

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

July 18, 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

Item 1.	Approval of Minutes Minutes of the May 16, 2024, Board Meeting DRAFT Minutes attached	Action Item
Item 2.	Public Comment on Items Not on the Agenda - The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.) No materials for this item	
Item 3.	Executive Officer Statement No materials for this item	Information Item
Item 4.	Legislative Update Copy of Legislative Update attached	Information Item
Item 5.	Contract Update Copy of Contract Report attached	Information Item
Item 6.	Request for Authority to Begin Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.) Copy attached	Action Item

Item 7.	Clayborne Dennis (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 8.	Jofama Coleman (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 9.	Truman Simon (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 10.	Abraham Villalobos (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 11.	Ronald Velasquez (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES MAY 16, 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, May 16, 2024, at 10:02 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. The meeting was recorded.

Item 1. Approval of the Minutes of the March 21, 2024, Board Meeting

Member Becton moved approval of the Minutes for the March 21, 2024, Board Meeting. The motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

Item 2. Public Comment

The Board opened the meeting for public comment and Chief Counsel Gauthier 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.)

Hovanes T. appeared via Zoom on behalf of himself and other victims of violent crimes. He also provided this statement to the Board:

First, the regulations of the Board have not been updated in over a decade. We have new regulations going into effect on July 1, and no outreach has been conducted to the hundreds of cities and law enforcement agencies, the 58 counties and their victim centers and district attorneys, the hundreds of courts in the state and their honorable judges, or any other stakeholder across the state. The regulations present untested implementations that I am concerned do not do victims justice. The newly proposed Office of Regulatory Counsel should make sure that these regulations benefit victims first and foremost, to partially divest this Board of its quasi-legislative powers and place it back into a more democratic executive branch agency, leaving CalVCB and its counsel to better focus on implementing crime victim statutes and regulations, and quasi-judicial resolutions of them within the agency.

Second, CalVCB does not do enough to ensure all Californians come within the protections of its ambit. Accessibility is limited to in person meetings in Northern California, or phone or Zoom connections, with few meetings. We need a CalVCB

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meeting every month, and we need satellite opportunities around the State. This is a historic election year, plagued with political violence across academic institutions, communities, and even against political candidates, who have as difficult of a time funding mental health and security expenses as California's victims have with getting their own funding from CalVCB when psychologically injured, financially injured, physically injured, or threatened with physical injury, as a result of crime. We need victims and advocates and many others, such as academics and legal scholars, to be invited to present, share their screen or PowerPoints, share analytics, data, and technical information, and engage in dialogue with the Board and stakeholders.

Third, CalVCB is taking claim denials and claim underpayments to an extreme. For every 1 dollar going to victims out of \$200 million, 3 dollars does not go to victims. Its meeting agendas track legislation which rarely makes it through the legislative process, yet the meeting agendas do not discuss active or ongoing litigation with the CalVCB and claimants or parties. Every other executive branch or legislative branch body that meets publicly includes at least a list of active litigation to be discussed in close session. Claimants who pursue declaratory relief, injunctive relief, writ relief, or any other relief, from the courts, are faced with more systemic injustice due to lack of access to counsel, deference to the agency, lack of consistent or contemporary case law, all while living within the catastrophe that remains in the wake of violent crime. We need statutes, regulations, Governors executive orders, trial and appellate court rulings, and court general and emergency orders by Presiding Judges and Justices, that bridge these gaps for crime victim litigants, both in cases involving the CalVCB, and any other litigation where crime victimization is at the crux. We need elected or appointed judges to be trauma-informed, bias-resistant, and passionate about balancing the interests of crime victims above the interests of the government or the crime perpetrators.

Fourth, law enforcement and county victim centers can do more. We need before CalVCB-county contracts, expansions of mandatory and discretionary services to victims in the Penal Code, before performance monitoring, before technology and security, and more cooperation between cities, counties, and CalVCB. We need before policy manuals and training for CalVCB staff, beyond the Wikimanual and other internal resources. We need access to selecting local Administrative Law Judges with OAH for claimants and their agency hearings, who know their communities more than Sacramento does. We need access to the subpoena powers and verification powers authorized for cities, counties, and CalVCB. We need access to discovery in agency claims as well as evidentiary hearings with full due process and examination rights. We need increased subrogation rights and

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remedies for the CalVCB to recoup from the losses incurred by Californians as a result of the crime perpetrators.

Fifth, the federal government is implementing new regulations to reform many aspects of crime victim claims administered by the States. I recently attended the National Crime Victims Rights Week candlelight vigil on the National Mall in D.C. on April 24th, as 1 of the only 2 Burbank advocates in attendance, the other being my esteemed fellow alumni from UC Berkeley now working on the Hill. CalVCB has not had any public discussions about the implications of these federal regulations, and how they too can be incorporated within claim processing systems, agency claim appeals, agency claim hearings, and litigation over victim claims. Nor has CalVCB discussed how they plan to meet federal requirements for civil rights, including ADA accommodations for individuals with disabilities.

On May 31st, I will be launching a press release regarding my vision for crime victim reform across the state, with a focus on all the litigation against CalVCB, all the conflicting regulations and statutes, all 58 county victim center contracts, and my expansive requests for CalVCBs public records. I want everyone listening, to know that this year is going to be the year where we Californians bring change to an agency and system that desperately needs it and has needed it for decades. Victims and survivors are suffering. Their wallets are drying up, their health is deteriorating by the day, week, month, and year. They lose housing, lose employment, lose credit scores, and they lose their electoral rights to have their voice heard in our democracy. We hope now we will be heard. We are looking in every corner, we will stand up for every victim and survivor, and we will make sure that Sacramento serves all Californians equally.

Thank you all for your public service, and remember that supporting our fellow neighbors from all walks of life, is the Burbank way.

Chair Ravel thanked Hovanes T. for his comments and noted that at the prior Board meeting the federal regulation changes to the VOCA Victim Compensation Program guidelines were an item for discussion.

Item 3. 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 this year and next year. The Governor's May Revise came out late last week and details the numerous ways that California aims to close the state's budget deficit. There will be multiple impacts to CalVCB and the Programs we administer.

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First the Governor announced a plan to eliminate approximately 10,000 vacant positions starting in 2025-26. The Department of Finance will be working with all departments to identify those positions. At this point, CalVCB does not know how many positions will be lost. CalVCB has been able to fill many of its vacancies and will continue to fill critical positions.

More significantly, all California state departments have been asked to permanently reduce ongoing operations by 7.95 percent beginning in 2024-25. As a small state department, CalVCB will feel the impact of these budget reductions. CalVCB has a fiscally conservative and historically lean budget, so identifying these permanent savings will be challenging. CalVCB will do all that it can to reduce the impact these cuts will have on the victims we serve; however, we have to acknowledge that it may impact service levels and will most certainly make it challenging to implement improvements.

Ms. Gledhill continued, stating the Department of Finance also let CalVCB know that the general fund backfill to the restitution fund will be reduced this year. CalVCB began receiving this backfill due to a decrease in funding available from the state penalty fund. Because of this decrease, the restitution fund was projected to be insolvent by fiscal year 2020-21 and CalVCB started receiving transfers from the general fund that year. Since fiscal year 2022-23, those transfers equaled \$39.5 million per year. These transfers have allowed the restitution fund to build a modest reserve, and this reduction will decrease that reserve.

Ms. Gledhill reminded the Board that the Trauma Recovery Center (TRC) grant program is funded through the Safe Neighborhoods and Schools Fund, money from the restitution fund, and currently general fund money from the Budget Act of 2022. The Safe Neighborhoods and Schools Fund did increase by \$698,000 in the May revise; however, in the May revision there is discussion of maximizing the pullback of one-time spending. This approach was more specifically outlined by the Department of Finance, which has directed departments to immediately cease spending of one-time funds that meet certain criteria.

The \$2.2 million of general fund money provided to TRCs in the Budget Act of 2022 meets those criteria. Therefore, we do not currently believe we have the authority to spend those funds. That means CalVCB is planning to reduce the TRC grant amounts by just over \$1.5 million for the nine TRC grantees the Board approved at the March meeting. At that meeting, the Board gave CalVCB the authority to make these adjustments. The \$1.5 million reduction equates to about a 12 percent decrease, so the plan is to reduce all awards by that amount. CalVCB did verify that even with these reductions, all nine TRCs will receive enough funding to cover the salaries of the three statutorily required positions, which are psychologist, psychiatrist, and social worker. The plan is to reach out to the TRCs to let them know about the new award amounts and ask them if they still want to accept the funding. If a TRC declines the funding, CalVCB will use that money to increase the grant awards for the other Board

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approved TRCs. The new grant agreements must be effective by July 1, 2024, to prevent a lapse in service for the existing TRCs that received a subsequent grant award.

Additionally, in 2022, the Legislature passed a Budget Trailer Bill (AB 160) that would make a number of changes to CalVCB statutes effective July 1, 2024. However, those changes were only to go into effect if it was determined there was sufficient funding and an appropriation was made to fill the restitution fund for the cost of those changes. The proposed changes included increasing reimbursement limits, expanding eligibility for income loss, and allowing violent felons to receive compensation while on supervised release. Compensation for erroneously convicted individuals also would have been increased. The May revise states that, due to the negative multi-year budget forecast, these conditions have not been met, and the changes are not included in the revised budget.

Ms. Gledhill also updated the Board on the Joint Powers (JP) contracts. CalVCB currently has seventeen field offices across the state that process applications and bills for CalVCB. These offices are operated by counties and the city of Los Angeles. These contracts are funded via a local assistance line-item in the budget, and the funding is distributed to the counties to perform the processing work as outlined in a three-year contract.

CalVCB is currently negotiating these contracts, which require approval from the County Board of Supervisors or the City Council. There is always a chance that a local government will choose not to renew the contract. Given the current fiscal situation that is also impacting county and city governments, CalVCB wanted to inform the Board there may be some changes with who chooses to take on this role. If a local government chooses not to renew their contract, headquarters will redistribute the local assistance funding to another county. Victims should not be impacted by these changes.

Ms. Gledhill noted that CalVCB received confirmation from the Office of Administrative Law that the regulations we last discussed at the January Board Meeting are complete. Those regulations will go into effect on July 1, 2024.

