UCLA Education Research Institute	Los Angeles	Existing	\$2,648,721.11	2	\$1,869,971.45
Palomar Health Foundation	San Diego	Existing	\$7,538,520.72	2	\$1,869,971.45
Ruby's Place	Alameda	Former	\$1,926,234.60	3	\$1,348,335.68
Partnerships for Trauma Recovery	Alameda	Existing	\$2,800,054.46	3	\$1,539,971.45
Amanecer Community Counseling Service	Los Angeles	Existing	\$2,500,000.00	3	\$1,539,971.45
Safe Harbor – Trauma Recovery Center	Los Angeles	Existing	\$2,786,327.32	3	\$1,539,971.45
County of Santa Clara, District Attorney's Office	Santa Clara	New	\$1,967,899.63	3	\$1,377,501.19
Community Resource Center	San Diego	New	\$1,063,886.59	4	\$531,914.75
Napa Solano SANE-SART	Solano	Existing	\$2,205,978.38	4	\$1,099,971.45
A Quarter Blue	Orange	Existing	\$4,528,039.19	4	\$1,099,971.45
Building Opportunities for Self-Sufficiency	Alameda	New	\$1,883,944.80	4	\$941,943.84
					\$21,853,000.00



**2023 CalVCB Trauma Recovery
Center
Grant Notice of Funds Available
(NOFA)**

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I. Overview

A. Introduction

The California Victim Compensation Board (CalVCB) provides reimbursement to eligible victims of crime for many crime-related expenses. CalVCB funding comes from restitution paid by criminal offenders through fines, orders and penalty assessments, and federal grant funds. Government Code sections 13963.1 and 13963.2 mandate that CalVCB administer a program to evaluate applications and award grants to Trauma Recovery Centers (TRC) in California to provide services to victims of crime.

The grant program awards funding for TRCs to provide trauma-informed services to victims of crime. Grantees will serve all victims of crime, whether or not they meet CalVCB's eligibility requirements, provided the services are consistent with California Government Code sections 13963.1 and 13963.2 and this Notice of Funds Available (NOFA).

B. Key NOFA Dates

NOFA Release Date	Monday, December 5, 2022
Final Date to Submit Questions	Monday, December 12, 2022 by 5:00 p.m. PST
Response to Questions Posted	Thursday, December 15, 2022 by 5:00 p.m. PST
Final Application Submission Date	Tuesday, January 17, 2023 by 2:00 p.m. PST
Tentative Board Award Approval Date	Thursday, March 16, 2023

C. Authorizing Legislation

The CalVCB TRC Grant program is mandated by California Government Code sections 13963.1 and 13963.2. Available funds are subject to compliance with state statute and CalVCB TRC grant program rules. California Government Code section 13963.2 states:

The Trauma Recovery Center at the San Francisco General Hospital, University of California, San Francisco, is recognized as the State Pilot Trauma Recovery Center (State Pilot TRC). The California Victim Compensation Board shall use the evidence-informed Integrated Trauma Recovery Services (ITRS) model developed by the State Pilot TRC when it selects, establishes, and implements Trauma Recovery Centers (TRCs) pursuant to Section 13963.1. All TRCs funded through the Restitution Fund or Safe Neighborhoods and Schools Fund shall do all of the following:

(a) Provide outreach and services to crime victims who typically are unable to access traditional services, including, but not limited to, victims who are homeless, chronically mentally ill, members of immigrant and refugee groups, disabled, who have severe trauma-related symptoms or complex psychological issues, are of diverse ethnicity or origin, or are juvenile victims, including minors who have had contact with the juvenile dependency or justice system.

(b) Serve victims of a wide range of crimes, including, but not limited to, victims of sexual assault, domestic violence, battery, crimes of violence, vehicular assault, and human trafficking, as well as family members of homicide victims.

(c) Offer evidence-based and evidence-informed mental health services and support services that include individual and group treatment, medication management, substance abuse treatment, case management, and assertive outreach. This care shall be provided in a manner that increases access to services and removes barriers to care for victims of violent crime and may include providing services to a victim in his or her home, in the community, or at other locations conducive to maintaining quality treatment and confidentiality.

(d) Be comprised of a staff that includes a multidisciplinary team of clinicians made up of at least one psychologist, one social worker, and additional staff. Clinicians are not required to work full-time as a member of the multidisciplinary team. At least one psychiatrist shall be available to the team to assist with medication management, provide consultation, and assist with treatment to meet the clinical needs of the victim. The psychiatrist may be on staff or on contract. A clinician shall be either a licensed clinician or a supervised clinician engaged in completion of the applicable licensure process. Clinical supervision and other supports shall be provided to staff regularly to ensure the highest quality of care and to help staff constructively manage vicarious trauma they experience as service providers to victims of violent crime. Clinicians shall meet the training or certification requirements for the evidence-based practices they use.

(e) Offer mental health services and case management that are coordinated through a single point of contact for the victim, with support from an integrated multidisciplinary treatment team. Each client receiving mental health services shall have a treatment plan in place, which is periodically reviewed by the multidisciplinary team. Examples of primary treatment goals include, but are not limited to, a decrease in psychosocial distress, minimizing long-term disability, improving overall quality of life, reducing the risk of future victimization, and promoting post-traumatic growth.

(f) Deliver services that include assertive outreach and case management including, but not limited to, accompanying a client to court proceedings, medical appointments, or other appointments as needed, assistance with filing an application for assistance to the California Victim Compensation Board, filing police reports or filing restraining orders, assistance with obtaining safe housing and financial benefits, helping a client obtain medical care, providing assistance securing employment, and working as a liaison to other community agencies, law enforcement, or other supportive service providers as needed. TRCs shall offer outreach and case management services to clients without regard to whether clients choose to access mental health services.

(g) Ensure that no person is excluded from services solely on the basis of emotional or behavioral issues resulting from trauma, including, but not limited to, substance abuse problems, low initial motivation, or high levels of anxiety.

(h) Utilize established, evidence-based, and evidence-informed practices in treatment. These practices may include, but are not limited to, motivational interviewing, harm reduction, seeking safety, cognitive behavioral therapy, and trauma-focused cognitive processing therapy.

(i) Ensure that no person is excluded from services based on immigration status.

D. State Pilot TRC Model Link

The SFO TRC model, referenced in the legislation as the ITRS model, is linked below for your reference.

<http://traumarecoverycenter.org/wp-content/uploads/2020/04/TRC-Manual.pdf>

II. Application Requirements

A. Eligible Applicants

Applicants must be able to meet requirements pursuant to Government Code section 13963.2 and have the ability to carry out all direct services from the main location of operation. Provision of virtual services is permissible to accommodate social distancing guidelines.

B. Funding Amounts and Terms

CalVCB TRC grant awards are funded by an annual appropriation of \$2,000,000 from the Restitution Fund with additional funding from the Safe Neighborhood and Schools Act. The Budget Act of 2022 also provided additional funding from the General Fund for this cycle's grants in the amount of \$2,223,825.67. The number of grants awarded will be determined by a variety of factors, including the number of qualified applicants, the amount of funds requested, and the amount of funds available. Program expenses are reimbursed after they have been incurred and invoiced monthly. Grant awards made under the 2023/24 NOFA will be for a two-year cycle effective July 1, 2023, through June 30, 2025.

A grantee is not guaranteed continued funding and may apply for a consecutive grant to prevent a lapse in funding.

C. Application Package Components

A complete application package shall include all items from the first three bullet points listed below. Failure to submit any section of bullets one through three will result in disqualification of the application.

- Title Page (attached)
- Numbered Responses to Narrative Questions 1-6 (attached)
- Budget Worksheet(attached), Budget Narrative, Flow Chart, Organizational Chart, Time Task Plan

- Letters of Recommendation (maximum of three (3) from agencies your program is currently working with including a Law Enforcement agency and a Community Based Organization)

D. Formatting Requirements

Responses to narrative questions 1-6 shall be no longer than two (2) pages each and must specify the number of the question being answered. Formatting requirements of responses to narrative questions 1-6 and the Budget Narrative are as follows:

- 11 pt. font Arial
- 1-inch margins
- Double spaced

III. Application Submission and Review Procedures

A. Application Submission

Grant application packages should be submitted in the form of a single PDF file and must be submitted via email to Grants@victims.ca.gov no later than 2:00 p.m. PST on Tuesday, January 17, 2023. Applicants will receive an email confirming receipt of their application. If confirmation is not received within one (1) hour of email submission Monday through Friday during the regular business hours of 8:00 a.m. – 5:00 p.m. PST, applicants should call Kyle Archibald at (916) 491-3740. Applications received after 2:00 p.m. PST on Tuesday, January 17, 2023, will be rejected.

B. Initial Application Review

Application packages will be reviewed to ensure all required sections are present and complete and to ensure formatting requirements were followed. Applications missing any required components will be disqualified. Applications that don't follow formatting instructions will have points deducted.

C. Application Scoring

- Total application package worth 100 points
- 6 questions – 60 available points
- Budget Worksheet, Budget Narrative, Flow Chart, Organizational Chart and Time Task Plan, Letters of Recommendation – 40 available points

Responses to narrative questions will be scored using the following rubric:

- 0 – Not Qualified; Does not provide demonstrated ability to meet requirement. DISQUALIFIED.
- 1-2 – Less Qualified answers are not easy to follow or understand, provide little or no direct experience or understanding of how qualifications have or will be met.

- 3-6 – Qualified; answers the question, provides direct experience and complete knowledge of how qualifications have or will be met with comprehensive examples.
- 7-10 – Highly Qualified; in addition to meeting the Qualified standard above, provides direct experience and comprehensive examples of qualification and ability to begin providing services within 30 days of receiving award.

Acceptance of an application does not constitute a grant award and does not obligate CalVCB to award funds. CalVCB reserves the right to partially fund selected applications. An applicant may request a specific dollar amount; however, CalVCB will make the final determination of the dollar amounts awarded. Any portion of a grant that a TRC does not use within the specified grant period shall revert to the funding source.

IV. Budget Requirements

A. Personnel Services

Personnel Services (salaries, wages, and fringe benefits) must constitute a minimum of 75% of the total grant amount (for the 2-year grant cycle) as described in CalVCB TRC grant agreement/contract. If a position is not allocated at 100% reimbursable by the grant, indicate at what percentage will be invoiced for reimbursement on the Budget Drawdown Worksheet.

- A minimum of 60% of the funds budgeted to personnel services must be for clinical staff who provide Direct Client Services. Direct client services are services provided to a client by a licensed clinician or services provided with a licensed clinician present. Direct client service providers can be either TRC budgeted staff or contracted for services.
- A maximum of 40% of the funds budgeted to the personnel services can account for Indirect Client Services. Indirect client services are services provided by non-licensed staff that supports direct services of a treatment plan. Indirect client service providers can be either TRC budgeted staff or contracted for services.
- CalVCB TRC Functional Timesheets are required to be completed by all TRC budgeted staff and contracted personnel.
- Paid Time Off (PTO)/Leave accrual during the grant period is paid as part of the normal costs of salary and wages and will not be reimbursed as a separate line item. The Grantee will provide CalVCB with the information required to determine an hourly rate that includes the employee's wage and accrual for PTO/Leave time offered. This hourly rate will be used to reimburse

the time an employee spends on TRC activities to the employer. The Grantee is responsible for maintaining the accrual and usage of this time.

- Any request for reimbursement for PTO/Leave when used, will not be eligible for reimbursement. The Grantee is responsible for managing the PTO/Leave time bank.
 - The Grantee will provide CalVCB with the calculation for the accrual and policies that dictate the accrual, payment, and usage of PTO/Leave.
- If fringe benefits are offered, they will be specifically identified to each employee and are charged individually and identified in the budget associated for personnel salary and wages and benefits total.
 - Reimbursement for fringe benefits must be proportional to the amount of time spent by the employee working on the TRC Grant.
 - Fringe benefits such as FICA, disability insurance, workers' compensation, retirement, and health care/dental/vision/life insurance will include the description, and the amounts of benefits will be displayed by category, position, and class.
 - Contracted staff will only be reimbursed for their hourly rate, and requests for reimbursement of fringe benefits are not considered an eligible expense.

B. Contracted Personnel

Contracted personnel will only be reimbursed for their hourly rate for the TRC services provided.

- Grantees may contract for personnel services as set forth in the approved budget of the grant agreement/contract or with prior written approval from CalVCB submitted as a Budget Modification Request.
- Contractor services must be for the purpose of achieving the grant objectives for direct or indirect client services.
- Grantees are responsible for ensuring that each contractor complies with the grant agreement, including, if applicable, collecting and reporting of data.
- Contracting out shall not affect the grantee's overall responsibility for the management of the grant, and the grantee shall reserve sufficient rights and control to enable it to fulfill its responsibilities for the grant.
- Grantees shall have a written agreement with each contractor and shall submit a copy of the agreement to CalVCB to include hourly rate of pay, dates and times of service, and any and all negotiated budget agreements for approval.

C. Operating Costs

Operating costs can be allocated up to 25% of the total grant award. All items submitted must include a description or explanation of the expense on the Invoice Worksheet (Attachment 7).

If you are receiving grant funds or financial support from other sources for any of the budgeted line items, you must include corresponding documentation and reduce your reimbursement request by the same percentage. Rent may be included in your operating costs. Reimbursement of rent is for facility rental. Indicate the number of square feet specified in the lease agreement as well as the rental amount. Rental cost must be in alignment with similar market costs.

v. General Terms and Conditions

All applications shall become the property of CalVCB. All submitted applications are public record and therefore subject to disclosure under the California Public Records Act.

CalVCB reserves the right to withdraw the NOFA at any time. Further, CalVCB makes no representation that any funding will be awarded to any applicant responding to the NOFA.

Both parties reserve the right to terminate the Grant Agreement upon thirty (30) days written notice to the other party. CalVCB may reduce or terminate grant funds for reasons that may include, but are not limited to, the following:

- a. If the project fails to comply with any term or condition of the grant award.
- b. If during the term of the grant award, the state funds appropriated for the purposes of the grant award are reduced or eliminated, or, in the event revenues are not collected at the level appropriated, CalVCB may immediately terminate or reduce the grant award.

Should CalVCB deem it necessary to reduce or terminate grant funds, the grantee shall be notified in writing. No such termination or reduction shall apply to allowable costs already incurred by the grantee to the extent that state funds are available for payment of such costs up to, and including, the date of the notice. The grantee shall be reimbursed all reasonable expenses incurred per the approved budget up to the date of termination.

Grant funds must be used to increase the total amount of funds used to provide services to victims of crime and may not be used to supplant current sources of funding that would, in the absence of these grant funds, be available or forthcoming.

In addition, grant funds may not be used to defray any costs that the grantee was already obligated to pay at the time the grant was awarded. To prevent the supplanting of grant funds, CalVCB will carefully review all applications, and will conduct post-award monitoring and auditing of any funding and expenditures.

Any supplantation of existing funding with these grant funds constitutes grounds for suspension or termination of grant funding and recovery of funds already provided.

VI. Post-NOFA Award Recommendation

Once a funding recommendation is approved by the Board, CalVCB will notify all applicants of the results of the submitted applications. Each applicant will receive an approval or denial letter notifying them of individual results.

CalVCB may request additional information or clarification or may contact the project lead listed on the application to discuss budget adjustments or required revisions.

The TRC Grant Liaison will request adjustments or updates to the following items:

- Goals and outcomes based on new funding recommendation
- Updated Budget Drawdown Worksheet
- Std. 204 form

A. Contract Negotiations

Grant agreements/contracts are legal agreements between the Grantee and CalVCB, and Grantees are responsible for delivering the outcomes set forth in the contract and for managing all grant funds appropriately.

CalVCB will coordinate the review and approval of agreement/contract language. Upon approval of the language, CalVCB will facilitate the signature process to fully execute the grant agreement/contract. CalVCB will then distribute a copy of the fully executed grant contract and approved budget to the Grantee.

B. Invoicing and Payment

The TRC shall submit itemized invoices that include supporting documentation detailing program expenditures and database export files on a monthly basis. Invoices are due to CalVCB by the last business day of the following month. The TRC Grantee must submit the database export files monthly prior to, or with, monthly invoices.

