

## CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

March 21, 2024

10:00 a.m.

400 R Street, Room 330

Sacramento, CA 95811

### **Additional Location:**

Contra Costa District Attorney's Office

900 Ward Street

Martinez, CA 94553

## **BOARD MEETING MATERIALS**

<b>Item 1.</b>	Approval of Minutes Minutes of the January 31, 2024, Board Meeting <a href="#">DRAFT Minutes attached</a>	Action Item
<b>Item 2.</b>	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.) <a href="#">No materials for this item</a>	
<b>Item 3.</b>	Executive Officer Statement <a href="#">No materials for this item</a>	Information Item
<b>Item 4.</b>	Legislative Update <a href="#">Copy of Legislative Update attached</a>	Information Item
<b>Item 5.</b>	Contract Update <a href="#">Copy of Contract Report attached</a>	Information Item
<b>Item 6.</b>	Update on Marketing Campaign with Civilian, Inc <a href="#">Copy attached</a>	Information Item
<b>Item 7.</b>	Proposal to Approve Trauma Recovery Center Grant Awards <a href="#">Copy attached</a>	Action Item

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<b>Item 8.</b>	Truman Simon (Pen. Code, §§ 4900, et seq.) <a href="#">Copy attached</a>	Action Item
<b>Item 9.</b>	Maurice Caldwell (Pen. Code, §§ 4900, et seq.) <a href="#">Copy attached</a>	Action Item
<b>Item 10.</b>	Miguel Solorio (Pen. Code, §§ 4900, et seq.) <a href="#">Copy attached</a>	Action Item

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# ITEM 1

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## CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES JANUARY 31, 2024, 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 Wednesday, January 31, 2024, at 10:06 a.m. Also, present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

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 16, 2023, Board Meeting**

Member Johnson moved approval of the Minutes for the November 16, 2023, Board Meeting. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

### **Item 2. Approval of the Minutes of the December 20, 2023, Board Meeting**

Member Johnson moved approval of the Minutes for the December 20, 2023, Board Meeting. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

### **Item 3. 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 regarding Item number 4 under closed session. She asked that the Board members use discretion and allow wage loss for the claimant. She stated her disagreement with the process and not knowing what the proposed decision is before the Board meeting. She believes the wage loss should have been approved three years ago if the right and caring attention was given to the claimant. She stated the claimant provided multiple documents, including her medical history for 10 years. The claimant has already been approved for eligibility, but she really needs the income loss to be approved.

Ms. Petros continued, noting the claimant filed a Writ of Mandate and there were errors made by staff and she worked with the Attorney General's Office to put a stay on the court case. There was a CalVCB hearing held; however, Ms. Petros felt like the Hearing Officer was set on denying the claim. In fact, the Hearing Officer obtained a copy of the victim's credit report. Ms. Petros stated she had never heard of that before and was informed that it happens often.

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Ms. Petros concluded by asking the CalVCB to use discretion and to look into this matter carefully.

Chair Ravel thanked Ms. Petros for her comments and noted that the claimant also submitted a written comment to the Board members.

## **Item 4. Executive Officer Statement**

Executive Officer Gledhill updated the Board on a few items:

To start, Ms. Gledhill noted that California is facing a significant budget deficit. In December, the Department of Finance issued a budget letter requiring departments to take immediate action to reduce current year expenditures. The CalVCB took immediate steps to identify cost savings and make adjustments. For example, canceling plans for non-essential travel, and canceling attendance at several conferences and meetings. Also, the CalVCB has been working with its partners to transition to virtual outreach unless events are local and no-cost.

The CalVCB also anticipates that there will be reductions in the amount of money received from the general fund to backfill the restitution fund. The historical imbalance of the restitution fund largely ties to the decline in State Penalty Fund revenues and changes to how funds were disbursed. Revenues from the State Penalty Fund equaled \$53 million in 2008-09 but have been set at \$6.5 million each year since 2018-19. Concerns about the solvency of the restitution fund led the Legislature to provide general fund backfills that totaled \$39.5 million in the 2022-23 budget year.

Ms. Gledhill continued, stating the Budget team is working closely with the Department of Finance to ensure the path forward will not impact the CalVCB's ability to compensate victims of violent crime. The CalVCB has sufficient reserves at this time to ensure continuity of services and operations as a result of the proposed elimination of the General Fund backfill.

Ms. Gledhill also reported that the outreach campaign contract is underway.

Ms. Gledhill reminded the Board that the Forced or Involuntary Sterilization Compensation Program ended on December 31, 2023. In total, the CalVCB received 566 applications, 51 of which we received shortly before the end of the program and are being reviewed for eligibility. The individuals will go through the eligibility process and if needed will also have an opportunity to appeal.

The CalVCB issues payments to sterilization survivors as soon as possible and has until the end of September 2024 to issue all payments. This timeline will allow the CalVCB to complete the appeal process for the new applications received before the end of the program.

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CalVCB also received the final report from the contractor used for media outreach to potential sterilization victims. The CalVCB invested about \$200,000 into ads on cable TV, radio, and social media in regions across the state. This content has been seen or heard over 318 million times. Extra money was invested into Spanish advertisement in the Southern California region in December. The CalVCB is currently working on the Legislative report for this program and will share it with the Board along with any other significant updates.

Ms. Gledhill updated the Board on the 2024-25 Trauma Recovery Center (TRC) grant cycle. The CalVCB posted the Notice of Funds Available (NOFA) on the CalVCB website and the California Grants portal. The NOFA was also shared on social media and in external newsletters. The NOFA included comprehensive information about the application requirements, submission, and review procedures, budget requirements, and general terms and conditions.

Interested organizations had until January 22 to apply for funding. The CalVCB received 19 TRC applications and organizations requested a total of \$35.8 million. In the last funding cycle, 15 TRCs was awarded \$17.4 million. There is a limited amount of funding available to grant to TRCs and there is no statutory or other limit on the amount of funding that applicants can request. However, given the current budget situation, CalVCB is unsure as to how much money will be available in this grant cycle. The CalVCB will not be able to fund the total amount requested.

Ms. Gledhill noted that once a recommendation for funding levels is made by staff and adopted by the Board, grantees are advised of what amount the Board approved. Given the approved amounts may be less than amounts requested, grantees have the option to either accept or decline the grant. Grant agreements are then executed between the grantees and the CalVCB.

Ms. Gledhill concluded her report by reminding the Board that January 31 marked the end of Human Trafficking Prevention month. During this month the CalVCB celebrated the efforts of survivor advocates, anti-trafficking organizations, and law enforcement around the world. The CalVCB helped raise awareness about human trafficking.

The CalVCB posted a social media toolkit and shared it with its partners and stakeholders to spread the word about human trafficking prevention and resources for victims. The post was viewed over 2,500 times. Additionally, the outreach team provided information about human trafficking during presentations to community-based organizations.

Chairperson Ravel thanked Ms. Gledhill for the updates.

## **Item 5. Legislative Update**

The Legislative Update was presented by Deputy Executive Officer Katie Cardenas.

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Ms. Cardenas stated that the Legislature has reconvened and several bills that were introduced in 2023 were eligible to be advanced in January as two-year bills but failed the deadline. However, two key bills advanced to their second house last year and could be acted upon later this year.

- AB 1186 by Assembly Member Bonta would require the CalVCB to distribute payment of juvenile restitution orders. This bill is on the Senate Inactive File and is eligible to be removed from the file for a floor vote through the end of August.
- AB 997 by Assembly Member Gipson would require the CalVCB to compensate mental health services for individuals with successful erroneous conviction claims. The bill was held on the Suspense File in the Senate Appropriations Committee and is eligible to be reheard through August.

No new bills that would impact the CalVCB have yet been introduced. The introduction deadline for regular bills is February 16.

Chairperson Ravel thanked Ms. Cardenas for the updates.

## **Item 6. Contract Update**

The Contract Update was presented by Deputy Executive Officer Shawn Ramirez.

Ms. Ramirez stated that the Contract Report was informational only and offered to answer any questions the Board had regarding the items listed in the report.

Chairperson Ravel thanked Ms. Ramirez for the update.

## **Item 7. Request for Authority to Conclude the Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, and 649.50)**

The Request for Authority to Conclude the Rulemaking Process for Amendments to the California Code of Regulations was presented by Senior Attorney Sara Harbarger.

Ms. Harbarger stated she is seeking authorization to complete the rulemaking process for the proposed regulatory changes. On January 19, 2023, the Board approved submitting the rulemaking calendar to begin the process of revising these regulations. On September 14, 2023, the Board authorized CalVCB staff to commence the rulemaking process for California Code of Regulations Title 2, sections 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, and 649.50.

The public comment period commenced on September 29, 2023, and concluded on November 13, 2023. The CalVCB sent 11,342 emails and 28 letters to members of the public notifying

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them of the proposed modifications and the public comment period. CalVCB staff also held two public hearings, one on December 12, 2023, and the other on December 28, 2023. All comments that were presented during the public comment period as well as those provided at the public hearings were reviewed and considered by CalVCB staff. Based on this, CalVCB staff decided to remove section 649.4 from the regulation packet for further research and review.

The purpose of the changes in the eight regulations is to assist the public in understanding the requirements to obtain victim benefits and to increase transparency with all members of the public. Ms. Harbarger continued, stating that two of the regulations explain to the providers the process when the CalVCB discovers provider fraud or audit discrepancies.

Ms. Harbarger concluded by noting if the Board approves staff to complete the rulemaking process, then the regulations modification packet will be mailed to the Office of Administrative Law (OAL) for review and approval. If the OAL approves the amended regulations, they will then file them with the Secretary of State. The regulations may take effect on either April 1 or July 1, 2024, depending on the length of OAL's review.

Chairperson Ravel asked Ms. Harbarger two questions:

- 1) Were any comments expressed at the hearings that were not included in the public comments?
- 2) Regarding the removal of section 649.4 for further consideration, is that a substantive change that would require a second comment period?

Ms. Harbarger responded that all comments that were made during the public hearing were summarized and put into the public comments section. For example, the comments made by Margaret Petros that are in the comment section were only provided orally during the public hearings. Ms. Harbarger confirmed that an additional public comment period was not required with the removal of section 649.4 and stated this approach was also confirmed with OAL.

Chairperson Ravel thanked Ms. Harbarger for her responses.

Member Johnson asked three questions:

- 1) What was the intent of the changes to section 649.4 initially?
- 2) What is the process moving forward and will there be a separate public process for opening up the regulations again and reconsidering changes to section 649.4 based on what the staff was trying to achieve and the public comments that came as a part of that?
- 3) Will section 649.4 be under consideration within the next rulemaking package in a year or sooner?



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Ms. Harbarger responded that the purpose behind the initial modifications to section 649.4 was to simplify and clarify the regulation as it was currently written. It was at times confusing for the public to navigate. Most of the comments were about subsection F where it states, “The Board shall not grant compensation to an applicant for any expenses incurred due to a victim’s death or injury while the victim is incarcerated in a correctional institution.” The concerns were that this is possibly not consistent statute. In order to provide CalVCB staff with sufficient time to research the legislative history, section 649.4 was pulled from this regulations packet. A form of section 649.4 will be a part of the next rulemaking package.

Finally, Ms. Harbarger stated the CalVCB is looking to bring additional regulations to the Board for modification at the September 2024 Board meeting.

Member Johnson thanked Ms. Harbarger.

Member Becton stated she is glad that the CalVCB pulled section 649.4 for a further review and that the plan is to bring it back to the Board for consideration. She states that it is an important issue that should be understood and to have all the information to make an informed decision.

Chairperson Ravel asked if Ms. Harbarger knew what other items were being considered for the regulation package for the September 2024 Board meeting?

Ms. Harbarger responded that the rulemaking calendar was submitted to OAL for the 2024 year. The goal is to bring three packages to the Board:

- 1) The Penal Code section 4900 regulation updates, especially in light of the statutory changes that have occurred within the past year,
- 2) The Good Samaritan Program, and
- 3) Income Loss and Support Loss.

Ms. Harbarger concluded by stating those are the regulation goals for 2024 and noted there may be additional victim program regulations.

Chairperson Ravel thanked Ms. Harbarger.

Ms. Petros thanked the staff for their efforts regarding the two public hearings and speaking with the stakeholders. She stated her agreement with pulling section 649.4 for further review and noted the summary of comments provided was easy to follow. Finally, she noted that it would be her preference that any public hearings held on draft regulations be open and include a format for the public and/or stakeholders to ask questions that are answered in the hearing.

Chairperson Ravel thanked Ms. Petros for her comments.

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Member Becton moved to approve staff's conclusion of the rulemaking process for amendments to Title 2 of the California Code of Regulations, sections 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, and 649.50, excluding section 649.4. The motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

## **Item 8. Cartier Hunter (Pen. Code, §§ 4900, et seq.)**

The Penal Code section 4900 claim of Cartier Hunter was presented by Chief Counsel, Kim Gauthier.

On June 2, 2023, Cartier Hunter submitted an application as an erroneously convicted person to the California Victim Compensation Board, which was supplemented in June and August of 2023. The application is based on Mr. Hunter's 2016 convictions for murder and being a felon in possession of a firearm. Both convictions were vacated by a writ of habeas corpus in February 2023 and the case was dismissed immediately thereafter without a finding of factual innocence.

As there was no objection to the claim filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900(b). The proposed decision recommends compensation in the amount of \$449,990, which represents \$140 per day for each of the 3,214 days Mr. Hunter was wrongfully imprisoned.

Mr. Hunter has been represented by attorney Lateef Gray of Pointer & Buelna, LLP and the Office of the Attorney General is represented by Deputy Attorney General Jessica Leal.

Chair Ravel requested we hear first from the attorney for Mr. Hunter.

Mr. Gray noted that Mr. Pointer was also present. Mr. Gray stated they had nothing to add unless needed.

Chair Ravel confirmed that Mr. Hunter was not present.

Chair Ravel requested to hear next from Ms. Leal.

Ms. Leal also stated she had nothing to add unless the Board had questions.

Chair Ravel thanked everyone for appearing at the meeting.

Member Becton moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Cartier Hunter. The motion was seconded by Member Johnson. The motion was approved by a unanimous vote of the Board and the proposed decision was adopted.

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## **Item 9. Giovante Douglas (Pen. Code, §§ 4900, et seq.)**

The Penal Code section 4900 claim of Giovante Douglas was presented by Chief Counsel, Kim Gauthier.

On June 2, 2023, Giovante Douglas submitted an application as an erroneously convicted person to the California Victim Compensation Board, which was supplemented in September of 2023. The application is based on his 2016 convictions for murder. Those convictions were vacated by a writ of habeas corpus in September 2022 and the case was dismissed immediately thereafter without a finding of factual innocence.

As there was no objection to the claim filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900(b). The proposed decision recommends compensation in the amount of \$457,660, which represents \$140 per day for each of the 3,269 days Mr. Douglas was wrongfully imprisoned.

Mr. Douglas has been represented by attorney Lateef Gray of Pointer & Buelna, LLP and the Office of the Attorney General is represented by Deputy Attorney General Jessica Leal.

Chair Ravel requested we hear first from the attorney for Mr. Douglas.

Mr. Gray stated that Items 8 and 9 are from the same criminal case and are related.

Chair Ravel thanked Mr. Gray for his comment.

Chair Ravel requested to hear next from Ms. Leal.

Ms. Leal also stated she had nothing to add unless the Board had questions.

Chair Ravel thanked everyone for appearing at the meeting.

Member Johnson moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Giovante Douglas. The motion was seconded by Member Becton. The motion was approved by a unanimous vote of the Board and the proposed decision was adopted.

## **Item 10. Giovanni Hernandez (Pen. Code, §§ 4900, et seq.)**

The Penal Code section 4900 claim of Giovanni Hernandez was presented by Chief Counsel, Kim Gauthier.

On December 18, 2023, Giovanni Hernandez submitted an application as an erroneously convicted person to the California Victim Compensation Board, which was supplemented in late December of 2023. The application is based on his 2012 convictions for first-degree

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murder, attempted first-degree murder, and shooting at an unoccupied vehicle. Those convictions were vacated in June of 2023 pursuant to a grant of habeas corpus.

In December of 2023, the court granted the motion for a finding of factual innocence pursuant to Penal Code section 1485.55.

As mandated by the court order and pursuant to Penal Code section 1485.55 the proposed decision recommends compensation in the amount of \$859,600, which represents \$140 per day for each of the 6,140 days Mr. Hernandez was wrongfully imprisoned.

Mr. Hernandez has been represented by Marissa Harris, former supervising attorney at the Juvenile Innocence and Fair Sentencing Clinic at Loyola Law School and the Office of the Attorney General is represented by Deputy Attorney General Jessica Leal.

Chair Ravel requested we hear first from Ms. Harris.

Ms. Harris thanked the Board and stated they concur with the Hearing Officer's proposed decision. She would like the Board to approve compensation for the 6,140 days Mr. Hernandez was incarcerated for a crime he did not commit.

Chair Ravel thanked Ms. Harris for her comments.

Chair Ravel confirmed that Mr. Hernandez did not want to address the Board.

Chair Ravel requested to hear next from Ms. Leal.

Ms. Leal also stated this claim fell under the automatic grant, so she had nothing further to add.

Chair Ravel thanked everyone for appearing at the meeting.

Member Johnson moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Giovanni Hernandez. The motion was seconded by Member Becton. The motion was approved by a unanimous vote of the Board and the proposed decision was adopted.

## Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:47 a.m. pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1 through 96 of the Victim Compensation Program.

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## Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 11:45 a.m.

*Chair Ravel noted on the record in response to Ms. Petros, that the written comment from claimant in Item 4 was considered by the Board's in closed session.*

Member Becton moved to approve items 1 through 96 excluding number 3 of the Victim Compensation Program. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

## Adjournment

Member Becton moved the adjournment of the January Board meeting. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned at 11:47 a.m.

## Next Board Meeting

The next Board meeting is scheduled for Thursday, March 21, 2024.

# 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 21, 2024**

**AB 2307 (Davies) CalVCB: Reimbursement: Self-Defense Courses**

This bill would authorize CalVCB to reimburse up to \$1,000 for self-defense courses offered, provided, or operated by a nonprofit organization, university, or law enforcement agency.

**Status: Introduced**

**AB 2979 (Mike Fong) Income Taxation: Exclusion: Victim Compensation.**

This bill would state the intent of the Legislature to enact legislation to exclude compensation received from CalVCB from the definition of gross income for the purpose of taxation.

**Status: Introduced**

**SB 1430 (Glazer) – Factual Innocence**

This bill would require the Department of Justice (DOJ) to issue a certificate of innocence to an individual with a finding of factual innocence or an award of compensation from CalVCB for an erroneous conviction. It would also require DOJ and law enforcement agencies to annotate the individual's criminal record.

**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. It would specify that CalVCB shall not pursue reimbursement or recover in a separate action against a person who was adjudicated, or against the person's parent or guardian, for an offense committed while the person was a minor.

**Status: Placed on the Senate Inactive File in 2023. Because the bill advanced to the floor of its second house, it is eligible to be returned from the inactive file to be heard on the floor as a two-year bill through August 2024.**

**AB 997 (Gipson) Exoneration: Mental Health Services**

This bill would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims.

**Status: Held on the Suspense File in the Senate Appropriations Committee in 2023. Because the bill advanced to the fiscal committee of its second house, it is eligible to be heard in that committee as a two-year bill through August 2024.**

**[AB 1909 \(Quirk-Silva\) Criminal Fines: Collection](#)**

This bill would make any portion of a restitution order that remains unsatisfied after a defendant has completed diversion enforceable. Additionally, a local collection program may continue to enforce these restitution orders.

**Status: Referred to the Assembly Public Safety Committee**

**[SB 1035 \(Ashby\) 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 1 percent.

**Status: Introduced**

**[AB 1803 \(Jim Patterson\) Criminal Procedure: Restitution](#)**

This bill would require, to the extent possible, a restitution order for a felony violation of human trafficking to include full reimbursement for noneconomic losses, including, but not limited to, psychological harm.

**Status: Referred to the Assembly Public Safety Committee**

**[AB 1956 \(Reyes\) Victim Services](#)**

This bill would require the California Governor's Office of Emergency Services (Cal OES) to allocate funds, upon appropriation by the Legislature, to fill the gap in Victims of Crime Act grant funding and to prioritize continuity and stability of crime victim services if the federal grant funding that is awarded to the office is 10 percent or more lower than the amount awarded in the prior year.

**Status: Referred to the Assembly Public Safety Committee**

**[AB 2730 \(Lackey\) Sexual Assault: Medical Evidentiary Examinations](#)**

Current law requires Cal OES to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault and the collection of evidence. This bill would expand the definition of a qualified health care professional who may conduct an examination for evidence of sexual assault or attempted sexual assault. It would add a nurse midwife to a nurse or nurse practitioner who may conduct an examination in consultation with a licensed physician and surgeon and would remove the requirement that the consulting physician and surgeon themselves conduct examinations or provide treatment. It would also

no longer require a physician assistant to work in consultation with a physician and surgeon when conducting the examination.