Executive Officer Gledhill continued, noting April is both Sexual Assault Awareness month and the month where we recognize National Crime Victims' Rights week. In addition to participating in multiple crime victim focused outreach events, this year CalVCB also launched its statewide media campaign and has targeted advertisements across the state sharing information about CalVCB's Programs and services.

On denim day, CalVCB staff collected 170 pieces of clothing for Community Against Sexual Harm (CASH). This Sacramento based nonprofit helps victims of human trafficking. Last week, CalVCB dropped off the donations and took a tour of the facility. The facility has added a new health clinic, food pantry, and a children's room.

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Ms. Gledhill concluded her report by letting the Board know that CalVCB has started the strategic planning process. CalVCB is developing a four-year strategic plan that will guide the organization from 2025 through 2028. As part of this process, CalVCB is soliciting internal and external feedback.

In late April a survey was shared with CalVCB's stakeholders to learn more about the areas of excellence and opportunities for improvement. We also asked for suggestions on how to promote and implement diversity, equity, inclusion, and accessibility in the work that CalVCB does. CalVCB staff was asked for their feedback on core values. CalVCB will use all of this information to help guide the strategic planning process.

Chairperson Ravel thanked Ms. Gledhill for the updates.

Member Johnson asked:

1. Are the TRC funding cuts to be universal or is that at the executive director's discretion?
2. Are the reduced amounts going to be enough to support the programs adequately?
3. Did CalVCB consider not awarding the last eligible applicants?
4. How does CalVCB plan to gather the public feedback to inform the strategic plan?

Ms. Gledhill stated that the Board did approve any adjustments that needed to be made based on the May revise, so the plan with the 12% cut is to make across the board cuts. CalVCB did confirm that the reduced amounts will be enough to fund the statutorily required positions. At that point, it will become the decision of each TRC if they want to accept the grant award as part of their overall funding or decline the grant award. CalVCB did consider not awarding the last eligible applicants; however, that would mean not funding some current TRCs.

Regarding the strategic plan, CalVCB has mailing lists for multiple stakeholders throughout the state. Information is sent out multiple times. CalVCB is always communicating with stakeholders and interest groups around the state, making sure that they are aware of CalVCB processes.

Member Johnson suggested reaching out in-person, having one-on-one conversations, and holding workshops to get the feedback needed.

Ms. Gledhill thanked Member Johnson for his input.

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Item 4. Legislative Update

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

Ms. Cardenas stated that the Senate and the Assembly Appropriations Committees were both meeting this morning to hear bills on the suspense file, which are bills that are determined to have more than a negligible cost. At the hearings, the committees will determine whether these bills will move forward or be held in the committee for the remainder of the year. Due to the state's budget situation, fewer bills are expected to move forward than in prior years. Among the bills that will be heard today are:

- AB 2307 by Assembly Member Davies would authorize CalVCB to reimburse up to \$1,000 for self-defense courses provided or operated by a nonprofit organization, a university, or a law enforcement agency.
- AB 1430 by Senator Glazer would require the Department of Justice (DOJ) to issue a certificate stating that an individual received either a finding of innocence from a court or an award of compensation for an erroneous conviction from CalVCB. It would also require the DOJ to annotate the individual's criminal record with the same information.

Additionally, AB 2979 by Assembly Member Mike Fong passed out of the Assembly Appropriations Committee on May 15 and was referred to the assembly floor. This bill will clarify that Victim Compensation and Good Samaritan payments received from CalVCB are excluded from the definition of gross income in the Revenue and Taxation Code. Since this bill contains clarifying language and has no fiscal effect, the bill was not required to be heard on suspense.

Chairperson Ravel thanked Ms. Cardenas for the updates.

Item 5. 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 6. Mental Health Guidelines

The Proposed Updates to the Mental Health Guidelines agenda item was presented by Deputy Executive Officer Vincent Walker.

Mr. Walker proposed an increase in the initial mental health session limits and other updates to the mental health guidelines. The California Victims Compensation Board has the authority

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pursuant to Government Code section 13957.2 to establish maximum rates and service limitations for reimbursement of mental health and counseling services. Reimbursement of mental health expenses by CalVCB is based on the definitions, session limitations, documentation requirements, and other criteria set forth in the Mental Health Guidelines.

Mr. Walker stated CalVCB established initial session limits in 2003 for claimants receiving reimbursement for mental health treatment. The limits were determined by CalVCB's clinical psychologist to control the costs of mental health treatment and review the right assessment-based treatment. The claimant's initial session limit is dependent on their filing status. Session limits have been reviewed several times since implementation, the last time was in 2015. Each review resulted in an increase to the session limits for one or two filing statuses. Currently the initial limit for a derivative adult, new caretaker, or roommate survivor is 15 sessions; for a minor derivative, minor witness, or parent/caretaker it is 30 sessions; and, for an adult survivor, adult victim, minor survivor, or minor victim it is 40 sessions. Once the initial limit has been reached, an Additional Treatment Plan (ATP) must be submitted by a mental health provider. To ensure the treatment provided is related to the qualifying crime and that the mental health guideline requirements are met, the ATP will then be reviewed and approved by CalVCB. If the necessary criteria is met, CalVCB will authorize additional sessions beyond the claimant's initial sessions, while not exceeding their maximum monetary benefit limit. The maximum monetary benefit limit for adult derivative, minor derivative, new caretaker, roommate survivor, and minor witnesses is \$5,000. For all others, the maximum is \$10,000 for mental health expenses.

Mr. Walker continued explaining that for fiscal year ending June 30, 2023, CalVCB received 1,163 ATPs from mental health providers; 787 were first time submissions and 376 were at least the second request on an application. In review of applications received over the last seven years in which mental health sessions were paid, CalVCB noticed that in each filing status the initial session limit was exceeded and required completion of an ATP. Specifically, applications with the filing statuses of adult derivative, new caretaker, or roommate survivor with an initial session limit of 15 were paid on average of between 19 and 27 total sessions. Applications with a filing status of minor derivative, minor witness, or parent caretaker with an initial session limit of 30 were paid an average of 40 to 54 total sessions. Applications with a filing status of adult survivor, adult victim, minor survivor, or minor victim with an initial session limit of 40 were paid an average of 54 to 67 total sessions. These totals were within the monetary cap of either \$5,000 or \$10,000.

CalVCB proposes increasing the allowable initial mental health session limits for all filing status types currently set at 15, 30, and 40, to 30, 50, and 60. These proposed increases will allow for continued services to victims without unnecessary delays and reduce the administrative requirements for providers by completing fewer ATPs. CalVCB does not anticipate any increased fiscal impact as the total amount of mental health sessions reimbursed will not

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increase. If approved, these new session limits would apply to all applications filed and bills submitted on or after June 1, 2024.

Mr. Walker continued noting CalVCB's second proposal is pursuant to Assembly Bill 1187, which took effect January 1, 2024, and grants certified Child Life Specialist eligibility for reimbursement for providing treatment to CalVCB applicants. Providers need to be certified by the Association of Child Life Professionals and supervised by a licensed provider. Licensed Clinical Social Workers must have a master's degree in social work, register as an Associate Clinical Social Worker, obtain 3,000 supervised hours, then pass the licensed Clinical Social Worker exam. CalVCB reimburses licensed clinical social workers \$105 per hour for services provided to CalVCB claimants. Certified Child Life Specialist must have a bachelor's degree in child life studies or a related field, complete a 600-hour child life specialist internship, and pass the certification exam. Additionally, CalVCB surveyed several current certified child life specialist job postings and determined an average hourly rate for compensation being offered by employers for this provider type. CalVCB proposes adding certified Child Life Specialist providers at the reimbursement rate of \$38 an hour to the list of approved provider types who will be subject to the terms and conditions set forth in the Mental Health Guidelines.

Upon adoption by the Board, these updates will be submitted to the Secretary of State's Office as required by Government Code section 13957.2. The updates will comply will the recently enacted legislation.

Chairperson Ravel asked to confirm his understanding of the following points:

- 1) This is all sub regulatory, there is an APA [Administrative Procedure Act] exception, and we can file this with the Secretary of State and go forward.
- 2) We are not increasing the overall visits; we are just conforming to existing practices and removing obstacles that providers and claimants have to go through to get approved.
- 3) We are amending the guidelines, so they are consistent with the recently enacted legislation and including this new type of provider within the list of approved providers.

Mr. Walker confirmed that was correct.

Chairperson Ravel thanked Mr. Walker.

Member Johnson asked:

- 1) Were the 376 additional mental health requests because they were denied or just wanting to extend the sessions?
- 2) How often does CalVCB deny an ATP or find it does not meet the Mental Health Guidelines?

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Mr. Walker clarified that the requests were for additional mental health sessions beyond the first approved sessions. Mr. Walker continued by stating, denials happen very rarely and only when the provider is not complying with the requirements of the Guidelines.

Member Johnson thanked Mr. Walker.

Member Johnson moved to approve the proposed changes to the Mental Health Guidelines. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

Item 7. Abel Soto (Pen. Code, §§ 4900, et seq.)

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

On January 29, 2024, Abel Soto submitted an application to the California Victim Compensation Board as an erroneously convicted felon, which was supplemented twice and filed on March 25, 2024. The application is based on Mr. Soto's 2007 convictions for murder and two counts of assault with a deadly weapon. In January 2024 the Los Angeles County Superior Court granted the joint petition filed by the Los Angeles County District Attorney's Office and counsel for Mr. Soto dismissing the charges in the interests of justice and finding Mr. Soto factually innocent of all charges 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 \$909,720, which represents \$140 per day for each of the 6,498 days Mr. Soto was wrongfully imprisoned.

Mr. Soto has been represented by attorney Ellen Eggers throughout this claim and the Office of the Attorney General is represented by Deputy Attorney General Dina Petrushenko and Jessica Leal who is appearing before the Board today.

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

Chair Ravel confirmed that neither Ms. Eggers nor Mr. Soto were present.

Chair Ravel requested to hear next from Ms. Leal.

Ms. Leal stated she had no further comment on this claim.

Chair Ravel thanked Ms. Leal for appearing at the meeting.

Member Becton moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Abel Soto. 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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Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:43 a.m. pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1 through 104 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 10:52 a.m.