Invoices shall include the following files and supporting documentation:

- Invoice Worksheet
 - Attach additional Microsoft Excel file detailing all expenses on the Invoice Worksheet
- Budget Drawdown Worksheet
 - Budget Tab
 - Drawdown Request Tab
 - Staffing Tab
 - Emergency Expenditure Tab
- CalVCB TRC Functional Timesheets for each employee must be completed, signed, and dated for each TRC staff being billed to the grant
- TRC timesheets, if applicable, for all employees including contracted staff, unless detailed invoices are submitted to show the date, time, service and unique client identifier of the clients for whom the contracted staff is invoicing
- Payroll records for employees and contracted staff including the employee's or contracted staff person's name, position/classification, time base, breakdown of salary and wages/fringe benefits, and PTO/Leave accrual calculation
- Invoice(s) for contracted services
- All supporting documentation for fringe benefit claims
- All supporting documentation for Operating Expenses:
 - Supporting documentation such as bills, invoices, statements, and/or receipts must include all pages
- TRC Certification of Reports signed by the person named as having signature authority, stating that all information reported is correct and grant expenditures are in accordance with eligible costs

C. Data Collection Reporting Requirements

Grantees shall collect data and submit data reports monthly to Grants@victims.ca.gov unless stipulated differently in the TRC's grant agreement/contract. Data files are due to CalVCB by the last business day of the month following service.

In compliance with federal statutes and rules governing federal matching funds for victims' services, the Grantee shall submit any forms and data requested by CalVCB per Government Code section 13963.1(g)(2).

Data files shall include metrics indicated by CalVCB, which may include and may not be limited to:

- Client resources
- Demographic information
- Crime information
- Services provided and referred to the client

- Session and case management information
- Assessment data
- Training provided
- Community outreach provided
- Collaborative activities

The Grantee must keep accurate records as source documentation to support the information in the reports. Records must be retained by the Grantee for at least three years from the end of the grant period. During programmatic monitoring and site visits, CalVCB may review these records for accuracy and compare data to the reports submitted by the Grantee.

The Grantee will only report data for treatment, case management, training, outreach, and collaboration activities that are funded by the grant.

The Grantee will only be reimbursed for services provided to victims for whom data has been reported to the Board.

Software requirements for data submission:

- Microsoft Excel, 2010 version or newer

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 **Daniel Larsen**

11 Claim No. 14-ECO-01

Proposed Decision on Remand Post-Writ
(Penal Code §§ 4900 et seq.)

12 **I. Introduction**

13 On September 8, 2014, Daniel Larsen (Larsen) 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 was based upon Larsen's imprisonment for a 1999, Three
16 Strikes conviction for possessing a concealed dirk or dagger, which was vacated during a federal
17 habeas proceeding due to ineffective assistance of counsel. The charges were dismissed by the
18 prosecutor on remand because, due to a change in sentencing laws, Larsen had already served a
19 longer sentence than could be imposed under the new law. Before granting relief, the federal court
20 excused Larsen's procedurally untimely habeas petition by finding, pursuant to *Schlup v. Delo* (1995)
21 513 U.S. 298, that it was "more likely than not that no reasonable juror would have convicted him in the
22 light of the new evidence." After granting relief, the federal court rejected Larsen's motion for a finding
23 of factual innocence.

24 On August 17, 2017, the Board denied Larsen's claim because the weight of evidence failed to
25 demonstrate by a preponderance that he did not commit the crime of possessing a concealed dirk or
26 dagger. The Board rejected Larsen's assertion that a *Schlup* finding amounted to a court finding of
27 factual innocence for which automatic approval of the claim was required, without a hearing and within
28 30 days, under Penal Code section 1485.55.

Larsen pursued a writ of mandate. The superior court affirmed the Board's decision, but the Second District Court of Appeal reversed. The appellate court announced that a *Schlup* finding, coupled with a later grant of habeas relief that results in permanent release, amounts to a factual finding of innocence within the meaning of Penal Code section 1485.55, subdivision (a). As a result, the court determined that the Board erred by failing to automatically approve Larsen's claim, without a hearing, and within 30 days, regardless of the weight of inculpatory evidence. The Board petitioned for review to the California Supreme Court, which was granted but then dismissed. After the appellate court's remittitur issued, the superior court entered judgment granting Larsen's writ on January 10, 2023, with directions for the Board to approve Larsen's claim upon remand.

In this remanded proceeding, Larsen is represented by Alexander Simpson, Associate Director of the California Innocence Project. The Attorney General is represented by Deputy Attorney General Dina Petrushenko. The matter was assigned to CalVCB Senior Attorney Laura Simpton. As mandated by court order pursuant to Penal Code section 1485.55, it is recommended that CalVCB approve Larsen's claim under Penal Code section 4900 in the amount of \$736,540 if sufficient funds are available, upon appropriation by the Legislature, as indemnification for the injury sustained by Larsen's imprisonment for 5,261 days.

II. Procedural and Factual Background

A. State Court Proceedings

On June 6, 1998, Larsen was arrested and subsequently charged with possession of a concealed dirk or dagger in Los Angeles County Superior Court case number PA032308.¹ It was further alleged that Larsen has three prior felony convictions within the meaning of the Three Strikes law and had served three prior prison terms.²

At trial, two responding officers (i.e., Officers Townsend and Rex) testified that they observed Larsen retrieve an object from beneath his shirt and throw it under a nearby vehicle, where they later retrieved a knife. In an entirely different location, the officers discovered a copper bar. This incident

¹ Administrative Record (AR) 1570-1571; Former Pen. Code, § 12020, subd. (a), replaced by Pen. Code, § 21310, added by Stats.2010, c. 711 (S.B. 1080), § 6, operative Jan. 1, 2012.

² Pen. Code, §§ 667, subd. (b)-(i), 1170.12, subds. (a)-(b); see also Pen. Code, § 667.5, subd. (b).

1 occurred in the parking lot of a bar, where someone had just reported shots fired by an assailant who
2 wore the same type of shirt as Larsen. When booked, Larsen provided a false name to the police.
3 Larsen did not present a defense, although his defense counsel once indicated to the judge that
4 Larsen had tossed the copper bar, not the knife.³

5 Following the jury's guilty verdict, Larsen admitted the prior strike and prison term allegations in
6 a bifurcated proceeding. As a result, Larsen was sentenced on August 18, 1999, to 28 years to life
7 under the Three Strikes law in effect at that time for possessing a concealed dirk or dagger.⁴ The
8 court awarded 298 days credit for actual time served pre-conviction.⁵

9 The California Court of Appeal affirmed the judgment on June 1, 2000, and the California
10 Supreme Court declined review on August 9, 2000. No claim of factual innocence was raised.⁶

11 Five years later on May 18, 2005, with the assistance of the California Innocence Project,
12 Larsen filed a habeas petition in the Los Angeles Superior Court, alleging, for the first time, that his
13 counsel was ineffective for failing to investigate and present exculpatory evidence. Larsen attached a
14 2001 letter from James McNutt (Mr. McNutt) and a 2005 declaration from Mr. McNutt and his wife
15 Elinor McNutt (Ms. McNutt), who both asserted that Larsen did not throw the knife. The petition was
16 denied. Larsen renewed this claim in habeas petitions before the California Court of Appeal and
17 California Supreme Court, which were also denied on March 28, 2006, and July 25, 2007,
18 respectively.⁷

19 **B. Federal Habeas Relief**

20 On July 15, 2008, Larsen filed a federal petition for writ of habeas corpus, which was amended
21 June 23, 2009.⁸ The petition was filed well after the one-year statutory deadline imposed by 28 U.S.C.

23 ³ *Larsen v. California Victim Comp. Bd.* (2021) 64 Cal.App.5th 112, 115–116, as modified (June 1,
24 2021), review dismissed, cause remanded (Cal., Sept. 21, 2022, No. S269406).

25 ⁴ *Larsen, supra*, 64 Cal.App.5th at p. 115.

26 ⁵ AR 1628.

27 ⁶ *Larsen, supra*, 64 Cal.App.5th at p. 116.

28 ⁷ *Ibid.*; AR 1451, 2943-2947, 2950-2952, 3013-3014.

⁸ AR 3010-3011, 3137.

1 § 2244(d)(1)(A), which had expired in 2001. Nonetheless, the federal court excused Larsen's untimely
2 petition under *Schlup*, after conducting an evidentiary hearing on May 19, 2009, at which the McNutts
3 testified along with another witness, Brian McCracken. Specifically, Ms. McNutt denied seeing Larsen
4 throw anything while in the bar parking lot and claimed, instead, that Larsen's associate William
5 "Bunker" Hewitt (Hewitt) had tossed a metal object. Hewitt and Larsen were both members of the
6 "Nazi Low Riders" gang, and Hewitt signed a declaration in 2001 admitting the knife belonged to him.⁹
7 Mr. McNutt similarly denied seeing Larsen throw anything and further claimed that the object tossed by
8 Hewitt was probably a knife. McCracken, who had been inside the bar, testified that someone other
9 than Larsen had threatened him with a knife earlier that evening. Noting that Mr. McNutt was a former
10 police chief in North Carolina, the magistrate judge found all three witnesses to be credible.¹⁰ Applying
11 *Schlup*, the magistrate judge determined that, "[h]ad the jury been able to consider this same
12 evidence, 'no reasonable juror [would have found Larsen] guilty beyond a reasonable doubt.'"¹¹ The
13 district court adopted the magistrate judge's decision, enabling the merits of Larsen's untimely petition
14 to be considered.¹²

15 A second evidentiary hearing ensued on November 17, 2009, this time on the merits of the
16 habeas petition. Larsen's trial counsel testified that Larsen had informed him of the McNutts only after
17 the jury's verdict but before sentencing. Counsel declined to contact the McNutts or pursue a motion
18 for new trial for fear it might "screw up" Larsen's appeal. Combined with the previous finding of the
19 McNutts' credibility, the magistrate judge found that counsel rendered constitutionally ineffective
20
21

22
23 ⁹ *Larsen, supra*, 64 Cal.App.5th at pp. 166-118, 121-122; see also AR 2258, 2716-2717, 2819.

24 ¹⁰ Unbeknownst to the federal court at the time of the hearing, Ms. McNutt's son Alfred also "had ties to
25 Neo-Nazi gangs." (*Larsen, supra*, 64 Cal.App.5th at p. 122.) In fact, Alfred and Larsen knew each
26 other, given that "Alfred was investigated for allegedly directing an associate to solicit Larsen and
27 Hewitt to kill two police officers in 1998." (*Ibid.*) Upon relocating to California, the McNutts resided
28 with a friend of Alfred, who was also a convicted felon and the subject of a residential search warrant
while Mr. McNutt was present. (AR 577-578, 874-875.)

¹¹ *Larsen, supra*, 64 Cal.App.5th at p. 118 (quoting federal decision).

¹² *Larsen, supra*, 64 Cal.App.5th at pp. 116-118.

1 assistance and granted Larsen's petition for habeas relief. The district court adopted the magistrate
2 judge's decision on June 14, 2010, and ordered Larsen be retried or released within 90 days.¹³

3 The prosecution appealed. In a published opinion filed September 16, 2013, and amended
4 November 20, 2013, the Ninth Circuit affirmed the district court's decision to excuse Larsen's untimely
5 habeas petition and grant relief. The Ninth Circuit acknowledged that "it may have been physically
6 possible for Larsen to throw a knife during a split second when neither of the McNutts was paying
7 attention" but that possibility "does not defeat Larsen's *Schlup* claim."¹⁴

8 **C. Larsen's Prison Release**

9 Larsen was not retried.¹⁵ The prosecutor fully intended to retry Larsen for possessing a
10 concealed dirk or dagger and only declined to do so because of a change in the sentencing law.¹⁶
11 Specifically, the Three Strikes law no longer provided for an indeterminate life sentence for nonviolent
12 felony convictions as a third strike. As a result, Larsen faced a maximum sentence of nine years
13 imprisonment if convicted under the new sentencing law.¹⁷ Larson was released from prison on March
14 19, 2013, after having been incarcerated a total of 5,261 days (i.e., over 14 years), consisting of 298
15 days pre-conviction, plus 4,963 days post-conviction.¹⁸

16 **D. Civil Litigation**

17 Following his release from custody, Larsen filed a civil rights suit for malicious prosecution,
18 which he ultimately lost following a jury trial. The witnesses included Larsen and Mr. McNutt, as well
19 as Officers Townsend and Rex. Both officers consistently testified that they observed Larsen throw
20 the knife. Neither officer recalled seeing Mr. McNutt at the scene, who was six-feet seven-inches tall.
21 By comparison, Larsen denied throwing anything. With some discrepancies, Mr. McNutt provided a
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23 ¹³ *Larsen, supra*, 64 Cal.App.5th at pp. 118-119; see also *Larsen v. Adams* (C.D. Cal. 2010) 718
24 F.Supp.2d 1201; Cal. Code Regs., tit. 2, § 617.8 (official notice).

25 ¹⁴ *Larsen v. Soto* (9th Cir. 2013) 742 F.3d 1083, 1098.

26 ¹⁵ By 2013, possession of a dirk or dagger no longer qualified for indeterminate Three Strikes
27 sentencing as a result of Proposition 36. (*People v. Jonson* (2015) 61 Cal.4th 674, 689-90.)

28 ¹⁶ *Larsen, supra*, 64 Cal.App.5th at pp. 120; AR 1331-1337 (civil litigation testimony).

¹⁷ AR 1336.

¹⁸ AR 1628, 2966.

1 substantially similar account as his prior testimony during the habeas proceeding. Hewitt also testified,
2 and he denied any memory of the events on the night of Larsen's arrest because he had been high on
3 drugs, but acknowledged that he always used to carry a weapon. On October 22, 2015, the civil trial
4 jury returned a complete defense verdict. Thus, the only jury to hear live witness testimony from Mr.
5 McNutt and Officers Rex and Townsend unanimously ruled in favor of the officers.¹⁹

6 **E. Motion for a Finding of Factual Innocence**

7 On November 30, 2015, Larsen returned to federal court and filed a motion for a finding of
8 factual innocence pursuant to Penal Code section 1485.55, which was rejected. At the outset, the
9 magistrate judge ruled that it lacked jurisdiction to make such a finding as a federal court,
10 notwithstanding California law. The magistrate judge also declined to construe the motion as a
11 request to clarify its previous order granting habeas relief, as there was "nothing vague or
12 ambiguous...."²⁰ The magistrate judge remarked that its *Schlup* determination "did not reach an
13 'affirmative[] conclu[sion] that [Larsen] was actually innocent of possessing a dagger' and cited
14 authority holding *Schlup* "does not require absolute certainty about the petitioner's guilt or
15 innocence."²¹ Specifically, as the magistrate judge explained, "the Court did not affirmatively conclude
16 that Petitioner was actually innocent of possessing a dagger."²² The magistrate judge concluded,
17 "Therefore, because nothing in the Court's prior Orders requires clarification, and as the Court never
18 affirmatively determined that Petitioner was innocent of possessing a dagger, Petitioner's Motion is
19 DENIED."²³ The district court again accepted the magistrate judge's recommendation and denied
20 Larsen's motion."²⁴

21
22 ¹⁹ *Larsen, supra*, 64 Cal.App.5th at pp. 119–120; AR 735-736.

23 ²⁰ *Larsen, supra*, 64 Cal.App.5th at pp. 120–121 (quoting federal decision).

24 ²¹ *Ibid.*

25 ²² *Larsen v. Soto* (C.D. Cal., June 15, 2016, No. CV 08-4610 CAS (SS) 2016 WL 3792817, at *4,
26 report and recommendation adopted (C.D. Cal., July 12, 2016, No. CV 08-4610 CAS (SS) 2016 WL
27 3792822 (ordering that "judgment shall be entered in favor of Respondent and against Petitioner on
28 Petitioner's request for a finding of actual innocence).

²³ *Ibid.*

²⁴ *Larsen, supra*, 64 Cal.App.5th at pp. 120–121.

1 **F. CalVCB Proceedings**

2 Meanwhile, on September 8, 2014, with the assistance of the California Innocence Project,
3 Larsen submitted a claim for compensation as an erroneously convicted person under Penal Code
4 section 4900 based upon his vacated conviction for possession of a concealed dirk or dagger. In
5 accordance with then-existing law, Larsen requested compensation in the amount of \$496,300 for
6 4,963 days that he was imprisoned post-conviction only, at a rate of \$100 per day.²⁵ On October 16,
7 2015, Deputy Attorney General Heather Gimle filed a response in opposition to Larsen's claim. A
8 hearing ensued on September 14, 2016, at which Larsen did not personally appear, but counsel for
9 both parties did.