**Status: Introduced**

**[AB 1832 \(Blanca Rubio\) Labor Trafficking Task Force](#)**

This bill would establish within the Civil Rights Department the Labor Trafficking Task Force. The bill would authorize the task force to coordinate with other relevant agencies, including CalVCB, to combat labor trafficking, coordinate with specified entities when investigating criminal actions related to labor trafficking, and coordinate with state or local agencies to connect survivors with available services.

**Status: Referred to the Assembly Labor and Employment Committee**

**[AB 2020 \(Bonta\) Survivors of Human Trafficking Support Act](#)**

This bill would enact the Survivors of Human Trafficking Support Act. The act would require the California Health and Human Services Agency to establish a statewide human trafficking survivor passport program for the purposes of identifying a person as a survivor of human trafficking and increasing efficiency in providing assistance to them. The act would also authorize a county to establish a Human Trafficking Survivor Board to work with community-based organizations to identify and address issues relating to human trafficking in the local community. The act would further require state and local enforcement agencies to establish and maintain protocols for how to interact with people who are victims of human trafficking that include a best practice to contact and coordinate with a community-based organization.

**Status: Introduced**

**[SB 1267 \(Dahle\) Crimes: Victims' Rights: Marsy's Law](#)**

This bill would state the intent of the Legislature to enact legislation that would ensure Marsy's Law is fully recognized through an updated notification process that reflects the changing criminal justice landscape. This update would include, but is not limited to, post-conviction changes, resentencing considerations, retroactive state policy decisions, and cases that predate Department of Corrections and Rehabilitation form 1707.

**Status: Introduced**

# ITEM 5

**CALIFORNIA VICTIM COMPENSATION BOARD**  
**CONTRACT REPORT**  
**MARCH 21, 2024**

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

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

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

<b>Contractor Name and PO/Contract Number</b>	<b>Contract Amount and Contract Term</b>	<b>Good or Service Provided</b>
<b>Approval</b>		
No approvals requested.		
<b>Informational</b>		
<b>Contractor Name:</b> U.S. Postal Service  <b>PO Number:</b> PR 23-100	<b>Contract Amount:</b> \$50,000.00  <b>Term:</b> N/A	This procurement is to replenish the CalVCB’s postage account. Postage is needed to continue daily mailings from CalVCB to claimants and stakeholders.  This was procured utilizing State Administrative Manual section 8120.2 to prepay United Parcel Service metered accounts with revolving fund checks.

<p><b>Grant Name:</b> Amanecer Community Counseling Service</p> <p><b>Grant Number:</b> G23-002 A1</p>	<p><b>Grant Amount:</b> \$2,500,000.00</p> <p><b>Term:</b> 5/1/2023 – 9/30/2025</p>	<p>This amendment is to update language in the Grant Agreement to match other, currently approved TRC Grant Agreements.</p> <p>Assembly Bill 178, Budget Act of 2022, section 214 (Provision 3) allocated funds to establish Regional Trauma Recovery Center Pilot Programs in Northern and Central California.</p>
<p><b>Contractor Name:</b> Orange County District Attorney’s Office</p> <p><b>Contract Number:</b> S23-025 A1</p>	<p><b>Contract Amount:</b> \$335,367.00</p> <p><b>Term:</b> 7/1/2023 – 6/30/2026</p>	<p>The Contract was amended to update language to allow the Contractor to make changes to the budget document, Exhibit B-1.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
<p><b>Contractor Name:</b> Contra Costa County District Attorney’s Office</p> <p><b>Contract Number:</b> S23-019 A1</p>	<p><b>Contract Amount:</b> \$460,977.00</p> <p><b>Term:</b> 7/1/2023 – 6/30/2026</p>	<p>The Contract was amended to update language to allow the Contractor to make changes to the budget document, Exhibit B-1.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
<p><b>Contractor Name:</b> Inland Business Systems</p> <p><b>Contract Number:</b> S24-021</p>	<p><b>Contract Amount:</b> \$109,255.59</p> <p><b>Term:</b> 3/1/2024 – 2/28/2026</p>	<p>This Contract is to procure, install, and provide maintenance for monochrome printers.</p> <p>This was procured utilizing the Copiers and Managed Print Services (NASPO ValuePoint) Cooperative Agreement 7-19-70-46-09.</p>



# ITEM 6

# **California Victim Compensation Board Update on Civilian Marketing Contract**

**March 21, 2024**

## **Update on Civilian Marketing Contract**

In July 2023, the Board approved a \$3 million contract with Civilian to provide a comprehensive statewide campaign to increase awareness among Californians regarding CalVCB's programs and services. Since July, the Executive Officer has provided periodic updates on the contract's status. The purpose of this informational item is to update the Board on Civilian's public awareness survey and the plan for the campaign's launch during National Crime Victims' Rights Week in April 2024.

## **Measuring Success**

The goal of the campaign is to raise awareness and increase the number of CalVCB applicants to improve access to financial support. The budget specified the campaign would focus on underserved populations, many of whom are most vulnerable and most in need of our services.

Success of this campaign will be measured using the following:

- Comparison of pre-campaign and post-campaign public awareness survey results.
- Increases in the number of applications submitted, the amount of compensation provided, website hits, and social media impressions. The specific focus will be on increased engagement from underserved populations.
- Additional relationships with community partners, with specific focus on healthcare providers.

## **Pre-Campaign Public Awareness Survey**

Civilian conducted a pre-campaign online survey with 600 individuals that live in the top 15 most populated California counties and two rural Northern California counties. They targeted individuals with a household income of less than \$75,000 per year, who were at least 18 years old, and had resided in California for at least a year. Out of the total number of respondents, 21% identified as being a violent crime victim, and 30% were determined to be from underserved populations. Additional demographic information such as gender, age, ethnicity, language and education were also captured.

# California Victim Compensation Board Update on Civilian Marketing Contract

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## ***Preliminary findings of the survey indicate:***

- Many Californians are unaware of CalVCB and what we do, with those who are aware, learning mostly from a friend or family member.
- CalVCB's logo recognition is low.
- Californians would trust a local government program, their doctor or healthcare provider, and law enforcement most to provide information about CalVCB.
- Digital advertising is the most effective way to reach people.

## **Preliminary Creative Concepts**

Civilian tested creative concepts with 101 participants from across the state using online focus groups. Of these individuals 48 were English speakers and 53 were Spanish speakers. 73% of the participants identified as a victim of a violent crime and 80% of the participants had a household income of less than \$75,000.

## ***Key Learnings Include:***

- Overall, straightforward messaging and inviting, hopeful imagery was preferred among focus group participants.
- Highly inclusive graphics and messages that made it clear that any violent crime victim may qualify to receive help from CalVCB drew attention and interest indicating that inclusive content is more likely to expand reach and inspire action among hard-to-reach populations.
- The word "rebuild" captured positive attention and was considered the most effective messaging to motivate people to apply. CalVCB has already begun implementing some of these findings in its social media posts and publication language.
- The use of real-life stories, testimonials, and news coverage is key to getting the public to trust that CalVCB can work for victims.
- The terms "financial assistance" and "financial support" were viewed more favorably than the term "financial reimbursement."

## **Media Buys**

Starting in April, Civilian will begin digital advertising in 15 counties that were identified based on their crime rates, population, and CalVCB application numbers. These advertisements, which will be placed on social media platforms, websites, and through streaming platforms like Spotify, will run for two years through April 2026. Based on the

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feedback collected thus far, we also plan to work with well-vetted social media influencers from the medical and mental health communities to reach victims.

Additionally, Civilian recommended additional advertising in three priority counties – Kern, San Diego, and Los Angeles. These were identified by the Office of Data and Innovation as having especially high crime or high population with a relatively low number of CalVCB applications. As part of the outreach effort, Civilian will record radio ads to be broadcasted in these three counties for three-month periods. CalVCB and Civilian will periodically review the results from these campaigns and make adjustments to the strategy as necessary.

### **Next Steps**

Civilian plans to launch the awareness campaign during National Crime Victims' Rights Week which is from April 21 to April 24.

# ITEM 7

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

**March 21, 2024**

**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 22 TRCs across California.

In this cycle, grantees will provide services consistent with the Notice of Funds Available (NOFA) released December 6, 2023. The grant awards provide funding for a two-year cycle effective July 1, 2024 through June 30, 2026.

**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.

<b>Fiscal Year 2023-24 Estimated TRC Funding</b>	
<b>Amount</b>	<b>Source</b>
\$8,304,025	SNSF will provide an estimated \$8,741,000 less five percent of the allocated funds that may be utilized for administrative costs per statute. Additionally, we plan to use \$75 remaining from grants that expired June 30, 2023. 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.
\$2,223,000	Budget Act of 2022 (General Fund) allocation for the fiscal year 2024-25 grant cycle.
\$2,000,000	Restitution Fund
<b>\$12,527,025</b>	<b>Total Estimated TRC Funding</b>

Each year, there is a finite amount of funding available to grant TRCs and there is no statutory or other limit as to the amount of funding that may be requested by applicants. In more recent years, the funds requested for grants have disproportionately increased compared 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 met the minimum qualifications, as detailed in the statutory requirements.

The scoring process is transparent as it explicitly states in the NOFA how answers to narrative questions are scored and how the points are 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 from the entire process, 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 71 points.

## **CalVCB Analysis and Recommendation**

### ***Analysis***

For fiscal year 2024-25, a total of 19 applications were received in response to the NOFA. The total funds requested by all applicants equaled \$35,764,478. Two were disqualified for receiving a zero score on at least one statutorily required component. Seventeen demonstrated they could meet minimum qualifications with varying degrees of proficiency, however eight of the applicants attained very few points with scores between 30-47 points out of 100.

To fund each of the 17 applicants with 'qualifying' responses would result in significantly less funding per TRC and not support the competitive nature of the process. It would also, based on the amount of money requested per TRC, result in some less qualified candidates being funded more than applicants with higher scores.

Additionally, without a limit to the amount of funding that can be requested, it is necessary to maintain the established practice of applying a maximum award of \$2,200,000 so that more TRCs can be funded. Without such a criteria, in this cycle, based on scores and amounts requested, only six out of nine TRCs could be fully funded, one could be partially funded and two would not be funded at all.

Out of the nine candidates, seven are current TRCs, one is a previously funded TRC, and one is a new TRC grantee.

### ***Recommendation***

The top nine applicants are recommended for funding based on an assessment of their score. The final grant amount is calculated using a tiered percentage system based on the final application score received by the applicant.

<b>Application Score</b>	<b>Funding Tier</b>	<b>Funding Formula</b>
70 points or higher	1	100% up to \$2.2 M
60-69 points	2	76% of request or of a maximum of \$2.2 M
50-59 points	3	60% of request or of a maximum of \$2.2 M

Given the amount of funds available and the number of applicants, CalVCB recommends maintaining the approach previously approved by the Board and funding



at a maximum of \$2,200,000 per award for the two-year grant period. This approach is consistent with last year and continues to provide the best opportunity to fund the largest number of TRCs.

The funding formula, as applied, results in the following funding allocations.

<b>Applicant</b>	<b>County</b>	<b>New or Existing</b>	<b>Original Funds Requested</b>	<b>Funding Tier</b>	<b>Award Amount</b>
<b>Reach the Valley (REACH)</b>	Riverside	New	\$839,607	1	\$839,607
<b>The Regents of the University of California, San Francisco</b>	San Francisco	Existing	\$3,068,279	2	\$1,672,000
<b>MIRACLES Counseling Center, Inc.</b>	Los Angeles	Existing	\$3,437,775	2	\$1,672,000
<b>Alameda County District Attorney's Office</b>	Alameda	Existing	\$2,600,000	2	\$1,672,000
<b>Regents of the University of California, Davis</b>	Sacramento	Former	\$1,548,127	2	\$1,176,577
<b>University of Southern California</b>	Los Angeles	Existing	\$1,989,132	2	\$1,511,741
<b>Downtown Women's Center</b>	Los Angeles	Existing	\$2,510,220	3	\$1,327,700
<b>California State University Long Beach Research Foundation</b>	Los Angeles	Existing	\$4,147,256	3	\$1,327,700
<b>Citrus Counseling Services, Inc.</b>	San Bernardino	Existing	\$2,300,000	3	\$1,327,700
					<b>\$12,527,025</b>

# ITEM 8

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

8  
9 In the Matter of:

10 **Truman Simon**

11 Claim No. 22-ECO-11

***Proposed Decision***

**(Penal Code § 4900, subd. (a))**

12 **I. Introduction**

13 On March 23, 2022, Truman Simon (Simon) submitted a claim for compensation to the  
14 California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to  
15 Penal Code section 4900. The claim is based upon Simon's 2018 felony convictions as an aider and  
16 abettor to assault with a firearm and criminal threats, both of which were reversed on direct appeal due  
17 to insufficient evidence. Simon seeks compensation in the amount of \$154,560 for allegedly serving  
18 1,104 days imprisonment from the date of his arrest on April 21, 2018, to and including the date of his  
19 release on April 28, 2021.

20 The Attorney General objected to Simon's claim on February 24, 2023, arguing that Simon  
21 failed to prove his innocence by a preponderance of evidence. The Attorney General alternatively  
22 argued that compensation, if any is due, amounts to \$152,320 for 1,088 days because records from  
23 the California Department of Corrections and Rehabilitation (CDCR) show Simon's release date was  
24 actually April 12, 2021.

25 The Attorney General is represented by Deputy Attorney General Dina Petrushenko, and  
26 Simon is self-represented. On March 1, 2023, both parties waived a hearing and agreed to proceed  
27 on the written record. The administrative record closed the next day. The matter was assigned to  
28 CalVCB Senior Attorney Kristen Sellers.

1 After considering all the evidence in the record, the claim is recommended for denial because  
2 Simon has failed to prove by a preponderance of the evidence that he is more likely innocent, than  
3 guilty, of his vacated convictions as an aider and abettor to assault with a firearm and criminal threats.

## 4 II. Procedural Background

### 5 1. Simon's Original Convictions

6 On April 21, 2018, Simon was arrested and subsequently charged with one count of assault  
7 with a firearm and one count of criminal threats in Kern County Superior Court case number  
8 RF007944A.<sup>1</sup> Enhancements were further alleged for Simon's prior strike conviction, prior serious  
9 felony conviction, and prior prison commitment.<sup>2</sup> R.E. and I.R. were charged as co-defendants and  
10 jointly tried with Simon before a single jury.<sup>3</sup> Simon and R.E. were tried as accomplices while I.R. was  
11 the alleged perpetrator. On August 1, 2018, the jury acquitted R.E. and I.R., evidently due to  
12 identification concerns, but convicted Simon of both crimes.<sup>4</sup> Following a bench trial, the court found  
13 true all of Simon's alleged enhancements.<sup>5</sup> On August 28, 2018, the court sentenced Simon to eleven  
14 years in state prison.<sup>6</sup>

### 15 2. Simon's Convictions Reversed on Direct Appeal

16 Simon appealed to the Fifth District Court of Appeal, arguing that there was insufficient  
17 evidence to support his convictions. On December 29, 2020, in a 2-1 decision, the Appellate Court  
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19 <sup>1</sup> Pen. Code, §§ 245, subd. (a)(2), 422; Docket for *People v. Simon*, Kern County Superior Court case  
20 number RF007944A, available online <https://www.kern.courts.ca.gov/online-services/case-information>;  
21 see also Cal. Code Regs., tit. 2, § 617.8 (official notice.)

22 <sup>2</sup> Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (c)-(j), 667, subd. (a), 667.5, subd. (b); Attorney  
23 General Response Letter (AGRL) at p. 1; AGRL Exhibits (Exs.) at p. 23.

24 <sup>3</sup> Simon's co-defendants are referred to by their initials only to protect their privacy. Simon and R.E.  
25 are brothers.

26 <sup>4</sup> AGRL Exs. at pp. 479-480.

27 <sup>5</sup> AGRL Exs. at pp. 58-62.

28 <sup>6</sup> Simon Application (App.) at p. 1. The pagination refers to the continuous page numbers for the 19-  
page PDF file submitted on March 23, 2022, including the Erroneously Convicted Person Claim Form  
(App. at pp. 1-3) *People v. Simon*, Fifth District Court of Appeal, case number F078189 (*id.* at pp. 4-17);  
Criminal Case Information - Case Details for Kern County Superior Court case number RF007944A (*id.*  
at pp. 18-19); see also AGRL at p. 1; AGRL Exs. at pp. 63-64, 155-156.

1 reversed Simon’s convictions for assault with a firearm and criminal threats.<sup>7</sup> On April 7, 2021, the  
2 Kern County Superior Court dismissed the case, without a finding of factual innocence.<sup>8</sup> Simon was  
3 released from custody on April 12, 2021, after having been confined a total of 1,088 days since his  
4 arrest on April 21, 2018.<sup>9</sup>

### 5 **3. Simon’s Erroneously Convicted Person Claim**

6 On March 23, 2022, CalVCB received Simon’s claim seeking compensation as an erroneously  
7 convicted person under Penal Code section 4900. In his claim, Simon alleged he served a total of  
8 1,104 days in custody, solely as a result of his erroneous convictions, from the date of his conviction  
9 on April 21, 2018, to and including the date of his release on April 28, 2021. On April 1, 2022, CalVCB  
10 requested a response letter from the Attorney General within 60 days in accordance with Penal Code  
11 section 4902.

12 On April 18, 2022, CalVCB received returned mail from Simon, which was marked as “not  
13 deliverable” and “unable to forward.” CalVCB called the telephone number listed on Simon’s  
14 application but was informed he no longer resided at that location, and the person who answered the  
15 telephone was unable to provide any forwarding contact information for Simon. Simon’s application  
16 did not provide an email address or any other means of communicating with him. Consequently,  
17 CalVCB emailed the Attorney General’s representative on April 21, 2022, stating that CalVCB’s  
18 request for a response letter to Simon’s claim was stayed pending receipt of Simon’s new contact  
19 information.<sup>10</sup>

20 On September 6, 2022, CalVCB received an email from the Attorney General stating that their  
21 office received correspondence from Simon, showing a return address at Wasco State Prison. The  
22 next day, CalVCB mailed a letter to Simon at the Wasco State Prison address, notifying him that the

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24 <sup>7</sup> App. at pp. 5-17; See also, e.g., *People v. Simon*, Fifth District Court of Appeal, case number  
25 F078189, opinion filed December 29, 2020, available at 2020 WL 7764963, docket accessible at  
<https://appellatecases.courtinfo.ca.gov/>. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

26 <sup>8</sup> AGRL Exs. at pp. 1,436-1,437.

27 <sup>9</sup> AGRL Exs. at p. 1,610. The number of days between Simon’s arrest and release was determined  
using the online “Days Calculator” located at <https://www.timeanddate.com/date/duration.html>.

28 <sup>10</sup> 2 Cal. Code Regs., tit. 2, § 616.2.

1 administrative proceedings were stayed and requesting he confirm his new contact information as it is  
2 his duty to promptly inform CalVCB of any change of address.<sup>11</sup> On September 26, 2022, CalVCB  
3 received a letter from Simon stating that he was incarcerated in California State Prison, Solano and  
4 would likely be there until his release date on January 18, 2023. Shortly thereafter, CalVCB lifted the  
5 stay and sent a second request for a response letter from the Attorney General.

6 Following two extensions for demonstrated good cause, the Attorney General timely submitted  
7 a response letter on February 27, 2023, along with 13 exhibits amounting to nearly 2,000 pages.<sup>12</sup>  
8 Included in the exhibits were court records, trial transcripts, police reports, the probation report, CDCR  
9 records, and documents related to Simon's criminal history.

10 By email on February 28, 2023, the Attorney General notified CalVCB that the parties agreed to  
11 waive a hearing and pre-hearing brief, thereby submitting the matter on the written record. On March  
12 1, 2023, Simon confirmed the parties' stipulation as represented by the Attorney General and the  
13 administrative record closed immediately thereafter.

### 14 **III. Factual Background**

#### 15 **A. The Crime**

16 On April 21, 2018, at approximately 2:00 a.m., Simon, R.E., and I.R. were involved in a  
17 physical altercation outside of the TTT Tavern in the town of Ridgecrest located in Kern County.<sup>13</sup> The  
18 altercation started inside the bar when Simon insulted another patron's wife, but quickly moved  
19 outside.<sup>14</sup> Officer Rowland, who was patrolling the area, witnessed the physical altercation in  
20 progress. He immediately responded and called for backup.<sup>15</sup> Once on scene, he observed I.R.  
21 actively fighting an unknown Hispanic male.<sup>16</sup> Simon attempted to approach the fight, but was stopped  
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23 <sup>11</sup> 2 Cal. Code Regs., tit. 2, § 616.2.

24 <sup>12</sup> AGRL at pp. 1-19; AGRL Exs. At pp. 1-1,954.

25 <sup>13</sup> App. At p. 6.