Member Becton moved to approve items 1 through 104 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 May Board meeting. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned at 10:53 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, July 18, 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
JULY 18, 2024

AB 1186 (Bonta) Restitution Fines

This bill would provide that restitution fines against both adult and juvenile offenders would be deemed uncollectible 10 years after imposition. It would also remove authority for the imposition of certain mandatory restitution fines against juvenile offenders. It would also remove the authority to have 50 percent deducted from the wages of an individual housed in a Youth Authority facility in order to fulfill unpaid restitution.

Status: Removed from the Senate Inactive File, amended and scheduled for the Senate Public Safety Committee on July 2

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

This bill would exclude victim compensation and Good Samaritan payments received from CalVCB from the definition of gross income under the Revenue and Taxation Code.

Status: Scheduled for the Senate Appropriations Committee on June 24

SB 1481 (Caballero) Claims Against the State

This bill would appropriate \$19,289,000 from the General Fund to the Attorney General in order to pay claims, judgments, or settlements against the state. Among the appropriations is \$1,625,000 for payment arising from Souliotes v. California Victim Compensation Board (Los Angeles County Superior Court Case Nos. BS170608 and 21STCP03535).

Status: Amended and ordered to the Senate Floor

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 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: Held on the Suspense File in the Assembly Appropriations Committee

SB 1430 (Glazer) Factual Innocence

This bill would require the Department of Justice (DOJ) to issue a certificate stating that an individual received either a finding of innocence from a court, or an award of compensation for erroneous conviction from CalVCB. It would also require the DOJ to annotate the individual's criminal record with the same information.

Status: Held on the Suspense File in the Senate Appropriations Committee

AB 2432 (Gabriel) Corporations: Criminal Enhancements

This bill would create new restitution fines for corporate crimes and a new special fund, the California Crime Victims Fund (CCVF). A court may determine the amount of a restitution fine to be assessed against a corporation, commensurate with the seriousness of the offense. The minimum fine is \$100,000 if a corporation is convicted of a felony and \$1,000 if it is convicted of a misdemeanor. Of these collected fines, 75 percent would be deposited in the CCVF, and 25 percent would be distributed to the prosecuting jurisdiction. A court may also order a corporation to pay an additional fine, not to exceed the greater of either two times the value of the taking or loss, or \$25 million, to be deposited in the CCVF. Funds in the CCVF would be appropriated to the Office of Emergency Services to support crime victim services that have traditionally been funded with federal Victims of Crime Act Victim Assistance Formula Grant funding.

Status: Amended and scheduled for the Senate Public Safety Committee on June 25

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 in consultation with a licensed physician and surgeon to include a certified nurse-midwife. It would also remove the requirement that the consulting physician and surgeon conduct examinations or provide treatment.

Status: Enrolled

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: Scheduled for the Senate Labor, Public Employment and Retirement Committee on June 26

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

This bill would enact the Survivors of Human Trafficking Support Act. The act would require a county that has an interagency sexual assault response team to establish a survivor review board, for the purpose of soliciting, accepting, and reviewing feedback from survivors regarding their experience with service providers. The act would further require state and local law 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: Scheduled for the Senate Appropriations Committee on July 1

[AB 3055 \(Bonta\) Survivors of Human Trafficking: Identification Cards](#)

This bill would require the Department of Motor Vehicles to develop an assisted and expedited process for survivors of human trafficking to obtain a new or replacement identification card. The bill would also require CalVCB to post information on its internet website about obtaining an identification card using this process, obtaining a replacement social security card or replacement permanent resident card, and the Safe at Home program of the Secretary of State.

Status: Held on the Suspense File in the Assembly Appropriations Committee

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

This bill would specify that any portion of a restitution order that remains unsatisfied after a defendant has completed diversion is enforceable by a local collection program.

Status: Held on the Suspense File in the Assembly Appropriations Committee

[SB 1035 \(Ashby\) Criminal Procedure: Fines, Fees, and Restitution](#)

This bill would change the annual interest rate on restitution orders to an adjusted rate not to exceed 10 percent. It would also change 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: Held on the Suspense File in the Senate Appropriations Committee

[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: Held on the Suspense File in the Assembly Appropriations 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: Held on the Suspense File in the Assembly Appropriations Committee

ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD
CONTRACT REPORT
JULY 18, 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.

Contractor Name and PO/Contract Number	Contract Amount and Contract Term	Good or Service Provided
Approval		
No approvals requested.		
Informational		
Contractor Name: Alameda County District Attorney’s Office Contract Number: S23-018 A1	Contract Amount: \$838,533.00 Term: 7/1/2023 – 6/30/2026	The Contract was amended to update language to allow the Contractor to make changes to the budget document, Exhibit B-1. 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).
Contractor Name: Merced County, District Attorney's Office	Contract Amount: \$236,649.00 Term: 7/1/2023 – 6/30/2026	The Contract was amended to update language to allow the Contractor to make changes to the budget document, Exhibit B-1. This procurement is exempt from competitive bidding pursuant to

<p>Contract Number: S23-022 A1</p>		<p>State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
<p>Contractor Name: Monterey County, District Attorney's Office</p> <p>Contract Number: S23-023 A1</p>	<p>Contract Amount: \$350,949.00</p> <p>Term: 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>Contractor Name: Napa County, District Attorney's Office</p> <p>Contract Number: S23-024 A1</p>	<p>Contract Amount: \$165,000.00</p> <p>Term: 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>Contractor Name: Riverside County, District Attorney's Office</p> <p>Contract Number: S23-026 A1</p>	<p>Contract Amount: \$496,209.00</p> <p>Term: 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>Contractor Name: San Bernardino County, District Attorney's Office</p>	<p>Contract Amount: \$449,859.00</p> <p>Term: 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>Contract Number: S23-027 A1</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>Contractor Name: San Diego County, District Attorney's Office</p> <p>Contract Number: S23-028 A1</p>	<p>Contract Amount: \$712,509.00</p> <p>Term: 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>Contractor Name: San Francisco County, District Attorney's Office</p> <p>Contract Number: S23-029 A1</p>	<p>Contract Amount: \$275,391.00</p> <p>Term: 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>Contractor Name: San Joaquin County, District Attorney's Office</p> <p>Contract Number: S23-030 A1</p>	<p>Contract Amount: \$593,163.00</p> <p>Term: 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>Contractor Name: San Luis Obispo County, District Attorney's Office</p>	<p>Contract Amount: \$283,089.00</p>	<p>The Contract was amended to update language to allow the</p>

<p>Contract Number: S23-031 A1</p>	<p>Term: 7/1/2023 – 6/30/2026</p>	<p>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>Contractor Name: San Mateo County, District Attorney's Office</p> <p>Contract Number: S23-032 A1</p>	<p>Contract Amount: \$ 242,862.00</p> <p>Term: 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>Contractor Name: Santa Barbara County, District Attorney's Office</p> <p>Contract Number: S23-033 A1</p>	<p>Contract Amount: \$ 297,792.00</p> <p>Term: 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>Contractor Name: Santa Clara County, District Attorney's Office</p> <p>Contract Number: S23-034 A1</p>	<p>Contract Amount: \$ 891,729.00</p> <p>Term: 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>Contractor Name: Shasta County, District Attorney's Office</p> <p>Contract Number: S23-035 A1</p>	<p>Contract Amount: \$ 208,839.00</p> <p>Term: 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>Contractor Name: Solano County, District Attorney's Office</p> <p>Contract Number: S23-036 A1</p>	<p>Contract Amount: \$ 233,559.00</p> <p>Term: 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>Contractor Name: Sonoma County, District Attorney's Office</p> <p>Contract Number: S23-037 A1</p>	<p>Contract Amount: \$ 233,559.00</p> <p>Term: 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>Contractor Name: Tulare County, District Attorney's Office</p> <p>Contract Number: S23-038 A1</p>	<p>Contract Amount: \$ 227,901.00</p> <p>Term: 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>Contractor Name: Ventura County, District Attorney's Office</p> <p>Contract Number: S23-039 A1</p>	<p>Contract Amount: \$224,949.00</p> <p>Term: 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>Contractor Name: County of Alameda</p> <p>Contract Number: S24-002</p>	<p>Contract Amount: \$2,127,423.00</p> <p>Term: 7/1/2024 – 6/30/2027</p>	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</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>Contractor Name: County of Butte</p> <p>Contract Number: S24-003</p>	<p>Contract Amount: \$727,395.00</p> <p>Term: 7/1/2024 – 6/30/2027</p>	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</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>Contractor Name: Los Angeles County</p> <p>Contract Number: S24-004</p>	<p>Contract Amount: \$6,987,666.00</p> <p>Term: 7/1/2024 – 6/30/2027</p>	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol</p>

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Orange Contract Number: S24-006	Contract Amount: \$1,657,524.00 Term: 7/1/2024 – 6/30/2027	This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime. 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).
Contractor Name: County of Placer Contract Number: S24-007	Contract Amount: \$989,484.00 Term: 7/1/2024 – 6/30/2027	This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime. 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).
Contractor Name: County of Riverside Contract Number: S24-008	Contract Amount: \$2,309,502.00 Term: 7/1/2024 – 6/30/2027	This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime. 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).
Contractor Name: County of San Joaquin	Contract Amount: \$ 2,398,380.00	This contract is to authorize funding of the Joint Powers to support contracted staff who assist in

<p>Contract Number: S24-013</p>	<p>Term: 7/1/2024 – 6/30/2027</p>	<p>providing restorative financial assistance to victims of crime.</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>Contractor Name: County of San Luis Obispo</p> <p>Contract Number: S24-014</p>	<p>Contract Amount: \$ 714,066.00</p> <p>Term: 7/1/2024 – 6/30/2027</p>	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</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>Contractor Name: County of Santa Barbara</p> <p>Contract Number: S24-015</p>	<p>Contract Amount: \$ 915,867.00</p> <p>Term: 7/1/2024 – 6/30/2027</p>	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</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>Contractor Name: County of Santa Clara</p> <p>Contract Number: S24-016</p>	<p>Contract Amount: \$ 3,399,084.00</p> <p>Term: 7/1/2024 – 6/30/2027</p>	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol</p>