10 In a proposed decision dated April 20, 2017, CalVCB Hearing Officer Laura Simpton
11 recommended Larsen's claim be denied. The proposed decision rejected Larsen's threshold argument
12 that compensation was automatically required by Penal Code section 1485.55 based upon the federal
13 court's *Schlup* determination. The proposed decision reasoned that section 1485.55 "requires an
14 affirmative finding of factual innocence and the *Schlup* finding that no reasonable juror would have
15 convicted Larsen is 'not at all equivalent to finding him innocent.'"²⁶ The proposed decision further
16 concluded that Larsen had failed to satisfy his burden of proving his innocence by a preponderance.
17 As summarized by the appellate court,

18 Weighing the evidence, the [proposed decision] found the McNutts must have been
19 mistaken about who threw the knife because Officers Townsend and Rex had a
20 compelling reason to focus on Larsen, whose shirt matched the description of the
21 reported gunman. The officers were unlikely to have mistaken Larsen for Hewitt, the
22 [proposed decision] believed, because both McNutts testified Hewitt wore a different
23 style of shirt. The [proposed decision] also reasoned the officers, who had been partners
24 for only a short time, did not know Larsen and had no motive to "frame" him. Additionally,
25 the [proposed decision] highlighted several other considerations to "bolster[]" its
26 conclusion: (1) the prosecutor intended to retry Larsen but for a change in the law, (2)
27 the jury appeared to have found the officers more credible than Mr. McNutt in the civil
28 litigation, (3) Hewitt's association with Larsen made it "unlikely" Hewitt would have
remained silent on the night of Larsen's arrest if the knife had been his, and (4) Larsen's

²⁵ AR 2965, 2972, 2974, 2985; see also Former Pen. Code, § 4904, as amended by Stats.2013., c. 800 (S.B. 618), § 8, eff. Jan. 1, 2014.

²⁶ *Larsen, supra*, 64 Cal.App.5th at p. 121 (quoting proposed decision).

1 account of the events preceding his arrest contradicted the credible testimony of other
2 witnesses in several respects.²⁷

3 As for Larsen's membership in the "Nazi Low Riders" gang, the proposed decision "considered this
4 evidence 'solely ... to the extent it show[ed] that Larsen ran in the same social circles' as Hewitt, [Ms.
5 McNutt's son] Alfred, and others."²⁸ At the urging of the Attorney General and over Larsen's objection,
6 the three-member Board unanimously adopted the proposed decision on August 17, 2017, rendering
7 the decision final on that date.²⁹

8 **G. Writ of Mandate Litigation**

9 **1. Superior Court**

10 Larsen filed a petition for writ of mandate in the Los Angeles County Superior Court on
11 September 18, 2017. The petition was denied on March 25, 2019, after the court adopted its tentative
12 decision for the hearing on February 19, 2019. Among its conclusions, the superior court expressly
13 found "[s]ubstantial evidence supported the Board's determination that Larsen had not shown that he
14 was innocent of the crime charged."³⁰ The superior court did not address Larsen's argument
15 regarding *Schlup* and Penal Code section 1485.55, as he had omitted it from his trial brief.³¹

16 **2. Appellate Court**

17 Larsen appealed. In a published opinion filed May 11, 2021, and modified June 1, 2021, the
18 Second District Court of Appeal concluded that CalVCB had erred by holding "a hearing when
19 compensation should have been recommended automatically" pursuant to Penal Code section
20 1485.55, subdivision (a).³² The appellate court confirmed that a court finding of factual innocence
21 "must be made by at least a preponderance of the evidence and must reflect a determination that the
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23 ²⁷ *Larsen, supra*, 64 Cal.App.5th at p. 123 & n.5.

24 ²⁸ *Larsen, supra*, 64 Cal.App.5th at p. 122 (quoting proposed decision).

25 ²⁹ AR 389-412; Cal. Code Regs., tit. 2, § 619.2, subd. (e).

26 ³⁰ *Larsen v. VCGC*, Los Angeles Superior Court case number BS170693, tentative decision for hearing
27 on February 19, 2019, at pp. 23-24, with judgment entered March 25, 2019.

27 ³¹ *Larsen, supra*, 64 Cal.App.5th at pp. 121-122.

28 ³² *Larsen, supra*, 64 Cal.App.5th at p. 137.

1 person charged and convicted of an offense did not commit the crime” in order to fall within the
2 automatic provisions of Penal Code section 1485.55.³³ The appellate court further acknowledged that
3 *Schlup* is satisfied in federal court by the petitioner’s showing that “it is ‘more likely than not no
4 reasonable juror would have convicted him in light of the new evidence [of actual innocence].”³⁴
5 Nonetheless, the appellate court held that a “*Schlup* finding coupled with a permanent release from
6 custody pursuant to a writ of habeas corpus satisfies the requirements of section 1485.55(a)” because
7 “such a finding demarcates the legal boundary between guilt and innocence.”³⁵ The court
8 acknowledged that “a jury’s acquittal of a defendant ... is not a determination that the defendant is
9 innocent” but insisted that, in this “specialized area of law,” “the line between innocence and guilt is
10 drawn with reference to a reasonable doubt.”³⁶ Thus, for purposes of section 1485.55, “factual
11 innocence encompasses a *Schlup* innocence finding, i.e., that the person charged probably did not
12 commit the crime and hence no juror would convict him or her.”³⁷

13 In reaching this conclusion, the appellate court examined legislative history surrounding
14 Penal Code section 1485.55. While that history did not mention *Schlup*, the court found legislative
15 intent:

16 “to lower the threshold at which a court finding would obviate the need for a Board
17 hearing, to preserve the link between the test for granting habeas corpus relief based on
18 new evidence on the one hand and entitlement to compensation without a Board hearing
19 on the other, and to consider what a trial jury would do as the line demarcating guilt and
20 innocence.”³⁸

21 The appellate court further suggested that, if *Schlup* findings were excluded from triggering automatic
22 compensation, then subdivision (a) of section 1485.55 would be “practically dead letter” and would
23 only encompass a substantive claim of actual innocence, which “are legal unicorns: assumed for
24 argument’s sake to be viable by some courts ... but never seen as the ultimately successful predicate

24 ³³ *Larsen, supra*, 64 Cal.App.5th at p. 129.

25 ³⁴ *Larsen, supra*, 64 Cal.App.5th at p. 126 (quoting *Schlup*).

26 ³⁵ *Larsen, supra*, 64 Cal.App.5th at pp. 128, 131.

27 ³⁶ *Larsen, supra*, 64 Cal.App.5th at p. 131.

28 ³⁷ *Larsen, supra*, 64 Cal.App.5th at p. 131 n.11.

³⁸ *Larsen, supra*, 64 Cal.App.5th at p. 132.

1 for the grant of habeas relief.”³⁹ The appellate court discounted the federal judge’s comment that “the
2 Court never affirmatively determined that Petitioner was innocent of possessing a dagger” as merely a
3 denial of having found a substantive claim of factual innocence as a basis for habeas relief and not a
4 reflection of the *Schlup* ruling itself.⁴⁰

5 **3. California Supreme Court**

6 CalVCB petitioned for review to the California Supreme Court, which was granted on August
7 25, 2021.⁴¹ While review was pending, the Legislature enacted Senate Bill (SB) 446, effective January
8 1, 2022. SB 446 amended subdivision (a) of Penal Code section 1485.55 to confirm that a court
9 finding of factual innocence includes “any standard for factual innocence applicable in those
10 proceedings....”⁴² SB 446 also added subdivision (f) to section 1485.55, which defined the term
11 “court” throughout section 1485.55 as either “a state or federal court....”⁴³ Otherwise, subdivisions (b)
12 and (e) of section 1485.55 continued to require a “preponderance of the evidence that the crime with
13 which [claimants] were charged was either not committed at all or, if committed, was not committed by
14 the petitioner” for a finding of factual innocence by a state or federal court.⁴⁴

15 **4. Remanded Proceedings**

16 On September 21, 2022, the California Supreme Court dismissed review in *Larsen* and
17 transferred the matter back to the appellate court. On October 5, 2022, the appellate court issued the
18 remittitur for *Larsen*, rendering the decision final and remanding the matter back to the superior court.
19 CalVCB moved to recall the remittitur, but the motion was denied on November 18, 2022. Upon
20 remand, the superior court entered judgment granting Larsen’s petition for writ of mandate on January
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24 ³⁹ *Larsen, supra*, 64 Cal.App.5th at p. 133.

25 ⁴⁰ *Larsen, supra*, 64 Cal.App.5th at p. 134 n.12 (emphasis added).

26 ⁴¹ *Larsen v. California Victim Compensation Board* (Cal. 2021) 282 Cal.Rptr.3d 637 (S269406).

27 ⁴² Pen. Code, § 1485.55, subd. (a), as amend. by Stats.2021, c. 490 (S.B.446), § 2, eff. Jan. 1, 2022.

28 ⁴³ Pen. Code, § 1485.55, subd. (f), as added by Stats.2021, c. 490 (S.B.446), § 2, eff. Jan. 1, 2022.

⁴⁴ Pen. Code, § 1485.55, subds. (b) and (e).

1 10, 2023, with directions for CalVCB “to approve payment of his claim if sufficient funds are available,
2 upon appropriation by the Legislature.”⁴⁵

3 The remanded matter was returned to CalVCB Hearing Officer Laura Simpton for
4 reconsideration.⁴⁶ On January 18, 2023, the hearing officer requested both parties confirm their
5 appearance and the amount of eligible compensation for Larsen. The hearing officer’s proposed
6 calculation for compensation totaled \$736,540 for 5,261 days, at a rate of \$140 per day for pre- and
7 post-conviction confinement.⁴⁷ Alexander Simpson of the California Innocence Project responded the
8 same day, in which he confirmed his appearance on behalf of Larsen and agreed with the proposed
9 compensation calculation. On January 23, 2023, Deputy Attorney General Dina Petrushenko
10 confirmed her appearance on behalf of the Attorney General and also agreed with the proposed
11 compensation calculation. The administrative record closed thereafter on January 23, 2023.

12 **III. Determination of Issues**

13 Penal Code section 4900 allows a person, who has been erroneously convicted and
14 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
15 CalVCB.⁴⁸ Typically, under subdivision (a) of section 4900, claimants bear the burden to prove by a
16 preponderance that (1) the crime with which they were convicted either did not occur or was not
17 committed by them and (2) they suffered injury as a result of their erroneous conviction.⁴⁹ Once such
18 a claim is received and filed, Penal Code section 4902 requires the Attorney General to submit a
19 written response.⁵⁰ Thereafter, under Penal Code section 4903, a hearing before a hearing officer
20 ensues, at which the claimant and Attorney General may present evidence concerning innocence and
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23 ⁴⁵ *Larsen v. VCGC*, Los Angeles Superior Court case number BS170693, judgment entered January
10, 2023.

24 ⁴⁶ Cal. Code of Regs., tit. 2, § 619.5, subd. (e) (requiring remanded matters “be returned to the hearing
25 officer who prepared the proposed decision, if practicable”).

26 ⁴⁷ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

27 ⁴⁸ Pen. Code, § 4900, subd. (a).

28 ⁴⁹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

⁵⁰ Pen. Code, § 4902, subd. (a).

injury.⁵¹ Upon the requisite showing of innocence and a finding of injury, Penal Code section 4904 requires approval of the claim, at a rate of \$140 per day, if sufficient funds are available.⁵²

An exception to this process occurs when a claimant obtains a finding of factual innocence issued by a state or federal court. 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 4904.⁵³

Notably, the italicized language in subdivision (a) was added by SB 446, effective January 1, 2022, which apparently confirmed the appellate court's *Larsen* opinion. As cross-referenced in section 1485.55, Penal Code section 4904, in turn, provides in relevant part:

If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, ... and the California Victim Compensation Board has found that the claimant has sustained injury through their erroneous conviction and imprisonment, the [CalVCB] shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature.”⁵⁴

Under section 4904, payment is calculated at the rate of \$140 per day of imprisonment for both pre- and post-conviction imprisonment that resulted solely from the erroneous conviction.⁵⁵

a. Innocence

Here, Larsen's 1999 conviction under the Three Strikes law for possessing a concealed dirk or dagger was vacated during a federal habeas proceeding. Before granting relief, the federal court excused Larsen's procedurally untimely petition by finding, pursuant to *Schlup*, that it was “more likely

⁵¹ Pen. Code, § 4903, subd. (a).

⁵² Pen. Code, § 4904.

⁵³ Pen. Code, § 1485.55, subd. (a), as amend. by Stats.2021, c. 490 (S.B.446), § 2, eff. Jan. 1, 2022, italics added.

⁵⁴ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

Previously, CalVCB merely recommended the Legislature make an appropriation to indemnify the claimant, and the legislators were free to “vote against bills making appropriations for the payment of such claims....” (*Larsen, supra*, 64 Cal.App.5th at p. 124 n.6.)

⁵⁵ Pen. Code, § 4904.

1 than not that no reasonable juror would have convicted him in light of the new evidence.”⁵⁶ The
2 granted relief resulted in Larsen’s “permanent release,” as all charges were dismissed upon remand
3 due to a change in the sentencing laws.⁵⁷ Under these circumstances, Larsen’s *Schlup* finding
4 reflected a court determination that he “probably did not commit the crime and hence no juror would
5 convict him....”⁵⁸ Thus, as mandated by the appellate court opinion, Larsen is deemed to be factually
6 innocent within the meaning of Penal Code section 1485.55. This binding determination is not altered
7 by the federal court’s express denial of Larsen’s factual innocence. Nor is it altered by CalVCB’s
8 previous determination, supported by substantial evidence, that the administrative record failed to
9 prove Larsen’s innocence by a preponderance. Regardless of these events, CalVCB is statutorily
10 bound to assume that Larsen has, in fact, demonstrated his innocence by a preponderance of
11 evidence for purposes of compensation as an erroneously convicted offender.

12 **b. Injury**

13 Given this assumption of innocence, CalVCB further finds that Larsen’s demonstrated injury
14 amounts to 5,261 days of imprisonment for his vacated conviction of possessing a concealed dirk or
15 dagger. In his 2014 claim, Larsen requested compensation for just 4,963 days, representing the
16 period between the date of his conviction on August 18, 1999, and the date of his release on March
17 19, 2013. At that time, compensation was statutorily limited to \$100 per day for postconviction
18 imprisonment only.⁵⁹ But since then, the rate of compensation increased to \$140 per day and now
19 includes both pre-conviction and post-conviction confinement.⁶⁰ This compensation is “for the purpose
20 of indemnifying the claimant for the injury” sustained “through their erroneous conviction and
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22 _____
23 ⁵⁶ *Larsen, supra*, 64 Cal.App.5th at pp. 126, 131.

24 ⁵⁷ *Larsen, supra*, 64 Cal.App.5th at pp. 129 n.10, 131, 137.

25 ⁵⁸ *Larsen, supra*, 64 Cal.App.5th at p. 131 n.11.

26 ⁵⁹ Former Pen. Code, § 4904, as amend. by Stats.2013, c. 800 (S.B. 618), § 8.

27 ⁶⁰ The appellate court decision did not specify whether or not CalVCB should apply the 2014 version of
28 the law upon remand, but the superior court’s judgment quoted the current version of Penal Code
section 4904. CalVCB typically applies the law in effect at the time of the Board’s decision for Penal
Code section 4900 claims, regardless of when the claim was originally submitted to CalVCB.


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1 imprisonment....⁶¹ The requisite injury "may be established by showing that, but for the erroneous
2 conviction, the claimant would not have been in custody."⁶²
3 As documented in the Abstract of Judgment, Larsen spent a total of 298 days in custody pre-
4 conviction between the date of his arrest on June 6, 1998, and his conviction on August 18, 1999,
5 during which he was released at various times on bail.⁶³ He remained confined for 4,963 days
6 between his conviction and release on March 19, 2013. Thus, as both parties agree, Larsen's overall
7 length of imprisonment for his erroneous conviction amounts to 5,261 days. But-for his erroneous
8 conviction, he likely would have been free for all of these 5,261 days. He is therefore entitled to
9 indemnification in the amount of \$736,540 for his injury if sufficient funds are available upon
10 appropriation by the Legislature.

V. Conclusion

12 As mandated by the appellate court opinion pursuant to Penal Code section 1485.55, the
13 undersigned hearing officer recommends upon reconsideration that CalVCB approve payment to
14 Larsen in the amount of \$736,540 for his claim as an erroneously convicted offender under Penal
15 Code section 4900 if sufficient funds are available upon appropriation by the Legislature, as
16 indemnification for the injury sustained by his 5,261 days of imprisonment solely as a result of his
17 vacated conviction.

Date: February 2, 2023



Laura Simpton
Hearing Officer
California Victim Compensation Board

⁶¹ Pen. Code, § 4904.
⁶² Cal. Code of Regs., tit. 2, § 640, subd. (f).
⁶³ AR 1628.