26 <sup>14</sup> AGRL Exs. At p. 673.

27 <sup>15</sup> AGRL Exs. At p. 327.

28 <sup>16</sup> AGRL Exs. At pp. 325-326, 328; The victims and witnesses are referred to by their first names only in an effort to protect their privacy.

1 by a bouncer and the two began physically fighting.<sup>17</sup> R.E. had fallen and was lying on the cement  
2 nearby.<sup>18</sup> Officers briefly detained Simon, R.E., and I.R., and searched them for weapons but found  
3 none.<sup>19</sup> The three men were ultimately released; however, Simon and R.E.'s cousin, Kimberly, was  
4 arrested for public intoxication and taken into custody.<sup>20</sup>

5 About an hour later, Simon, R.E., and I.R. showed up at the home of Simon's friend Eric, which  
6 was walking distance from TTT Tavern, and began banging on his front door.<sup>21</sup> At the time, Eric lived  
7 with his mother (Gladys) and two younger siblings, all of whom were asleep.<sup>22</sup> Eric awoke to the  
8 sound of loud banging on his front door. When he answered the door, Simon and two other men were  
9 standing in a half circle facing him. Eric immediately recognized Simon but did not know either of the  
10 men standing with him. All three men began screaming at Eric, accusing him of being involved in the  
11 altercation at TTT Tavern earlier that night. Simon was "doing most of the talking."<sup>23</sup> Almost  
12 immediately, the man standing in the middle, later identified as I.R., pulled a gun out of his pocket,  
13 pointed it directly at Eric, and repeatedly asked, "Are you ready to die today?"<sup>24</sup> During the  
14 confrontation, Gladys approached the doorway, yelled at the three men, and demanded that they  
15 leave.<sup>25</sup> The three men eventually complied, with Simon apologizing to Gladys as they walked away.  
16 Gladys followed the men down the street as she called 9-1-1 and watched them enter an apartment  
17 complex just one block away, which was later determined to be R.E.'s apartment.<sup>26</sup>

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21 <sup>17</sup> AGRL Exs. at p. 328.

22 <sup>18</sup> *Ibid.*

23 <sup>19</sup> App. at p. 6.

24 <sup>20</sup> App. at p. 14; AGRL Exs. at pp. 324, 378, 673.

25 <sup>21</sup> AGRL Exs. at pp. 244, 673.

26 <sup>22</sup> AGRL Exs. at p. 244.

27 <sup>23</sup> AGRL Exs. at p. 673.

28 <sup>24</sup> AGRL Exs. at pp. 673, 721.

<sup>25</sup> AGRL Exs. at p. 276.

<sup>26</sup> AGRL Exs. at pp. 276, 673.

1           Soon thereafter, law enforcement detained Simon and I.R. near R.E.'s apartment.<sup>27</sup> Officers  
2 asked Eric if he would participate in an infield lineup, but he declined, fearful of retaliation from the  
3 perpetrators.<sup>28</sup> Gladys, however, was willing to participate in an infield lineup. Officers drove her to a  
4 nearby apartment, where Simon and I.R. were both seated on the curb.<sup>29</sup> Gladys positively identified  
5 Simon and I.R. as two of the men she confronted at her house that night, specifically identifying I.R. as  
6 the gunman. Shortly thereafter, at a second infield lineup, she identified R.E. as the third man present  
7 that night.<sup>30</sup> All three men were arrested and taken into custody.<sup>31</sup> Law enforcement conducted an  
8 extensive search of R.E.'s apartment and the surrounding area, but the gun was never recovered.<sup>32</sup>

9           **B. Evidence Presented at Trial**

10           **1. Officer Rowland's Testimony**

11           Officer Rowland testified that at about 2:00 a.m. on the date of the crime, he was on patrol and  
12 witnessed a physical altercation involving Simon, R.E., and I.R. outside TTT Tavern.<sup>33</sup> I.R. was  
13 physically fighting another patron, Simon was fighting a bouncer, and R.E. was on the cement.<sup>34</sup> The  
14 altercation started because Simon insulted the patron's wife.<sup>35</sup> He described the patron as a tall  
15 Hispanic man, in his mid-20's, with a "stocky build" and "long-ish slicked back black hair."<sup>36</sup> All three  
16 men were detained and pat-searched but no weapons were found.<sup>37</sup> They were ultimately released;  
17 however, Simon and R.E.'s cousin, Kimberly, was arrested for public intoxication and taken into  
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20 <sup>27</sup> App. at p. 3.

21 <sup>28</sup> AGRL Exs. at p. 673.

22 <sup>29</sup> AGRL Exs. at pp. 673- 674.

23 <sup>30</sup> AGRL Exs. at p. 336.

24 <sup>31</sup> AGRL Exs. at pp. 673- 674.

25 <sup>32</sup> AGRL Exs. at p. 674.

26 <sup>33</sup> AGRL Ex. at p. 325.

27 <sup>34</sup> AGRL Ex. at p. 328.

28 <sup>35</sup> AGRL Ex. at pp. 329-330.

<sup>36</sup> *Ibid.*

<sup>37</sup> AGRL Ex. at pp. 331-332.



1 custody.<sup>38</sup> Officer Rowland did not see Eric anywhere in the area that night, but noted that the TTT  
2 Tavern was about a 10 to 15 minute walk to Eric's house.<sup>39</sup>

### 3 **2. Eric's Testimony**

4 Eric testified that at about 3:00 a.m., he awoke to the sound of banging on his front door.<sup>40</sup>  
5 When he opened the door, he immediately recognized Simon as his best friend's brother; however, he  
6 did not know who the other two men were.<sup>41</sup> In fact, Eric repeatedly testified that he did not know the  
7 two men with Simon and, notably was unable to positively identify them as I.R. and R.E..<sup>42</sup> He  
8 emphasized Simon was not the one with the gun but was "definitely there."<sup>43</sup>

9 The three men were standing close together in a half circle, with the gunman in the middle,  
10 slightly behind the other two men, and Simon to his right.<sup>44</sup> He described the men as standing on a  
11 little square cement area, right in front of the door.<sup>45</sup> Because Eric knew Simon, he did not initially  
12 "think there was going to be a problem."<sup>46</sup> However, all three men started screaming at him about a  
13 bar fight and accusing him of somehow being involved.<sup>47</sup> During the confrontation, Simon was doing  
14 most of the talking, repeatedly accusing Eric of being at TTT Tavern earlier in the evening and blaming  
15 Eric for his cousin's arrest.<sup>48</sup> Eric testified that Simon, I.R., and R.E. were "looking for some guy," and  
16 that they were trying to connect [Eric] to everything, "which did not make any sense."<sup>49</sup> While he could  
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18 <sup>38</sup> AGRL Ex. at p. 325.

19 <sup>39</sup> AGRL Ex. at pp. 325-327.

20 <sup>40</sup> AGRL Exs, at p. 240.

21 <sup>41</sup> AGRL Exs. at pp. 249, 258.

22 <sup>42</sup> AGRL Exs. at p. 240.

23 <sup>43</sup> AGRL Exs. at pp. 254-255.

24 <sup>44</sup> AGRL Exs. at pp. 254-255, 263.

25 <sup>45</sup> AGRL Exs. at p. 262.

26 <sup>46</sup> AGRL Exs. at p. 258.

27 <sup>47</sup> AGRL Exs. at p. 241.

28 <sup>48</sup> AGRL Exs. at pp. 241, 263, 673.

<sup>49</sup> AGRL Exs. at p. 263.

1 not remember the name of the person the three men were looking for, Eric confirmed that he himself  
2 did not fit that person's physical description.<sup>50</sup> To the contrary, Eric emphasized that the three men  
3 knew his name and "knew who [he] was."<sup>51</sup>

4 "Almost right away," the man in the center of the half circle pulled out a gun, pointed it directly  
5 at his chest, and asked, "Are you ready to die?"<sup>52</sup> Eric estimated the gun was pointed at him for eight  
6 or nine minutes and described fearing for his family's safety.<sup>53</sup> During that time, Gladys came to the  
7 door and confronted the three men.<sup>54</sup> She was "in their face," yelling at them and telling them to  
8 leave.<sup>55</sup> She told them they needed to grow up and asked the gunman why he had a gun.<sup>56</sup> As they  
9 were walking away, Gladys told them, "I don't know why you guys are walking away. I know where  
10 you live. I'm calling the cops right now."<sup>57</sup> The encounter with the three men lasted approximately 10  
11 to 20 minutes.<sup>58</sup> Eric testified that the men lived "right down the street" from him, but then later  
12 clarified that he does not know where they live, but that he regularly sees them hanging out at the  
13 house down the street from him.<sup>59</sup> He emphasized that "they all hang out" at the house down the  
14 street and that he and his family can see them from their house.<sup>60</sup> Upon arrival, law enforcement  
15 asked Eric to participate in an infield lineup to potentially identify the people involved, but he refused,  
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20 <sup>50</sup> AGRL Exs. at p. 263.

21 <sup>51</sup> *Ibid.*

22 <sup>52</sup> AGRL Exs. at pp. 243, 264.

23 <sup>53</sup> AGRL Exs. at pp. 243, 264-265.

24 <sup>54</sup> AGRL Exs. at p. 245.

25 <sup>55</sup> AGRL Exs. at pp. 245, 247.

26 <sup>56</sup> AGRL Exs. at p. 245.

27 <sup>57</sup> AGRL Exs. at p. 248.

28 <sup>58</sup> AGRL Exs. at p. 248.

<sup>59</sup> AGRL Exs. at pp. 249-253.

<sup>60</sup> AGRL Exs. at p. 253.

1 stating that he was intimidated at the time.<sup>61</sup> He emphatically stated that he was not at TTT Tavern at  
2 all that night.<sup>62</sup>

### 3 **3. Gladys' Testimony**

4 Gladys testified that she awoke to a loud banging on her front door.<sup>63</sup> She heard screaming  
5 and then went to the front door and saw three men standing at the door confronting her son, Eric.<sup>64</sup>  
6 One of the men had a gun.<sup>65</sup> They were cursing and using the "N word a lot."<sup>66</sup> They kept repeating,  
7 "You were there."<sup>67</sup> She ran to her room to get properly dressed and returned as the confrontation  
8 started escalating. The man holding the gun asked Eric if he was ready to die.<sup>68</sup> She got angry, made  
9 herself "big like a bear," and started yelling and screaming at them to get out.<sup>69</sup> She described being  
10 "face-to-face" with the men, estimating she was about eight to ten inches away from them.<sup>70</sup> The three  
11 men turned around and started walking away, as Simon apologized.<sup>71</sup> She then followed them about a  
12 block and a half down the street and called 9-1-1, as the three men called her "crazy."<sup>72</sup> Overall, she  
13 estimated that the confrontation, from the moment the three men knocked on her door, to the moment  
14 they walked away, lasted about 10 minutes.<sup>73</sup> In the courtroom, Gladys positively identified Simon,  
15 R.E., and I.R.as the three men at her front door that night.<sup>74</sup>

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17 <sup>61</sup> AGRL Exs. at p. 255.

18 <sup>62</sup> AGRL Exs. at p. 270.

19 <sup>63</sup> AGRL Exs. at p. 272.

20 <sup>64</sup> AGRL Exs. at pp. 272-274.

21 <sup>65</sup> AGRL Exs. at p. 274.

22 <sup>66</sup> AGRL Exs. at p. 273.

23 <sup>67</sup> *Ibid.*

24 <sup>68</sup> *Ibid.*

25 <sup>69</sup> AGRL Exs. at pp. 273, 276.

26 <sup>70</sup> AGRL Exs. at p. 276.

27 <sup>71</sup> AGRL Exs. at pp. 276- 277, 290.

28 <sup>72</sup> AGRL Exs. at p. 276.

<sup>73</sup> AGRL Exs. at p. 281.

<sup>74</sup> AGRL Exs. at pp. 277-278.



1 conviction.<sup>81</sup> Once such a claim is received and filed, Penal Code section 4902 requires the Attorney  
2 General to submit a written response.<sup>82</sup> Thereafter, under Penal Code section 4903, an informal  
3 administrative hearing before a hearing officer ensues, at which the claimant and Attorney General  
4 may present evidence concerning innocence and injury.<sup>83</sup> Upon the requisite showing of innocence  
5 and injury, then pursuant to Penal Code section 4904, CalVCB shall approve payment for the purpose  
6 of indemnifying the claimant for the injury sustained if sufficient funds are available, upon appropriation  
7 by the Legislature, at a rate of \$140 per day for their erroneous imprisonment.<sup>84</sup>

8 In limited circumstances, a different procedure may apply for claimants whose convictions have  
9 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court  
10 finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or  
11 vacated conviction pursuant to Penal Code section 1473.6, then CalVCB must automatically approve  
12 the claim, within 90 days and without a hearing, pursuant to Penal Code section 4904 for the injury  
13 sustained.<sup>85</sup> Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction  
14 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,  
15 subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General  
16 declines to object with clear and convincing proof of guilt, then CalVCB must approve the claim within  
17 90 days pursuant to Penal Code section 4904 for the injury sustained.<sup>86</sup> Unless one of these narrow  
18 statutory exceptions applies, then the claimant bears the burden to prove innocence and injury by a  
19 preponderance of the evidence under subdivision (a) of Penal Code section 4900.

20 When determining whether the claimant has satisfied their burden of proof, the Board may consider  
21 the "claimant's denial of the commission of the crime; reversal of the judgment of conviction; acquittal  
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23 <sup>81</sup> Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

24 <sup>82</sup> Pen. Code, § 4902, subd. (a).

25 <sup>83</sup> Pen. Code, § 4903, subd. (a).

26 <sup>84</sup> Pen. Code, § 4904, subd. (a).

27 <sup>85</sup> Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a), eff. Jan. 1, 2024; see also Cal. Code of  
28 Regs., tit. 2, § 640, subds. (e)(1)-(2).

<sup>86</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the crime....<sup>87</sup>  
2 The Board may also “consider as substantive evidence the prior testimony of witnesses [that] claimant  
3 had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant  
4 had an opportunity to object.”<sup>88</sup> Ultimately, the Board may consider “any other information that it  
5 deems relevant to the issue before it,” even if inadmissible under the traditional rules of evidence, so  
6 long as “it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct  
7 of serious affairs.”<sup>89</sup> No presumption is made as a result of Simon’s failure to obtain a finding of factual  
8 innocence.

9 **A. Penal Code Section 4900, subdivision (a), Governs Simon’s Claim**

10 Simon seeks compensation for his two felony convictions in case number RF007944A, which  
11 were both reversed on direct appeal. Neither of these convictions were reversed or vacated by grant of  
12 habeas or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). As such, the burden-  
13 shifting provision in subdivision (b) of Penal Code section 4900 does not apply. Moreover, Simon lacks  
14 a finding of factual innocence by any court under Penal Code section 1485.55 or 851.865. Thus,  
15 Simon’s claim does not fall within either of the limited statutory exceptions to subdivision (a) of section  
16 4900. Accordingly, subdivision (a) governs the disposition of Simon’s claim. He therefore bears the  
17 burden to demonstrate innocence by a preponderance of the evidence.

18 **B. Binding Court Determinations**

19 CalVCB has broad authority to consider all relevant evidence when deciding a claimant’s  
20 application for compensation. By statute, CalVCB is bound by “factual findings” and “credibility  
21 determinations” rendered by a court during proceedings on a petition for habeas corpus, motion to  
22 vacate judgment pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), or an application  
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26 <sup>87</sup> Cal. Code Regs., tit. 2, § 641, subd. (a).

27 <sup>88</sup> Cal. Code Regs., tit. 2, § 641, subd. (b).

28 <sup>89</sup> Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

1 for a certificate of factual innocence.<sup>90</sup> CalVCB is not, however, statutorily bound by an appellate  
2 court's decision on direct appeal. Nonetheless, an appellate court's determination of legal issues that  
3 were, or could have been, raised on direct appeal, may bind CalVCB under the doctrines of res judicata  
4 and collateral estoppel.<sup>91</sup>

### 5 **C. Insufficient Proof of Innocence**

6 To prevail in this claim, Simon bears the burden to show, by a preponderance of the evidence,  
7 he was innocent of the charged crimes. In other words, Simon must show he was more likely innocent,  
8 than guilty, of aiding and abetting assault with a deadly weapon and criminal threats. The burden rests  
9 upon Simon to affirmatively demonstrate that he did not commit these offenses, or they never occurred.

10 As detailed below, Simon fails to affirmatively establish that he did not aid and abet the assault  
11 with a firearm and criminal threats against Eric. In support of his claim of innocence, Simon offers only  
12 the Appellate Court's decision and his own, unsupported declaration of innocence. However, neither of  
13 these, whether considered together or separately, establishes Simon's innocence by a preponderance  
14 of the evidence. Having failed to prove that the charged crimes for which he was imprisoned either did  
15 not occur or were not committed by him, Simon's claim for compensation must therefore be denied.

#### 16 **1. Accomplice Liability for Assault with a Deadly Weapon and Criminal Threats**

17 "A person aids and abets the commission of a crime when he or she, acting with (1) knowledge  
18 of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or  
19 facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages, or instigates  
20 the commission of the crime."<sup>92</sup> In other words, a person aids and abets a crime if that person knows of

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23 <sup>90</sup> Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); see also *Gonzales v. California Victim*  
24 *Compensation Board* (Cal. Ct. App., Dec. 29, 2023, No. B323360) 2023 WL 9016418, at \*9 (defining  
25 "factual findings" in this context to exclude "the habeas court's summary of, observations about, and  
26 characterizations of the trial record when the habeas court is not finding facts after entering new  
27 evidence").

28 <sup>91</sup> See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206  
(explaining "Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause  
of action finally resolved in a prior proceeding" and "Collateral estoppel precludes relitigation of issues  
argued and decided in a prior proceeding").

<sup>92</sup> *People v. Nguyen* (2015) 61 Cal.4th 1015, 1054.

1 the perpetrator's criminal purpose and gives aid and encouragement with the intent or purpose of  
2 facilitating the perpetrator's commission of the crime.<sup>93</sup> The crime of assault with a firearm is defined  
3 as the willful commission of an act that by its nature would directly result in the application of a force to  
4 a person with a present ability to apply that force, such as by pointing a loaded gun at another.<sup>94</sup> The  
5 crime of criminal threats is defined as a willful, immediate, and unconditional threat to unlawfully kill  
6 another that reasonably causes the victim to fear for their safety, even if the defendant does not  
7 actually intend to carry out the threat.<sup>95</sup> "Among the factors which may be considered in making the  
8 determination of aiding and abetting are: presence at the scene of the crime, companionship, and  
9 conduct before and after the offense."<sup>96</sup> However, mere presence alone is insufficient to establish  
10 aiding and abetting.<sup>97</sup>

11 Here, Simon must prove by a preponderance of the evidence that he did not aid and abet the  
12 assault with a firearm and criminal threats. Meaning, he must show that he did not know I.R. had a gun  
13 or that I.R. intended to threaten Eric with a gun, and he did not intend to aid, promote, or encourage the  
14 assault against Eric. He must further show that he did not know I.R. intended to verbally threaten to kill  
15 Eric, and he did not intend to aid, promote, or encourage I.R.'s criminal threats against Eric.

## 16 **2. Inculcating Evidence**

17 The inculcating evidence presented by the Attorney General includes the trial record, police  
18 reports, the probation report, CDCR records, and documents related to Simon's criminal history.

19 As detailed below, this evidence suggests that Simon aided and abetted the assault with a  
20 deadly weapon and criminal threats against Eric, even if that evidence is insufficient to prove his guilt  
21 beyond a reasonable doubt.

22 It is undisputed that Simon was one of the three men who confronted Eric at his home at about  
23 3:00 a.m. on April 18, 2021. Eric repeatedly identified Simon as one of the perpetrators, stating that

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25 <sup>93</sup> *People v. Beeman* (1984) 35 Cal.3d 547, 560.

26 <sup>94</sup> Pen. Code, § 245; CALCRIM 875.

27 <sup>95</sup> Pen. Code, § 422; CALCRIM 1300.

28 <sup>96</sup> *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094.

<sup>97</sup> CALCRIM 401; see also *People v. Nguyen* (2015) 61 Cal.4th 1015, 1055.



1 when he opened the door, he immediately recognized Simon as his best friend's brother.<sup>98</sup> In fact,  
2 because Eric knew Simon, he did not believe there was a problem.<sup>99</sup> Similarly, Gladys positively  
3 identified Simon as one of the three men who confronted her son, first during an infield lineup and later  
4 at trial.<sup>100</sup> Notably, Simon has never denied being present that night. Nor has Simon denied that I.R.  
5 possessed a gun that he pointed at Eric's chest while asking if he was ready to die.