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Santa Cruz Contract Number: S24-017	Contract Amount: \$ 897,228.00 Term: 7/1/2024 – 6/30/2027	<p>This contract is to authorize funding of the Joint Powers to support contracted staff who assist in providing restorative financial assistance to victims of crime.</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>
Contractor Name: U.S. Postal Service PO Number: PR 23-161	Contract Amount: \$50,000.00 Term: N/A	<p>This procurement is to replenish the CalVCB’s postage account. Postage is needed to continue daily mailings from CalVCB to claimants and stakeholders.</p> <p>This was procured utilizing State Administrative Manual (SAM) section 8120.2 to prepay United Parcel Service metered accounts with revolving fund checks.</p>
Contractor Name: Sunstone IT LLC PO Number: 3169	Contract Amount: \$77,309.00 Term: 7/27/2024 – 7/26/2025	<p>This procurement is a renewal of the Blackboard learning management system software support and maintenance for an additional year.</p> <p>This was procured utilizing the Competitive – Small Business Option acquisition method.</p>
Contractor Name: OPTM West PO Number: 3165	Contract Amount: \$60,696.00 Term: 5/25/2024 – 5/24/2025	<p>This procurement is a renewal of the Rubrik Enterprise Edition Add-on which helps protect CalVCB’s data at multiple data centers. Safeguarding data for CalVCB employees and members helps the State of California by providing</p>

		<p>employees with a safe space for them to perform CalVCB's mission of supporting victims of crime.</p> <p>This was procured through a Mandatory Statewide Contract – 1-19-70-19R for Enterprise Technology.</p>
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ITEM 6

**Request for Authorization to Begin the Rulemaking Process for
Title 2. California Victim Compensation Board
Article 5. Claims of Persons Erroneously Convicted of Felonies
Sections 640, 640.1, 642, 642.1, 644, 645**

July 18, 2024

Action Requested

Staff propose to amend and adopt the regulations located at Sections 640, 640.1, 642, 642.1, 644, and 645 of Article 5, Title 2, for processing claims of erroneously convicted felons under Penal Code sections 4900, et seq. Staff also propose to modify the required form, as specified in Section 640, to submit a claim the Board.

It is requested that the Board authorize staff to begin the rulemaking process for this proposed regulatory action. This authorization includes submission to the California Office of Administrative Law (OAL) of the attached Proposed Regulations, modified Claim Form, and Initial Statement of Reasons. This authorization also includes publication of the attached Notice of Rulemaking Action, followed by a public comment period, as well as a hearing if requested.

Background

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to Penal Code sections 4900 through 4906. The regulations governing these claims specifically include sections 640 through 646 of Article 5, as well as CalVCB's general hearing procedures in sections 615.1 through 619.7 of Article 2.5, to the extent they are not inconsistent or conflict with Article 5.

To be eligible for consideration, claimants must timely submit a completed claim form and allege innocence of a felony charge for which they were convicted and sentenced to prison. (Pen. Code, §§ 4900, 4901.) To prevail, claimants typically must prove, by a preponderance of the evidence presented at a hearing before a hearing officer, that they did not commit the crime that resulted in their incarceration, and they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).)

However, a different and expediated process applies in the following three scenarios: (1) when a court found the claimant factually innocent, (2) when the claimant's conviction was vacated under specified circumstances and the charges dismissed or acquitted upon remand, unless the Attorney General timely objects with clear and convincing proof of guilt, or (3) when a court granted a motion for approval of the claim under subdivision (d) of Penal Code section 1485.55 after the District Attorney failed to demonstrate the claimant's guilt with clear and convincing evidence under specified circumstances. (Pen. Code, §§ 851.8, 1485.55, 4900, subd. (b).) If any of these scenarios apply, then the Board's approval is mandated, without a hearing, within 90 days. (*Ibid.*; Pen. Code, § 4902, subd. (a).)

When approving any claim, even without a hearing, CalVCB may nevertheless request additional evidence and argument from the parties as needed to calculate injury. (Pen. Code, § 4904.) A successful claim results in approved payment, if sufficient funds are available, in the amount of \$140 per day of the claimant's wrongful incarceration as compensation for the injury sustained through their erroneous conviction. (Pen. Code, § 4904.)

The regulations governing Penal Code section 4900 claims were last updated in 2022, effective January 2023. Since then, several statutory changes enacted by SB 78 (Glazer, Chapter 78, Statutes of 2023) have rendered portions of the regulations and claim form inconsistent with current law. Meanwhile, the number of claims received by CalVCB has exponentially increased by 139 percent from 28 claims in 2021 to 67 claims in 2023, yet the number of approved claims increased by just 57 percent from 7 claims in 2021 to 11 claims in 2023, and the number of denied or rejected claims increased by 144 percent from 18 claims in 2021 to 44 claims in 2023. Accordingly, revised regulations are needed to ensure compliance with current law and to provide clarity, consistency, and transparency for the process to obtain relief.

In light of these developments, staff determined that modifications to the regulations, as well as the claim form, are warranted. Specifically, the revision of Section 640 clarifies the procedure to submit a claim to CalVCB and to request a response from the Attorney General. The addition of Section 640.1 relocates existing language regarding applicable law to ease the parties' understanding. The revision of Section 642 expands upon the rejection process, adds illustrative examples of deficient claims, and includes stylistic changes for ease of understanding. The addition of Section 642.1 creates a procedure to withdraw a claim. The revision of Section 644 clarifies the process for participating in a hearing and includes nonsubstantive, organizational changes for ease of understanding. The revision of Section 645 expands upon the requirements for a proposed decision while deleting duplicative language. Finally, the revision of the claim form includes both substantive and organizational changes to provide improved guidance about the specific information and documentation needed for a claim under current law.

A copy of the draft Proposed Regulations, modified Claim Form as revised July 2024, Initial Statement of Reasons (ISOR), and Notice of Rulemaking Action are attached. A copy of the current claim form as revised July 2022 is also attached for comparison. In the Proposed Regulations, deleted text appears in strikethrough and new text is underlined.

Recommendation

It is recommended that the Board authorize staff to begin the rulemaking process. This includes authorization to submit the Proposed Regulations, modified Claim Form, and ISOR with OAL. This also includes authorization to publish the Notice of Rulemaking Action, followed by a public comment period and, if requested, a listening-only hearing.

Certification

I certify that at its July 18, 2024, Board Meeting, the California Victim Compensation Board adopted the proposed recommendation.

Andrea Burrell
CalVCB Board Liaison

ITEM 6A

TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES

Title 2, §§ 640, 640.1, 642, 642.1, 644, 645

[Notice Published August 2, 2024]

The California Victim Compensation Board (CalVCB) proposes to adopt the regulations and revised claim form as described below for Penal Code section 4900 claims after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

CalVCB has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person or their authorized representative no later than 15 days before the close of the written comment period. At the hearing, if requested, the Board will hear public comment but will take no action nor provide responses at that time. The hearing, if requested, will be scheduled on a date to be determined after the written comment period ends.

WRITTEN COMMENT PERIOD

The written comment period commences on August 2, 2024, and concludes 45-days later on September 16, 2024. During this period, any interested individual or their authorized representative may submit written comments relevant to the proposed regulatory action. To be considered, the written comments must be received by CalVCB by September 16, 2024. Untimely comments will not be considered. Written comments may be mailed to:

Neil Ennes, Legislative Coordinator
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048

Alternatively, written comments may be submitted by e-mail to regulations@victims.ca.gov or by facsimile (FAX) at (916) 491-6441.

AUTHORITY AND REFERENCE

Penal Code section 4906, along with Government Code section 13920, authorizes CalVCB to adopt these proposed regulations and revised claim form. The proposed regulatory action is intended to implement, interpret, and make specific Penal Code sections 4900 through 4904.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

CalVCB processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. The regulations governing this process specifically include sections 640 through 646 within Article 5, Title 2, of the California Code of Regulations, as well as the general hearing procedures in Article 2.5, Title 2, sections 615.1 through 619.7, to the extent those general regulations are not inconsistent or conflict with the specific regulations in Article 5.

A successful claim results in approved payment, if sufficient funds are available, by CalVCB for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful imprisonment. (Pen. Code, § 4904.) To be eligible for consideration, the claimant must allege innocence of a felony conviction under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned for that offense. (Pen. Code, §§ 4900, 4901.) In addition, the claimant must timely submit a verified Erroneous Conviction Claim Form, with supporting documentation, within ten years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

Generally, the claimant must prove, by a preponderance of the evidence, that (1) they did not commit the crime that resulted in their incarceration and (2) they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).) In this context, injury means that, but for the erroneous conviction, the claimant would have been free from custody. The claimant is entitled to a hearing to prove both of these elements, at which the Attorney General may appear to oppose the claim. (Pen. Code, § 4903, subd. (a).) The Attorney General, as well as CalVCB, are bound by any express factual findings rendered by a court during a habeas proceeding or motion to vacate, including a finding of factual innocence under any standard in that proceeding. (Pen. Code, §§ 851.865, 1485.5, 1485.55, subds. (a)-(c) & (g), 4903, subd. (c).)

Nonetheless, a different and expediated process applies in the following three circumstances. First, if a court found the claimant to be factually innocent of the challenged conviction based upon proof by a preponderance of evidence that the claimant did not commit the crime, then CalVCB's approval of a properly submitted claim is mandated, without a hearing and within 90 days. (Pen. Code, §§ 851.865, 1485.55, subds. (a) & (c), 4902, subd. (a).) Second, if the conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General failed to timely object with clear and convicting evidence the claimant's guilt, then CalVCB's approval of a properly submitted claim is mandated within 90 days. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).) Third and finally, if a court granted a motion under subdivision (d) of Penal Code section 1485.55 for approval of a claim based upon a conviction that was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subd. (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed to timely object with clear and convicting proof of the claimant's guilt, then CalVCB's approval of a properly submitted claim is mandated, without a hearing and within 90 days. (Pen. Code, § 1485.55, subd. (d).) When approving any claim, even without a hearing, CalVCB may nevertheless request additional evidence and argument from the parties as needed to calculate injury. (Pen. Code, § 4904, subd. (a).)