ITEM 8

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

8 In the Matter of:

9 **Johnny Choinski**

10 Claim No. 21-ECO-09

Proposed Decision

(Penal Code § 4900, subd. (a))

11 **I. Introduction**

12 On May 12, 2021, Johnny Choinski (Choinski) submitted a claim to the California Victim
13 Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code section
14 4900. The claim is based upon Choinski's seven, still-valid convictions for assault with a firearm,
15 assault with a firearm upon a peace officer, criminal threats, corporal injury, and discharging a
16 firearm. Choinski seeks compensation in the amount of \$949,200 for the duration of his imprisonment
17 for these seven felony convictions, which totaled 6,780 days. The Attorney General objected to the
18 claim, arguing that the evidence fails to prove Choinski's innocence. CalVCB Senior Attorney Laura
19 Simpton held a hearing on August 9, 2022, at which both parties appeared. The record closed
20 immediately thereafter. Throughout these proceedings, Choinski represented himself, and the
21 Attorney General was represented by Deputy Attorney General Jessica Leal.

22 After considering all the evidence in the record, the claim is recommended for denial because
23 Choinski has failed to prove, by a preponderance, that he is innocent of the challenged convictions.
24 As detailed below, the inculpatory evidence includes his still valid convictions, which are supported by
25 overwhelmingly evidence. By comparison, his exculpatory evidence largely consists of his
26 unsupported testimony and drawings, which describe an implausible version of events. Overall, the
27 proffered evidence fails to satisfy Choinski's burden under subdivision (a) of Penal Code section 4900
28 to show that he is innocent of the charged crimes.

II. Procedural Background

Choinski was arrested on August 22, 2001, and subsequently charged with numerous offenses against his estranged wife “L.C.” and several responding police officers in Los Angeles County Superior Court case number BA221417.¹ The charges included assault with a deadly weapon, criminal threats, corporal injury to spouse, discharging a firearm, burglary, kidnapping, and four separate counts of assault with a deadly weapon upon a peace officer.² Following a jury trial, Choinski was found guilty of all but one count of assault with a deadly weapon upon a peace officer. Choinski was sentenced on September 23, 2002, to an aggregate term of 28 years and 8 months imprisonment for all nine convictions.³

Choinski appealed to the Second Appellate District of the California Court of Appeal. In an unpublished decision filed February 17, 2004, the appellate court reversed the kidnapping conviction due to insufficient evidence of movement and further reversed the burglary conviction due to instructional error.⁴ Otherwise, the appellate court affirmed the remaining seven convictions for assault with a deadly weapon (i.e., L.C.), assault with a deadly weapon upon a peace officer (i.e., Officers Olson, Stambaugh, and Travis),⁵ criminal threats, corporal injury, and discharging a firearm. Upon remand to the trial court, the prosecution was barred from retrying Choinski for kidnap because of Double Jeopardy and ultimately declined to retry Choinski for burglary. After dismissing both charges on May 4, 2004, the trial court resentenced Choinski on the remaining seven felony convictions to an aggregate term of 23 years.⁶

¹ Attorney General Response Letter (AGRL) at p. 4. The victim is referred to by her initials only in an effort to protect her privacy.

² Pen. Code §§ 245, subd. (a)(2), 459, 422, 273.5, 246.3, 207, and 245, subd. (d)(1); AGRL at pp. 4-5; AG Exhibit (Ex.) 1 at pp. 46-49.

³ Ex. 1 at pp. 193-195.

⁴ Ex. 7; see also *People v. Johnny Choinski*, Second District Court of Appeal case number B162139, unpublished opinion filed February 17, 2004.

⁵ The first name of the peace officers are omitted to protect their privacy.

⁶ AGRL at p. 6; Ex. 8 at pp. 25-26.

1 Between 2004 and 2020, Choinski filed 19 habeas petitions in state court, plus one more in
2 federal court. Among the numerous claims raised in these habeas petitions was an allegation that
3 Choinski was actually innocent. With the exception of an order to recalculate the custody credits in
4 August 2019, all petitions were denied, including two subsequent petitions challenging the revised
5 custody credit calculations in November 2019 and November 2020.⁷

6 Choinski remained imprisoned until he completed his 23-year sentence on March 19, 2021,
7 when he was released on parole. By then, he had been incarcerated for a total of 6,780 days from
8 August 22, 2001, to and including March 19, 2021. His parole evidently terminated one year later on
9 March 19, 2022.⁸

10 On May 12, 2021, Choinski timely submitted a claim to CalVCB seeking compensation as an
11 erroneously convicted offender pursuant to Penal Code section 4900. But instead of alleging factual
12 innocence, the claim only challenged the accuracy of the credit calculations by the California
13 Department of Corrections and Rehabilitation (CDCR). After notifying Choinski that his claim may be
14 rejected for failing to raise any basis upon which relief may be granted, Choinski supplemented the
15 claim on June 16, 2021. In his supplemental claim, Choinski affirmatively alleged that he was
16 factually innocent of all seven convictions that led to his incarceration in case number BA221417.⁹

17 CalVCB filed Choinski's supplemented claim on July 1, 2021, and requested a response from
18 the Attorney General. Following multiple extensions for demonstrated good cause, the Attorney
19 General timely submitted a response letter on April 27, 2022, along with 47 exhibits spanning over
20 2,300 pages.¹⁰

21 Choinski requested an in-person hearing before the hearing officer, which was granted. At
22 CalVCB's invitation, Choinski submitted a pre-hearing brief on July 1, 2022, which generally asserted
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24 ⁷ AGRL at pp. 6-10; Exs. 27-35; Choinski Application ("App.") at pp. 9-10.

25 ⁸ Choinski App. at pp. 1, 5.

26 ⁹ Choinski Supplemental (Supp.) App. at pp. 1-12 (claim form with written statement) at pp. 13-163
27 (supporting documents); see also CalVCB Letter dated July 1, 2021, requesting response from the
Attorney General at pp. 1-2.

28 ¹⁰ AGRL at pp. 1-17; Exs. 1-47.

1 that the Attorney General failed to offer any direct or physical evidence to oppose his claim. The
2 hearing ensued on August 9, 2022, at which Choinski appeared and testified, along with his sole
3 witness Martina Dul (Dul). The Attorney General also appeared and cross-examined both Choinski
4 and Dul, but otherwise declined to submit any new evidence. The record closed at the conclusion of
5 the hearing, after both parties declined to submit post-hearing briefs.

6 **III. Factual Summary**

7 As detailed below, the record reveals that Choinski engaged in a series of escalating incidents
8 of domestic violence against L.C. that culminated on August 22, 2001, with the offenses that lead to
9 his seven felony convictions.

10 **A. Trial Evidence**

11 Choinski married L.C. in 1998. In April 1999, Choinski threw L.C. to the ground, injuring her
12 head, and threatened to shoot L.C., the police, and himself.¹¹ L.C. obtained a restraining order
13 against Choinski based upon this act of domestic violence,¹² but they eventually reconciled, and the
14 order expired. The following year in September 2000, Choinski hit and choked L.C., held a gun to her
15 mouth, and threatened to shoot L.C., the police, and himself.¹³ In April or May of 2001, Choinski
16 punched L.C. several times and threatened to kill her if she called police, even from behind bars.¹⁴
17 On July 4, 2001, during a camping trip with friends, Choinski struck L.C. with a bottle, held a gun to
18 her mouth, threatened to play Russian Roulette, and then fired the gun multiple times near her, while
19 aiming up in the air or down at the ground.¹⁵

20 Following this incident, L.C. broke off their relationship.¹⁶ L.C. remained in the apartment she
21 had shared with Choinski, which still contained some of his belongings, but he did not live there.¹⁷

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23 ¹¹ AGRL at p. 1; Ex. 2 at pp. 62-71.

24 ¹² Ex. 2 at pp. 71-72.

25 ¹³ AGRL at p. 4; Ex. 3 at pp. 325-330 (testimony by Mariusz K.), 352-353 (testimony by Kasia S.).

26 ¹⁴ AGRL at p. 4; Ex. 3 at pp. 347-355; Ex. 42 at pp. 5-6.

27 ¹⁵ Ex. 3 at pp. 331-333; Ex. 42 at pp. 5-6.

28 ¹⁶ Ex. 2 at pp. 134-135, 137.

¹⁷ Ex. 2 at p. 73; Ex. 7 at p. 5.

1 The apartment was located on the second floor with a balcony. The front door of the apartment was
2 accessible only through an enclosed flight of stairs, which was secured at the base by a screen metal
3 security door.¹⁸ The door itself was difficult to see through, unless positioned directly in front with
4 good lighting.¹⁹

5 On August 6, 2001, starting at approximately 2:00 a.m., Choinski repeatedly called L.C. He
6 left around 15 messages in which he called L.C. vulgar names and threatened to come to her
7 apartment with a gun. Around 4:00 a.m., Choinski arrived at L.C.'s apartment complex. Choinski
8 attempted to retrieve a ladder, but it was chained to a fence under L.C.'s balcony. Unable to free the
9 ladder, Choinski instead vandalized L.C.'s car and finally left irate when L.C. called police.²⁰

10 A few weeks later on the night of August 22, 2001, Choinski arrived at L.C.'s apartment again.
11 This time, he brought a bolt cutter, which he used to cut the chain from the ladder. He propped the
12 ladder against L.C.'s balcony and started to climb. L.C. heard the commotion and tried to push
13 Choinski away with a broom, but he grabbed it from her. L.C. warned Choinski that she would call
14 police if he came upstairs, but Choinski pulled a gun from his belt and pointed it at L.C. Within
15 seconds, Choinski was standing on the balcony with his gun pointed at L.C.'s head.²¹

16 Choinski ordered L.C. inside the apartment, entering through the window into the bedroom
17 and continuing to the living room. Choinski, who appeared to be drunk, followed behind L.C. while
18 pointing a gun at her the entire time.²²

19 Choinski complained that his mother had kicked him out of the house. He told L.C. that since
20 he had "no life," she must also die. Choinski demanded alcohol, but L.C. denied having any.
21 Choinski struck L.C.'s arm, hip, and neck with the gun, causing bruises. Eventually L.C. found some
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25 ¹⁸ Ex. 2 at pp. 49, 51, 133, 263.

26 ¹⁹ Ex. 2 at p. 51; Choinski Supp. App. at p. 75; Choinski Hearing Ex. 3 at pp. 14, 16.

27 ²⁰ Ex. 2 at pp. 65-69; Ex. 42 at p. 3.

28 ²¹ AGRL at p. 2; Ex. 2 at pp. 72-74, 197; Ex. 42 at p. 3.

²² AGRL at p. 2; Ex. 2 at pp. 74-80; Ex. 42 at pp. 3-4.

1 cognac and gave it to Choinski. He ordered L.C. to drink some too, while holding a gun to her head.
2 She pretended to comply.²³

3 While still holding the gun to L.C.'s head, Choinski told her to call her family in Poland to say
4 her "goodbyes" because she was living her "last minutes." L.C. tried to calm Choinski by engaging
5 him in conversation. Choinski told L.C. that he had 50 bullets in his pocket and then displayed the
6 loaded bullets in his gun. Choinski suggested having sex with L.C. before shooting her to death. He
7 also suggested they move to Poland.²⁴

8 Eventually, L.C. used the bathroom, while Choinski stood over her holding a gun to her head.
9 Once she finished, Choinski exposed his penis and demanded she "service him." L.C. instead
10 offered to make coffee and discuss their future. Choinski remained in the bathroom. Once she was
11 out of his sight, L.C. grabbed her cordless phone and ran out of the apartment's front door, down the
12 enclosed stairwell, past the screen metal security door, onto the driveway for the apartment complex.
13 L.C., who was wearing only a nightgown, hid under a car and called police.²⁵ As recorded by 911,
14 L.C. was crying and repeatedly stated she was scared because her husband wanted to kill her and
15 had a gun.²⁶

16 Police arrived shortly thereafter. There were five or six responders, which included Officers
17 Olson, Strambaugh, and Travis, and Sergeant Gomez.²⁷ From their exterior location, they spotted
18 Choinski holding a gun inside the apartment and heard multiple gunshots. Eventually, Choinski
19 opened the screen metal security door at the base of the enclosed staircase and faced the officers
20 waiting outside. Choinski remained near the doorway, standing on the single step immediately below
21 the threshold, while holding a gun in his mouth with his right hand.²⁸ The officers repeatedly ordered
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24 ²³ AGRL at p. 2; Ex. 2 at pp. 74-80; Ex. 42 at pp. 3-4.

25 ²⁴ AGRL at p. 2; Ex. 2 at pp. 74-80; Ex. 42 at pp. 3-4.

26 ²⁵ AGRL at pp. 2-3; Ex. 2 at pp. 80-83; Ex. 42 at p. 4.

27 ²⁶ Choinski Supp. App. at pp. 32-39.

28 ²⁷ Ex. 2 at pp. 39-40.

²⁸ Ex. 2 at pp. 43-44, 49, 54-56, 144-145, 165-169, 184-185.

1 Choinski to drop his gun. Instead, Choinski pointed his gun directly at Officers Olson, Stambaugh,
2 and Travis, all of whom were standing near each other and within four to 15 feet of Choinski.²⁹
3 Sergeant Gomez was standing directly behind these officers.³⁰ Afraid for their lives, the officers fired
4 at Choinski, striking him multiple times.³¹

5 A subsequent investigation determined that the officers fired a total of 20 rounds at Choinski,
6 although most bullets missed him.³² The officers' weapons included two .45 caliber semi-automatic
7 pistols, an AR-16 .223 rifle, and a shotgun.³³ Medical records confirmed that Choinski was struck
8 once in the chest and right shoulder, with both bullets exiting out his back, and once in the stomach,
9 pelvis, left bicep, and right hand.³⁴ Choinski was transported by ambulance to the hospital for
10 surgery.³⁵ Extensive metallic bullet fragments remained in Choinski's body.³⁶

11 After the shooting, police seized Choinski's gun, which at some point had fallen from his
12 hand.³⁷ The gun was loaded and registered to Choinski.³⁸ Police also located a fired cartridge
13 casing inside the front pocket of Choinski's bloody shorts, which had been left near the driveway,
14 evidently after paramedics tended to Choinski.³⁹ Police eventually entered L.C.'s apartment and
15 found it in complete disarray. As documented by photographs, shots had been fired through the
16 balcony window, bathroom mirror, toilet, television, and even clothing in the closet. L.C.'s computer,
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19 ²⁹ Ex. 2 at pp. 43-46 (Stambaugh), 147, 154 (Olson), 185-186 (Travis)

20 ³⁰ Ex. 2 at pp. 148, 187.

21 ³¹ AGRL at p. 3; Ex. 2 at pp. 44, 48, 147, 165-176, 190; Ex. 42 at p. 4.

22 ³² Choinski Supp. App. at pp. 146-149 (Los Angeles County District Attorney's Office Analysis of non-
23 fatal shooting, dated June 11, 2002). Although this information was not presented to the jury, it is
24 included for context.

25 ³³ Choinski Supp. App. at p. 148.

26 ³⁴ Choinski Supp. App. at pp. 107-108, 148.

27 ³⁵ Choinski Supp. App. at pp. 146-149.

28 ³⁶ Choinski Supp. App. at pp. 107, 109.

³⁷ AG Ex. 2 at p. 167.

³⁸ Ex. 2 at pp. 202-203, 211, 217.

³⁹ Ex. 2 at pp. 205-206.

1 radio, and related equipment had been thrown on the ground and destroyed. Multiple fired cartridge
2 casings were located inside the apartment.⁴⁰ Finally, a pair of bolt cutters was located in a carport
3 near L.C.'s apartment.⁴¹

4 Meanwhile, Officer F.,⁴² who was fluent in Polish, arrived on scene after the shooting in order
5 to interview L.C. They spoke for several hours. This was the first time that Officer F. met L.C.⁴³

6 In his defense, Choinski testified that L.C. had lied about everything. He claimed L.C. had
7 welcomed him into the apartment via the balcony to retrieve his personal belongings, including his
8 gun. He admitted using the ladder after cutting the chain but only because the downstairs security
9 door was locked, so no one would be able to hear him knock. He denied being drunk and accused
10 L.C. of having a drinking problem. During their amicable visit, he showered. While he was getting
11 dressed, he overheard L.C. call 911 and falsely accuse him. Once L.C. left the apartment, Choinski
12 called his mother, who supposedly told him to hand over his gun to the police. After drinking some
13 cognac, Choinski walked out of the apartment and down the stairwell, while supposedly holding the
14 gun with one finger. As he descended the stairs, he tossed the gun towards the still-closed screen
15 metal security door. In particular, Choinski stated, "Maybe three stairs prior to this security door, I put
16 my hand down to throw the gun. And as I throw the gun, the gun hit the security door and it was left
17 there in the corner."⁴⁴ After tossing the gun, he claimed police nevertheless shot him, while he was
18 standing behind the closed screen metal security door. Choinski denied ever pointing the gun at the
19 officers. Choinski acknowledged that the photographs of L.C.'s apartment looked "like a typhoon
20 went through it," but he denied causing any of the damage. During the trial, Choinski expressly
21 declined to accuse the police of "any type of set up," insisting instead that only L.C. and her friends
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24 ⁴⁰ Ex. 2 at pp. 92-95.