6 While the jury's verdict reflects reasonable doubt as to the identity of the two men who  
7 accompanied Simon, the administrative record reveals it was likely R.E. and I.R. While Simon and R.E.  
8 are brothers, Simon and I.R., the alleged gunman, also had a personal relationship. Eric testified that  
9 he regularly saw Simon, R.E., and I.R. hanging out at the house down the street, which was later  
10 identified as R.E.'s apartment.<sup>101</sup> He could see R.E.'s apartment from his house and saw Simon, R.E.,  
11 and I.R. there "all the time."<sup>102</sup> Moreover, Officer Rowland testified that the physical altercation at TTT  
12 Tavern started because Simon insulted another patron's wife and when the fight moved outside, I.R.  
13 physically fought the patron while Simon was stopped by a bouncer.<sup>103</sup> Simon, R.E., and I.R. were  
14 briefly detained while Simon and R.E.'s cousin was arrested for public intoxication.<sup>104</sup> Being detained  
15 and watching someone they knew get arrested provided them with a common purpose to confront and  
16 threaten Eric. This was more than a mere association, but rather, the group's misguided effort to  
17 retaliate for the bar fight and Simon and R.E.'s cousin's arrest. After being released, the three men  
18 were together for about an hour before they all showed up at Eric's house, banging on his front door,  
19 and threatening him. While these circumstances may be insufficient to prove beyond a reasonable  
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23 <sup>98</sup> AGRL Exs. at pp. 249, 258.

24 <sup>99</sup> AGRL Exs. at p. 258.

25 <sup>100</sup> AGRL Exs. at pp. 277-278, 673-674.

26 <sup>101</sup> AGRL Exs. at pp. 249-253.

27 <sup>102</sup> AGRL Exs. at p. 253.

28 <sup>103</sup> AGRL Exs. at pp. 329-332.

<sup>104</sup> AGRL Exs. at pp. 324, 378, 673.

1 doubt that Simon knew of the gunman's criminal intent, they fail to preclude such an inference in this  
2 administrative proceeding where the burden of persuasion falls upon Simon.<sup>105</sup>

3 Evidence in the record strongly suggests that Simon knew I.R. had a firearm at the time of the  
4 crime. The physical altercation at TTT Tavern took place at closing time, about 2:00 a.m. Officer  
5 Rowland testified that when Simon, R.E., and I.R. were detained and searched for weapons, none were  
6 found.<sup>106</sup> He also testified that Eric's residence was only a 10 to 15 minute walk from TTT Tavern, but  
7 that Simon, R.E., and I.R. did not show up at Eric's front door until 3:00 a.m., nearly an hour later.<sup>107</sup>  
8 Simon never explained what occurred during that hour or where the three men were. However, the  
9 men had ample time to retrieve a firearm before going to Eric's to threaten him. That the gun was  
10 loaded may be inferred from the nature of I.R.'s verbal threats to shoot Eric immediately.

11 Further, when Eric answered the door, he saw Simon and two other men standing close  
12 together in a half circle in front of the door.<sup>108</sup> I.R. was in the middle, slightly behind Simon.<sup>109</sup> Eric  
13 testified that the gunman pointed the gun at him "almost right away" and for eight or nine minutes  
14 repeatedly asked him if he wanted to die that night.<sup>110</sup> Based on the proximity of where Simon and I.R.  
15 were standing, next to each other on a "little square" cement area right in front of the door, it may be  
16 fairly inferred that Simon heard I.R. repeatedly threaten Eric's life. It may be further inferred that Simon  
17 observed the gun during the eight or nine minutes that I.R. pointed it at Eric's chest. At no point did  
18 Simon seem surprised by the gun or attempt to stop or deescalate the situation. To the contrary,  
19 Simon continued to yell at Eric while I.R. was pointing a gun at his chest. Simon only apologized once  
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22 <sup>105</sup> *Diola v. State Bd. of Control* (1982) 135 Cal.App.3d 580, 588 n.7 (noting that while "Innocence might  
23 well be predicated upon a reasonable doubt of guilt," the "board's section 4900 determination is a civil  
24 determination of culpability" that requires the claimant to "carry the burden of proof of innocence by a  
preponderance of the evidence").

25 <sup>106</sup> AGRL Exs. at pp. 331-332.

26 <sup>107</sup> AGRL Exs. at pp. 244, 325-327, 673.

27 <sup>108</sup> AGRL Exs. at pp. 254-255, 263.

28 <sup>109</sup> *Ibid.*

<sup>110</sup> AGRL Exs. at pp. 264-265.

1 Gladys got “in their face” and chased them off.<sup>111</sup> Thus, Simon continued to escalate the encounter  
2 during and immediately after the assault with a firearm and criminal threats.

3 Finally, the record reflects that Simon instigated the confrontation. Eric repeatedly testified that  
4 he only recognized Simon and did not know the other two men. What’s more, the men knew Eric’s  
5 name, which suggests that Simon was the one who led R.E. and I.R. to Eric’s house, still angry about  
6 the bar fight and his cousin being arrested.<sup>112</sup> All three men were yelling and screaming, but Simon  
7 was “doing most of the talking for them,” accusing Eric of being involved.<sup>113</sup> R.E.’s apartment was only  
8 a few blocks away from Eric’s home, leaving Simon, R.E., and I.R. more than enough time to retrieve a  
9 firearm before showing up at Eric’s at 3:00 a.m. to threaten him. Because Simon led R.E. and I.R. to  
10 Eric’s home and I.R. pulled the gun out “almost right away,” it is reasonable to assume that threatening  
11 to kill Eric with a firearm was part of the plan.

12 As urged by the Attorney General, Simon has a lengthy criminal history, which includes felony  
13 convictions for robbery and resisting an executive officer.<sup>114</sup> Between June 2016 and June 2022,  
14 Simon had fourteen criminal cases filed against him in Kern County and pled guilty to domestic violence  
15 charges five times.<sup>115</sup> According to the probation report, he violated probation numerous times and “is  
16 a danger to society.”<sup>116</sup> At a minimum, in this informal proceeding where traditional rules of evidence  
17 do not apply, Simon’s prior convictions may be considered as impeachment evidence of his credibility,  
18 as well as to show intent or the absence of mistake.<sup>117</sup> Although this factor is incriminating, it is of  
19 relatively minimal inculpatory weight.<sup>118</sup>

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22 <sup>111</sup> AGRL Exs. at pp. 245, 247.

23 <sup>112</sup> AGRL Exs. at p. 263.

24 <sup>113</sup> AGRL Exs. at p. 673.

25 <sup>114</sup> AGRL at pp. 5-11.

26 <sup>115</sup> AGRL at p. 6.

27 <sup>116</sup> AGRL at p. 4.

28 <sup>117</sup> Evid. Code, §§ 788, 1101; *People v. Wheeler* (1992) 4 Cal.4th 284; Cal. Code Regs., tit. 2, § 641, subd. (d).

<sup>118</sup> Even if this factor is excluded, the result of this decision remains the same given the overall record.

1 Overall, the record contains significant evidence of Simon’s guilt for aiding and abetting assault  
2 with a firearm and criminal threats.

3 **3. Proffered Exculpatory Evidence**

4 As for evidence of his innocence, Simon provides only an unsupported declaration, relying  
5 primarily on the Appellate Court’s reversal of his convictions. First, he asserts the “victim stated in trial  
6 that I did not commit this crime.”<sup>119</sup> However, this is contradicted by the testimony elicited at trial. Eric  
7 testified that when he answered the door on April 21, 2018, he immediately recognized Simon as his  
8 best friend’s brother. He stated unequivocally that although Simon was not the one with the gun he  
9 was “definitely there” and the most vocal during the eight or nine minutes the firearm was pointed at  
10 his chest.<sup>120</sup> Simon offers no other details or circumstances to negate an inference of guilt from the  
11 administrative record. He does not, for example, express surprise at the use of a gun or deny that his  
12 close friend I.R. was the gunman. Moreover, Simon declined an opportunity to appear at an  
13 administrative hearing where he would testify, under oath and be subject to cross-examination by the  
14 Attorney General, about the crimes against Eric. Accordingly, Simon’s conclusory declaration is not  
15 persuasive.

16 Second, Simon contends the Appellate Court’s decision is sufficient to establish his  
17 innocence.<sup>121</sup> However, a court’s finding that there was insufficient evidence to support a conviction is  
18 not equivalent to a finding of factual innocence.<sup>122</sup> Here, the Appellate Court’s finding insufficient  
19 evidence established Simon’s *guilt* does not satisfy Simon’s burden to demonstrate his *innocence* by a  
20 preponderance of the evidence in this proceeding. In fact, the Appellate Court’s determination that the  
21 evidence was insufficient to support Simon’s convictions means only that there was not enough

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23 <sup>119</sup> App. at p. 2.

24 <sup>120</sup> AGRL Exs. at pp. 254-255.

25 <sup>121</sup> App. at p. 2.

26 <sup>122</sup> *Gonzalez v. California Victim Comp. Bd.* (December 29, 2023, B323360) \_\_ Cal.App.2nd \_\_; *Diola,*  
27 *supra*, 135 Cal.App.3d at p. 588 n. 7; see also *Tennison v. Cal. Victim Comp. and Gov. Claims Bd.*  
28 (2007) 152 Cal.App.4th 1164, 1191 (“the question to be answered is not whether there is sufficient  
evidence to establish culpability, but whether or not claimants can establish they are not culpable”).

1 evidence presented at trial for a reasonable jury to find him guilty beyond a reasonable doubt. A finding  
2 of insufficient evidence to satisfy the most demanding standard of proof to convict a defendant of a  
3 crime is not, at all, equivalent to finding that a particular defendant is more likely innocent than not of  
4 committing the crime. Indeed, the evidence might prove by a preponderance that the defendant is  
5 more likely guilty than innocent, yet still be insufficient to convict. Accordingly, the Appellate Court's  
6 reversal of Simon's convictions for insufficient evidence fails to persuade that he is likely innocent of the  
7 underlying charges.

8 Incidentally, the jury's acquittal of Simon's co-defendants, even if potentially exculpating, fails to  
9 demonstrate his innocence. The jury's verdict reflects uncertainty as to who committed the assault and  
10 criminal threats, not whether those crimes occurred. There is ample evidence identifying Simon as the  
11 culprit who aided and abetted the assault with a firearm and criminal threats. Reasonable doubt to  
12 convict Simon's co-defendants of these crimes does not preclude CalVCB from finding insufficient  
13 evidence of Simon's innocence.

#### 14 **4. Overall Evidence Fails to Demonstrate Innocence**

15 After considering all the inculcating and exculpating evidence detailed above, Simon has failed  
16 to prove he is more likely innocent than guilty of his vacated convictions for aiding and abetting assault  
17 with a firearm and criminal threats. The burden rests upon Simon to affirmatively demonstrate that he  
18 did not commit these offenses, or they never occurred. To that end, it is Simon's burden to show that,  
19 on the night of the crime, he did not know the gunman intended to commit assault with a firearm and  
20 criminal threats and that before or during the commission of the crime, he did not intend to aid and abet  
21 the gunman in an assault with a firearm and criminal threats against Eric.<sup>123</sup> Simon's sole reliance on  
22 the reversal of his convictions due to insufficient evidence is misguided. An appellate court's  
23 determination that insufficient evidence established a claimant's *guilt* for purposes of a criminal  
24 proceeding, is not sufficient to establish a claimant's *innocence* for purposes of Penal Code section  
25 4900. Moreover, the administrative record before CalVCB includes additional evidence not presented  
26 at trial. Thus, CalVCB remains free to determine whether, in its view, the weight of evidence presented  
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28 <sup>123</sup> CALCRIM 401.

1 in this administrative proceeding satisfies Simon's burden to prove his innocence by a preponderance  
2 of evidence.

3 On balance, Simon's innocence does not appear to be the most likely scenario after considering  
4 all of the evidence in the administrative record. While it is possible that Simon may have been entirely  
5 unaware of the gunman's actions, that possibility is not persuasive. Rather, it appears to be at least as  
6 likely that Simon aided and abetted the assault with a deadly weapon and criminal threats against Eric.  
7 It is undisputed that Simon was present when these crimes occurred, likely committed by I.R. as the  
8 gunman with R.E. as another accomplice. These crimes occurred just hours after the threesome were  
9 involved in a physical altercation at a nearby bar that resulted in the arrest of Simon's relative, which  
10 they blamed upon Eric. After sufficient time had passed for the threesome to obtain a firearm, they  
11 arrived at Eric's home, a location that only Simon knew. Once Eric opened the front door, Simon  
12 escalated the confrontation by continuing to yell at Eric, even after I.R. pulled out a firearm, aimed it at  
13 Eric, and threatened to kill him. The confrontation deescalated only after Eric's mother appeared and  
14 chastised the men. At no time has Simon denied being aware of the firearm or knowing I.R. intended to  
15 fatally threaten Eric with a firearm, nor did Simon ever deny that the firearm was loaded.

16 Accordingly, Simon entirely fails to meet his burden on this record, for all of the reasons detailed  
17 above.

18 **V. Conclusion**

19 In accordance with subdivision (a) of Penal Code section 4900, the undersigned Hearing  
20 Officer recommends that CalVCB deny Simon's claim. He has failed to demonstrate by a  
21 preponderance of evidence that he did not commit the offenses for which he was convicted and  
22 imprisoned. Simon is, therefore, ineligible for compensation as an erroneously convicted person.

23  
24 Date: February 12, 2024

25 \_\_\_\_\_  
26 Kristen Sellers  
27 Hearing Officer  
28 California Victim Compensation Board

# ITEM 9

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

8 In the Matter of:

9 **Maurice Caldwell**

10 Claim No. 13-ECO-01

**Proposed Decision on Reconsideration**

**Post-Writ (Penal Code § 4900, subd. (b))**

11 **I. Introduction**

12 Eleven years ago on March 25, 2013, Maurice Caldwell (Caldwell) submitted a claim to the  
13 California Victim Compensation Board (CalVCB) seeking compensation as an erroneously convicted  
14 person pursuant to Penal Code section 4900. The claim was based upon Caldwell's 1991 convictions  
15 for murder, attempted murder, and discharging a firearm into an occupied vehicle, all of which were  
16 vacated by a writ of habeas corpus in 2010 and the charges dismissed in 2011. After a two-day  
17 administrative hearing in 2017, the Board denied Caldwell's claim in 2019 under then-existing law for  
18 failing to demonstrate his innocence by a preponderance of the evidence. Caldwell filed a petition for  
19 writ of mandate, which was granted in part in 2022. Without deciding whether CalVCB had erred, the  
20 writ nevertheless ordered CalVCB to augment the record with newly discovered evidence and  
21 reconsider the claim under the recently enacted burden-shifting provision in subdivision (b) of section  
22 4900. Accordingly, Caldwell's augmented claim was filed on May 24, 2023, in which he requests  
23 compensation in the amount of \$1,049,160 for 7,494 days imprisonment. Caldwell is represented by  
24 the law firms of Gross & Belsky and Quadra & Coll.

25 By letter dated August 24, 2023, the Attorney General, represented by Deputy Attorney  
26 General Sharon Laughner, initially opposed Caldwell's claim, arguing that clear and convincing  
27 evidence demonstrated Caldwell's guilt, and, alternatively, the maximum amount of compensation  
28 amounted to \$1,023,960 for 7,314 days imprisonment. A hearing was set on the matter for January



1 31, 2024. But by letter sent January 22, 2024, the Attorney General withdrew further objection to the  
2 claim and subsequently agreed with Caldwell's compensation calculation.

3 On January 29, 2024, the scheduled hearing was vacated, and the administrative record  
4 closed. The matter was assigned to CalVCB Senior Attorney Laura Simpton. As required by  
5 subdivision (b) of Penal Code section 4900, CalVCB is mandated to approve payment to Caldwell in  
6 the amount of \$1,049,160 if sufficient funds are available, upon appropriation by the Legislature, as  
7 indemnification for the demonstrated injury sustained by his 7,494 days imprisonment solely as a result  
8 of his vacated convictions.

## 9 II. Procedural History

### 10 A. Criminal Proceedings

11 On September 21, 1990, claimant was arrested and charged with one count of murder, one  
12 count of attempted murder, and one count of discharging a shotgun at an occupied vehicle in San  
13 Francisco County Superior Court case number 138408.<sup>1</sup> Enhancements for personal use of a firearm  
14 were also alleged.<sup>2</sup> All of these charges related to a fatal shooting that occurred on June 30, 1990.  
15 Following a jury trial, Caldwell was convicted of all three counts and allegations on March 20, 1991.  
16 He was sentenced on April 29, 1991, to an aggregate term of 27 years to life.<sup>3</sup> The court awarded 221  
17 days as credit for actual time served, representing the duration of Caldwell's confinement since the  
18 date of his arrest.<sup>4</sup> The judgment was affirmed by the First District Court of Appeal on August 27,  
19 1992.

20 On February 18, 2009, with the assistance of the Northern California Innocence Project (NCIP),  
21 Caldwell filed a petition for writ of habeas corpus in the San Francisco County Superior Court.<sup>5</sup> The  
22 petition alleged, inter alia, that trial counsel rendered ineffective assistance of counsel, false evidence  
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24 <sup>1</sup> Pen. Code, §§187, 664/187, 246; Administrative Record (AR) at pp. 3445-3446, 4933, 5186-5187.

25 <sup>2</sup> Pen. Code, §12022.5.

26 <sup>3</sup> AR at pp. 910-914, 927-928, 5925-5926, 5928; Caldwell Amended Updated Statement of Factual  
27 Innocence (Amend. Stmt.) at pp. 1, 3; Attorney General Objection Letter (AGOL) at pp. 4-7.

28 <sup>4</sup> Abstract of Judgment (AOJ), sent by email from Caldwell's counsel on May 17, 2023.

<sup>5</sup> AR at pp. 6461-6517.

1 was elicited at trial, and Caldwell was actually innocent. The prosecution opposed the writ on August  
2 20, 2010.<sup>6</sup> On December 16, 2010, after an evidentiary hearing, the superior court granted habeas  
3 relief solely on the basis of ineffective assistance of counsel. The court specifically found that  
4 Caldwell's trial counsel prejudicially failed to adequately investigate the case.<sup>7</sup>

5 The prosecution refiled the case against Caldwell for a retrial on all vacated charges. By then,  
6 the sole eyewitness had died in 1998. At one point, the prosecution offered Caldwell a plea deal for  
7 time served, but Caldwell refused.<sup>8</sup> On March 25, 2011, the court excluded the eyewitness' prior  
8 testimony on due process grounds because it relied upon a trial exhibit that had been lost. The court  
9 emphasized that this ruling did not amount to an adverse finding concerning the eyewitness' reliability.<sup>9</sup>  
10 Based on this ruling, the prosecution announced it was unable to proceed and, therefore, the charges  
11 were dismissed.<sup>10</sup> Caldwell was released from custody on March 28, 2011.<sup>11</sup> By then, he had been  
12 incarcerated for a total of 7,494 days since his arrest on September 21, 1990.

### 13 **B. Civil Rights Lawsuit**

14 On April 16, 2012, Petitioner filed a civil rights complaint in federal court against the City of San  
15 Francisco and three police officials who had investigated his criminal case (i.e., Sergeant Crenshaw,  
16 Inspector Gerrans, and Inspector Crowley). Petitioner alleged that these officials had used coercive  
17 techniques and fabricated evidence in order to frame him for the now-vacated criminal convictions.  
18 After extensive litigation, including discovery, the district court disagreed and granted summary  
19 judgment in favor of all defendants on March 2, 2016. Caldwell appealed.

20 On May 11, 2018, the Ninth Circuit reversed in part. Specifically, the court held that Caldwell  
21 had raised a triable issue as to whether Sergeant Crenshaw had fabricated evidence against him. As  
22 for Inspectors Gerrans and Crowley, the court held that their investigation techniques were not so

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24 <sup>6</sup> AR at pp. 6591-6678.

25 <sup>7</sup> AR at pp. 1196-1216.

26 <sup>8</sup> Caldwell Amend. Stmt. at p. 4.

27 <sup>9</sup> AR at pp. 1304-1305; AGOL at p. 8.

28 <sup>10</sup> *Ibid.*; Caldwell Amend. Stmt. at p. 4.

<sup>11</sup> AGOL at p. 8; Caldwell Amend. Stmt. at p. 4.