Since the regulations in Article 5 were last updated, new statutory changes were enacted. SB 78 (Glazer, Chapter 78, Statutes of 2024), effective January 2024, added subdivision (d) to Penal Code section 1485.55, which authorizes a claimant to file a motion in the superior court to require CalVCB's approval of a properly submitted claim. SB 78 also authorizes CalVCB to request evidence and argument as needed to calculate compensation for every claim. Finally, SB 78 extends CalVCB's deadlines for mandated approval of enumerated claims from 30 to 90 days after filing.¹ As a result of these new changes, some regulations are outdated or inconsistent with current law and require modification.

Along with these recent statutory changes, the volume of claims submitted to CalVCB has grown exponentially. For instance, the number of received claims increased by 139 percent from 28 in 2021 to 67 in 2023. This trend continues. As of June 30, 2024, CalVCB received 47 claims, with a total of 94 expected by years end. Meanwhile, the number of denied and rejected claims similarly increased by 144 percent from 18 claims in 2021 to 44 claims in 2023. The number of approved claims also increased, albeit by 57 percent, from 7 claims in 2021 to 11 claims in 2023. As a result of this influx, new and modified regulations are needed to clarify the basis for relief.

CalVCB last revised the regulations in Article 5 governing Penal Code section 4900 claims in 2022, which became effective in January 2023. In light of the new statutory changes by SB 78, as well as the increased volume of claims, CalVCB determined that additional revisions are warranted. The modified regulations will comply with current law and provide clarity, consistency, and transparency for the process to obtain relief.

Anticipated Benefits of the Proposed Regulation:

The revisions will address the substantive changes effected by SB 78 to ensure consistency with current law. The revisions will also provide additional clarity for processing claims and determining eligibility. Finally, the revisions will include nonsubstantive changes that merely reorganize or rephrase existing regulations and delete duplicative sections in an effort to render the governing regulations easier to understand, especially for claimants representing themselves.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The proposed regulations are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with

¹ In 2022, AB 160 (Committee on Budget) conditionally increased compensation effective July 2024 to adjust for inflation annually and to include time spent on supervised release, but only so long as general fund money over the multiyear forecast was available. Given the Governor's May Revise Budget for 2024-2025, which confirmed no such money was available, this conditional amendment remains inoperable. Accordingly, no regulatory modifications are proposed as a result of AB 160.

Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private individual or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing Penal Code section 4900 claims. An approved claim results in payment, if sufficient funds are available, at a set rate of \$140 per day of the claimant's wrongful incarceration for an erroneous conviction. On average, each approved claim amounts to approximately \$1 million. Even with the recent trend of increasing claims and approved payments, compensation is awarded to a limited group of individuals, historically less than 15 per year. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

The Board has determined that the proposed regulations will not affect:

(A) *The creation or elimination of jobs within the State of California,*

The proposed regulations do not impact jobs as they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

(B) *The creation of new businesses or the elimination of existing businesses within the State of California, and*

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

(C) *The expansion of businesses currently doing business within the State of California.*

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

The Board has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking

compensation for their wrongful incarceration as a result of an erroneous felony conviction.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private individuals than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Neil Ennes
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3728

The backup contact person concerning the proposed administrative action may be directed to:

Kim Gauthier
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3754

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Neil Ennes at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at 400 R Street, Suite 500, Sacramento, California 95811. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Neil Ennes at the P.O. Box or the phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Neil Ennes at the P.O. Box indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Neil Ennes at the above P.O. Box address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through our website at www.victims.ca.gov/proposed-regulations/.

* * * * * END * * * * *

ITEM 6B

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES
SECTIONS 640, 640.1, 642, 642.1, 644, 645

As submitted by the California Victim Compensation Board on August 2, 2024

§ 640. Presentation of Claim.

(a) Claims on behalf of persons erroneously convicted of felonies shall be submitted on an "Erroneously Convicted Person Claim Form," Rev. ~~July 2022~~July 2024, hereby incorporated by reference, and provided by the Board or obtained on the Board's website. Claimants must include the following:

(1) completed claim form with a statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant, and;

(2) supporting documentation as specified in the claim form.

(b) The claim and supporting documentation may be submitted in electronic format as a PDF attachment to the Board's designated email address. Claims emailed after 5:00 p.m. during the week or anytime during the weekend or state holidays will be deemed received the next regular business day. Alternatively, the claim and supporting documentation may be sent by mail to the Board's physical address and will be deemed received upon the date of arrival within the Board's Legal Division. If the claim and supporting documentation are submitted in hardcopy only, an original and one copy are required.

(c) The supporting documentation must confirm the claimant was convicted of a felony in a California court, for which they served a term of imprisonment in either a state prison or county jail pursuant to subdivision (h) of Penal Code section 1170, and the claimant is no longer incarcerated for that felony conviction. The supporting documentation must also confirm the claim was timely submitted under Penal Code section 4901.

(d) Once received, a hearing officer will review the claim to determine compliance with Penal Code sections 4900 and 4901 and, upon such a determination, deem the claim filed. A filed claim will be considered by the Board. All claims that fail to comply with sections 4900 and 4901 may be rejected by a hearing officer.

(e) Upon filing, the Board will notify the claimant and the California Attorney General and forward a complete copy of the claim to the California Attorney General in either hardcopy or electronic PDF format with directions to submit a response.

~~(1) Unless the automatic provision in either Penal Code section 851.865 or Penal Code section 1485.55 applies, the Board will request a response from the Attorney General. The response may offer evidence in support of or in opposition to the claim. The Attorney General's response shall be submitted to both the Board and the claimant in hardcopy form with an electronic version in PDF format.~~

(1) Notice of the filing will include an initial determination by the hearing officer whether the claim falls within subdivision (a) or (b) of Penal Code section 4900 and whether Penal Code section 851.865 or 1485.55 apply. If either party objects, the hearing officer will reconsider the determination.

(2) When some but not all convictions in a claim fall within the scope of Penal Code section 851.865, 1485.55, or 4900, subdivision (b), those convictions may be addressed in a separate proposed decision, and a corresponding portion of compensation approved pending a proposed decision on any other challenged convictions, unless the claimant waives application of the expediated timelines provided in Penal Code section 4902. If waived, a single proposed decision disposing of all convictions in the claim will be prepared in accordance with the statutory timeline that allows the most time for the Attorney General to respond and the Board to decide the claim.

(3) For claims that fall exclusively within section 851.865 or 1485.55, the Attorney General's response may address injury only. For all other claims, the Attorney General's response may address innocence, guilt, and injury.

~~(24) The automatic provisions in section 851.865 and section 1485.55 do not apply if the claimant lacks a court finding of factual innocence for each and every conviction underlying their incarceration. A court finding of factual innocence for any individual conviction is binding upon the Board.~~

(f) Injury may be established by showing that, but for the erroneous conviction, the claimant would not have been in custody. Injury is not established for any concurrent period of incarceration attributable to another conviction.

(1) The hearing officer may request additional documents or arguments from the parties as needed to calculate compensation for the claimant's injury.

(2) The claimant bears the burden to demonstrate injury by a preponderance of the evidence.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 851.865, 1485.55, 4900, 4901, 4902, 4903 and 4904, Penal Code.

§ 640.1. Applicable Law.

(a) If there is any inconsistency or conflict between the provisions of the California Code of Regulations Article 2.5 and this article, the provisions of this article shall apply.

(b) The formal hearing provisions of the Administrative Procedure Act (Government Code §§ 11500-11529) do not apply.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Section 11500 et seq., Government Code; Sections 4900, 4902, 4903 and 4904, Penal Code.

§ 642. Rejection of Claim.

(a) Claims that are untimely or are otherwise not in compliance with Penal Code sections 4900 and 4901 will be rejected by a hearing officer and will not be heard or considered by the Board. Claims not in compliance with sections 4900 and 4901 include, but are not limited to, the following circumstances:

(1) A claim that fails to state facts upon which relief may be granted is not in compliance with Penal Code sections 4900 and 4901. For example, relief may not be granted for a claim based

upon a charge that did not result in a felony conviction or a claim based upon a felony conviction for which probation was granted without imposition of any term of imprisonment.

(2) ~~Successive or duplicative claims are not in compliance with Penal Code sections 4900 and 4904.~~ The Board will consider on the merits only a single claim by a claimant challenging the same underlying conviction.

(3) A claim solely based upon a ~~vacated conviction that was vacated~~ due to a change in the legal definition of the crime, for example Penal Code section ~~4170.951172.6~~, ~~is not in compliance with Penal Code sections 4900 and 4904.~~ To be compliant, the claim must allege that the claimant is innocent of the crime with which they were erroneously convicted because the charged crime was either not committed at all or not committed by the claimant under the law in effect at the time the charged crime allegedly occurred.

(4) A claim solely based upon a conviction that was vacated due to satisfactory completion of the sentence, for example Penal Code section 1203.4.

(5) A claim that lacks injury as a matter of law, such as when only one conviction is challenged as erroneous, and an equivalent sentence was concurrently imposed for another, unchallenged conviction.

(b) Prior to rejecting a claim ~~for failure to comply~~not in compliance with Penal Code sections 4900 and 4901, the claimant shall be:

(1) notified of the reason for rejecting the claim and,

(2) given thirty (30) calendar days to present evidence that will overcome the rejection. The deadline may be extended upon the claimant's written request for demonstrated good cause.

(3) At the hearing officer's discretion, a response from the Attorney General may be requested. The Attorney General shall be given thirty (30) calendar days to submit the response, which may be extended upon the Attorney General's written request for demonstrated good cause.

(4) Upon receipt of the response, the claimant may submit a reply within thirty (30) calendar days, which may be extended upon the claimant's written request for demonstrated good cause.

(c) If the claimant's response provides sufficient evidence to prove that the claim was timely submitted and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be deemed filed as of the date the additional evidence was received and considered.

(d) If the claimant's response does not provide sufficient evidence to prove that the claim was timely submitted and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be rejected without a hearing and will not be considered by the Board. The rejection constitutes a final decision.

(e) A claimant, whose claim was rejected, is not barred as a result of that rejection from presenting a new claim with new evidence or law that overcomes the basis for rejection. The timing of the new claim must satisfy the statutory deadline and shall not relate back to the date of submission of the rejected claim.