25 ⁴¹ Ex. 2 at p. 197.

26 ⁴² Only the first initial of this officer's name is included in this proposed decision because of the
27 accusations made by Choinski against this officer, none of which were sustained by any court.

28 ⁴³ Ex. 1 at pp. 5-6, 15; Ex. 2 at pp. 114-116; see also Choinski Hearing Exhibit 2 at p. 17 (Officer F.
Declaration).

⁴⁴ Ex. 2 at p. 240.

1 had framed him. Choinski also denied wearing the bloody shorts that were seized from the driveway,
2 claiming instead that the shorts belonged to L.C.⁴⁵

3 In rebuttal, a firearms expert testified that the bullet holes in the screen metal security door
4 were either fired towards the outside from someone standing within the stairwell while the door was
5 closed, or from outside towards the stairwell while the door was open. Also, one friend of Choinski
6 and one friend of L.C. testified to the abuse they observed Choinski inflict upon L.C. before August
7 2001, including the camping trip on the Fourth of July.⁴⁶

8 The jury convicted Choinski of nine of the ten charges. Specifically, the jury found Choinski
9 guilty of three counts of assault with a firearm upon a peace officer (i.e., Officers Olson, Strambaugh,
10 and Travis) and one count each of assault with a firearm upon L.C., kidnapping, burglary, criminal
11 threats, inflicting corporal injury on a spouse, and discharging a firearm. The jury acquitted Choinski
12 of a single count of assault with a firearm upon a peace officer (i.e., Sergeant Gomez), presumably
13 because he was not located in the immediate line of fire. After Choinski's convictions for kidnapping
14 and burglary were reversed and ultimately dismissed, leaving intact his remaining seven convictions,
15 he was resentenced to 23 years in prison.⁴⁷

16 **B. Federal Civil Rights Litigation**

17 In 2004, Choinski filed a civil rights action against the Los Angeles Police Department and
18 several officers, including Officer F.⁴⁸ Evidently, Choinski submitted multiple declarations from
19 friends, family members, and a neighbor in an effort to bolster his complaint. Specifically, a
20 declaration signed by Michael Kulig (Kulig) on January 21, 2005, averred that, before the shooting, on
21 August 6, 2001, L.C. claimed to have made new friends who would shoot Choinski for her.⁴⁹ A

23 ⁴⁵ AGRL at pp. 3-4; Ex. 2 at pp. 220-241; Ex. 3 at pp. 247-302; Ex. 3-2 at pp. 303-324; Ex. 42 at pp. 4-
24 5.

25 ⁴⁶ AGRL at p. 4; Ex. 3 at pp. 326-347 (Mariusz K.), 348-365 (Kasia S.); Ex. 42 at p. 6.

26 ⁴⁷ AGRL at pp. 5-6; Ex. 1 at pp. 188-189; Ex. 8 at p. 26; Ex. 9.

27 ⁴⁸ Choinski Supp. App. at pp. 16-26, 105-106, 119; see also online docket for *Johnny Choinski v. Los*
28 *Angeles Police Department et al.*, U.S. District Court (C. Cal.), case number 2:04CV04459. (See Cal.
Code Regs., tit. 2, § 617.8 (official notice.)

⁴⁹ Choinski Supp. App. at pp. 16-17.

1 declaration signed by Elenora Mazerant (Mazerant) on February 18, 2005, averred that, on August
2 13, 2001, Kulig had expressed concern about L.C.'s threat to have Choinski shot.⁵⁰ A declaration
3 signed by Urszula Zurawski (Zurawski) on February 21, 2005, likewise averred that, on August 13,
4 2001, Kulig had expressed concern about L.C.'s threat to have Choinski shot.⁵¹

5 Significantly, a declaration signed by Dul on February 18, 2005, averred that, on August 18,
6 2001, Mazerant had told her of L.C.'s threat to have Choinski shot. Dul added that, sometime after
7 Choinski was sentenced to prison on September 23, 2002, L.C. told her that Officer F. had promised
8 "to take care of" Choinski, supposedly by having the police "beat him up and shot [sic] his testicle and
9 penis."⁵² L.C. supposedly told Dul that Officer F. had assured L.C. that she would "easily" obtain a
10 green card if Choinski went to prison.⁵³

11 A declaration signed by Choinski's mother Lucy Choinski (Lucy) on January 21, 2005, alleged
12 that, on August 6, 2001, Choinski had told her about L.C.'s threat to have him shot.⁵⁴ Lucy further
13 declared that, on August 22, 2001, Choinski told her over the telephone that L.C. had falsely told
14 police that he had tried to kill her, and Lucy responded by advising Choinski to surrender his gun to
15 police.⁵⁵ A declaration signed by his father Stefan Choinski (Stefan) on February 18, 2005, similarly
16 averred that, on August 6, 2001, Choinski had told him about L.C.'s threat to have him shot. This
17 conversation with Stefan supposedly occurred after Choinski returned from checking on L.C. at 1:30
18 a.m. in the morning because she had ignored his earlier telephone calls.⁵⁶ A declaration signed by
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21 ⁵⁰ Choinski Supp. App. at pp. 18-19.

22 ⁵¹ Choinski Supp. App. at p. 20.

23 ⁵² Choinski Supp. App. at p. 24.

24 ⁵³ Choinski Supp. App. at p. 24.

25 ⁵⁴ Choinski Supp. App. at pp. 21-22.

26 ⁵⁵ Significantly, as noted by the prosecution outside of the jury's presence during the trial, Choinski's
27 mother and sister had repeatedly called L.C. and told her not to testify. His mother specifically
28 threatened L.C. that "If anything happens to my son I'm going to kill you." (Ex. 2 at pp. 59-60.) As a
result of this threat, L.C. obtained a restraining order. (Choinski Supp. App. at pp. 40, 43.)

⁵⁶ Choinski Supp. App. at p. 23.

1 Choinski's sister Elizabeth Mehmood on August 10, 2006, claimed that she was prohibited by court
2 security from recording the trial on her personal recorder.⁵⁷

3 Finally, a declaration signed by L.C.'s neighbor Angelica Cruz on December 29, 2005, averred
4 that on August 22, 2001, at about 12:20 a.m., she observed officers approaching the stairwell, heard
5 shots, and later observed an officer kick a firearm from the bottom of the stairwell out onto the
6 driveway. Cruz did not witness the actual shooting.⁵⁸

7 Ultimately, Choinski's civil rights complaint was dismissed on September 19, 2006, when the
8 court granted the defendants' motion for summary judgment. Specifically, the case was "dismissed
9 with prejudice as to all of plaintiffs [*sic*] claims," with the sole exception of those "claims for the alleged
10 use of excessive force, which are dismissed without prejudice to bringing the claims if plaintiffs [*sic*]
11 relevant criminal convictions are invalidated."⁵⁹ Choinski's recent motion for reconsideration was
12 denied on January 26, 2022.⁶⁰

13 **C. Habeas Proceedings**

14 Choinski's numerous state habeas petitions were generally denied, sometimes on procedural
15 grounds, without a formal decision, including his claim of factual innocence.⁶¹ Habeas relief was
16 granted solely to recalculate custody credits on June 28, 2019, which resulted in an amended
17 Abstract of Judgment issued on August 15, 2019.⁶² Thereafter, on November 25, 2019, and again on
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22 ⁵⁷ Choinski Supp. App. at pp. 25-26.

23 ⁵⁸ Choinski Supp. App. at pp. 105-106.

24 ⁵⁹ Docket for *Choinski v. Los Angeles Police Department et al.*, *supra*, case number 2:04CV04459, at
25 pp. 9-10; see also *Heck v. Humphrey* (1994) 512 U.S. 477, 487 (barring prisoner's civil rights claim for
26 damages whenever a judgment in favor of the prisoner would necessarily imply the invalidity of his
conviction or sentence, unless the prisoner demonstrates that the conviction or sentence has already
been invalidated).

27 ⁶⁰ *Ibid.* at p. 8.

28 ⁶¹ Exs. 8, 12, 13, 14, 16, 23, 26, 34, 35, 37, 39, 41.

⁶² Ex. 32; Choinski App. at pp. 9-10.

1 November 12, 2020, the state court expressly found that Petitioner “has failed to demonstrate there
2 was any error in recalculating his custody credit or release date....”⁶³

3 Meanwhile, Choinski’s federal habeas petition was denied in a lengthy decision issued by the
4 magistrate judge on March 24, 2008, which was adopted by the district court on February 24, 2009.⁶⁴
5 The petition alleged, inter alia, prosecutorial misconduct by withholding, hiding, or covering up
6 evidence and ineffective assistance of counsel for failing to investigate and present a defense to all
7 charges.⁶⁵ It does not appear that Choinski submitted the declarations from his friends and family.⁶⁶
8 Regardless, the federal habeas court ultimately concluded that Choinski had “fail[ed] to establish the
9 existence of errors that, when viewed singly or cumulatively, deprived him of a fair trial.”⁶⁷ The court
10 specifically found Choinski’s claims “that the police planted evidence to justify the shooting ... or
11 coerced petitioner’s wife to frame petitioner” to be unsupported and speculative.⁶⁸ Also, when
12 summarizing the trial evidence, the court observed that, on August 22, 2001, Choinski had been living
13 with his mother when he arrived at L.C.’s apartment, threatened L.C. with a gun, subsequently exited
14 the stairwell holding the gun in his mouth, and then pointed the gun at police.⁶⁹ The court further
15 observed that the officers fired at Choinski while believing their lives were in danger.⁷⁰

16 **D. CalVCB Proceedings**

17 On May 12, 2021, Choinski submitted a claim under Penal Code section 4900. But rather
18 than claiming to be innocent, Choinski instead challenged the accuracy of CDCR’s credit calculations
19 for his still valid convictions, which allegedly delayed his release from prison by 736 days.⁷¹ As
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21 ⁶³ Exs. 34, 35.

22 ⁶⁴ Exs. 42, 43.

23 ⁶⁵ Ex. 42 at p. 6.

24 ⁶⁶ Ex. 42 at p. 10, n.2.

25 ⁶⁷ Ex. 42 at p. 25.

26 ⁶⁸ Ex. 42 at p. 11.

27 ⁶⁹ AG Ex. 42 at pp. 3-4.

28 ⁷⁰ AG Ex. 42 at p.4.

⁷¹ Choinski App. at pp. 1-2, 4.

1 support, Choinski attached a series of grievances with CDCR challenging his credit calculations to
2 determine his parole date, which were denied as meritless in a final decision rendered December 31,
3 2020.⁷² He also attached several court minute orders and a revised Abstract of Judgment filed on
4 August 15, 2019, which confirmed his aggregate sentence of 23 years for his still valid convictions
5 while awarding 987 days actual credit and 148 days conduct credit.⁷³ Finally, he attached a CDCR
6 form that confirmed his scheduled release date on March 19, 2021.⁷⁴

7 Following notice by CalVCB that his claim appeared to be deficient for failing to comply with
8 Penal Code sections 4900 and 4901, Choinski submitted a supplemental claim on June 16, 2021.⁷⁵
9 In a written statement, Choinski insisted that he was innocent of his seven convictions for assault with
10 a firearm against L.C., assault with a firearm against the police officers, criminal threats, corporal
11 injury, and discharging a firearm.⁷⁶ He alleged that both L.C. and the police had falsely accused him
12 of the underlying crimes and further alleged that the police had planted evidence against him.⁷⁷ He
13 also raised numerous allegations of trial error, such as ineffective assistance of counsel. As support,
14 Choinski attached the same declarations from the civil rights litigation (i.e., Kulig, Mazerant, Zurawski,
15 Dul, Lucy, Stefan, Mehmood, and Cruz). He also attached his grievances with the Los Angeles
16 Police Department over the shooting, as well as the result of the Los Angeles District Attorney's
17 investigation that exonerated the officers, plus various reports from the Los Angeles Police
18 Department and medical records.⁷⁸ Finally, Choinski included numerous crime scene photographs
19 with his own annotations and drawings in an effort to depict that he was shot by police, while standing
20 behind the closed screen metal security door, and not holding a gun.

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22 ⁷² Choinski App. at pp. 14-15, 23-34, 37.

23 ⁷³ Choinski App. at pp. 9-10.

24 ⁷⁴ Choinski App. at p. 5.

25 ⁷⁵ Choinski Supplemental ("Supp.") App. at pp. 1-165.

26 ⁷⁶ Choinski Supp. App. at p. 1; see also CalVCB Letter, dated July 1, 2021, regarding "Request for
27 Response Letter from the Attorney General," at pp. 1-2.

28 ⁷⁷ Choinski Supp. App. at pp. 1, 3-12.

⁷⁸ Choinski Supp. App. at pp. 98, 107-111, 146-149,

1 After the Attorney General submitted a response letter with supporting exhibits on April 27,
2 2022, an in-person hearing ensued on August 9, 2022. Choinski appeared and testified under oath,
3 as did his sole witness Dul. Their testimony is summarized below, along with a description of the
4 exhibits submitted by Choinski.⁷⁹

5 **1. Choinski's Testimony**

6 Choinski insisted he was innocent of all seven felony convictions. He denied ever threatening
7 or abusing L.C. He also denied threatening the police with his firearm. He accused the police of
8 shooting him while he was no longer holding a gun and still standing behind the closed screen metal
9 security door. Contrary to his trial testimony, Choinski claimed that he bent down, placed the gun on
10 the floor, and then was shot by police just as he was standing back up. He further accused the police
11 of falsely testifying to a contrary version of events, as well as tampering with evidence to frame him.

12 To support his version of events, Choinski claimed that the gunshot wound to the fingertip of
13 his right hand, combined with the absence of any strike marks on his gun,⁸⁰ proved that he could not
14 have been aiming the gun at the police when they shot him. Choinski also claimed that steel
15 remnants of the screen metal security door remained in his body, which he attempted to demonstrate
16 during the hearing by lifting his shirt and placing a supposed magnet on his chest and abdomen. The
17 magnet appeared to adhere to Choinski's skin. Choinski insisted the magnet would not have adhered
18 to any of the remaining bullet fragments because they were made of lead and copper.⁸¹ In addition,
19 Choinski referenced a crime scene photograph of the screen door with bullet holes,⁸² which he
20 claimed, contrary to the prosecution's expert at trial, showed that the direction of the bullets originated
21 from outside towards the stairwell while the door was still closed. He also suggested the bullet holes
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24 ⁷⁹ See Olympus Audio Recording of August 9, 2022, Hearing, spanning 1:47:06 in length; see also
25 Zoom Visual Recording, with limited audio, of August 9, 2022, Hearing, spanning 1:57:16 in length.

26 ⁸⁰ Choinski Hearing Ex. 3 at p. 30.

27 ⁸¹ As emphasized by the Attorney General when objecting to this demonstration, Choinski lacked any
28 expert scientific evidence to lay a foundation for this demonstration. The objection was overruled but
the lack of foundation goes to the weight of this evidence. (Cal. Code Regs., tit. 2, § 641, subd. (e).)

⁸² Choinski Hearing Ex. 3 at pp. 16-17.

1 in the screen metal door matched the location of his gunshot injuries based upon his own
2 measurements and calculations derived from the police reports and medical records. Choinski further
3 noted extensive blood on the floor behind the screen metal security door, which apparently included a
4 footprint from one of his sandals, as well as blood flows down the single step leading to the
5 driveway,⁸³ as proof that he was shot while standing inside the enclosed stairwell. He claimed that a
6 crime scene photograph of his firearm resting on the driveway had been planted by police because
7 he had actually discarded it while standing inside the stairwell behind the door.⁸⁴ In an attempt to
8 bolster this claim, Choinski referenced the neighbor's declaration that had described an officer kicking
9 the firearm from the bottom of the stairwell out onto the driveway once the shooting ceased.⁸⁵ Based
10 upon his version of events, Choinski maintained that he did not assault any of the police officers with
11 a firearm and, therefore, the officers' use of force was excessive and unjustified.