1 coercive as to rise to the level of fabricated evidence. Accordingly, the court reversed summary  
2 judgment only as to Sergeant Crenshaw but affirmed dismissal of the remaining defendants.<sup>12</sup> Several  
3 years later in December 2021, Caldwell received an \$8 million settlement from the City of San  
4 Francisco.<sup>13</sup> Caldwell was represented in the civil litigation by Terry Gross and Adam Belsky of the  
5 law firm Gross & Belsky.<sup>14</sup>

#### 6 **D. Denied Motion For Factual Innocence Finding**

7 On August 3, 2015, with the assistance of Gross & Belsky, Caldwell filed a motion in the San  
8 Francisco County Superior Court for a finding of factual innocence under Penal Code section 1485.55.  
9 In support, Caldwell offered much of the same evidence from the habeas proceedings and ongoing  
10 civil rights litigation.<sup>15</sup> The district attorney opposed the motion.<sup>16</sup> On May 31, 2016, the court denied  
11 the motion based upon the written pleadings because the proffered evidence failed to demonstrate  
12 Caldwell's innocence by a preponderance.<sup>17</sup> Following Caldwell's appeal, the First District Court of  
13 Appeal affirmed the decision to deny a finding of factual innocence on December 12, 2018.<sup>18</sup>  
14 Thereafter, the California Supreme Court denied review on March 13, 2019.<sup>19</sup>

#### 15 **E. CalVCB Proceeding**

16 Previously, on March 21, 2013, with the assistance of the NCIP, Caldwell submitted a claim to  
17 CalVCB as an erroneously convicted person pursuant to Penal Code section 4900. The NCIP was  
18 subsequently replaced by the law firm Gross & Belsky.<sup>20</sup> Under then-existing statutes, the claim  
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20 <sup>12</sup> AR at pp. 1572-1605, 8505-8532; AGOL at p. 9.

21 <sup>13</sup> AGOL at p. 9; Amend. Stmt. at p. 3.

22 <sup>14</sup> AR at p. 8504.

23 <sup>15</sup> AR at pp. 1543-1544, 8624.

24 <sup>16</sup> AR at pp. 1545-1571.

25 <sup>17</sup> AR at pp. 1606-1615.

26 <sup>18</sup> AR at pp. 1616; 8533-8558.

27 <sup>19</sup> *People v. Maurice Caldwell*, First Appellate District Court of Appeal, case number A148828, docket  
28 available online at <https://appellatecases.courtinfo.ca.gov>; see also Cal. Code Regs., tit. 2, § 617.8  
(official notice).

<sup>20</sup> AR at p. 8651.

1 sought compensation at the rate of \$100 per day for post-conviction imprisonment only, which  
2 amounted to \$731,400 for the 7,314 days between the jury's guilty verdict on March 20, 1991, and his  
3 release on March 28, 2011.<sup>21</sup> The administrative proceedings were initially stayed while Caldwell  
4 continued his civil rights litigation and pursued a motion for a finding of factual innocence under Penal  
5 Code section 1485.55.<sup>22</sup> The proceedings eventually resumed, and, on March 1, 2017, Caldwell filed  
6 a supplemented claim seeking \$1,023,960, at the recently increased statutory rate of \$140 per day but  
7 only for 7,314 days of his post-conviction incarceration, which excluded time spent in jail  
8 preconviction.<sup>23</sup> The Attorney General submitted a written opposition to the claim on April 14, 2017.<sup>24</sup>

9 CalVCB Senior Attorney Kevin Kwong was assigned to consider the claim. A two-day hearing  
10 ensued on May 9 and 31, 2017, at which Caldwell testified, along with several other witnesses.<sup>25</sup> The  
11 hearing officer issued a proposed decision on August 14, 2017, recommending the Board deny  
12 Caldwell's claim for failing to prove his innocence by a preponderance of the evidence.<sup>26</sup>

13 The Board first considered the proposed decision at a public meeting on October 19, 2017. At  
14 the urging of Caldwell's counsel, the Board voted 2-1 to postpone a final decision until the appellate  
15 court decided Caldwell's then-pending appeal of the superior court's denial of his motion for a finding  
16 of factual innocence.<sup>27</sup> Two years later on October 10, 2019, after the appellate court affirmed the  
17 superior court's denial, the Board resumed consideration of the proposed decision. By a 2-0 vote, the  
18 Board adopted the proposed decision and denied Caldwell's claim for insufficient proof of innocence.<sup>28</sup>

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21 <sup>21</sup> AR at pp. 1, 57-58; former Pen. Code, § 4904, as amended by Stats.2000, c. 630 (A.B. 1799).

22 <sup>22</sup> AR at pp. 8651-8698.

23 <sup>23</sup> AR at pp. 1618-1661; former Pen. Code, § 4904, as amended by Stats.2016, c. 31 (S.B. 836)  
24 (increasing compensation rate to \$140 per day to include time spent in county jail that is part of the  
25 term of incarceration).

25 <sup>24</sup> AR at pp. 7884-7899.

26 <sup>25</sup> AR at pp. 8615, 8626-8628.

27 <sup>26</sup> AR at pp. 8452-8478.

28 <sup>27</sup> AR at p. 8501; Caldwell's Further Supplemental Exhibits (FSE) FSE at pp. 174-200.

<sup>28</sup> AR at pp. 8607-8612, 8614-8639; FSE at pp. 204-222.

1           **F. Writ of Mandate**

2           On November 20, 2019, with the assistance of Gross & Belsky and Quadra & Coll, Caldwell  
3 filed a petition for writ of mandate in the Sacramento County Superior Court challenging CalVCB's  
4 denial of his claim. The case was repeatedly continued while awaiting Caldwell's opening brief on the  
5 merits. Then on May 4, 2022, Caldwell moved to augment the record and remand to the Board to  
6 reconsider his claim in light of newly discovered evidence from the recently settled civil rights litigation.  
7 Over objections from CalVCB as Respondent and the Attorney General as Real Party in Interest, the  
8 superior court granted the motion on October 31, 2022, pursuant to the discretionary provision in Code  
9 of Civil Procedure, section 1094.5, subdivision (e). Not only did the court direct CalVCB to set aside its  
10 prior decision and reconsider the new evidence, without deciding whether that prior decision was  
11 erroneous under then-existing law, but the court further directed CalVCB to apply the recently enacted  
12 burden-shifting provision in subdivision (b) of Penal Code section 4900 when reconsidering Caldwell's  
13 claim. The final writ directing CalVCB to set aside its decision, augment the record, and conduct a  
14 new hearing to reconsider Caldwell's claim under subdivision (b) of section 4900 issued on December  
15 14, 2022.<sup>29</sup>

16           **G. CalVCB Proceedings on Reconsideration**

17           Upon remand for reconsideration, the matter was reassigned to CalVCB Senior Attorney Laura  
18 Simpton, as the original hearing officer was no longer available.<sup>30</sup> On February 2, 2023, in accordance  
19 with the superior court's writ, CalVCB notified both parties that its prior decision was vacated and  
20 invited Caldwell to submit any new evidence and arguments that he wished to be considered by  
21 CalVCB. Caldwell did so on May 17, 2023, represented at that time by Gross & Belsky and Quadra &  
22 Coll. His submissions included a revised claim form, which still sought compensation for 7,314 days  
23 solely for the period of Caldwell's post-conviction confinement, along with multiple exhibits spanning  
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26 <sup>29</sup> *Caldwell v. CalVCB and State of California*, Sacramento County Superior Court case number 34-  
27 2019-80003269, docket available online at <https://www.saccourt.ca.gov/indexes/new-portal-info.aspx>;  
28 see also court order filed Oct. 31, 2022, attached as Ex. A to Writ of Mandate issued Dec. 1, 2022;  
amended writ filed Dec. 14, 2022; see also Cal. Code Regs., tit. 2, § 617.8 (official notice).

<sup>30</sup> Cal. Code Regs., tit. 2, § 619.5, subd. (e).

1 2,277 pages and several audio and video recordings. These exhibits, entitled “Further Supplemental  
2 Exhibits,” augmented the original administrative record that spans 8,777 pages.

3 On May 18, 2023, CalVCB requested clarification from Caldwell as to the number of days for  
4 which compensation was sought, given the current statutory and regulatory provisions. Caldwell  
5 responded on May 24, 2023. He submitted an amended claim form and updated statement of factual  
6 innocence requesting compensation in the amount of \$1,049,160 for 7,494 days imprisonment,  
7 consisting of 7,314 days postconviction, plus 180 days preconviction. Later that same day, CalVCB  
8 notified the parties that the augmented claim, as amended, was deemed filed pursuant to subdivision  
9 (b) of Penal Code section 4900 and requested a response from the Attorney General within 45 days.

10 Following a single extension of time in accordance with Penal Code section 4902, subdivision  
11 (d), the Attorney General timely objected to Caldwell’s claim by letter dated August 15, 2023. The  
12 Attorney General maintained that the administrative record provided clear and convincing proof of  
13 Caldwell’s guilt. In particular, the Attorney General asserted that the credibility characterizations by the  
14 superior and appellate courts when denying Caldwell’s motion for a finding of factual innocence were  
15 statutorily binding upon CalVCB under Penal Code section 4903, subdivision (c). Alternatively, the  
16 Attorney General asserted that the maximum amount of compensation amounted to \$1,023,960 for  
17 7,314 days imprisonment.

18 After conferring with the parties regarding availability, CalVCB scheduled a hearing on the  
19 claim for January 31, 2024. In preparation for the hearing, both parties timely submitted prehearing  
20 briefs on December 29, 2023. Thereafter, Caldwell timely submitted a prehearing statement on  
21 January 19, 2024. However, by email sent January 22, 2024, the Attorney General withdrew further  
22 objection to Caldwell’s claim. Specifically, the Attorney General advised that, “[b]ased on Penal Code  
23 section 4903 and the opinion in *Gonzales v. California Victim Compensation Board* (B232260), the  
24 Attorney General has reevaluated this claim and no longer objects to compensation.”<sup>31</sup>

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26 <sup>31</sup> In *Gonzales*, decided December 29, 2023, the court held that only findings rendered in support of a  
27 *granted* motion for a finding of factual innocence are binding upon CalVCB under former Penal Code  
28 section 4903, which rendered binding “the factual findings and credibility determinations *establishing*  
*the court’s basis for granting* a writ of habeas corpus, or an application for a certificate of factual  
innocence....” (*Gonzales v. California Victim Compensation Board* (2023) 98 Cal.App.5th 427, 316

1 On January 22, 2024, CalVCB confirmed receipt of the Attorney General’s declination of further  
2 objection. Before vacating the scheduled hearing, CalVCB requested additional information from both  
3 parties on the issue of injury in order to calculate compensation. To that end, Caldwell and his counsel  
4 provided separate declarations on January 26, 2024, both of which confirmed that all 7,494 days of  
5 Caldwell’s incarceration solely resulted from his erroneous convictions and no other unrelated  
6 convictions were sustained during that period of time.<sup>32</sup> Later that same day, the Attorney General  
7 agreed with Caldwell’s calculation. On January 29, 2024, with both parties’ agreement, CalVCB  
8 vacated the hearing and closed the administrative record.

9 **III. Factual Summary**

10 **A. The Murder**

11 At approximately 2:30 a.m. on June 30, 1990, Judy A. (Judy) and his friends Domingo B.  
12 (Domingo), Dominador V. (Dominador), and Eric A (Eric). arrived in the San Francisco Alemany  
13 Housing Project to purchase crack cocaine.<sup>33</sup> The four, Filipino men were in Domingo’s two-door car,  
14 which he parked on the 900 block of Ellsworth Street. All four stepped out of the vehicle. Domingo  
15 and Judy stood near the driver’s side, while Dominador and Eric stood near the passenger’s side.<sup>34</sup>

16 A group of six or seven men, standing by a lamp post about 25 feet away from the car,  
17 approached. One of the men handed Domingo two rocks of cocaine, and Domingo gave him some  
18 cash in return, but the man complained “it’s not enough.”<sup>35</sup> As Domingo turned to his friends to ask for  
19 more money, someone punched Domingo in the nose. Around that same time, someone yelled,  
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21 Cal.Rptr.3d 757, 775; former Pen. Code, § 4903, subd. (b), as added by Stats.2019, c. 473 (S.B. 269),  
22 eff. Jan. 1, 2020, emphasis added.) But the current version of this section, which deletes the verb  
23 “granting,” renders binding all findings “*establishing the court’s basis for writ of habeas corpus, ... or an*  
24 *application for a certificate of factual innocence....*” (Pen. Code, § 4903, subd. (c), italics added.)  
25 *Gonzales* further clarified that a binding finding under this section excludes a court’s “summary of,  
26 observations about, and characterizations of the trial record...” when the court has not “entertain[ed]  
27 new evidence....” (*Gonzales, supra*, at p. 771.)

28 <sup>32</sup> Caldwell Declaration, dated Jan. 26, 2024; Terry Gross Declaration, dated Jan. 26, 2024.

<sup>33</sup> In an effort to protect their privacy, the victims and witnesses are referred to by first name only.

<sup>34</sup> AR at pp. 87, 6447-6448, 8535-3536.

<sup>35</sup> AR at p. 6448.

1 “shoot him,” after which an unidentified man fired a pistol.<sup>36</sup> Dazed, Domingo retreated to the driver’s  
2 seat of his car while fumbling for his keys. Someone fired a shotgun, and Domingo’s side window  
3 shattered. Some of the shotgun pellets struck Domingo.<sup>37</sup>

4 Just after Domingo managed to start the car, he spotted Judy standing near the passenger  
5 door.<sup>38</sup> Judy was clutching his chest, trying to get into the car. Domingo leaned over, opened the  
6 passenger door, and pulled Judy inside. Judy exclaimed that he had been shot and then fell silent.  
7 Frightened and with blood on his face, Domingo began frantically driving. Domingo could not recall  
8 whether any additional shots were fired or what route he took to leave the area.<sup>39</sup> Meanwhile, Eric and  
9 Dominador ran from the scene on foot, escaping any injury.<sup>40</sup>

10 After driving approximately ten minutes, Domingo stopped at a gas station and asked the  
11 attendant to call 911, which was dialed at 2:51 a.m. However, by the time paramedics responded at  
12 3:03 a.m., Judy was already dead.<sup>41</sup> He died of loss of blood caused by his gunshot wounds. Notably,  
13 Judy sustained two different types of gunshot wounds. Specifically, a single bullet from a pistol had  
14 passed through Judy’s heart, liver, and spleen. In addition, 20 pellets from a shotgun had struck his  
15 body.<sup>42</sup> As for Domingo’s injuries from the shotgun pellets, he was transported to the hospital for  
16 treatment and survived.

## 17 **B. Police Investigation**

18 Police initially had no leads as to the shooters’ identity. Many potential witnesses on scene  
19 were unresponsive. While interviewed at the hospital, Domingo described the dealers as young Black  
20 men. Eric described one suspect as five feet, four to six inches tall, with a “Jheri-curl” hairstyle.<sup>43</sup>

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22 <sup>36</sup> AR at p. 6448.

23 <sup>37</sup> AR at pp. 513, 5320-5332, 6447-6448, 8535-8536.

24 <sup>38</sup> AR at pp. 5325-5326.

25 <sup>39</sup> AR at pp. 5323-5328, 6448.

26 <sup>40</sup> AR at pp. 1608, 5244, 6448.

27 <sup>41</sup> AR at pp. 513, 5636.

28 <sup>42</sup> AR at pp. 5612, 6448.

<sup>43</sup> AR at p. 8536.



1 Over a week later on July 12, 1990, police received an anonymous tip from a female caller to  
2 “check out” Caldwell because he had “been shooting off guns in the projects.”<sup>44</sup> At that time, Caldwell  
3 was 23 years old, five-feet five-inches tall, 135 pounds, with a Jheri-curl hairstyle.<sup>45</sup> Caldwell, who  
4 also went by the name of “Twone” or “Twan,” had been arrested multiple times on Ellsworth Street for  
5 various drug and weapons offenses, but none of those arrests resulted in a conviction.<sup>46</sup> In the arrest  
6 reports, Caldwell’s address was alternately listed as Ellsworth Street, Paris Street a couple miles  
7 away, or sometimes both. After one such arrest in January 1990, Caldwell filed a civilian complaint  
8 against Sergeant Crenshaw.<sup>47</sup> The anonymous tip about Caldwell was forwarded to Inspectors  
9 Gerrans and Crowley as the assigned investigators, who at that time were unaware of Caldwell’s  
10 complaint against Sergeant Crenshaw.<sup>48</sup>

11 **1. Eyewitness Mary C.**

12 The next day on July 13, 1990, while canvassing the neighborhood, Inspector Gerrans spoke to  
13 Mary C. (Mary) inside her apartment. Mary was 29 years old and lived in the 900 block of Ellsworth  
14 Street with her two young sons aged 13 and 6 years old. During the recorded interview, Mary stated  
15 that she was woken around 2:40 a.m. by the sound of broken glass and shots fired, which prompted  
16 her to get up and look out her bedroom window. From that vantage point, with her head tilted, she  
17 observed someone fire a shotgun.<sup>49</sup> Mary provided multiple details about the shooting, including the  
18 number of gunmen and type of weapons involved, the number of victims in the fleeing car, the victims’  
19 skin tone and possible ethnicity, the number of car doors, and the shattered car window. Significantly,  
20 Mary stated that the shotgun shooter wore only sweatpants and no shirt.<sup>50</sup> At that point, the interview  
21 was interrupted by a knock at the door. It was Sergeant Crenshaw, allegedly with Caldwell standing  
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23 <sup>44</sup> AR at pp. 1384, 8536.

24 <sup>45</sup> AR at pp. 1377, 1983, 2433-2434, 3522, 8536.

25 <sup>46</sup> AR at pp. 28, 1377-1380, 4724, 4726, 4730, 4748, 4750, 4762, 4781, 4785, 4797.

26 <sup>47</sup> AR at pp. 3914-3923.

27 <sup>48</sup> AR at pp. 6129-6130, 6138-6139.

28 <sup>49</sup> AR at pp. 4716, 5934-5938, 6530.

<sup>50</sup> AR at pp. 1385-1489.

1 nearby, asking for the keys to Inspector Gerrans' patrol car because he had "Maurice Caldwell, Twan,  
2 the guy I told you about" in custody.<sup>51</sup>

3 During the remainder of the interview, Mary described the shotgun shooter as 21 to 25 years  
4 old, five-feet four-inches tall, 150 pounds, with a Jheri-curl hairstyle, which generally matched  
5 Caldwell's appearance. She noted, again, that the shotgun shooter was "bare-chested."<sup>52</sup> Mary also  
6 described the man holding the handgun as 19 to 22 years old, five-feet seven-inches tall, and 130  
7 pounds, wearing a baseball cap, blue jeans, and dark jacket. Mary did not believe that either of the  
8 gunmen lived in the projects, although she thought she had seen them once or twice in the area since  
9 the shooting. Mary also drew a rough sketch of the shooting, which did not include any streetlights.<sup>53</sup>

10 On July 26, 1990, Mary spoke again to Inspectors Gerrans and Crowley, this time at the police  
11 station.<sup>54</sup> Mary selected Caldwell's photograph from a six-person array as the shotgun shooter.<sup>55</sup>  
12 Mary added that she recently "heard they call him Twan."<sup>56</sup> Mary also told the inspectors that she had  
13 been threatened by Caldwell and his associates for talking to police. One such incident occurred as  
14 Mary was walking home from the bus stop after midnight, having just finished working a swing shift.  
15 As she walked past the basketball court, she spotted Caldwell with a group of men and someone  
16 shouted, "If you talk anymore, we gonna 'f' you up, you and your family."<sup>57</sup> Caldwell threatened her  
17 another time, this time while standing outside her apartment when she was about to leave for work, by  
18 saying "If you talk anymore, we're gonna 'f' you up."<sup>58</sup> Mary told her son to lock the door behind her  
19 and went to work.<sup>59</sup>

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21 <sup>51</sup> AR at pp. 1065-1666, 1389, 1623. At trial, Mary testified that she only observed an officer standing  
22 in her doorway. (AR at p. 5415.)

23 <sup>52</sup> AR at pp. 1390-1392; 8536-8537.

24 <sup>53</sup> AR at pp. 1389-1405; 6530.

25 <sup>54</sup> AR at pp. 4828-4844.

26 <sup>55</sup> AR at pp. 4846-4848.

27 <sup>56</sup> AR at p. 4829.

28 <sup>57</sup> AR at pp. 4834-4835.

<sup>58</sup> AR at p. 4836.

<sup>59</sup> AR at p. 4836.

1           Shortly after this interview, law enforcement relocated Mary and her sons from their apartment  
2 to a different public housing project.<sup>60</sup> Thereafter, Mary identified Caldwell as the shotgun shooter  
3 several more times, including at an in-person lineup on October 29, 1990, the preliminary hearing on  
4 December 3, 1990, and the trial on March 11, 1991.<sup>61</sup> When describing the shooting, Mary testified  
5 that the shotgun shooter stood under a streetlight when firing at the victim's car as it drove away.<sup>62</sup>  
6 The jury learned of Mary's relocation, which she explained had been suggested by the inspectors, and  
7 she denied asking for anything in return for her assistance.<sup>63</sup>

## 8                           **2. Caldwell's Statements to Police**

9           On July 13, 1990, the same day as Mary's first statement to police, Sergeant Crenshaw  
10 interviewed Caldwell. According to Sergeant Crenshaw's notes, Caldwell allegedly stated that he was  
11 present at the shooting but was not involved.<sup>64</sup>

12           After his arrest on September 21, 1990, Inspectors Crowley and Gerrans interviewed Caldwell,  
13 which was recorded. Caldwell denied being present when the shooting occurred or making a contrary  
14 statement to Sergeant Crenshaw. At the time shots were fired, Caldwell claimed to have been in bed  
15 with a female, whose last name he denied knowing, while in his aunt's house, whose last name he  
16 also denied knowing, which was located possibly in the 800 block of Ellsworth Street. He insisted by  
17 the time he arrived on scene that the victim's car had already left the area. Caldwell denied knowing  
18 who fired the handgun. He also denied threatening anyone for speaking to police about the  
19 shooting.<sup>65</sup>

## 20                           **3. Caldwell's Witnesses**

21           One week later on September 27, 1990, Inspector Gerrans spoke to Caldwell's aunt, Deborah  
22 R. (Deborah). According to the inspector's notes, Deborah stated that Caldwell ran out of her house  
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24 <sup>60</sup> AR at p. 5422.