(1) A new claim that fails to provide new evidence or law to overcome the basis for a previous rejection will not be considered by the Board or hearing officer.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections ~~4170.951172.6~~, 1203.4, 4900, 4901, 4902, 4903 and 4904, Penal Code.

§ 642.1 Withdrawal of Claim.

(a) A claimant may withdraw a claim upon request any time prior to the Attorney General's submission of a response letter.

(b) The hearing officer may, in their discretion, deem a claim withdrawn in any of the following circumstances:

(1) The hearing officer lacks valid contact information for the claimant and more than ninety (90) days have passed since the claimant's last communication with the Board.

(2) The claimant abandons the claim by failing to respond to a request by the hearing officer and more than ninety (90) days have passed since that request was made.

(c) A claim shall not be withdrawn if any of the following circumstances apply:

(1) The Attorney General submitted a response letter, unless the parties expressly agree to the withdrawal.

(2) A hearing before a hearing officer has been scheduled, unless the parties expressly agree to the withdrawal.

(3) The administrative record closed.

(d) Prior to deeming a claim withdrawn, the hearing officer shall send notice to the parties at their last known address of the proposed withdrawal and allow thirty (30) days for a response.

(e) A claimant, whose claim was withdrawn, is not barred as a result of that withdrawal from presenting a new claim. The timing of the new claim must satisfy the statutory deadline and shall not relate back to the date of submission of the withdrawn claim.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 4900, 4901, 4902, 4903 and 4904, Penal Code.

§ 644. Conduct of Hearing Before Hearing Officer.

(a) Upon receipt of a response from the Attorney General, a hearing on the claim will be scheduled when permitted by Penal Code section 4903, taking into consideration the availability of the parties, witnesses, and hearing officer. The hearing officer shall provide at least 15 days' notice to the parties of the date and location of the hearing. The claimant may waive the hearing and elect to proceed on the written record. For claims proceeding under subdivision (b) of Penal Code section 4900, the hearing may be waived only if both the claimant and Attorney General agree to proceed on the written record.

(b) Hearings shall be open to public observation, unless otherwise provided by law.

(c) Hearings will be conducted in Sacramento unless the hearing officer agrees to an alternative location or appearance by electronic means.

(A) A party that requests that all or part of a hearing be conducted by electronic means is responsible for providing, operating, and paying for all necessary equipment required for their appearance throughout the duration of the hearing. The hearing may proceed by electronic means so long as each party is able to participate in the hearing.

(B) The hearing will be recorded by electronic means at the expense of the Board.

(2) The hearing officer may determine the amount of time allotted to present a claim for compensation. The determination made under this subsection shall be based on the following factors:

(A) complexity of legal or factual issues;

(B) necessity to evaluate credibility of witnesses for a proper determination of issues;

(C) parties' representation by legal counsel;

(D) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(E) any other factor likely to affect a just and proper determination of issues.

(3) A party appearing at a hearing shall have their witnesses and evidence present and be ready to proceed when the matter is called.

(A) Each party is responsible for securing the attendance of their witnesses and, if necessary, providing an interpreter.

(B) Oral testimony shall be given under oath or affirmation that is administered by the hearing officer. Any party or witness who testifies is subject to cross examination on any matter relevant to the claim, even if the matter was not covered during the direct examination. The hearing officer may question any party or witness.

(4) If a claimant fails to appear at the hearing or fails to proceed, the Board may base its decision on previously submitted evidence.

(A) A party's request for a continuance of the hearing must be in writing, provide sufficient facts for the basis of the request, and submitted to the hearing officer as soon as the need for the delay is known.

(B) The hearing officer may grant a continuance only if the request demonstrates good cause for the delay. Good cause may be shown where both parties agree to the requested continuance. If the request is made less than thirty (30) days before the scheduled hearing, good cause requires a showing of extraordinary and unforeseen circumstances.

(d_b) Except for claims proceeding under subdivision (b) of Penal Code section 4900, the claimant has the burden of proof on all issues necessary to establish eligibility, including innocence and injury.

(1) The standard of proof is a preponderance of the evidence.

(2) The parties shall present evidence in the following order:

(A) the claimant;

(B) the Attorney General;

(C) the claimant, if they desire to offer any evidence or testimony to rebut the Attorney General's evidence or argument.

(e_c) For claims proceeding under subdivision (b) of Penal Code section 4900, the Attorney General has the burden of proof, by clear and convincing evidence, to prove the claimant committed the acts constituting the offense for which the claimant was convicted. The claimant continues to bear the burden to prove injury by a preponderance of the evidence.

(1) The parties shall present evidence in the following order:

(A) the Attorney General;

(B) the claimant;

(C) the Attorney General, if they desire to offer any evidence or testimony to rebut the claimant's evidence or argument.

(D) the claimant, if they desire to offer any evidence or testimony on the issue of injury.

(2) The claimant's burden to prove injury is satisfied upon a showing that each and every conviction underlying their incarceration was vacated by either a writ of habeas corpus or motion pursuant to Penal Code section 1473.6 or subdivision (a)(2) of section 1473.7, and all charges were subsequently dismissed or ended in acquittal without any new conviction for a lesser offense. If the claimant sustained a new conviction upon remand for a lesser offense, then the claimant's injury is presumptively calculated as the difference in length between the sentence served for the original conviction and the sentence imposed for the new conviction.

~~(f) The hearing officer may determine the amount of time allotted to present a claim for compensation. The determination made under this subsection shall be based on the following factors:~~

~~(1) complexity of legal or factual issues;~~

~~(2) necessity to evaluate credibility of witnesses for a proper determination of issues;~~

~~(3) parties' representation by legal counsel;~~

~~(4) necessity of witnesses being subject to cross examination for the proper determination of issues; and~~

~~(5) any other factor likely to affect a just and proper determination of issues.~~

~~(g) If a claimant fails to appear at the hearing or fails to proceed, the Board may base its decision on previously submitted evidence.~~

~~(h) A party that requests that all or part of a hearing be conducted by electronic means under California Code of Regulations section 617.4 may be responsible for providing, operating, and paying for all necessary equipment.~~

~~(i) The hearing will be recorded by electronic means at the expense of the Board.~~

~~(j) Any party may request the Board to arrange for the preparation of a hearing transcript. The party requesting the preparation of a hearing transcript shall bear all costs for its preparation and shall provide one copy of the transcript to the Board at no cost to the Board.~~

~~(k) The hearing officer may allow or request the parties to submit post-hearing briefs.~~

(1) Post-hearing briefs shall be limited to legal and factual arguments related to relevant issues under section Penal Code sections 4900 et seq. or identified by the hearing officer.

(2) The hearing officer shall inform the parties of the deadline for the submission of a post-hearing brief.

(f) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless the hearing officer orders otherwise.

(g) In a hearing in which post-hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post-hearing briefs, unless the hearing officer orders otherwise or grants an extension.

(h) No argument will be considered by the hearing officer after the close of the hearing record, except as allowed in California Code of Regulations section 619.4, unless the hearing officer orders otherwise.

(i) The hearing officer retains the discretion to reopen the hearing administrative record for good cause.

~~(p) The formal hearing provision of the Administrative Procedure Act (Government Code §§ 11500-11529) do not apply.~~

~~(q) If there is any inconsistency or conflict between the provisions of California Code of Regulations Article 2.5 and this article, the provisions of this article shall apply.~~

~~(r) At the request of the claimant, the Attorney General, or other interested party, the Board will provide information about the hearing rules and procedures.~~

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 4900, 4902, 4903 and 4904, Penal Code.

§ 645. Proposed Decision by Hearing Officer.

~~(a) The hearing officer shall take the matter under submission once the administrative record is closed and prepare a proposed decision.~~

~~(b) The hearing officer shall prepare a proposed decision that is written and contains a statement of the factual and legal bases for the proposed decision.~~

~~(c) If the factual basis for the proposed decision includes a determination based substantially on the credibility of a witness, the proposed decision shall identify specific evidence that supports the credibility determination, which may include but is not limited to demeanor, manner or attitude.~~

~~(d) The proposed decision shall be based on evidence in the hearing record and on matters subject to official notice under California Code of Regulations section 617.8.~~

~~(e) The hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.~~

~~(f) The proposed decision may not deny a claim solely because the claimant failed to obtain a court finding of factual innocence.~~

~~(g) For claims proceeding under subdivision (b) of Penal Code section 4900, the proposed decision may not deny a claim unless the overall weight of evidence, which may include the trial record only in combination with other admissible evidence, satisfies the Attorney General's burden of proof.~~

(d) When some but not all convictions in a claim fall within the scope of Penal Code section 851.865, 1485.55, or 4900, subdivision (b), and the claimant declines to waive the expedited timelines in Penal Code section 4902, more than one proposed decision may be issued and a corresponding portion of compensation approved pending a proposed decision on any other challenged convictions.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 1485.55, 4900, 4902, 4903 and 4904, Penal Code.

ITEM 6C

Title 2. California Victim Compensation Board
Article 5. Claims of Persons Erroneously Convicted of Felonies
Sections 640, 640.1, 642, 642.1, 644, 645

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. The regulations governing these claims specifically include sections 640 through 646 of Article 5, as well as CalVCB's general hearing procedures in sections 615.1 through 619.7 of Article 2.5, to the extent they are not inconsistent or conflict with Article 5.

A successful claim results in approved payment, if sufficient funds are available, for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful incarceration. (Pen. Code, § 4904.) To be eligible for consideration, the claimant must allege innocence of a felony conviction under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned for that offense. (Pen. Code, §§ 4900, 4901.) In addition, the claimant must timely submit a verified Erroneous Conviction Claim Form, with supporting documentation, within ten years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

To prevail, the claimant typically must prove, by a preponderance of the evidence, that they did not commit the crime that resulted in their incarceration, and they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).) In limited circumstances, the claim must be approved in an expediated process, without a hearing, as specified in Penal Code sections 851.865, 1485.55, and subdivision (b) of section 4900. Specifically, before 2023, approval was mandated in the following two scenarios: (1) pursuant to section 851.865 or 1485.55 if a court found the claimant factually innocent of the challenged conviction, or (2) pursuant to subdivision (b) of section 4900 if the claimant's conviction was vacated by grant of habeas or Penal Code section 1473.6 or 1473.7, subdivision (a)(2), with dismissal or acquittal upon remand, and the Attorney General failed to object with clear and convincing evidence of guilt.