12 As for the remaining crimes against L.C., Choinski denied pointing a gun at L.C. anytime that
13 night. He denied committing any acts of violence or abuse against L.C., either that night or any time
14 before. He denied ever threatening to shoot police, either that night or before. He also denied firing
15 his gun inside the apartment, where he insisted he still lived with L.C. Nonetheless, he admitted
16 loading his gun that night. He also admitted cutting the chain to the ladder to enter the apartment.
17 Choinski insisted that L.C. knew Officer F. before the shooting occurred and cited Officer F.'s
18 declaration from the civil rights litigation as support, even though that declaration confirms Officer F.
19 first met L.C. after the shooting.⁸⁶ Choinski further claimed that his civil rights complaint was denied
20 without prejudice, even though the court docket reveals some claims were denied with prejudice
21 while the remaining were denied without prejudice only if the underlying criminal convictions were
22 vacated.

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26 ⁸³ Choinski Hearing Ex. 3 at pp. 10, 14, 26, 37; Choinski Hearing Ex. 4 at p. 4.

27 ⁸⁴ Choinski Hearing Ex. 3 at p. 37.

28 ⁸⁵ Choinski Supp. App. at p. 105 (Cruz declaration).

⁸⁶ Choinski Hearing Ex. 2 at pp. 8-15, 17-18.

2. Dul's Testimony

Dul, who had suffered a stroke and spoke limited English, also testified on behalf of Choinski. Dul appeared to have difficulty understanding the Attorney General's questions, but she readily understood most of Choinski's questions. Dul had known Choinski and L.C. since approximately 1994. At one point during cross-examination, Dul admitted visiting Choinski while in prison, but then later denied having done so. In addition, Dul initially denied knowing whether Choinski ever beat L.C., then admitted she saw him abuse L.C., but then denied ever seeing any abuse. Dul claimed that L.C. was a heavy drinker. Dul accused L.C. of becoming aggressive when drunk, once towards Dul when Dul refused to drink with her. At Choinski's prompting, Dul further claimed that L.C. had lied to police about a car accident while driving under the influence of alcohol. In addition, Dul claimed that, sometime before the shooting, L.C. had told her about Officer F. Specifically, L.C. supposedly told Dul that Officer F. had assured her that she (L.C.) would qualify for a green card if her husband went to jail. Dul insisted this conversation happened before the shooting, despite the contrary representation in her declaration that it occurred afterwards. Dul acknowledged that she was not present when Choinski was shot.

3. Choinski's Hearing Exhibits

During the hearing, Choinski submitted multiple exhibits. Exhibit 1 includes a collection of defense motions regarding appointment of an investigator and expert, request for continuance, request for dismissal; multiple declarations by Choinski challenging the adequacy of his trial counsel's representation; and a notice from the California State Bar that found insufficient evidence to sustain any of Choinski's allegations of improper conduct by his trial counsel.⁸⁷ Exhibit 2 includes the investigative report issued by the Los Angeles County District Attorney, which concluded that all officers who fired at Choinski acted lawfully in self-defense and defense of others.⁸⁸ It also includes a declaration from Officer F. from the civil rights litigation, which confirms the timing of her first meeting with L.C. after the shooting occurred, along with the Statement of Uncontroverted Facts and

⁸⁷ Choinski Hearing Ex. 1 at pp. 1-24.

⁸⁸ Choinski Hearing Ex. 2 at pp. 1-25.

1 Law filed by the defendants in support of their motion for summary judgment.⁸⁹ Exhibit 3 includes
2 one officer's response to interrogatories in that litigation; a jury instruction that allows only reasonable
3 force to make an arrest and, when unreasonable or excessive, permits the arrestee to use
4 reasonable force in return; along with multiple photographs of the scene, some of which were
5 annotated by Choinski; a Los Angeles Police Department Firearms Analyzed Evidence Report; and
6 medical records and photographs depicting Choinski's hand injury.⁹⁰ Exhibit 4 includes multiple
7 drawings and annotated crime scene photographs depicting the shooting according to Choinski's
8 version of events.⁹¹ Exhibit 5 includes multiple medical records regarding Choinski's treatment
9 following the shooting, which confirms gunshot wounds on his chest, pelvis, left arm, fingertips on his
10 right hand, and back.⁹² The records further confirm that several bullet fragments were located on his
11 chest, abdomen, and pelvis. Exhibit 5 also includes correspondence by Choinski complaining of his
12 appellate counsel's representation, as well as a notice from the California State Bar that found
13 insufficient evidence to sustain any of Choinski's allegations of improper conduct by his appellate
14 counsel. Exhibit 5 additionally includes an annotated transcript of Choinski's statement to the trial
15 court at sentencing, during which he insisted he was innocent, accused L.C. and the responding
16 officers of framing him, and specifically accused Officer F. of having promised L.C. that the police
17 would shoot Choinski at least two weeks before the shooting occurred. Exhibit 6 consists of a life-
18 size mannequin with various markings, holes, and dowels that were added by Choinski in an effort to
19 recreate the location and trajectory of the gunshot wounds he sustained, based upon his own
20 evaluation of the measurements contained in the police reports. Exhibit 7 consists of a screen metal
21 that Choinski represented was identical to the material used in the security door at the apartment.
22 Exhibits 8 and 9 are photographs taken during the hearing of Exhibits 6 and 7, respectively. Finally,
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25 ⁸⁹ Choinski Hearing Ex. 2 at pp. 8-15, 17-18.

26 ⁹⁰ Choinski Hearing Ex. 3 at pp. 1-25.

27 ⁹¹ Choinski Hearing Ex. 4 at pp. 1-5.

28 ⁹² Choinski Hearing Ex. 5 at pp. 1-62.

exhibits 10a and 10b are photographs taken during the hearing of Choinski holding the screen metal (exhibit 7) in front of the mannequin (exhibit 6).

Determination of Issues

Penal Code section 4900, subdivision (a), allows a person, who has been erroneously convicted and imprisoned for a felony offense that they did not commit, to submit a claim for compensation to CalVCB for the injury sustained.⁹³ Typically, under subdivision (a) of section 4900, 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.⁹⁴ Once such a claim is received and filed, Penal Code section 4902 requires the Attorney General to submit a written response pursuant to Penal Code section 4902.⁹⁵ Thereafter, under Penal Code section 4903, an informal administrative hearing before a hearing officer ensues, at which the claimant and Attorney General may present evidence concerning innocence and injury.⁹⁶ Upon the requisite showing of innocence and injury, then pursuant to Penal Code section 4904, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of \$140 per day.⁹⁷

In limited circumstances, a different procedure may apply for claimants whose convictions have been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or vacated conviction pursuant to Penal Code section 1473.6, then CalVCB must automatically approve the claim, within 30 days and without a hearing, pursuant to Penal Code section 4904 for the injury

⁹³ Pen. Code, § 4900.

⁹⁴ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

⁹⁵ Pen. Code, § 4902, subd. (a).

⁹⁶ Pen. Code, §4903, subd. (a).

⁹⁷ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

1 sustained.⁹⁸ Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction
2 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
3 subdivision (a)(2), and the charges were dismissed on remand, and the Attorney General declines to
4 object with clear and convincing proof of guilt, then CalVCB must approve the claim within 60 days
5 pursuant to Penal Code section 4904 for the injury sustained.⁹⁹ Unless one of these narrow statutory
6 exceptions applies, then the claimant bears the burden to prove innocence and injury by a
7 preponderance of the evidence under subdivision (a) of Penal Code section 4900.

8 When determining whether the claimant has satisfied their burden of proof, the Board may
9 consider the "claimant's denial of the commission of the crime; reversal of the judgment of conviction;
10 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
11 crime...."¹⁰⁰ The Board may also "consider as substantive evidence the prior testimony of witnesses
12 [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for
13 which claimant had an opportunity to object."¹⁰¹ Ultimately, the Board may consider "any other
14 information that it deems relevant to the issue before it," even if inadmissible under the traditional rules
15 of evidence, so long as "it is the sort of evidence on which reasonable persons are accustomed to rely
16 in the conduct of serious affairs."¹⁰²

17 CalVCB's broad authority to consider all relevant evidence when deciding a claimant's
18 application for compensation may be limited by various court determinations during the criminal
19 proceedings. By statute, CalVCB is bound by express factual findings rendered by a court during
20 proceedings on a petition for habeas corpus, motion to vacate judgment pursuant to Penal Code
21 section 1473.6, or an application for a certificate of factual innocence.¹⁰³ While this statutory provision
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23 ⁹⁸ Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a); see also Cal. Code of Regs., tit. 2, § 640,
24 subd. (e)(1)-(2), eff. Jan. 1, 2023.

25 ⁹⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

26 ¹⁰⁰ Cal. Code Regs., tit. 2, § 641, subd. (a).

27 ¹⁰¹ Cal. Code Regs., tit. 2, § 641, subd. (b).

28 ¹⁰² Cal. Code Regs., tit. 2, § 641, subds. (c) and (f).

¹⁰³ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

1 omits any findings rendered by an appellate court on direct appeal, an appellate court's determination
2 of claims that were, or could have been, raised on direct appeal, may be binding under the doctrines of
3 res judicata and collateral estoppel.¹⁰⁴ Nonetheless, a claim under Penal Code section 4900 may not
4 be denied solely because the claimant failed to obtain a court finding of factual innocence.¹⁰⁵
5 Regardless of any court determinations that may bind CalVCB, the claimant continues to bear the
6 burden of proof to demonstrate innocence by a preponderance of the evidence.¹⁰⁶

7 **A. Penal Code Section 4900, subdivision (a), Governs Choinski's Claim**

8 In his supplemented claim, Choinski seeks compensation for all seven of his still-valid felony
9 convictions in case number BA221417, for which he was imprisoned a total of 6,780 days.¹⁰⁷ None of
10 these convictions were reversed or vacated, despite Choinski's appeal and multiple habeas petitions in
11 state and federal court. Accordingly, neither of the limited statutory exceptions set forth in Penal Code
12 section 1485.55 or subdivision (b) of Penal Code section 4900 applies. Therefore, as the Attorney
13 General maintains and Choinski does not dispute,¹⁰⁸ subdivision (a) of section 4900 governs the
14 disposition of this claim. This determination is not altered by the reversal of two of Choinski's
15 convictions on direct appeal. A reversal on direct review is not one of the enumerated events that may
16 trigger application of either Penal Code section 1485.55 or subdivision (b) of Penal Code section 4900.
17 Moreover, Choinski's claim does not challenge either of these vacated convictions, for which he did not
18 serve any term of imprisonment. Thus, Choinski's claim does not fall within either of the limited
19 statutory exceptions to subdivision (a) of section 4900.

22 ¹⁰⁴ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206
23 (explaining "Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause
24 of action finally resolved in a prior proceeding" and "Collateral estoppel precludes relitigation of issues
argued and decided in a prior proceeding").

25 ¹⁰⁵ Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, eff. Jan. 1, 2023.

26 ¹⁰⁶ Pen. Code, § 4900, subd. (a), 4904; *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588
27 n.7 ("To prevail claimant must carry the burden of proof of innocence by a preponderance of the
evidence"); Cal. Code of Regs., tit. 2, § 644, subd. (b)(1), eff. Jan. 1, 2023.

28 ¹⁰⁷ Choinski Supp. App. at p. 1.

¹⁰⁸ AGRL at pp. 10-11.

1 **B. Choinski's Claim Excludes CDCR's Credit Calculations**

2 Incidentally, Choinski's claim, as supplemented, does not include any challenge to CDCR's
3 custody credit calculations.¹⁰⁹ Nevertheless, to the extent any such claim might be inferred, it must be
4 rejected, as a matter of law, for failing to raise any basis upon which relief may be granted.¹¹⁰ Relief
5 under Penal Code section 4900 is limited to individuals who were imprisoned for a crime they did not
6 commit.¹¹¹ Consequently, a sentencing miscalculation for a crime that the claimant admittedly
7 committed does not qualify for relief under section 4900. And even assuming otherwise, Choinski still
8 fails to prove by a preponderance that any such error occurred. To the contrary, the state court
9 expressly determined on November 12, 2020, that Choinski "has failed to demonstrate there was any
10 error in recalculating his credits or release date...."¹¹² CDCR likewise confirmed the accuracy of their
11 calculations in a final decision issued on December 31, 2020, and Choinski was subsequently released
12 as scheduled on March 19, 2021.¹¹³ None of Choinski's protestations demonstrate otherwise.

13 Thus, to prevail on his supplemented claim, Choinski bears the burden to demonstrate by a
14 preponderance that (1) the crimes with which he was convicted and imprisoned were either not
15 committed at all or, if committed, were not committed by him, and (2) he sustained injury as a result of
16 his imprisonment for his erroneous convictions.¹¹⁴

17 **C. Binding Court Determinations**

18 Neither party addresses what, if any, court determinations rendered during the criminal
19 proceedings are binding. In an abundance of caution, it is assumed that the appellate court's
20 determination of insufficient evidence to support the kidnapping conviction is binding, as well as the
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23 ¹⁰⁹ Choinski Supp. App. at pp. 1-165; see also CalVCB Letter, dated May 21, 2021, regarding "Unfiled
24 Penal Code § 4900 Application 21-ECO-09" at pp. 1-2.

25 ¹¹⁰ Cal. Code of Regs., tit. 2, § 642.

26 ¹¹¹ Pen. Code, § 4900, subd. (a).

27 ¹¹² Ex. 35.

28 ¹¹³ Choinski App. at pp. 5, 14-15, 23-34, 37.

¹¹⁴ Pen. Code, § 4900, subd. (a).

1 appellate court's finding of instructional error for the burglary conviction.¹¹⁵ It is further assumed that
2 the state court's final habeas determination finding in November 2020 that Choinski had failed to
3 demonstrate any error in recalculating his custodial credits or release is also binding.¹¹⁶ In addition, it is
4 assumed that the federal habeas court's determination that Choinski failed to establish the existence of
5 any error that, when viewed singly or cumulatively, deprived him of a fair trial, is likewise binding.¹¹⁷
6 Alternatively, even if none of these court findings are binding, their reasoning is persuasive and may be
7 considered by CalVCB.¹¹⁸ No presumption is made as a result of Choinski's failure to obtain a finding
8 of factual innocence.¹¹⁹

9 **D. Insufficient Proof of Innocence**

10 After considering all of the evidence and argument presented by the parties, and taking into
11 consideration the binding determinations by the state and federal courts,¹²⁰ Choinski has failed to
12 satisfy his burden to demonstrate innocence by a preponderance. On balance, the weight of the
13 inculpatory evidence far exceeds the exculpatory evidence. As detailed below, the record fails to show
14 that Choinski is more likely innocent than guilty of any of the challenged crimes for which he was
15 convicted and imprisoned. Choinski's claim for compensation must therefore be denied.

16 **1. Inculpatory Evidence**

17 Most significantly, Choinski remains validly convicted of all seven felony offenses that he
18 challenges in this administrative proceeding. Those crimes include assault with a firearm, assault with
19 a firearm upon a peace officer, terrorist threats, corporal injury, and discharging a firearm. These seven
20 convictions resulted from an unanimous jury finding of guilt, beyond a reasonable doubt, after
21 considering the live testimony from L.C., multiple responding officers, Choinski, and other percipient
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23 ¹¹⁵ Ex. 7 at pp. 4-5, 8.

24 ¹¹⁶ Ex. 35.

25 ¹¹⁷ Ex. 42 at p. 25.

26 ¹¹⁸ Cal. Code Regs., tit. 2, § 641, subd. (f).

27 ¹¹⁹ Pen Code, § 1485.55, subd. (d).

28 ¹²⁰ Alternatively, even if none of the state and federal court decisions are binding, the result of this proposed decision would remain the same.

1 witnesses. Despite an appeal and numerous habeas challenges in state and federal courts, these
2 seven convictions remain undisturbed and have never been reversed or vacated. Accordingly, these
3 still-valid convictions carry significant incriminating weight.

4 Moreover, compelling evidence supports the jury's finding of guilt for all seven convictions. L.C.
5 provided an emotional account of the abuse she endured at Choinski's hands throughout their
6 marriage, including the night of August 22, 2001.¹²¹ He repeatedly aimed a loaded firearm at her, even
7 pressing it against her head at times. He threatened to kill her, telling her to say goodbye to her family
8 because she was living her "last minutes." And he forcibly struck L.C. with the firearm on her arm, hip,
9 and neck, leaving bruises. After L.C. managed to escape while wearing only a nightgown, multiple
10 gunshots were heard emanating from inside her apartment where Choinski remained. L.C. never
11 wavered in her accusations against Choinski, despite extensive cross-examination.¹²²

12 L.C.'s testimony was corroborated by the recording of her emotional 911 call to police, in which
13 she cried and repeatedly stated she was scared because her husband wanted to kill her and had a
14 gun.¹²³ Her testimony was further corroborated by her prior police reports of Choinski's abuse, one of
15 which resulted in a restraining order years earlier. Physical evidence also corroborated L.C.'s version
16 of events. Specifically, multiple bullets had been fired through a window, mirror, toilet, television, and
17 clothing in L.C.'s apartment, all of which was documented by police photographs. Also, Choinski's
18 firearm was loaded and a spent bullet casing was found in his pocket. L.C.'s consistent and
19 corroborated testimony, which was believed by the jury over Choinski's version of events, weighs
20 heavily in favor of his guilt for the crimes against L.C.