25 <sup>61</sup> AR at pp. 5004-5005, 5155-5158, 5396-5414.

26 <sup>62</sup> AR at pp. 5403, 5429-5430, 5458-5459, 6448.

27 <sup>63</sup> AR at p. 5422.

28 <sup>64</sup> AR at p. 4552.

<sup>65</sup> AR at pp. 4864-4945, 8536.

1 “half naked, no shirt on just pants, no shoes” after the shooting ended.<sup>66</sup> At trial, Deborah testified,  
2 instead, that Caldwell “had a t-shirt on, ... just no shirt.”<sup>67</sup> Deborah also testified that Caldwell lived in  
3 the Alemany Projects with Betty Jean T. (Betty Jean) next door to eyewitness Mary.<sup>68</sup> Deborah further  
4 testified that several people were inside her home when the shots were fired, including her friend  
5 Jacqueline W. (Jacqueline) and Henry M. (Henry).<sup>69</sup> She added that someone named “Meritt  
6 Funches” later admitted to her that he fired the pistol that struck Judy.<sup>70</sup>

7 On September 27, 1990, Inspector Garrans also spoke to Deborah’s friend Jacqueline, and  
8 their conversation was recorded. According to the transcript, Jaqueline stated that, when the shooting  
9 occurred, Caldwell ran out the door wearing only “pants” and “he didn’t have on a shirt either....”<sup>71</sup>  
10 She confirmed he was “bare chested.”<sup>72</sup> Jaqueline did not testify at Caldwell’s trial.

11 Several months later on January 10, 1991, Inspector Gerrans interviewed Alice C., who was a  
12 friend of Caldwell’s family. Alice stated that she was present when the shooting occurred and  
13 identified “Merritt” as the person who shot the victim with a handgun during a drug transaction.<sup>73</sup> Alice  
14 denied seeing Caldwell during the shooting, claiming that she next spotted him about 20 minutes later  
15 as he was leaving Deborah R.’s house. Alice generally repeated this version of events when testifying  
16 at trial, adding that Caldwell may have been wearing a t-shirt when she saw him a couple hours later.<sup>74</sup>  
17 Alice denied seeing anyone with a shotgun that night and insisted all shots were fired from Merrit’s  
18 handgun.<sup>75</sup>

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20 <sup>66</sup> AR at p. 1350.

21 <sup>67</sup> AR at p. 5650.

22 <sup>68</sup> AR at pp. 5653, 5656, 5659. Incidentally, Betty Jean also testified at trial that Caldwell lived with her  
in her apartment on Ellsworth Street located next door to Mary. (AR at p. 6449.)

23 <sup>69</sup> AR at p. 5647.

24 <sup>70</sup> AR at p. 6450.

25 <sup>71</sup> AR at pp. 4950-4951.

26 <sup>72</sup> AR at p. 4951.

27 <sup>73</sup> AR at pp. 1511-1515, 5008.

28 <sup>74</sup> AR at pp. 5680-5689.

<sup>75</sup> AR at pp. 5688-5692.

1           **C. Other Suspects**

2           On October 17, 1990, shortly after Caldwell’s arrest but before trial, Caldwell’s attorney told  
3 police that Caldwell had named Henry as the shotgun shooter and Marritte Funches (Funches) as the  
4 handgun shooter. At the time of the shooting, Henry was approximately 34 years old, five feet and  
5 eight inches tall, 170 pounds, with short hair.<sup>76</sup> Henry was a homeless drug addict, who had been  
6 released from prison in 1987 for a forcible rape conviction that required him to register as a sex  
7 offender.<sup>77</sup> Funches was 19 years old, a drug dealer, and Caldwell’s “best friend,” though both  
8 claimed to have a falling out shortly before the shooting.<sup>78</sup> The inspectors searched extensively for  
9 Henry and Funches but were unable to locate them. Nevertheless, in late October 1990, the  
10 inspectors showed photographs of Henry and Funches to Mary and the surviving victims. None  
11 identified either Henry or Funches as the gunmen. Mary recognized Funches from “around” and  
12 expressly denied that he was the handgun shooter.<sup>79</sup>

13           The jury ultimately convicted Caldwell as charged for the murder of Judy, attempted murder of  
14 Domingo, and shooting at their occupied vehicle. No charges were ever filed against Funches.

15           **D. Post-Conviction Evidence Through 2019**

16           Over the next two decades, Caldwell gathered evidence in support of his petition for habeas  
17 relief, motion for a finding of factual innocence, civil rights complaint, and claim for compensation  
18 under Penal Code section 4900. As summarized below, the evidence largely fell within the following  
19 three categories: (1) impeachment of eyewitness Mary, (2) Caldwell’s alibi defense, and (3) alternate  
20 suspects.

21           **1. Proffered Impeachment Evidence**

22           In an effort to show Mary’s identification was financially motivated, Caldwell presented  
23 evidence showing that Mary received some cash and a new job several months after Caldwell’s  
24 convictions. Specifically, on May 1, 1991, several months after Caldwell’s convictions, the San

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25 <sup>76</sup> AR at pp. 2262, 4506-4507, 4978-4979, 6161, 6225.

26 <sup>77</sup> AR at pp. 34, 1301, 1655, 2262; see also FSE at p. 255.

27 <sup>78</sup> AR at pp. 1020, 1024-1025, 3240.

28 <sup>79</sup> AR at pp. 1546, 1558-1559, 4505-4507, 4978-4979, 7276, 7279, 8538.

1 Francisco District Attorney nominated Mary for a commendation by the Mayor for the hardships she  
2 endured to assist with the prosecution of his case.<sup>80</sup> For instance, Mary required police escorts to and  
3 from the courthouse for her testimony, which occurred shortly after a witness in another gang case  
4 was murdered.<sup>81</sup> The Mayor agreed with the District Attorney's recommendation and, in September  
5 1991, awarded Mary the City's Medal of Merit with \$1,000 cash, \$150 gift certificate, and a watch.<sup>82</sup>  
6 Mary also received tickets to Disneyland from the San Francisco Secret Witness Program, plus airfare  
7 provided courtesy of United Airlines, after prompting by the Mayor's office.<sup>83</sup> Though Mary already had  
8 a job when the crimes occurred, the Mayor assisted her in obtaining a better job at the airport, after  
9 which Mary soon promoted.<sup>84</sup> Mary continued working there for four more years without complaint,  
10 even after health complications required her to use an oxygen tank that she lugged on public  
11 transport.<sup>85</sup> In 1998, Mary died at the age of 37 due to health complications.

12 In an effort to undermine the accuracy of Mary's perception, Caldwell presented evidence to  
13 challenge her ability to observe the streetlight that illuminated the shotgun shooter from her bedroom  
14 window. This included a declaration and testimony from Caldwell's habeas attorney Paige Kaneb  
15 (Kaneb), who stated that she was unable to view the light pole after looking out Mary's window, albeit  
16 years after the shooting.<sup>86</sup> While the Alemany Projects underwent extensive renovations around the  
17 time of shooting, Kaneb confirmed with the city that no significant changes were made thereafter that  
18 would have altered the view. Also, Caldwell insisted in his declarations and testimony that he lived  
19 with Betty Jean next door to Mary, contrary to Mary's description that the shooters did not live in the  
20

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21 <sup>80</sup> AR at pp. 1375-1376,

22 <sup>81</sup> AR at pp. 1408, 4850, 4851. In an article published years later, Mary described her fear of  
23 retaliation for assisting the police, including some of the threats she received, but she explained her  
24 decision to do so anyway in order to set an example for her sons. (AR at pp. 1405-1408, 2204.)

25 <sup>82</sup> AR at p. 2204.

26 <sup>83</sup> AR at pp. 2204, 8531, 6248.

27 <sup>84</sup> AR at pp. 2204-2205.

28 <sup>85</sup> AR at pp. 2205.

<sup>86</sup> AR at pp. 6587-6588; CalVCB Hearing, held on May 9, 2017, afternoon session (05/09/2017 PM),  
saved as MP3 audio recording, at 1:54:41-3:29:15.

1 neighborhood. Caldwell could not recall the amount he paid in rent to Betty Jean. Caldwell admitted  
2 that he sold crack cocaine and Betty Jean was addicted to crack cocaine, but he insisted that he  
3 stopped selling drugs before the shooting occurred.<sup>87</sup>

4 In a related vein, Caldwell presented evidence attacking the integrity of the San Francisco  
5 Police Department generally and the investigating officers specifically, all in an effort to show that  
6 Mary's identification was falsely induced by law enforcement. This included Caldwell's complaint  
7 against Sergeant Crenshaw in January 1990, Sergeant Crenshaw's exchange with Inspector Gerrans  
8 at Mary's door during her first interview, the Ninth Circuit's finding of a triable issue as to whether  
9 Sergeant Crenshaw fabricated evidence, and subsequent changes to police department policy for  
10 resolving misconduct complaints.

## 11 **2. Alibi Defense**

12 Caldwell also presented declarations and testimony from different witnesses to bolster his alibi  
13 defense. His aunt Deborah, who was addicted to crack cocaine in 1990, testified by telephone at the  
14 CalVCB hearing that Caldwell was in her home, upstairs in a bedroom with a female named "Tina,"  
15 when the shooting occurred, after which he went outside wearing a "white t-shirt tank top." Deborah  
16 acknowledged describing Caldwell as "half-naked" to police but insisted she meant that he had on a t-  
17 shirt but no outer shirt.<sup>88</sup>

18 Tina M. (Tina), who had an expunged conviction for check fraud, testified at the CalVCB  
19 hearing that she was in bed with Caldwell at Deborah's home when the shooting occurred, after which  
20 Caldwell put on a "wife beater" t-shirt and left. Tina insisted she clearly recalled the day, as it was her  
21 17<sup>th</sup> birthday. She added it was not unusual for people in their community to not know each other's full  
22 name.<sup>89</sup>

23 Caldwell similarly insisted, in his 2009 and 2013 declarations, as well as his deposition  
24 testimony and testimony at the CalVCB hearing, that he was upstairs with Tina when the shooting  
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26 <sup>87</sup> AR at p. 1342, CalVCB Hearing (05/09/2017 PM) at 37:51-51:36.

27 <sup>88</sup> CalVCB Hearing (05/09/2017 PM) at 1:05:33-1:28:15.

28 <sup>89</sup> CalVCB Hearing (05/09/2017 PM) at 1:30:10-1:53:38.

1 occurred, after which he put on pants and a tank top before going outside. Contrary to his 2009  
2 declaration, Caldwell claimed that he spotted Henry holding a shotgun but did not see him fire it.  
3 Caldwell next spotted Funches, with whom he no longer got along, and asked him what happened, but  
4 Funches allegedly replied it was none of his business. Thereafter, Caldwell went back inside  
5 Deborah's home.<sup>90</sup>

### 6 **3. Alternate Suspects**

7 Caldwell presented additional evidence implicating Henry as the shotgun shooter and Funches  
8 as the handgun shooter. Notably, Caldwell stated in his 2009 declaration that he observed Henry "fire  
9 one shot" from a shotgun, but in his 2013 declaration, Caldwell stated that he only saw Henry "running  
10 away with a shotgun."<sup>91</sup> At the CalVCB hearing, Caldwell attributed this inconsistency to a drafting  
11 oversight by his habeas counsel Kaneb, which he neglected to notice before signing.<sup>92</sup> In both  
12 declarations, Caldwell stated that he "learned" from others that Funches, who was then serving a  
13 sentence of life without possibility of parole (LWOP) in Nevada for a 1991 murder, was the handgun  
14 shooter.<sup>93</sup> Declarations from Caldwell's associates likewise implicated Henry as the shotgun shooter  
15 and Funches as the handgun shooter, though one declarant specifically noted that Henry wore a jacket  
16 when firing the shotgun.<sup>94</sup>

17 While imprisoned out-of-state, Funches admitted in his 2008 and 2009 declarations and 2015  
18 deposition that he fatally shot the victim in the chest with a handgun, though supposedly only after the  
19 victim threatened him with a butterfly knife.<sup>95</sup> Funches denied that Caldwell was the shotgun shooter,  
20 but he initially declined to identify who was, only later claiming during his deposition that it was Henry.  
21 Significantly, Funches admitted that he had planned to kill eyewitness Mary after learning she had

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22  
23 <sup>90</sup> CalVCB Hearing, held on May 9, 2017, morning session (05/09/2017 AM), saved as MP3 audio  
24 recording, at 1:22:46-2:26:33; CalVCB Hearing (05/09/2017 PM) at 0:00:48-1:04:51; AR at pp. 1016-  
1021; 1341-1349; 7078.

25 <sup>91</sup> AR at pp. 1016-1021, 1341-1348.

26 <sup>92</sup> CalVCB Hearing (05/09/2017 PM) at 10:03-18:30, 36:25-36:50.

27 <sup>93</sup> See *Funches v. State* (1997) 113 Nev. 916, 944 P.2d 775.

28 <sup>94</sup> AR at pp. 1230-1234 (Maurice T. declaration); 1248-1251 (Demetrius J. declaration).

<sup>95</sup> AR at pp. 1023-1025, 1026-1027, 6778-7042.



1 spoken to police and further confirmed that Mary received at least one written threat. Funches added  
2 that Caldwell “did not know the specifics” of his plan to kill Mary, but Caldwell “knew that Marrantte would  
3 do whatever it took.”<sup>96</sup>

4 Other evidence in the administrative record undermined Caldwell’s theory that Henry and  
5 Funches were the shooters. Henry was 34 years old at the time of the shooting, much older than the  
6 description provided by the victims and Mary, whereas Caldwell was 23 years old.<sup>97</sup> Caldwell was an  
7 admitted crack cocaine seller, which was the same activity engaged in by the shotgun shooter,  
8 whereas Henry was a drug addict. Caldwell repeatedly testified at the CalVCB hearing that Martin, like  
9 the shotgun shooter described by Mary, “never wears a shirt,” but Caldwell claimed in his 2015  
10 deposition that Martin wore a shirt that night.<sup>98</sup> Meanwhile, Caldwell’s own witnesses initially  
11 described his attire as “half naked” with “no shirt.” Neither Mary nor the victims identified Henry or  
12 Funches as one of the shooters after being shown their photographs in October 1990, and Mary  
13 affirmatively excluded Funches as the handgun shooter.<sup>99</sup> Mary’s eldest son corroborated the threats  
14 their family received from Caldwell when speaking to police in 2010, noting he and his younger brother  
15 were called “snitch” and someone said, “I’ll play baseball with your heads.”<sup>100</sup> These threats were  
16 further corroborated by Funches’ frightening admissions. Also, Caldwell’s aunt Deborah inexplicably  
17 testified at trial that Henry was inside her home when the shooting occurred, along with Caldwell.<sup>101</sup>

18 Notably, Henry’s 2015 declaration from the civil rights litigation admitted that he witnessed the  
19 shooting, but unequivocally denied that he fired any gun, and opined that Caldwell had falsely  
20 implicated him as the shotgun shooter to “protect[ ] himself or the actual shooter.”<sup>102</sup> Henry did not

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22 <sup>96</sup> AR at pp. 3342, 6801, 7001-7002; CalVCB Hearing (05/09/2017 PM) at 0:00:48-1:04:51. Portions of  
23 Funches’ deposition testimony were read aloud by Caldwell’s counsel during the CalVCB hearing.  
(CalVCB Hearing, conducted May 30, 2017, in the morning (05/30/2017 AM) at 07:55-49:21.)

24 <sup>97</sup> AR at p. 7471

25 <sup>98</sup> AR at pp. 3517-3518; CalVCB Hearing (5/9/2017 PM) at 0:00:48-1:04:51.

26 <sup>99</sup> AR at pp. 7276, 7279.

27 <sup>100</sup> AR at p. 3245.

28 <sup>101</sup> AR at p. 5647.

<sup>102</sup> AR at pp. 8571; FSE at p. 258.

1 name either of the shooters, but he did confirm that the shotgun shooter was “not wearing a shirt” and  
2 was “bare back.”<sup>103</sup> Henry added that Caldwell offered him money if he testified that Caldwell was not  
3 the shooter. In the declaration’s preamble, Henry averred that the contents were based upon his  
4 personal knowledge “and if called upon to testify, could and would testify competently to the contents  
5 of this declaration.”<sup>104</sup>

6 After carefully considering all of the evidence in the administrative record, CalVCB denied  
7 Caldwell’s claim in 2019 for insufficient proof of innocence. When explaining his vote, Board Member  
8 Michael Tubbs remarked, “I think there is compelling evidence on both sides to cause doubt” and,  
9 therefore, “I can’t say I feel [by] a feather more that Mr. Caldwell is factually innocent, but I also can’t  
10 say [by] a feather more that he’s actually guilty.”<sup>105</sup>

11 The San Francisco Superior Court and Court of Appeal similarly concluded, in 2016 and 2018,  
12 respectively, that the proffered evidence failed to demonstrate Caldwell’s innocence by a  
13 preponderance as required for a finding of factual innocence under Penal Code section 1485.55. As  
14 the superior court explained, it “is not convinced by a preponderance of the evidence that Petitioner is  
15 innocent” considering the “inconsistent declarations and testimony presented over the 25-plus year  
16 history of this case.”<sup>106</sup> The appellate court likewise concluded, after a de novo review, that “the  
17 evidence supporting Caldwell’s contention that he was not the shotgun shooter is eclipsed by the  
18 evidence of his role in the murder.”<sup>107</sup> The appellate court affirmed “the trial court’s implicit finding that  
19 claimant’s testimony was not credible.”<sup>108</sup> Consequently, as the appellate court found, “Caldwell did  
20 not prove his innocence by a preponderance of the evidence.”<sup>109</sup>

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23 <sup>103</sup> FSE at p. 258.

24 <sup>104</sup> FSE at p. 257.

25 <sup>105</sup> FSE at pp. 221-222.

26 <sup>106</sup> AR at pp. 1606-1615.

27 <sup>107</sup> AR at pp. 1616; 8533-8558.

28 <sup>108</sup> AR at p. 8554.

<sup>109</sup> AR at p. 8556.

1           **E. Supplemental Evidence on Remand**

2           In this remanded administrative proceeding ordered by writ of mandate, Caldwell presents new  
3 evidence obtained after 2019. This evidence includes new deposition testimony from Inspectors  
4 Crowley and Gerrans. Specifically, Inspector Crowley opined that the shooters were 15 to 20 feet from  
5 Mary’s window.<sup>110</sup> Inspector Crowley noted that there were two streetlights at the end of each building  
6 where Mary lived, such that he “could see pretty clearly” when arriving on scene at approximately 4:00  
7 a.m. after the shooting, but he did not personally observe the scene from Mary’s window.<sup>111</sup> The new  
8 evidence includes photographic exhibits, which measure 73 feet from Mary’s window to the nearest  
9 lamp post, as well as a nighttime videorecording filmed in 2020 of the view from Mary’s former  
10 apartment, and an expert report regarding the visibility from Mary’s window.<sup>112</sup> It also includes various  
11 expert reports regarding ballistics, the fallibility of eyewitness identification, and discriminatory police  
12 practices that targeted young Black men. Additional expert evidence suggests that an audio cassette,  
13 which had been used to negate some of Caldwell’s complaints against Sergeant Crenshaw, had been  
14 physically altered. It further included a grant of habeas relief, without a finding of factual innocence, for  
15 an unrelated 1990 murder in San Francisco that was also investigated by Inspectors Crowley and  
16 Gerrans and relied upon eyewitness identification.<sup>113</sup>

17           Notably, the new evidence also includes a videotape and written transcript of an interview with  
18 Henry that was conducted by San Francisco Police Inspectors Spillane and Levy on October 14, 2015,  
19 the same day that Henry signed the declaration denying he was the shotgun shooter, as well as  
20 excerpts of Henry’s subsequent deposition in 2021. During the 2015 interview, consistent with his  
21 declaration, Henry described the shotgun shooter’s attire, without prompting, as “shirt off,” later  
22  
23

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24 <sup>110</sup> FSE at pp. 1248, 1250-1251.

25 <sup>111</sup> FSE at pp. 1248, 1253-1254.

26 <sup>112</sup> FSE at pp. 314, 335, 658-668.