Since the regulations in Article 5 were last updated in 2022, effective January 2023, new statutory changes were enacted. SB 78 (Glazer, Chapter 78, Statutes of 2024), effective January 2024, added subdivision (d) to Penal Code section 1485.55, which added a third scenario under which a claim must be approved in an expediated process without a hearing. Specifically, subdivision (d) of section 1485.55 mandates approval of a claim if a court granted a motion for approval when the claimant's conviction was vacated by grant of habeas relief or Penal Code section 1473.6 or 1473.7, subdivision (a), with dismissal or acquittal upon remand, and the district attorney failed to object with clear and convincing evidence of guilt. SB 78 also amended Penal Code section 4904 to allow CalVCB to request evidence and argument as needed to calculate compensation for all claims, even those for which a

hearing is otherwise prohibited.¹ As a result of these new changes, some regulations are outdated or inconsistent with current law and require modification.

Along with these recent statutory changes, the volume of claims submitted to CalVCB has grown exponentially in recent years. For example, the number of received claims increased by 139 percent from 28 in 2021 to 67 in 2023. This trend continues. As of June 30, 2024, CalVCB received 47 claims, with a total of 94 expected by years end. Meanwhile, the number of denied and rejected claims similarly increased by 144 percent from 18 claims in 2021 to 44 claims in 2023. The number of approved claims also increased, albeit by 57 percent, from 7 claims in 2021 to 11 claims in 2023. As a result of this influx, new and modified regulations are needed to clarify the basis for relief.

In light of SB 78 and the increased volume of claims, CalVCB determined that modifications to the regulations, as well as the claim form, are warranted. The modified regulations will comply with current law and provide clarity, consistency, and transparency for the process to obtain relief.

BENEFITS

The modifications to the regulations and claim form will address the substantive changes effected by SB 78 to ensure consistency with current law. The modifications will also provide clarity for processing claims and determining eligibility. The modifications will include new tools to resolve novel issues in a fair and efficient manner, such as when a claim may be withdrawn, a continuance granted, or a noncompliant claim rejected. Finally, the modifications will include nonsubstantive changes that reorganize or rephrase existing regulations in an effort to render them easier to understand, especially for claimants representing themselves.

PURPOSE

The specific purpose for each proposed modification to the regulations and claim form is detailed below.

Section 640: The purpose of this revised regulation is to clarify the process for submitting a claim to CalVCB and referring that claim to the Attorney General for a response, as well as providing clarity, consistency, and transparency for the deadline and permissible content for that response. The revisions impact only subdivisions (a), (e), (f), and (g), as detailed below. The specific purpose for each modified subdivision follows.

- **Section 640, subdivision (a):** While retaining the requirement for claimants to submit a completed “Erroneously Convicted Person Claim Form,” the revised subdivision replaces the required form from the outdated 2022 version to the current 2024 version. CalVCB will therefore be able to furnish claimants with an updated form that is consistent with the current law for processing claims under Penal Code

¹ In 2022, AB 160 (Committee on Budget) conditionally increased compensation effective July 2024 to adjust for inflation annually and to include time spent on supervised release, but only so long as general fund money over the multiyear forecast was available. Given the Governor’s May Revise Budget for 2024-2025, which confirmed no such money was available, this conditional amendment remains inoperable. Accordingly, no regulatory modifications are proposed as a result of AB 160.

section 4900.

- **Sections 640, subdivisions (b) through (d):** No changes are proposed.
- **Section 640, subdivision (e):** This subdivision describes the process by which CalVCB will refer a filed claim to the Attorney General for a response. As revised, it deletes language in current subdivision (e)(1) that limits CalVCB's authority to request a response from the Attorney General only for filed claims that are not subject to Penal Code sections 851.865 and 1485.55. Despite language in sections 851.865 and 1485.55 that prohibits a hearing on the underlying claim, SB 78's amendment of Penal Code section 4904 expressly authorizes CalVCB to request evidence and argument on the issue of injury from the Attorney General or claimant for all claims. Accordingly, this revised subdivision confirms that a response from the Attorney General will be requested for each filed claim, even those subject to sections 851.865 and 1485.55. It further confirms that notice of the request for a response will be sent to both the Attorney General and the claimant. Finally, it retains the requirement for the Attorney General's response to be submitted in both hardcopy and electronic format with a copy to the claimant.
 - **Section 640, subdivision (e)(1):** This new subdivision details the process by which CalVCB requests a response from the Attorney General for a filed claim. The request includes the hearing officer's initial determination whether the claim falls within subdivision (a) or (b) of Penal Code section 4900 and whether Penal Code section 851.865 or 1485.55 applies. This initial determination is significant because each of these statutes impose different deadlines and burdens of proof to approve the claim. For instance, the Attorney General's response is due within 45 days, subject to only one extension of time, for claims under subdivision (b) of section 4900, whereas the Attorney General's response is due within 60 days, with unlimited extensions of time thereafter, under subdivision (a) of section 4900. Relatedly, this subdivision allows either party to object to the initial determination, prompting reconsideration by the hearing officer. The ability for reconsideration ensures due process as both sides may be heard and submit additional evidence on this issue.
 - **Section 640, subdivision (e)(2):** This new subdivision establishes the process for handling a mixed claim, wherein only some, but not all, challenged convictions within a single claim fall within Penal Code section 851.865, 1485.55, or subdivision (b) of section 4900. This situation may occur when, for example, a claimant obtains a finding of factual innocence for only some but not all of the convictions underlying their incarceration. As this new subdivision explains, absent a waiver by the claimant of the expedited timelines for the Attorney General's response and the Board's decision that apply to any portion of the claim under sections 851.865, 1485.55, and subdivision (b) of section 4900, then the claim may be resolved in a piecemeal fashion. In this scenario, different due dates may apply to portions of the Attorney General's response, and the hearing officer may issue multiple proposed decisions that separately address each portion of the claim, with compensation deducted pending a proposed decision on any remaining aspect of the claim. But as this new subdivision confirms, in the event of the claimant's waiver, then a single statutory deadline will apply that allows for the most time for the Attorney General to submit a single response and the hearing officer to issue a single proposed decision.

- **Section 640, subdivision (e)(3):** This new subdivision specifies the permissible content of the Attorney General's response in accordance with SB 78's amendment to Penal Code section 4904. For claims that fall exclusively within Penal Code section 851.865 or 1485.55, the Attorney General's response may only address injury. For all other claims, the Attorney General's response may also address innocence and guilt.
- **Section 640, subdivision (e)(4):** This revised subdivision, which is renumbered from current subdivision (e)(2), deletes language interpreting the automatic approval provisions in Penal Code sections 851.865 and 1485.55 to exclude any claim that lacks a court finding of factual innocence for each and every conviction underlying the duration of incarceration. This interpretation relied upon the statutory prohibition against a hearing in sections 851.865 and 1485.55, which left CalVCB without any means to determine injury if the claimant was deemed factually innocent of only some, but not all, of the challenged convictions. However, with SB 78's amendment to Penal Code section 4904 that allows CalVCB to receive evidence and argument on the issue of injury for any claim, as well as SB 78's expansion of the types of claims for which automatic approval is required, this interpretation is no longer persuasive. Accordingly, this revised subdivision deletes this outdated interpretation in accordance with SB 78. This subdivision nevertheless retains the still valid language that a single finding of factual innocence for any individual conviction is binding upon the Board.
- **Section 640, subdivision (f):** This revised subdivision retains the definition of injury in accordance with Penal Code section 4904, while adding an example of a scenario that falls outside of that definition. Specifically, it explains that injury requires a showing that, but for the erroneous conviction, the claimant would not have been in custody. No injury occurs, for example, when the claimant was concurrently incarcerated for another conviction. By adding this specific example, the revised subdivision will be more readily understood by the parties, especially claimants representing themselves.
 - **Section 640, subdivision (f)(1):** This new subdivision confirms, based upon SB 78's amendment to Penal Code section 4904, that, for all claims, the hearing officer is authorized to request additional evidence or argument from either the Attorney General or the claimant to calculate compensation for the claimant's injury.
 - **Section 640, subdivision (f)(2):** This new subdivision confirms that, for all claims, the burden of proof to demonstrate injury remains upon the claimant, which includes claims for which approval is mandated without a hearing by Penal Code section 851.865 or 1485.55. This preponderance standard is mandated by Penal Code section 4904, which expressly requires a finding by the Board "that the claimant has sustained injury" before approving payment as compensation for any claim. As Evidence Code section 115 confirms, unless otherwise specified, "the burden of proof requires proof by a preponderance of the evidence." Consistent with this approach, section 644 in Article 5 likewise imposes a preponderance standard on the issue of injury for all hearings on a Penal Code section 4900 claim.

Section 640.1: The purpose of this new section, which relocates without substantive change existing language in section 644 of Article 5, is to highlight the applicable law that does and does not apply to Penal Code section 4900 claims. This reorganization is consistent with Articles 2.5 and 5.2 governing CalVCB proceedings, which also include a separate section at the commencement of the article defining the applicable law. As a stand-alone section, this regulation will be easier to identify and understand, especially for claimants representing themselves. The specific purpose for each proposed subdivision follows.

- **Section 640.1, subdivision (a):** This new subdivision, which relocates identical language in current section 644, subdivision (q), confirms that the general hearing procedures in Article 2.5 of Title 2 of the California Code of Regulations may apply to Penal Code section 4900 claims unless those procedures conflict or are inconsistent with any of the specific provisions in Article 5. Thus, it clearly informs the parties that this applicable law applies throughout the duration of the claim's pendency, even if no hearing before a hearing officer takes place.
- **Section 640.1, subdivision (b):** This new subdivision, which relocates identical language in current section 644, subdivision (p), confirms that the formal hearing provisions of the Administrative Procedure Act (APA) do not apply to Penal Code section 4900 claims. Thus, it clearly informs the parties that this portion of the APA does not apply at any time during the claim's pendency, regardless of whether a hearing before a hearing officer takes place.