21 The testimony from the responding officers also weighs heavily in favor of Choinski's guilt for his
22 crimes against them. Officers Olson, Strambaugh, and Travis each testified, under penalty of perjury,
23 that Choinski opened the screen metal security door while holding his firearm in his mouth, and they
24 fired at Choinski only after Choinski aimed his firearm directly at them. Choinski was located within 15
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26 ¹²¹ See Ex. 2 at p. 491 (acknowledging L.C.'s emotional testimony).

27 ¹²² Ex. 2 at pp. 112-134, 136-137 (cross and re-cross).

28 ¹²³ See Ex. 2 at p. 501 (acknowledging emotional 911 call); Choinski Supp. App. at pp. 30, 32-39.

1 feet of these officers, and his firearm was loaded. The victims' account, which was confirmed by
2 another responding officer who testified at trial,¹²⁴ was consistent and unequivocal. It was also
3 bolstered by the physical evidence, which included Choinski's loaded firearm, and the expert's
4 testimony regarding the bullet piercings in the screen metal security door. The jury necessarily found
5 these officers credible when rejecting Choinski's contrary testimony. Viewed together, the record
6 provides overwhelming evidence of Choinski's guilt for all seven of his challenged felony convictions.

7 This determination is not undermined by the appellate court's reversal of two of Choinski's
8 convictions for kidnapping and burglary.¹²⁵ The court concluded, as a matter of law, that there was
9 insufficient evidence of movement as required for kidnapping and prejudicial instructional error on a
10 defense to burglary of one's own residence.¹²⁶ But neither of these legal conclusions regarding matters
11 of law reflect a determination that the version of events testified by L.C. and the responding officers was
12 false or inaccurate.

13 Additional evidence in the record further inculpatates Choinski. The Los Angeles County District
14 Attorney's Office conducted an independent investigation of the shooting by law enforcement. Their
15 review of the incident concluded that all officers acted lawfully in self-defense and in defense of others.
16 As detailed in their report letter dated June 11, 2002, "Choinski came out of the stairway door with the
17 barrel of a stainless steel .44 caliber revolver in his mouth," but instead of heeding the officers' verbal
18 demands to drop the gun, "Choinski pointed the gun at" the officers, who "immediately shot at Choinski
19 inflicting multiple gunshot wounds."¹²⁷ The report notes that this confrontation with police occurred after
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21 ¹²⁴ Ex. 2 at pp. 161-178.

22 ¹²⁵ Choinski's claim under Penal Code section 4900 is not based upon either of these vacated
23 convictions. (Choinski Supp. App. at p. 1.) Indeed, any such claim would necessarily fail because
24 Choinski did not serve any part of any term of imprisonment for either conviction. (Pen. Code, § 4900,
25 subd. (a) (requiring claimant "shall have served the term or any part therefore for which they were
26 imprisoned"). Once these two convictions were reversed in 2004, Choinski's original sentence of 28
27 years and 8 months was reduced to 23 years, over a decade before that term expired in 2021. Thus,
28 none of Choinski's imprisonment was attributable to either of these two, reversed convictions. For this
same reason, no "injury" was "sustained" as a result of these reversed convictions. (Pen. Code, §§
4900, subd. (a), 4904.)

¹²⁶ Ex. 7.

¹²⁷ Choinski Supp. App. at pp. 146-149; Choinski Hearing Ex. 2 at pp. 1-4.

1 Choinski had pointed a revolver at L.C., threatened to kill her, pistol whipped her, and fired multiple
2 shots while inside the apartment. Despite Choinski's challenges to aspects of this report, the result of
3 this independent investigation by the District Attorney bolsters the already compelling evidence of
4 Choinski's guilt.

5 His guilt is further corroborated by the Defendants' Statement of Uncontroverted Facts and
6 Conclusions of Law in the civil rights litigation. As detailed in that pleading, the officers shot Choinski
7 only after he pointed his firearm at them.¹²⁸ Thereafter, the officers "secured the scene" and then
8 escorted paramedics to Choinski's location "on the stairs," where he "was combative and being verbally
9 abusive."¹²⁹ The officers removed Choinski's handcuffs at the paramedics' request, and then the
10 paramedics removed Choinski's clothing to assess his condition. Choinski was placed on a gurney,
11 given oxygen, and transported by ambulance to the hospital. Choinski continued to be "verbally
12 abusive to everyone in the ambulance while enroute to the hospital."¹³⁰ Meanwhile, L.C. met with
13 Officer F. for the first time after the shooting ended, and she described how Choinski had assaulted her
14 with a firearm, threatened her, and hit her earlier that night.¹³¹ All of these details are based upon
15 declarations from various witnesses, all submitted under penalty of perjury, which ultimately resulted in
16 a ruling in Defendants' favor.

17 Overall, the record contains overwhelming evidence of Choinski's guilt for all seven of his still-
18 valid convictions for assault with a firearm, assault with a firearm upon peace officers, criminal threats,
19 corporal injury, and discharging a firearm.

20 **2. Proffered Exculpating Evidence**

21 By comparison, Choinski's proffered exculpating evidence largely consists of his own
22 uncorroborated testimony and self-serving drawings, which combine to present an implausible version
23 of events. It also includes Dul's testimony, which is mostly irrelevant as she was not present when any
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25 ¹²⁸ Choinski Hearing Ex. 2 at p. 9.

26 ¹²⁹ Choinski Hearing Ex. 2 at p. 13.

27 ¹³⁰ Choinski Hearing Ex. 2 at p. 14.

28 ¹³¹ Choinski Hearing Ex. 2 at pp. 9-10.

1 of the disputed events occurred. It further includes declarations from friends and family on tangential
2 issues. Following a careful and thorough review, none of the proffered evidence of innocence is
3 persuasive.

4 Choinski's testimony was not credible for several reasons. At the threshold, his version of
5 events is not objectively plausible. If Choinski had truly wished to peacefully surrender when he
6 approached the officers, then he would have simply left his firearm inside the apartment. His
7 purposeful retention of the firearm after leaving the apartment negates any benign intent. Also, if
8 Choinski's visit with L.C. was entirely cordial, there was no need for him to have loaded his firearm that
9 evening, which he admitted doing. In addition, if Choinski still lived with L.C. and had been welcomed
10 into their apartment that night, then he would not have needed to enter by climbing a ladder onto the
11 balcony, much less bring his own bolt cutters. Finally, it is simply not believable that all five to six of the
12 responding officers would have conspired with L.C. to falsely accuse Choinski of numerous violent
13 crimes and then proceed to shoot up L.C.'s apartment afterwards to bolster their false account.
14 Overall, Choinski's version of events is objectively unlikely.

15 Not only is Choinski's account implausible, but it has shifted over time. When testifying before
16 CalVCB, Choinski claimed that he bent down, placed his gun on the floor while standing behind the
17 closed metal screen security door, and then was shot just as he stood back up. But when testifying at
18 trial, Choinski claimed to have thrown the gun against the door, which landed in the corner near the
19 doorway, while he was still standing on the third-to-last step of the stairwell. Both versions of events
20 cannot be true. Similarly, Choinski accused multiple peace officers, as well as L.C., of fabricating
21 evidence against him in an elaborate conspiracy to frame him for all seven crimes that led to his
22 convictions. But at trial, he expressly denied the police were involved in any set up and blamed only
23 L.C. and her friends.

24 Not only does Choinski's hearing testimony contradict itself, but it also contradicts other
25 disinterested witnesses. For example, he flatly denied ever assaulting his wife, despite the trial
26 testimony from multiple persons who had witnessed Choinski abuse L.C. Also, Choinski insisted that
27 the impact of the piercing bullets into the screen metal security door demonstrates that the bullets
28 emanated from outside while the door was closed. However, the expert at trial provided contrary

1 testimony, opining that the impact demonstrated that either the bullets were fired from someone
2 standing inside the stairwell with the door closed or outside the stairwell with the door open. The jury
3 necessarily sided against Choinski on both issues, which further undermines his credibility.

4 Choinski's credibility further suffers from the lack of an adequate scientific foundation to support
5 his dubious account of the shooting. For example, he insisted that the magnet demonstration during
6 the hearing confirms the presence of particles from the screen metal security door inside his body, yet
7 there was no foundational showing that the object used in the demonstration was actually a magnet, or
8 that the object adhered to his skin because of a magnetic attraction versus some other adherent, or that
9 the magnetic attraction would only apply to the door remnants rather than any of the bullet and/or
10 shotgun fragments that remain in his body. The absence of any expert foundation likewise renders
11 Choinski's illustrations, which purport to match his wounds with the trajectory of bullets that supposedly
12 pierced through the screen metal security door based upon his own calculations, entirely unpersuasive.
13 Similarly, he claims the injuries to his fingertips and supposed absence of any strike marks on his
14 firearm confirm that he was not aiming at the police when shot, but no medical or ballistics expert was
15 offered to corroborate either representation. Overall, Choinski's unsupported testimony regarding any
16 of these scientific and medical subjects is not persuasive.

17 Choinski's photographs and annotated drawings are similarly unconvincing. Several drawings
18 depict him standing unarmed, behind the closed screen metal security door, as one or more officers
19 aim and fire at him.¹³² But these drawings are directly contradicted by the officers' consistent testimony
20 that they fired at Choinski only after he opened the door and pointed his firearm at them. Some
21 photographs show substantial blood stains on the floor landing behind the door and the step
22 immediately below, which Choinski claims demonstrates that he was shot while standing behind the
23 closed door.¹³³ But the location of the blood appears to be consistent with the officers' testimony that
24 the shooting occurred while Choinski was standing on the step below the opened doorway when the
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26 ¹³² See, e.g., Choinski Supp. App. at pp. 73, 79-80, 86, 94, 122; Choinski Hearing Ex. 3 at pp. 14, 26;
27 Choinski Hearing Ex. 4 at pp. 1-3.

28 ¹³³ See, e.g., Choinski Supp. App. at pp. 81-82, 85, 128; Choinski Hearing Ex. 3 at p. 10; Choinski
Hearing Ex. 4 at p. 4.

1 shooting commenced, in which case Choinski either fell backwards or purposefully retreated, and
2 eventually landed on the floor. The collage of photographs depicting the injuries to Choinski's fingertips
3 and the supposed absence of any strike marks to his firearm similarly fail to prove he had been
4 unarmed when the shooting commenced.¹³⁴ It is possible that the strike marks to the firearm were
5 averted by Choinski's own hand, or that the strike marks are simply not visible in the selected
6 photographs. It is also possible that, by the time the bullet penetrated Choinski's hand, he had already
7 dropped his firearm. None of these scenarios prove Choinski's innocence. As for the photographs
8 showing Choinski's firearm positioned on the driveway, several feet beyond the security door,¹³⁵ they
9 presumably reflect the location where the firearm came to rest after responding officers kicked it out of
10 Choinski's reach, immediately after the shooting ceased. The photographs of the screen metal security
11 door are similarly unhelpful,¹³⁶ as the direction of the bullets' penetration is not visible in most, while the
12 closeup lacks sufficient context to discern which direction the door is facing. Ultimately, none of the
13 submitted photographs and drawings offer persuasive evidence of innocence.

14 Dul's testimony similarly fails to demonstrate Choinski's innocence. Whether due to her
15 friendship with Choinski, her limited English, recent stroke, or perhaps some combination of all three,
16 Dul was not a credible witness. Her testimony that L.C. claimed to have spoken with Officer F. about a
17 green card before the shooting occurred was contradicted by her own declaration from 2005, which
18 averred that the conversation occurred after Choinski was sentenced for these offenses. It was also
19 contradicted by both L.C. and Officer F., who swore that their first meeting occurred only after the
20 shooting. Consequently, Dul's other claims regarding L.C.'s drinking habits, possible false traffic report,
21 and supposed threats to have Choinski shot are likewise unconvincing, particularly given Dul's
22 inconsistent responses as to whether she ever witnessed Choinski abuse L.C. and whether she ever
23 visited Choinski in prison. In any event, much of Dul's testimony was irrelevant, as she was not present
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26 ¹³⁴ See, e.g., Choinski Supp. App. at pp. 87, 100, 104; Choinski Hearing Ex. 3 at pp. 27-31.

27 ¹³⁵ See, e.g., Choinski Supp. App. at pp. 122, 128, 134, 145, 151; Choinski Hearing Ex. 3 at p. 37;
Choinski Hearing Ex. 4 at p. 4.

28 ¹³⁶ See, e.g., Choinski Supp. App. at pp. 75-77; Choinski Hearing Ex. 3 at p. 10, 15, 16-19, 40.

1 during the events of August 22, 2001, that led to Choinski's convictions. Dul therefore has no first-hand
2 knowledge whether or not Choinski committed assault with a firearm, criminal threats, corporal injury,
3 discharge of a firearm, or assault with a firearm against a peace officer. Ultimately, neither Dul's
4 testimony nor her declaration amount to persuasive evidence of innocence.

5 The proffered declarations from Choinski's friends and family, which generally allege that L.C.
6 threatened to have Choinski shot weeks before the shooting occurred, are similarly unpersuasive. At
7 the outset, little weight is given to any declaration whose declarant did not testify subject to cross-
8 examination in any judicial or administrative proceeding.¹³⁷ Even less weight is given to those
9 declarations that merely repeat second-hand hearsay (i.e., Mazerant, Zurawski, and Stefan). All of
10 these declarants' credibility is generally impeached by their inherent bias in Choinski's favor due to their
11 personal relationships. This is especially true as to Choinski's mother Lucy, whose credibility is further
12 impeached by her pre-trial threat to kill L.C., which resulted in a restraining order to protect L.C.¹³⁸
13 Accordingly, Lucy's declaration that she told Choinski to "surrender his revolver" to the police, which
14 supposedly led to Choinski's armed confrontation with police, is not trustworthy. More importantly,
15 none of these declarants were present on August 22, 2001, and, therefore, they all lack first-hand
16 knowledge as to Choinski's guilt or innocence. Finally, the allegation throughout these declarations that
17 L.C. had threatened to have Choinski shot is ultimately irrelevant, as Choinski was not shot by L.C. or
18 any of her friends. Rather, Choinski was shot by the police, and the shooting occurred only after he
19 pointed a loaded firearm at them. Accordingly, these declarations fail to prove that Choinski is more
20 likely innocent than guilty.

21 Finally, the proffered declaration from neighbor Cruz fails to bolster Choinski's claim of
22 innocence. Cruz did not witness the shooting or the events that led up to it and, therefore, has no first-
23 hand knowledge as to Choinski's guilt or innocence for the challenged convictions. While Cruz
24 declared that she observed an officer kick a firearm from the bottom of the stairwell out onto the
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27 ¹³⁷ See Cal. Code Regs., tit. 2, §§ 641 (admissibility of evidence), 645 (hearing officer's proposed
decision).

28 ¹³⁸ Ex. 2 at pp. 59-60; Choinski Supp. App. at pp. 40, 43.

1 driveway after the shooting ended, such an event is readily explained by the officer's need to ensure
2 that the firearm remained out of Choinski's grasp. This security precaution was clearly needed, given
3 Choinski's continued "combative" and "verbally abusive" demeanor after the shooting, which persisted
4 even in the ambulance to the hospital.¹³⁹ No nefarious intent may be gleaned from this benign action
5 to protect the safety of all those in the area of the crime scene.

6 Incidentally, Choinski's repeated complaints about his counsel's representation during the trial,
7 as well as during the appeal, are not exculpatory. These complaints were necessarily rejected as
8 meritless when the state and appellate courts denied Choinski's multiple habeas petitions. But
9 regardless, relief under subdivision (a) of Penal Code section 4900 requires affirmative proof that the
10 claimant did not commit the crime. A showing of mere trial error will not suffice.

11 **3. Analysis**

12 On balance, the evidence fails to prove that Choinski is more likely innocent, than guilty, of any
13 of his seven convictions for assault with a firearm, assault with a firearm upon peace officers, criminal
14 threats, corporal injury, and discharging a firearm. The inculpatory evidence is overwhelming. Most
15 damning, it includes Choinski's still valid convictions for these offenses, which have been repeatedly
16 affirmed by the state and federal courts on appeal and habeas. It also includes the clear and
17 unequivocal trial testimony from L.C. and the responding officers, who consistently detailed the events
18 leading to Choinski's arrest on the night of August 22, 2001. It further includes corroborating physical
19 evidence, such as Choinski's loaded firearm at the scene of the shooting, bullet holes and spent
20 casings throughout L.C.'s apartment, and the bolt cutters in the carport. It likewise includes L.C.'s
21 emotional 911 call for help. Choinski's guilt is further supported by the results of the independent
22 investigation conducted by the Los Angeles County District Attorney, which exonerated all of the
23 responding officers, as well as the federal court's dismissal of Choinski's civil rights complaint by
24 granting the police department's motion for summary judgment.