27 <sup>113</sup> FSE at pp. 1935-2178. CalVCB approved compensation under Penal Code section 4900,  
28 subdivision (b), for this unrelated murder case cited by Caldwell. (*In re Joaquin Ciria*, Claim No. 22-  
ECO-17, decided September 15, 2022; see also Cal. Code Regs. Tit. 2, § 617.8 (official notice).)

1 confirming the shooter was “bare chested.”<sup>114</sup> Henry added that the initial shots were fired by  
2 someone likely holding a handgun, though he insisted that he was too far away to see. Henry further  
3 insisted that he did not recognize either shooter. Henry mentioned a telephone conversation with  
4 Caldwell, after Caldwell had been released from prison, “trying to use me, but like I told him I just  
5 basically hung up the phone on him when he started telling me that it could be some money in it for  
6 me....”<sup>115</sup> Henry insisted he did not fire any weapons that night and accused Caldwell of “using me as  
7 a scapegoat to get an appeal.”<sup>116</sup> At the conclusion of the interview, the investigators acknowledged  
8 helping Henry, who was then homeless, update his sex offender registration that was out of  
9 compliance, and the investigators agreed to inquire whether expungement of his underlying sex  
10 conviction may be possible.<sup>117</sup>

11 Years later, during his 2021 deposition, Henry disputed the preamble to his declaration,  
12 insisting that “I never made that statement that I would testify in a court of law....”<sup>118</sup> While  
13 emphasizing that he had “no recollection of things that happened during this time at all,” Henry denied  
14 seeing the handgun shooter fire at the victim in the chest, claiming he was too far away.<sup>119</sup> Henry  
15 similarly denied any recollection of Caldwell offering him money for anything.<sup>120</sup> Henry was “pretty  
16 sure about seeing somebody with a big gun,” although he did not remember whether the shooter was  
17 wearing a shirt.<sup>121</sup> Henry continued to deny seeing who fired the handgun or the shotgun.

#### 18 **IV. 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  
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22 <sup>114</sup> FSE at p. 271.

23 <sup>115</sup> FSE at p. 271.

24 <sup>116</sup> FSE at pp. 271-272.

25 <sup>117</sup> FSE at pp. 254-255, 278-279.

26 <sup>118</sup> FSE at p. 283.

27 <sup>119</sup> FSE at pp. 283, 284-285, 295.

28 <sup>120</sup> FSE at p. 288.

<sup>121</sup> FSE at pp. 283, 287.

1 CalVCB. Typically, claimants bear the burden to prove by a preponderance that (1) the crime with  
2 which they were convicted either did not occur or was not committed by them and (2) they suffered  
3 injury as a result of their erroneous conviction.<sup>122</sup> If the claimant satisfies their burden for both  
4 elements, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the  
5 injury if sufficient funds are available, upon appropriation by the Legislature.<sup>123</sup> Payment is calculated  
6 at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.<sup>124</sup>

7 Effective January 2022, CalVCB's approval is mandated by subdivision (b) of Penal Code  
8 section 4900 for certain claimants, even without a preponderance of evidence that the claimant did not  
9 commit the crime for which they were convicted.<sup>125</sup> Specifically, subdivision (b) compels approval of  
10 the claim for compensation, without a hearing and within 90 days, when the following three elements  
11 are met. First, the claimant's conviction must have been vacated either by a writ of habeas corpus or  
12 pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying  
13 the vacated conviction must have been dismissed on remand, or the claimant must have been  
14 acquitted upon retrial. Third, the Attorney General must decline to object to the claim in this  
15 administrative proceeding.<sup>126</sup> If all three elements are satisfied, and CalVCB finds that the claimant  
16 sustained injury through their erroneous conviction, then CalVCB shall approve payment for the  
17 purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation  
18 by the Legislature.<sup>127</sup> CalVCB's approval of the claim is statutorily required, regardless of whether or  
19 not the record proves the claimant is more likely innocent than guilty.

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

23 \_\_\_\_\_  
24 <sup>122</sup> Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 <sup>123</sup> Pen. Code, § 4904.

26 <sup>124</sup> Pen. Code, § 4904.

27 <sup>125</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

28 <sup>126</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

<sup>127</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the  
2 acts constituting the offense.<sup>128</sup> To meet that burden, the Attorney General may not rely solely on the  
3 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.<sup>129</sup>  
4 If the Attorney General fails to meet this burden following a hearing on the claim, then CalVCB shall  
5 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient  
6 funds are available upon appropriation by the Legislature.<sup>130</sup>

7 **A. Innocence**

8 Here, Caldwell’s claim falls within the mandatory approval provision of subdivision (b) of Penal  
9 Code section 4900, as all three of the required elements are met. First, Caldwell’s convictions for  
10 murder, attempted murder, and shooting at an occupied vehicle in case number 138408 were vacated  
11 pursuant to a writ of habeas corpus. Second, all charges against Caldwell were subsequently  
12 dismissed upon remand after the superior court excluded the prior testimony of the deceased  
13 eyewitness. Third, the Attorney General ultimately declined to object in this administrative proceeding.  
14 Consequently, CalVCB is required by subdivision (b) to approve compensation for the injury sustained  
15 by Caldwell if sufficient funds are available, upon appropriation by the Legislature.<sup>131</sup> No finding is  
16 made as to the relative weight of inculpatory and exculpatory evidence contained in the administrative  
17 record as augmented upon reconsideration.

18 **B. Injury**

19 By statute, the amount of compensation “shall be a sum equivalent to one hundred forty dollars  
20 (\$140) per day of incarceration served, and shall include any time spent in custody, including a county  
21 jail, that is considered to be part of the term of incarceration.”<sup>132</sup> This compensation is “for the purpose  
22 of indemnifying the claimant for the injury” sustained “through their erroneous conviction and  
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24  
25 <sup>128</sup> Pen. Code, § 4902, subd. (d).

26 <sup>129</sup> Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).

27 <sup>130</sup> Pen. Code, §§ 4903, subd. (d), 4904.

28 <sup>131</sup> Pen. Code, §§ 4900, subd. (b), 4904.

<sup>132</sup> Pen. Code, § 4904.

1 imprisonment....”<sup>133</sup> The requisite injury “may be established by showing that, but for the erroneous  
2 conviction, the claimant would not have been in custody.”<sup>134</sup>

3 Here, as requested by Caldwell and conceded by the Attorney General, Caldwell’s injury  
4 amounts to \$1,049,160, representing \$140 per day of his 7,494 days imprisonment. This custodial  
5 calculation includes the date of Caldwell’s arrest on September 21, 1990, through and including the  
6 date of his release on March 28, 2011.<sup>135</sup> But-for his erroneous convictions for murder, attempted  
7 murder, and shooting at an occupied vehicle in case number 138408, Caldwell would have been free  
8 for all 7,494 days of his imprisonment.

9 **V. Conclusion**

10 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer  
11 recommends that CalVCB grant Caldwell’s claim and approve payment in the amount of \$1,049,160, if  
12 sufficient funds are available,<sup>136</sup> upon appropriation by the Legislature, as indemnification for the injury  
13 sustained by his 7,494 days of imprisonment solely as a result of his vacated convictions for murder,  
14 attempted murder, and shooting at an occupied vehicle.

15 Date: February 14, 2024



16 \_\_\_\_\_  
17 Laura Simpton  
18 Hearing Officer  
19 California Victim Compensation Board  
20

21 \_\_\_\_\_  
22 <sup>133</sup> Pen. Code, § 4904.

23 <sup>134</sup> Cal. Code of Regs., tit. 2, § 640, subd. (f).

24 <sup>135</sup> Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th 882,  
25 886 (construing “days” for custody credit to include partial days)).

26 <sup>136</sup> Of the initial \$7 million appropriated by Senate Bill 101 (i.e., the Budget Act of 2023) for CalVCB’s  
27 payment of approved claims under Penal Code section 4900, no funds currently remain. Nonetheless,  
28 as Senate Bill 101 recognized, “Upon order of the Department of Finance, [this] amount ... may be  
increased by an amount not in excess of any total unpaid claim amounts pursuant to Sections 4900  
and 4904 of the Penal Code.” (S.B. 101, Ch. 12 at p. 853.) Accordingly, any additional appropriations  
will be applied to outstanding claims, in the order approved, absent a contrary directive from the  
Legislature or Department of Finance.

# ITEM 10



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

8  
9 In the Matter of:

10 **Miguel Solorio**

11 Claim No. 24-ECO-04

**Proposed Decision**

**(Penal Code §§ 1485.55, 4900 et seq.)**

12 **I. Introduction**

13 On January 9, 2024, Miguel Solorio (Solorio) submitted an application<sup>1</sup> for compensation to the  
14 California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to  
15 Penal Code section 4900, which was supplemented on January 23, 2024,<sup>2</sup> and February 22, 2024.<sup>3</sup> In  
16 this claim, Solorio requests compensation for 9,003 days of erroneous imprisonment for his vacated  
17 convictions for murder and assault with a deadly weapon in Los Angeles County Superior Court case  
18 number VA053386 based on the court's order granting his petition for writ of habeas corpus followed  
19

20 \_\_\_\_\_  
21 <sup>1</sup> Solorio's Application (App.) included an Erroneously Convicted Person Claim Form; a minute order  
22 from August 28, 2000; the August 28, 2000, abstract of judgment; the Joint Motion to File the Motion for  
23 Factual Innocence under Seal; the Order granting the Motion to File the Motion for a Finding of Factual  
24 Innocence Under Seal, the Joint Motion for a Finding of Factual Innocence, and the Finding of Factual  
25 Innocence.

26 <sup>2</sup> The clarification provided on January 23, 2024, hereinafter referred to as "Clar." includes: Solorio's  
27 petition for writ of habeas corpus; letters from the District Attorney's Office dated October 13, October  
28 18, and November 7, 2023; the order granting Solorio's petition for writ of habeas corpus; selected  
reporter's transcripts from the original trial; documentation confirming Solorio's December 9, 1998  
arrest and November 13, 2023 release from custody; statement of probable cause from the original  
investigation; and supplemental police reports from December 9 and 10, 1998.

<sup>3</sup> The supplemental document provided on February 22, 2024, hereinafter referred to as "Supp.",  
included a nunc pro tunc minute order confirming Solorio was found factually innocent of all charges in  
this case.

1 by the parties' joint motion for a finding Solorio was factually innocent of all charges. Solorio is  
2 represented by Sarah Pace of the Northern California Innocence Project. The Attorney General's  
3 Office is represented by Dina Petrushenko. The matter was assigned to CalVCB Senior Attorney  
4 Caitlin Christian. As mandated by Penal Code section 1485.55, it is recommended that the CalVCB  
5 approve Solorio's claim in the amount of \$1,260,420 as indemnification for the injury sustained through  
6 these erroneous convictions if sufficient funds are available upon appropriation by the Legislature.<sup>4</sup>

## 7 **II. Procedural Background**

### 8 **A. Solorio's Erroneous Conviction**

9 On December 9, 1998, Solorio was arrested for the charges later filed against him in Los  
10 Angeles County Superior Court case number VA053386.<sup>5</sup> He was released on December 11, 1998,  
11 after three days of imprisonment. On March 25, 1999, Solorio was arrested again, and charges in case  
12 number VA053386 were filed against him.<sup>6</sup>

13 On March 3, 2000, after a two-and-a-half week jury trial and three days of deliberation,<sup>7</sup> a jury  
14 found Solorio guilty of one count of first-degree murder with a special circumstance finding that this  
15 crime was committed by discharging a firearm from within a vehicle and an enhancement for the  
16 discharge of a firearm that resulted in another's death, six counts of assault with a firearm, and  
17 enhancements as to all seven counts for the personal use of a firearm and committing these crimes for  
18 the benefit of a criminal street gang.<sup>8</sup> On August 28, 2000, Solorio was sentenced to life without the  
19 possibility of parole for murder plus another 39 years and eight months to life in prison for the

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20  
21 <sup>4</sup> Pen. Code, §§ 1485.55, subs. (b)-(c), 4904. Of the initial \$7 million appropriated by Senate Bill 101  
22 (i.e., the Budget Act of 2023) for CalVCB's payment of approved claims under Penal Code section  
23 4900, no funds currently remain. Nonetheless, as Senate Bill 101 recognized, "Upon order of the  
24 Department of Finance, [this] amount ... may be increased by an amount not in excess of any total  
unpaid claim amounts pursuant to Sections 4900 and 4904 of the Penal Code." (S.B. 101, Ch. 12 at p.  
25 853.) Accordingly, any additional appropriations will be applied to outstanding claims, in the order  
26 approved, absent a contrary directive from the Legislature or Department of Finance.

25 <sup>5</sup> Clar. at p. 302.

26 <sup>6</sup> App. at p. 16.

27 <sup>7</sup> Clar. at p. 30.

28 <sup>8</sup> Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(21), 245, subd. (a)(2), 12022.5, subd. (a), 12022.53,  
subs. (b)-(e), and 186.22, subd. (b); Clar. at p. 223.

1 remaining assault convictions.<sup>9</sup>

2 On October 30, 2001, the Court of Appeal affirmed Solorio's convictions and sentence in full.<sup>10</sup>

3 **B. Post-Conviction Relief was Granted**

4 On July 28, 2023, Solorio filed a petition for writ of habeas corpus in the Los Angeles County  
5 Superior Court, requesting the court vacate his convictions and order he be released from custody  
6 based on new evidence establishing his innocence and ineffective assistance of counsel at his original  
7 trial. In letters dated October 13 and 18, 2023, the Los Angeles County District Attorney's Office  
8 "emphatically" conceded Solorio was entitled to habeas relief based on new evidence of his innocence  
9 and announced no new charges would be filed against him.<sup>11</sup> On November 7, 2023, the Conviction  
10 Integrity Unit, a unit within the Los Angeles County District Attorney's Office, also filed a "joint  
11 concession letter," signed by the District Attorney's Office and counsel for Solorio, requesting the court  
12 vacate and set aside all of Solorio's convictions in Los Angeles County Superior Court case number  
13 VA053386 with orders dismissing the case and that Solorio be released from custody based on  
14 evidence of third party culpability.<sup>12</sup>

15 On November 9, 2023, the superior court granted Solorio's petition for writ of habeas corpus,  
16 vacated and set aside his convictions, and dismissed the charges against him with prejudice.<sup>13</sup> Solorio  
17 was ordered to be released. On November 13, 2023, 9,000 days after his March 25, 2000, arrest,  
18 Solorio was released from custody.

19 On December 11, 2023, the parties filed a joint motion for a finding of factual innocence,  
20 requesting the superior court issue an order finding Solorio factually innocent of the shooting that  
21 resulted in his convictions in Los Angeles County Superior Court case number VA053386.<sup>14</sup>  
22 Specifically, the parties agreed Solorio was not in the car during, nor did he commit, the shooting that

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23  
24 <sup>9</sup> App. at pp. 13-15.

25 <sup>10</sup> App. at p. 24; Clar. at pp. 8, 223.

26 <sup>11</sup> Clar. at pp. 248, 251.

27 <sup>12</sup> Clar. at pp. 253, 269.

28 <sup>13</sup> App. at p. 24; Clar. at pp. 271-272.

<sup>14</sup> Pen. Code, § 1485.55, subd. (b).

1 resulted in the victim's death. On December 13, 2023, the court adopted the parties' proposed order,  
2 finding Solorio factually innocent of murder.<sup>15</sup> The order did not mention the related assault charges.

### 3 **C. Solorio's Erroneously Convicted Person Claim**

4 On January 9, 2024, Solorio submitted an Erroneously Convicted Person Claim Form  
5 requesting compensation in the amount of \$1,260,420 for the 9,003 days he was imprisoned solely for  
6 his erroneous conviction.<sup>16</sup> At CalVCB's request, his application was supplemented with additional  
7 supporting documents on January 22, 2024.

8 On January 23, 2024, Solorio's claim was filed, and the Attorney General's Office was invited to  
9 provide a response on the issue of injury only. That same day, the Attorney General's Office indicated  
10 it had no objection to Solorio's calculation he was erroneously imprisoned for a total of 9,003 days.

11 On January 24, 2024, Solorio requested the Board consider his claim at its January 31, 2024,  
12 board meeting. On January 26, 2024, Solorio's request was denied with notice that his claim could not  
13 be considered until the March 21, 2024, board meeting.

14 On February 13, 2024, CalVCB requested counsel for Solorio provide documentation  
15 confirming he was found factually innocent of all charges in the underlying case. On February 22,  
16 2024, Solorio provided a nunc pro tunc minute order, issued on February 22, 2024, confirming Solorio  
17 was found factually innocent of all charges in Los Angeles County Superior Court case number  
18 VA053386.<sup>17</sup>

## 19 **III. Factual Background**

### 20 **A. The Crime**

21 On December 6, 1998, Martin L. and five friends were driving around, looking for marijuana,  
22 when they spotted an old, beat-up, light blue Mercury Zephyr ("the Mercury") parked under a freeway  
23 overpass. Mistaking the Mercury's passengers for two other friends, Martin pulled up beside the  
24

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25  
26 <sup>15</sup> App. at pp. 47-48.

27 <sup>16</sup> App. at p. 3.

28 <sup>17</sup> Supp. 1.

1 Mercury.<sup>18</sup> The Mercury's driver immediately asked Martin's passengers where they were from and,  
2 moments later, pulled out a foot-long black revolver. Martin sped off and, in his attempt to flee the  
3 pursuing Mercury, ran a red light at a near-by intersection.<sup>19</sup>

4 Mary B., who was on her way from a church event with two friends, was stopped at the red light  
5 when Martin sped through the intersection. Moments later, the Mercury pulled up beside Mary and idled  
6 in the left turn lane. A few seconds later, at around 11:00 p.m., someone in the Mercury began shooting  
7 at Mary. Mary was shot in the head and died at the hospital four days later. Mary's two passengers  
8 survived. Angelica, who was riding in Martin's car, looked back when she heard the gunshots and saw  
9 the Mercury in the left-hand turn lane.<sup>20</sup>

## 10 **B. Law Enforcement's Investigation**

### 11 **a. Events Leading to Solorio's Identification**

12 A few days later, Martin, a former gang member and convicted felon, sought out law  
13 enforcement and explained what happened. He described the Mercury and identified the driver as a  
14 member of the local street gang, Quiet Village, known as "Clever." Police interviewed all five of Martin's  
15 passengers: Angelica, Stephanie, Rose, Kelly, and Richard.<sup>21</sup> Richard told police he recognized the  
16 driver, Solorio, from prior confrontations at school. Stephanie said she, too, recognized the driver as  
17 "Clever."<sup>22</sup>

18 Police assembled a six-pack of photos, which included a photo of Solorio, who police confirmed  
19 was known as "Clever."<sup>23</sup> Martin pointed to a photo of someone other than Solorio, stating he kind of  
20 looked like the Mercury's driver. Angelica pointed to the same photo, stating the driver had similar head  
21 and facial hair. A new six-pack was created with a different photo of Solorio. Solorio was the only  
22 individual who appeared in both six-packs. When shown the second six-pack, Angelica identified

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23  
24 <sup>18</sup> Clar. at p. 33.

25 <sup>19</sup> App. at p. 26.

26 <sup>20</sup> App. at pp. 25-27.

27 <sup>21</sup> Clar. at p. 254.

28 <sup>22</sup> Clar. at pp. 254-255.

<sup>23</sup> Clar. at pp. 308, 310, 315.

1 Solorio as the driver, with the caveat the driver had more hair than Solorio did in the photo. After  
2 looking at the second six-pack for several minutes, Richard also identified Solorio.<sup>24</sup>

3 Neither Martin nor the three other passengers identified Solorio as the driver during their initial  
4 interviews. Yet, more than one month later, after a photo of Solorio was published in newspapers and  
5 broadcast on TV, Martin was shown the second six-pack again and told police he was “100% sure”  
6 Solorio was the Mercury’s driver.<sup>25</sup>

7 **b. Police Interviewed Silvia and Solorio**

8 Police interviewed Solorio’s girlfriend, Silvia,<sup>26</sup> three days after the shooting. In her recorded  
9 interview, Silvia told police she was with Solorio the entire night, and they rode only in her car that  
10 evening. They had dinner at Solorio’s house, went to see a movie, and, at around 10:30 p.m., joined  
11 Solorio’s family at his sister Sandra’s home. Shortly after they arrived, Solorio’s brother, Pedro, left with  
12 another man in his recently deceased father’s light blue car. Silvia and Solorio left soon after Pedro  
13 returned, at roughly 11:45 p.m. Silvia dropped Solorio off and went home. She and Solorio then chatted  
14 on the phone until 1:00 a.m. when they went to sleep.<sup>27</sup>

15 Solorio did not know about the shooting until the police told him what had occurred. Solorio  
16 waived his rights and shared with police that he was not involved in the shooting and spent all night  
17 with Silvia.<sup>28</sup> Silvia came to his house for dinner, he then rode in Silvia’s car to the movies, and then, at  
18 around 10:30 p.m., to Sandra’s house. They stayed at Sandra’s house until around 11:45 p.m., when  
19 Silvia drove him home. The two then talked on the phone until about 1:00 a.m. Solorio told police he  
20 rode only in Silvia’s car on the night of December 6.<sup>29</sup>

21 *///*

22 \_\_\_\_\_  
23 <sup>24</sup> Clar. at pp. 255-256.