25 Choinski's proffered evidence of innocence pales in comparison. It largely consists of his own
26 testimony, which is not credible. His version of events has shifted over time and is ultimately

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28 ¹³⁹ Choinski Hearing Ex. 2 at pp. 13-14.

1 implausible. None of his drawings, photographs, or annotations prove otherwise, particularly those
2 lacking an adequate scientific foundation. The testimony of his sole witness Dul similarly lacks
3 credibility and is of limited relevance given she was not present when any of the disputed events
4 occurred. The declarations of Choinski's friends and family are similarly unpersuasive due to their
5 credibility issues and lack of personal knowledge regarding Choinski's actions on the night of his arrest.
6 All in all, the evidence fails to prove that Choinski is more likely innocent, than guilty, of any of
7 his seven convictions for assault with a firearm, assault with a firearm against a peace officer, criminal
8 threats, corporal injury, and discharging a firearm. The burden rests upon Choinski to affirmatively
9 demonstrate that he did not commit any of these offenses for which he was convicted and imprisoned.
10 But on balance, the totality of evidence fails to tip the scales toward innocence. Indeed, Choinski's guilt
11 appears much more likely given all of the evidence detailed above. Accordingly, his application as an
12 erroneously convicted person under Penal Code section 4900 must be denied.

13 V. CONCLUSION

14 In accordance with subdivision (a) of Penal Code section 4900, the undersigned hearing
15 officer recommends that CalVCB deny Choinski's claim. He failed to demonstrate by a
16 preponderance of evidence that he is factually innocent of any of the seven, felony offenses for which
17 he was convicted and imprisoned. Choinski is, therefore, ineligible for compensation as an
18 erroneously convicted person.

19 Date: February 6, 2023



20
21 Laura Simpton
22 Senior Attorney
23 California Victim Compensation Board

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 **Darwin Crabtree**

11 Claim No. 22-ECO-32

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On October 18, 2022, Darwin Crabtree (Crabtree) 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. The claim is based upon Crabtree's 1991 convictions for continuous child
16 sexual abuse, lewdly touching a child, and lewdness in the presence of a child, all of which were
17 vacated and dismissed in 2018.¹ Crabtree requests compensation in the amount of \$440,020 for
18 having been confined a total of 3,143 days for these convictions. Crabtree is represented by
19 Supervising Attorney Paige Kaneb of the Northern California Innocence Project (NCIP).

20 The Attorney General is represented by Deputy Attorney General Jessica Leal. By letter dated
21 January 4, 2023, the Attorney General declined to object to Crabtree's claim. The administrative
22 record closed that same day, and the matter was assigned to CalVCB Senior Attorney Laura Simpton.
23 As required by subdivision (b) of Penal Code section 4900, CalVCB is mandated to approve payment
24 to Crabtree in the amount of \$440,020 if sufficient funds are available, upon appropriation by the
25 Legislature, as indemnification for the demonstrated injury sustained by his 3,143 days imprisonment
26 solely as a result of his vacated convictions.

27 _____
28 ¹ Pen. Code, §§ 288, 285.5, 273g.

II. Procedural History

In 1991, Crabtree was charged in Butte County Superior Court case number CM000230 with multiple counts of continuous child sexual abuse and lewdly touching a child.² The alleged victims were Crabtree's sons, 12-year-old A.C. and eight-year-old J.C.³ Following a trial, the jury convicted Crabtree on December 18, 1991, of one count of continuous sexual child abuse involving J.C., two counts of lewdly touching J.C., and four counts of lewdness in the presence of a child involving either J.C. or A.C., as a lesser-included offense to lewd touching. The jury acquitted Crabtree of the four greater offenses, as well as two additional charges for lewdly touching A.C. On February 24, 1994, the superior court sentenced Crabtree to an aggregate term of 16 years in state prison. By then, Crabtree had been confined for a total of 323 days, as he had been released on his own recognizance for much of the time between his arrest and convictions.⁴

The judgment was affirmed by the California Court of Appeal, Third Appellate District, on July 17, 1995, and the California Supreme Court denied review on November 15, 1995.⁵ The record does not reveal whether Crabtree pursued state habeas relief, but his federal habeas petition was denied by the district court on February 27, 2001, and by the Ninth Circuit on May 8, 2002.⁶

Meanwhile, on November 13, 2001, Crabtree completed his prison term and was released on parole. By then, he had served a total of 3,143 days imprisonment solely as a result of his convictions in case number CM000230. As both parties agree, this calculation included a total of 323 days before

² Crabtree Application ("App.") at pp. 1, 4, 31. The pagination refers to the continuous page numbers for the entire, 154-page file, which includes the claim form, supporting memorandum, declarations, motion to vacate with exhibits, court orders, and an excerpt of the sentencing hearing.

³ Crabtree's sons, who were minors at the time, are referred to by their initials only in an effort to protect their privacy.

⁴ Crabtree App. at pp. 1, 4, 9-10, 13, 146-148. See also Docket for *People v. Darwin Lee Crabtree*, Butte County Superior Court case number CM000230, available online at <https://www.butte.courts.ca.gov/online-services/case-information>. (See Cal. Code Regs., tit. 2, § 617.8.)

⁵ *People v. Darwin Lee Crabtree*, Third District Court of Appeal case number C017837; *People v. Darwin Lee Crabtree*, California Supreme Court case number S048761, dockets available online at <https://appellatecases.courtinfo.ca.gov/>.

⁶ Crabtree App. at p. 43; *Crabtree v. Gomez*, U.S. District Court (E.D. Cal.) case number 2:97-CV-00133; *Crabtree v. Gomez*, Ninth Circuit case number 01-15554, decided April 4, 2002, available on Westlaw at 2002 WL 511713.

1 his conviction, as well as 2,820 days between his conviction and release.⁷ Crabtree remained on
2 parole, subject to registration requirements as a sex offender, for the ensuing 16 years.⁸

3 On August 24, 2017, with the assistance of the NCIP, Crabtree moved to vacate all of his
4 convictions in case number CM000230 based upon newly discovered evidence of actual innocence
5 pursuant to Penal Code section 1473.7, subdivision (a)(2). The proffered new evidence included
6 notarized statements by A.C. and J.C., signed in May 2008, which recanted their prior accusations
7 against Crabtree and declared his innocence.⁹ The prosecution conceded the motion should be
8 granted after conducting its own investigation.¹⁰

9 On January 17, 2018, the superior court granted the motion to vacate all of Crabtree's
10 convictions in case number CM000230. The court further ordered that Crabtree was no longer
11 required to register as a sex offender.¹¹ Immediately thereafter, all charges were dismissed on the
12 prosecution's motion.¹²

13 On October 18, 2022, Crabtree submitted a claim to CalVCB seeking compensation as an
14 erroneously convicted person under subdivision (b) of Penal Code section 4900. Specifically, Crabtree
15 requested \$440,020 for having been confined a total of 3,143 days as a result of his vacated
16 convictions in case number CM000230.¹³ After confirming compliance with Penal Code sections 4900
17 and 4901, CalVCB filed the claim and requested a response from the Attorney General within 45 days
18 as required by subdivision (d) of Penal Code section 4902.¹⁴ Following a single request for an
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21 ⁷ Crabtree App. at pp. 1, 13-14, 146-148; see also Declination Letter, dated January 4, 2023, signed
22 by Deputy Attorney General Jessica Leal.

23 ⁸ Crabtree App. at pp. 1, 14.

24 ⁹ Crabtree App. at pp. 29-136.

25 ¹⁰ Crabtree App. at pp. 3, 18.

26 ¹¹ Crabtree App. at pp. 3, 18.

27 ¹² Crabtree App. at pp. 3, 19-20.

28 ¹³ Crabtree App. at pp. 1, 14-15.

¹⁴ CalVCB email to parties, dated October 18, 2022, entitled "*PC 4900(b) Claim for Darwin Crabtree (22-ECO-32) – AG Response Requested.*"

1 extension of time, the Attorney General timely submitted a declination letter on January 4, 2023.¹⁵ The
2 administrative record closed the next day on January 5, 2023.

3 **III. Factual Background**

4 In November 1990, Crabtree and his wife divorced after 13 years of marriage. Prompted by
5 behavioral issues at school, their children commenced therapy with an unlicensed intern in January
6 1991. After several months, eight-year-old J.C. told the therapist that Crabtree had touched his penis.
7 The therapist reported J.C.'s disclosure to Child Protective Services (CPS), who referred the case to
8 the District Attorney's Office. During a pretext call arranged by law enforcement, J.C. accused
9 Crabtree of lewdly touching him, but Crabtree adamantly denied any such conduct.¹⁶

10 Over the following months, while continuing therapy with the intern, the children were
11 repeatedly interviewed by CPS and law enforcement. J.C.'s allegations of lewd touching by Crabtree
12 expanded from a single incident to two incidents, and eventually over a dozen. Meanwhile, 12-year-
13 old A.C. eventually claimed that he had also been lewdly touched by Crabtree.¹⁷

14 Based upon his sons' testimony, Crabtree was convicted of most charges in 1991 and
15 remained imprisoned until 2001. In 2008, A.C. and J.C. reached out to Crabtree and arranged to meet
16 in person. By then, A.C. and J.C. were 29 and 25 years old, respectively. When reunited, Crabtree's
17 children acknowledged that he had never lewdly touched them and apologized for falsely claiming
18 otherwise. Both sons wrote and notarized a statement swearing to Crabtree's innocence.¹⁸

19 In 2017, when a new statute enabled defendants who were no longer in custody to challenge
20 their convictions, Crabtree filed a motion to vacate with the assistance of the NCIP. The motion
21 included the 2008 notarized statements from A.C. and J.C., as well as a declaration from Crabtree's
22 counsel confirming that both sons had repeated their claims of Crabtree's innocence to NCIP
23 investigators and attorneys. It also included a report from psychologist Dr. Bradley McAuliff, who is an
24 expert on children suggestibility and forensic interviewing. The report opined that the accusations by

25 ¹⁵ Declination Letter, dated January 4, 2023, signed by Deputy Attorney General Jessica Leal.

26 ¹⁶ Crabtree App. at pp. 4-8.

27 ¹⁷ Crabtree App. at pp. 8-9.

28 ¹⁸ Crabtree App. at pp. 10-11, 32.

1 A.C. and J.C. of lewd touching by Crabtree were inaccurate and unreliable due to a combination of the
2 suggestive questioning by their therapist and law enforcement, as well as the emotional upheaval of
3 their parents' divorce.¹⁹

4 In response to the motion, members from the Butte County District Attorney's Office
5 interviewed A.C. and J.C. Both sons insisted that Crabtree was innocent. The prosecution found the
6 sons' account to be credible, which undermined Crabtree's convictions. The prosecution therefore
7 conceded that Crabtree's motion to vacate should be granted. The District Attorney personally
8 "offered this office's apologies for what part we played in his conviction."²⁰

9 On January 17, 2018, the Butte County Superior Court granted Crabtree's unopposed motion
10 to vacate his convictions pursuant to Penal Code section 1473.7, subdivision (a)(2).²¹ The court set
11 aside all of Crabtree's convictions in case number CM000230 and further confirmed that Crabtree was
12 no longer required to register as a sex offender. Immediately thereafter, the prosecution dismissed all
13 charges.²²

14 As recently as October 2022, both A.C. and J.C. maintained Crabtree's innocence when
15 speaking to his counsel from the NCIP. J.C. added that he "can't help but feel responsible."²³
16 Counsel further confirmed that no other convictions were imposed during Crabtree's confinement
17 outside of the wrongful convictions that were vacated and dismissed.²⁴

18 I. Determination of Issues

19 Penal Code section 4900 allows a person, who has been erroneously convicted and
20 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
21 CalVCB.²⁵ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
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23 ¹⁹ Crabtree App. at pp. 11, 29, 93-105.

24 ²⁰ Crabtree App. at pp. 13, 18, 26-27.

25 ²¹ Crabtree App. at pp. 13, 18, 20, 30.

26 ²² Crabtree App. at pp. 13, 18-20.

27 ²³ Crabtree App. at pp. 12, 15, 23.

28 ²⁴ Crabtree App. at p. 2.

²⁵ Pen. Code, § 4900, subd. (a).

1 which they were convicted either did not occur or was not committed by them and (2) they suffered
2 injury as a result of their erroneous conviction.²⁶ If the claimant satisfies their burden for both
3 elements, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the
4 injury if sufficient funds are available, upon appropriation by the Legislature.²⁷ Payment is calculated
5 at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.²⁸

6 Under subdivision (b) of Penal Code section 4900, CalVCB's approval is mandated for certain
7 claimants, even without a preponderance of evidence that the claimant did not commit the crime for
8 which they were convicted.²⁹ Specifically, subdivision (b) compels approval of the claim for
9 compensation, without a hearing and within 60 days, when the following three elements are met. First,
10 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
11 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
12 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
13 retrial. Third, the Attorney General must decline to object to the application in this administrative
14 proceeding.³⁰ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained
15 injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of
16 indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the
17 Legislature.³¹ CalVCB's approval of the claim is statutorily required, regardless of whether or not the
18 record proves the claimant is more likely innocent than guilty.

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

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24 ²⁶ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ²⁷ Pen. Code, § 4904.

26 ²⁸ Pen. Code, § 4904.

27 ²⁹ Pen. Code, § 4900, subd. (b).

28 ³⁰ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

³¹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 acts constituting the offense.³² To meet that burden, the Attorney General may not rely solely on the
2 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.³³ If
3 the Attorney General fails to meet this burden following a hearing on the claim, then CalVCB shall
4 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient
5 funds are available upon appropriation by the Legislature.³⁴

6 **A. Innocence**

7 Here, Crabtree's claim falls within the mandatory approval provision of subdivision (b) of Penal
8 Code section 4900, as all three of the required elements are met. First, Crabtree's multiple convictions
9 for lewd conduct in case number CM000230 were all vacated pursuant to Penal Code section 1473.7,
10 subdivision (a)(2). Second, all charges against Crabtree in that case were dismissed. Third, the
11 Attorney General declined to object with clear and convincing evidence of guilt in this administrative
12 proceeding. Consequently, CalVCB is required by subdivision (b) to approve compensation for the
13 injury sustained by Crabtree if sufficient funds are available, upon appropriation by the Legislature.³⁵

14 **B. Injury**

15 By statute, the amount of compensation "shall be a sum equivalent to one hundred forty dollars
16 (\$140) per day of incarceration served, and shall include any time spent in custody, including a county
17 jail, that is considered to be part of the term of incarceration."³⁶ This compensation is "for the purpose
18 of indemnifying the claimant for the injury" sustained "through their erroneous conviction and
19 imprisonment...."³⁷ The requisite injury "may be established by showing that, but for the erroneous
20 conviction, the claimant would not have been in custody."³⁸

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23 ³² Pen. Code, § 4902, subd. (d).

24 ³³ Pen. Code, § 4903, subd. (d).

25 ³⁴ Pen. Code, §§ 4903, subd. (d), 4904.

26 ³⁵ Pen. Code, §§ 4900, subd. (b), 4904.

27 ³⁶ Pen. Code, § 4904.

28 ³⁷ Pen. Code, § 4904.


³⁸ Cal. Code of Regs., tit. 2, § 640, subd. (f).

1 As both parties agree, Crabtree's compensation amounts to \$440,020, representing \$140 per
2 day of his imprisonment for his erroneous convictions. But-for his erroneous convictions in case
3 number CM000230, Crabtree would have been free for all 3,143 days of his imprisonment. This period
4 includes a total of 323 days confinement between Crabtree's arrest and conviction, during which he
5 was released on his own recognizance for much of the time, as well as 2,820 consecutive days
6 imprisonment between his conviction on December 18, 1991, and release on November 13, 2001.

7 II. Conclusion

8 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer
9 recommends that CalVCB grant Crabtree's claim and approve payment to Crabtree in the amount of
10 \$440,020 if sufficient funds are available, upon appropriation by the Legislature, as indemnification for
11 the injury sustained by his 3,143 days of imprisonment solely as a result of his vacated convictions for
12 continuous child sexual abuse, lewdly touching a child, and lewdness in the presence of a child.

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14 Date: January 24, 2023

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16 _____
17 Laura Simpton
18 Hearing Officer
19 California Victim Compensation Board
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