24 <sup>25</sup> Clar. at pp. 254-255.

25 <sup>26</sup> Silvia was Solorio’s girlfriend at the time of the shooting; however, she and Solorio have now been  
26 married since 2004, four years after his conviction. (Clar. at p. 105.)

27 <sup>27</sup> Clar. at p. 259.

27 <sup>28</sup> Clar. at pp. 19, 256.

28 <sup>29</sup> Clar. at p. 256.

1                   **c. Police Arrested Solorio, Pedro, and Two Other Gang Members**

2                   On December 10, police arrested Solorio, Pedro, and two brothers who were also members of  
3 Quiet Village: Rafael and Edgar. Rafael and Edgar had a white car, which police suspected was the  
4 vehicle involved in the December 6 shooting. Police also searched all four of the men’s homes.

5                   Police left Solorio and Edgar alone in one room and Pedro and Rafael alone in another and  
6 surreptitiously listened in on and recorded their conversations. Solorio told Edgar that he was with Silvia  
7 at Sandra’s house on Sunday night. Solorio also admitted there were guns in his family’s home, but he  
8 did not know whether they were used in the December 6 shooting. Solorio and Edgar then began to  
9 whisper about their involvement in an unrelated shooting but said they were not concerned about  
10 Mary’s murder because they were not involved in the December 6 incident.<sup>30</sup>

11                  Pedro told Rafael he had a .357 caliber and .32 caliber gun at his house, which police would  
12 likely find if they conducted a search. Rafael disclosed the police told his girlfriend they recovered a .32  
13 caliber gun at Pedro’s house. Pedro laughed and said that was not the gun used in the December 6  
14 shooting.

15                  During the following interview, Pedro, who was known to drive his father’s light blue Mercury,  
16 admitted to driving “his car” to Sandra’s the night of December 6, and then leaving at around 10:30  
17 p.m.<sup>31</sup> The investigating officer did not ask any follow-up questions about the car. In subsequent  
18 interviews, Pedro “distanced” himself from the Mercury.<sup>32</sup>

19                   **d. Police Located the Mercury and the Firearm**

20                  Witnesses said the car the shooter rode in was white or tan, in “bad shape,” and had large  
21 brown, orange, or black panels on the sides. The light blue Mercury with tan panels police previously  
22 observed in front of the Solorio family’s home was registered to Solorio’s father, who, like Solorio, was  
23 also named Miguel. Martin and Angelica later confirmed the car they saw Clever driving on the night of  
24

25  
26 \_\_\_\_\_  
27 <sup>30</sup> Clar. at p. 258.

28 <sup>31</sup> Clar. at pp. 251, 263.

<sup>32</sup> Clar. at p. 263.

1 December 6 was the Mercury registered to Solorio's father.<sup>33</sup>

2 Two months after the shooting, Solorio was standing in a carport with several other members of  
3 Quiet Village. Police found a .357 caliber gun in the carport, which was later matched to the casing and  
4 bullet from the December 6 shooting. According to the other gang members who were in the carport,  
5 someone dropped off the gun earlier that day, and Solorio was aware the gun was in the carport.<sup>34</sup>

6 **C. Evidence Introduced at Trial**

7 Martin and Angelica both said Solorio, who was also called Clever, was in the driver's seat of  
8 his father's Mercury and pulled out a gun during their exchange with him. Martin said the driver was  
9 "definitely" Solorio, not Pedro, after Pedro, who was also in the courtroom, was pointed out. Angelica,  
10 who police later discovered was using a stolen identity, admitted Pedro and Solorio looked alike and,  
11 after seeing them both, was only 75% sure it was Solorio and not Pedro who was driving the Mercury.<sup>35</sup>

12 Sandra, Solorio's sister, said Pedro arrived at her house at approximately 9:00 p.m. on  
13 December 6, 1998. Solorio and Silvia arrived at about 10:30 p.m. Shortly after Solorio and Silvia  
14 arrived, Pedro left in their father's Mercury to get beer. She did not know whether anyone left with  
15 him.<sup>36</sup> Sandra said Pedro and their other brother, Alejandro, frequently drove their father's Mercury, but  
16 Solorio never did.<sup>37</sup>

17 Silvia testified she had never seen Solorio drive his father's Mercury. Silvia testified they drove  
18 her car to Sandra's house. When they arrived, at around 10:30 p.m., the Mercury was out front, and  
19 Pedro was already inside. Shortly after they arrived, Pedro left with another man in his father's Mercury.  
20 Pedro said he was going to buy alcohol but did not have any alcohol when he returned about an hour  
21 later. A few minutes after Pedro's return, Silvia drove Solorio home in her car. Silvia then went home  
22 and called Solorio. They chatted on the phone until about 1:30 a.m.<sup>38</sup>

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23  
24 <sup>33</sup> Clar. at p. 256.

25 <sup>34</sup> Clar. at p. 256.

26 <sup>35</sup> Clar. at pp. 22, 33, 255; App. at pp. 27-28.

27 <sup>36</sup> Clar. at p. 257.

28 <sup>37</sup> App. at p. 27.

<sup>38</sup> App. at p. 27.



1 During cross-examination, the prosecution cast doubt on Silvia's credibility by repeatedly asking  
2 why she did not originally tell police that Pedro left in his father's Mercury. Silvia said she had, but the  
3 investigating officer then testified that Silvia's trial testimony was the first time he had heard anyone  
4 suggest Pedro was driving the Mercury on the night of the shooting.<sup>39</sup> The recording of Silvia's  
5 interview, when she told the investigating officer that Pedro left Sandra's house in the Mercury shortly  
6 before the shooting, was not played for the jury.<sup>40</sup>

7 Pedro was called to testify but invoked his Fifth Amendment privilege.<sup>41</sup> The jury did not hear  
8 the surreptitious recordings made after Pedro's December 10, 1998, arrest for the crimes charged in  
9 this case.<sup>42</sup>

#### 10 **D. Post-Conviction Evidence**

11 On May 11, 2021, Solorio successfully requested the Los Angeles County Conviction Integrity  
12 Unit (CIU) investigate his conviction.<sup>43</sup>

##### 13 **a. Additional Alibi Witnesses**

14 The CIU interviewed Eric P. Although they divorced a few months later, Eric and Sandra were  
15 married and living together on December 6, 1998. That night, their housemate, Jose P., told Eric that  
16 he was going to commit a drive-by shooting with Pedro in hopes of being jumped into Quiet Village. Eric  
17 watched as Jose retrieved a gun and hopped into the Mercury with Pedro, who was already in the  
18 driver's seat.<sup>44</sup> Two days later, Jose frantically packed his belongings and gave his house key to Eric.  
19 Jose disclosed that, instead of shooting rival gang members as intended, he shot an elderly woman  
20 and planned to flee to Mexico. Eric later returned to Mexico and visited Jose, to tell Jose about Solorio's  
21 incarceration for the December 6 shooting. Jose attributed his actions to drug use and said there was  
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23  
24 <sup>39</sup> Clar. at pp. 44-45.

25 <sup>40</sup> Clar. at p. 259.

26 <sup>41</sup> App. at p. 27.

27 <sup>42</sup> Clar. at p. 259.

28 <sup>43</sup> Clar. at p. 253.

<sup>44</sup> Clar. at p. 260.

1 nothing he could do.<sup>45</sup>

2 One of Solorio's other brothers, Jesus, said Pedro drove him to Sandra's house in their father's  
3 Mercury on December 6. Jesus said everyone gave Pedro money to go buy beer. Pedro and Jose left  
4 in their father's Mercury. When they returned, Jose looked nervous, and Pedro did not have any beer.<sup>46</sup>  
5 Jesus later heard their mother ask someone not to disclose Pedro was driving the Mercury that night.  
6 Two months later, Pedro told Jesus he left the party to buy beer, but, while they were out, Jose shot  
7 someone. Pedro threatened to kill Jesus' daughters if he told anyone.<sup>47</sup> Jesus, who looked visibly  
8 concerned, did not come forward earlier because he was afraid of his mother and Pedro.<sup>48</sup>

9 **b. Corroborating Witnesses**

10 Jesus's then-girlfriend, Rosa, was also at Sandra's house the night of December 6, 1998. Rosa  
11 told CIU investigators that Pedro retrieved a foot-long black revolver from the garage before leaving the  
12 house with Jose.<sup>49</sup> At some point after Pedro's return, his mother told Rosa that Jose shot someone  
13 from inside the Mercury while Pedro was driving. Pedro and Solorio's mother asked Rosa to tell the  
14 police Pedro was driving Rosa's car that night and admitted that she planned to dispose of the weapon  
15 and knew Solorio was not in the car when the shooting took place.<sup>50</sup>

16 Kelly originally denied being in Martin's car on the night of December 6, despite Martin naming  
17 her as one of his passengers. Nevertheless, Kelly later told Silvia she knew Solorio was not in the  
18 Mercury on December 6. When the CIU contacted Kelly, she admitted she was in Martin's car on the  
19 night of December 6 and knew Solorio was not in the Mercury.<sup>51</sup>

20 Doctor John Wixted, an expert in memory and identification, questioned the reliability of  
21 Angelica's, Richard's, and Martin's identifications based on the circumstances surrounding their

22 \_\_\_\_\_  
23 <sup>45</sup> Clar. at pp. 260, 249.

24 <sup>46</sup> Clar. at p. 260.

25 <sup>47</sup> Clar. at p. 260.

26 <sup>48</sup> Clar. at p. 261.

27 <sup>49</sup> Clar. at pp. 261, 249.

28 <sup>50</sup> Clar. at p. 261.

<sup>51</sup> Clar. at 261.

1 identification of Solorio. He noted, in particular, that Solorio was the only individual depicted in both six-  
2 packs, and, despite claiming to be familiar with Solorio, Richard looked at the photos for several  
3 minutes before selecting Solorio's photo from the six-pack.<sup>52</sup>

4 **c. Pedro's Independent Admissions of Guilt**

5 Sometime after Solorio's conviction, Pedro was sent to prison for unrelated crimes. During his  
6 incarceration, Pedro sent letters to Solorio, stating he would "come forward" and "be held accountable"  
7 for his actions. In an August 9, 2008, letter, Pedro agreed to tell Solorio what happened, admitted "the  
8 person responsible should be back from Mexico," and said he wanted to "prove [Solorio's] innocence."  
9 In a 2010 email, Pedro told Silvia not to hire a private investigator and promised to tell her what really  
10 happened that night after his upcoming court date. In a letter to Solorio dated July 4, 2011, Pedro said  
11 he wanted to help with Solorio's appeal but first needed to retain counsel and try to "get a deal" if he  
12 "gets incriminated."<sup>53</sup> In these letters Pedro further said he was going to incriminate himself "in order for  
13 god to forgive" him even though this meant they may "have to change worlds with each other."<sup>54</sup>

14 **d. Jose's Admissions of Guilt**

15 The CIU interviewed Eric's brother-in-law, Gustavo, who lived next door to Eric and Sandra at  
16 the time of the shooting. The day after the shooting, Jose told Gustavo that, the night before, Jose  
17 thought he was shooting at rival gang members but actually shot and killed an "older lady." A few days  
18 later, Jose told Gustavo someone else was arrested for what he had done. Jose immediately fled to  
19 Mexico.<sup>55</sup> Several years later, Gustavo told Sandra that Jose committed the shooting Solorio was  
20 incarcerated for. On another occasion, Gustavo was with Solorio's mother when she confronted Jose.  
21 Jose said he mistook Mary and her passengers for rival gang members due to drug use and  
22 apologized. At some point after that, Jose returned to Mexico and, by the time of CIU's investigation,  
23 was deceased.<sup>56</sup>

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24  
25 <sup>52</sup> Clar. at pp. 22, 262.

26 <sup>53</sup> Clar. at p. 263.

27 <sup>54</sup> Clar. at pp. 250-251.

28 <sup>55</sup> Clar. at pp. 264, 249.

<sup>56</sup> Clar. at p. 264.

1 CIU also interviewed another neighbor, Rogelio, who had ties to Jose’s family. Jose told Rogelio  
2 he was trying to get jumped into Quiet Village and intended to shoot rival gang members but shot the  
3 wrong car. Rogelio was deported to Mexico in 2001 and confirmed that, when Eric arrived in Mexico,  
4 Rogelio took him to visit Jose.<sup>57</sup>

5 CIU also spoke with Arturo, Jose’s brother. He, too, confirmed Jose was trying to get jumped  
6 into Quiet Village at the time of the shooting.<sup>58</sup>

7 **e. Other Exculpatory Evidence**

8 The CIU’s investigation yielded additional exculpatory evidence, which was filed under seal to  
9 preserve the investigative methods used by the CIU.<sup>59</sup> However, the discovery of this additional  
10 evidence, in conjunction with the facts stated above, led the CIU to support Solorio’s requests for both  
11 habeas relief and a finding of factual innocence.<sup>60</sup>

12 **IV. Determination of Issues**

13 Penal Code section 4900 allows a person, who has been erroneously convicted and  
14 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to  
15 CalVCB.<sup>61</sup> Specifically, subdivision (a) of section 4900 provides:

16 Any person who, having been convicted of any crime against the state amounting to a  
17 felony and imprisoned in the state prison or incarcerated in county jail pursuant to  
18 subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor  
19 for the reason that the crime with which they were charged was either not committed at  
20 all or, if committed, was not committed by the person, or who, being innocent of the  
21 crime with which they were charged for either of those reasons, shall have served the  
22 term or any part thereof for which they were imprisoned in state prison or incarcerated in  
23 county jail, may, under the conditions provided under this chapter, present a claim  
24 against the state to the California Victim Compensation Board for the injury sustained by  
25 the person through the erroneous conviction and imprisonment or incarceration.<sup>62</sup>

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23 <sup>57</sup> Clar. at p. 264.

24 <sup>58</sup> Clar. at p. 264.

25 <sup>59</sup> App. at pp. 18-19.

26 <sup>60</sup> App. at p. 22.

27 <sup>61</sup> Pen. Code, § 4900, subd. (a).

28 <sup>62</sup> Pen. Code, § 4900, subd. (a), emphasis added; see also Pen. Code, § 1170, subd. (h) (allowing  
prison term for specified felony convictions to be served in local county jail instead of state prison).

1 Plainly understood, section 4900 applies only to persons who were erroneously convicted and  
2 imprisoned for a felony offense that they did not commit and limits relief to the injury caused by their  
3 imprisonment or incarceration.

4 To prevail on a claim under subdivision (a) of Penal Code section 4900, claimants typically  
5 bear the burden to prove by a preponderance that (1) the crime with which they were convicted either  
6 did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous  
7 conviction.<sup>63</sup> Once such a claim is received and filed, Penal Code section 4902 requires the Attorney  
8 General to submit a written response.<sup>64</sup> Thereafter, under Penal Code section 4903, a hearing before a  
9 hearing officer ensues, at which the claimant and Attorney General may present evidence concerning  
10 innocence and injury.<sup>65</sup> Upon the requisite showing of innocence and a finding of injury, Penal Code  
11 section 4904 requires approval of the claim, at a rate of \$140 per day of incarceration, if sufficient  
12 funds are available.<sup>66</sup>

13 An exception to this process occurs when a claimant obtains a finding of factual innocence.  
14 Under subdivision (b) of Penal Code section 1485.55, when a court has granted a writ of habeas  
15 corpus, “the person may move for a finding of factual innocence by a preponderance of the evidence  
16 that the crime with which they were charged was either not committed at all or, if committed, was not  
17 committed by the petitioner.”<sup>67</sup> If the court makes such a finding, then under subdivision (c) of section  
18 1485.55, “the [CalVCB] board shall, without a hearing, recommend to the Legislature that an  
19 appropriation be made and any claim filed shall be paid pursuant to Section 4904.”<sup>68</sup>

20 Penal Code section 4904, in turn, provides that, upon a finding by the board “that the claimant  
21 has sustained injury through their erroneous conviction and imprisonment,” the board “shall approve  
22 payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available,  
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24 <sup>63</sup> Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 <sup>64</sup> Pen. Code, § 4902, subd. (a).

26 <sup>65</sup> Pen. Code, § 4903, subd. (a).

27 <sup>66</sup> Pen. Code, § 4904.

28 <sup>67</sup> Pen. Code, § 1485.55, subd. (b).

<sup>68</sup> Pen. Code, § 1485.55, subd. (c).

1 upon appropriation by the Legislature.”<sup>69</sup> Section 4904 further provides that the “amount of the  
2 payment shall be a sum equivalent to one hundred forty dollars (\$140) per day of incarceration served,  
3 and shall include any time spent in custody, including a county jail, that is considered to be part of the  
4 term of incarceration.”<sup>70</sup> Even with a finding of factual innocence, CalVCB is statutorily obligated to  
5 determine the extent of injury caused by the erroneous conviction and incarceration and may request  
6 additional documents and arguments from the parties as needed to complete this calculation.<sup>71</sup>

#### 7 **A. Innocence**

8 Pursuant to the court’s finding under Penal Code section 1485.55, CalVCB unequivocally  
9 accepts that Solorio is factually innocent of all the crimes he was charged with in Los Angeles County  
10 Superior Court case number VA053386. As determined by the superior court, and consistent with the  
11 parties’ joint motion for a finding of factual innocence, a preponderance of the evidence establishes  
12 Solorio was innocent of the charged offenses. Multiple witnesses confirmed Solorio was not present  
13 when the crimes occurred. Several individuals confirmed that Jose and Pedro committed these crimes,  
14 while Solorio was not even present. These accounts corroborated each other and were made by  
15 disinterested individuals who had no motive to lie to investigators. In addition, the record includes  
16 exculpatory evidence, which was not played for the jury, that was subsequently confirmed by Pedro’s  
17 statements suggesting he was present for these crimes and knew the identity of the perpetrator.  
18 Lastly, the record describes the efforts made to obscure Pedro’s involvement at the time of the original  
19 investigation and that both Jose and Pedro admitted to their involvement in the shooting shortly after  
20 the crimes were committed. Accordingly, the administrative record amply demonstrates Solorio was  
21 innocent of the charged offenses and, therefore, was erroneously convicted of these crimes for  
22 purposes of compensation under Penal Code section 4900.

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26 <sup>69</sup> Pen. Code, § 4904.

27 <sup>70</sup> Pen. Code, § 4904, emphasis added.

28 <sup>71</sup> Pen. Code, §4904, subd. (a).

1 **B. Injury**

2 By statute, the amount of compensation “shall be a sum equivalent to one hundred forty dollars  
3 (\$140) per day of incarceration served and shall include any time spent in custody, including a county  
4 jail, that is considered to be part of the term of incarceration.”<sup>72</sup> This compensation is “for the purpose  
5 of indemnifying the claimant for the injury” sustained “through their erroneous conviction and  
6 imprisonment....”<sup>73</sup> Though the legislature has not provided a specific definition, the legislative history  
7 reflects that the term “injury” refers to “whatever harm is suffered by a person who is wrongly  
8 imprisoned....”<sup>74</sup> As recently clarified by regulation, the requisite injury “may be established by showing  
9 that, but for the erroneous conviction, the claimant would not have been in custody.”<sup>75</sup>

10 In this claim, CalVCB agrees with the parties that Solorio’s injury includes the 9,003 days he  
11 was imprisoned solely for his convictions in Los Angeles County Superior Court case number  
12 VA053386. This includes the three days he spent in custody following his initial arrest for these crimes,  
13 from December 9, 1998, through December 11, 1998, and the 9,000 days from the date he was  
14 rearrested, on March 25, 1999, through November 13, 2023, when he was released from custody.  
15 Given the statutory rate of \$140 per day, CalVCB therefore also agrees with the parties’ calculation  
16 that Solorio is entitled to indemnification for his erroneous convictions in the amount of \$1,260,420 if  
17 sufficient funds are available upon appropriation by the Legislature.<sup>76</sup>

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24 <sup>72</sup> Pen. Code, § 4904.

25 <sup>73</sup> Pen. Code, § 4904.

26 <sup>74</sup> Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at pp. 4-5

27 <sup>75</sup> Cal. Code of Regs., tit. 2, § 640, subd. (f).

28 <sup>76</sup> Pen. Code, § 4904, subd. (a).

1 **V. Conclusion**

2 As mandated by Penal Code section 1485.55, the undersigned hearing officer recommends  
3 CalVCB approve payment to Solorio in the amount of \$1,260,420 as indemnification for the injury he  
4 sustained through the 9,003 days he was imprisoned for his erroneous convictions in Los Angeles  
5 County Superior Court case number VA053386, if sufficient funds are available upon appropriation by  
6 the Legislature.

7 *Caitlin Christian*

8 Date: March 5, 2024

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10 Caitlin Christian  
11 Hearing Officer  
12 California Victim Compensation Board  
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