Section 642: This section, as revised, explains and expands upon the process by which claims may be rejected by a hearing officer for failing to comply with the requirements of Penal Code section 4900 and 4901. It further provides additional, illustrative examples of these types of claims. These revisions, in addition to nonsubstantive stylistic changes within this section, are intended to facilitate the parties' understanding of this process, especially for claimants representing themselves. The specific purpose of each modified subdivision follows.

- **Section 642, subdivision (a):** This subdivision explains that a hearing officer may reject a claim, without being considered by the Board, if that claim fails to comply with Penal Code sections 4900 and 4901. As modified, it adds a sentence to confirm that the ensuing examples are merely illustrative and not comprehensive.
 - **Section 642, subdivision (a)(1):** This revised subdivision confirms that a claim, which fails to state facts upon which relief may be granted, is not in compliance with Penal Code section 4900 and 4901. To illustrate this type of deficient claim, the revised subdivision adds the following examples: a claim based upon a charge that did not result in a felony conviction, or a claim based upon a felony conviction for which probation was granted without imposition of any term of imprisonment. Duplicative language is deleted for stylistic purposes without substantive change.
 - **Section 642, subdivision (a)(2):** This subdivision is revised solely to delete duplicative language for stylistic purposes without substantive change.
 - **Section 642, subdivision (a)(3):** This subdivision is revised, without substantive change, in order to update the citation for former Penal Code 1170.95, which was renumbered as 1172.6 in 2022. It also includes nonsubstantive stylistic changes.

- **Section 642, subdivision (a)(4):** This new subdivision adds dismissal of a conviction solely due to satisfactory competition of a sentence pursuant to Penal Code section 1203.4 as an illustrative example of a claim that fails to comply with Penal Code sections 4900 and 4901.
 - **Section 642, subdivision (a)(5):** As another illustrative example of a noncompliant claim, this new subdivision includes any claim for which injury is lacking as a matter of law, such as when an equivalent sentence was concurrently imposed for another unchallenged conviction.
- **Section 642, subdivision (b):** This subdivision, as revised, clarifies and expands the process by which a submitted claim that fails to comply with Penal Code sections 4900 and 4901 may be cured and ultimately filed. It also includes nonsubstantive stylistic changes. Combined, these changes promote a process that ensures an opportunity for both the claimant and the Attorney General to address identified deficiencies before the claim is rejected by the hearing officer.
 - **Section 642, subdivision (b)(1):** No changes are proposed.
 - **Section 642, subdivision (b)(2):** As revised, the subdivision expressly allows for an extension of time for the claimant to submit a response that cures the identified deficiencies. This subdivision specifies that the request for an extension must be submitted in writing with demonstrated good cause.
 - **Section 642, subdivision (b)(3):** This new subdivision authorizes the hearing officer to request a response from the Attorney General to address whether or not the claim complies with Penal Code section 4900 and 4901. This new subdivision allows 30 days for the Attorney General to submit the request, which may be extended upon written request with good cause.
 - **Section 642, subdivision (b)(4):** This new subdivision authorizes the claimant to submit a reply to the Attorney General's response. The due date for the claimant's reply may be extended upon written request for demonstrated good cause.
- **Section 642, subdivision (c):** This revised subdivision clarifies that the filing date for a claim, which initially failed to comply with sections 4900 and 4901, is calculated based upon the date the hearing officer received and considered the claimant's response that cured all of the identified deficiencies. As revised, it confirms that the filing date is not determined by the date the claimant submitted the response. The filing date is significant, as it triggers the Board's 90-day deadline to approve a claim under Penal Code sections 851.865 and 1485.55, as well as the Attorney General's 45-day deadline to oppose a claim under section 4902, subdivision (d).
- **Section 642, subdivision (d):** This subdivision, which authorizes the hearing officer to reject a claim, adds a sentence to confirm that the hearing officer's rejection constitutes a final decision. As such, it is subject to judicial review by petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5.
- **Section 642, subdivision (e):** This new subdivision establishes the legal consequence of a rejected claim in the event of a future claim. It confirms that a claimant may submit a second claim if supported by new evidence or law that overcomes the identified deficiencies for the first, rejected claim. It further confirms that the timeliness of the second claim depends upon the date of its submission and

may not relate back to the first, rejected claim.

- **Section 642, subdivision (e)(1):** This new subdivision specifically authorizes the hearing officer's outright rejection of a second claim, without notice and 30-day opportunity to cure, when the second claim fails to overcome the identified deficiencies in the first rejected claim. As a result, this new subdivision may reduce the number of duplicative claims submitted by claimants who disagree with the rejection of their first claim. It may also encourage these claimants to file a petition for writ of mandate as the correct procedure to challenge the rejection of their first claim.

Section 642.1: The purpose of this new regulation is to establish a process for resolving claims that the claimant either has abandoned or wishes to withdraw. It ensures that claims are not pending indefinitely and allows CalVCB, as well as the parties, to conserve resources by terminating the administrative proceeding under specified circumstances. The specific purpose of each modified subdivision follows.

- **Section 642.1, subdivision (a):** This new subdivision allows the claimant to withdraw a claim, upon request, any time before the Attorney General's submission of a response letter.
- **Section 642.1, subdivision (b):** This new subdivision allows the hearing officer to deem a claim withdrawn under two scenarios. First, as detailed in subdivision (b)(1), the hearing officer may deem a claim withdrawn when the claimant failed to provide valid contact information and more than 90 days have passed since the claimant's last communication with CalVCB. Second, as detailed in subdivision (b)(2), the hearing officer may deem a claim withdrawn when the claimant fails to respond to a request by the hearing officer and more than 90 days have passed since the request was made.
- **Section 642.1, subdivision (c):** This new subdivision prohibits withdrawal of a claim in three scenarios. First, as detailed in subdivision (c)(1), withdrawal is prohibited after the Attorney General submits a response letter, unless the parties agree otherwise. Second, as detailed in subdivision (c)(2), withdrawal is prohibited after a hearing has been scheduled, unless the parties agree otherwise. Third, as detailed in subdivision (c)(3), withdrawal is prohibited after the administrative record has closed. If any of these scenarios apply, then the administrative process must continue until a final decision is reached.
- **Section 642.1, subdivision (d):** This new subdivision establishes the procedural prerequisites that must be followed before a claim may be deemed withdrawn. Specifically, the hearing officer must provide notice to the parties and allow 30 days for a response. Notice may be sent to the parties at their last known address, even if that address no longer appears valid. This subdivision supplements the general provision in section 616.2 of Article 2.5, which confirms the parties' ongoing duty to provide a correct address to CalVCB.
- **Section 642.1, subdivision (e):** This new subdivision establishes the legal consequence of a withdrawn claim in the event of a future claim. It confirms that a claimant is not barred from submitting a second claim solely because the first claim was withdrawn. It further confirms that the timeliness of the second claim depends upon the date of its submission and may not relate back to the first, withdrawn claim.

Section 644: The purpose of this revised regulation is to clarify the process for participating in a hearing before a hearing officer, as well as to make nonsubstantive changes that render this regulation easier to understand, especially for claimants representing themselves. The nonsubstantive changes include reorganizing existing provisions within section 644 by category and deleting duplicative provisions already contained in Article 2.5. Given the extensive changes proposed, modifications to delete current subdivisions are designated as “former,” and modifications to add new subdivisions are designated as “new.” The specific purpose of each modified subdivision follows.

- **Section 644, subdivision (a):** This subdivision, as revised with multiple new subdivisions and subsections, specifies the mechanics of a hearing before a hearing officer. This subdivision allows the hearing officer to schedule a hearing on a claim whenever permitted by statute. It deletes inconsistent language that authorized a hearing to be scheduled only upon receipt of the Attorney General’s response. This modification comports with SB 78’s amendment to Penal Code section 4904, which allows the Attorney General to submit a response on the issue of injury even for claims that are otherwise barred from a hearing by Penal Code section 851.865 or 1485.55.
 - **(New) Section 644, subdivision (a)(1):** This new subdivision incorporates, without substantive change, the provision in current subdivision (c) of section 644, which requires all hearings take place in Sacramento unless the hearing officer agrees to an alternative. To that end, the lettering of this subdivision is revised to consecutively follow the previous heading, and a typographical error is corrected. In addition, this new subdivision adds two subsections related to the mechanics for holding a hearing. Subsection (a)(1)(A) repeats and expands upon language in current subdivision (h) of section 644 concerning the circumstances under which a hearing may be conducted by electronic means. Those circumstances require both parties to provide their own electronic equipment as needed for their appearance throughout the duration of the hearing. Subsection (a)(1)(B) repeats identical language in current subdivision (i) of section 644, which specifies how the hearing must be recorded. This reorganization and expansion of the regulation by subject matter will facilitate a better understanding of the rules governing the hearing technicalities.
 - **(New) Section 644, subdivision (a)(2):** This new subdivision, which includes multiple subsections (a)(2)(A) through (E), repeats identical language in current subdivision (f), subsections (1) through (5), of section 644 concerning the length of allotted time for a hearing. This reorganization of the regulation, without substantive change, will facilitate a better understanding of the applicable rules.
 - **(New) Section 644, subdivision (a)(3):** This new subdivision, which includes new subsections (a)(3)(A) and (B), establishes each party’s obligation to proceed at the hearing. Specifically, each party must appear and be ready to proceed at the hearing, with all their evidence and witnesses present. Under subsection (a)(3)(A), the party is responsible for securing the attendance of their witnesses and, if necessary, providing an interpreter. In addition, under subsection (a)(3)(B), any testimony by a party or witness must be given under oath and subject to cross-examination by the opposing party and the hearing officer. Overall, this subdivision expands upon the general provisions in section 617.9 of Article 2.5 concerning a party’s failure

to appear or proceed, as well as section 617.7 of Article 2.5 concerning oral evidence.

- **(New) Section 644, subdivision (a)(4):** This new subdivision establishes the consequence of a party's failure to proceed and the process to continue the hearing date. Specifically, this subdivision repeats identical language in current subdivision (g) of section 644, which allows the Board to decide a claim based on previously submitted evidence if a claimant fails to appear or proceed at the hearing. It adds new subsections (a)(4)(A) and (B), which detail the circumstances under which a party may request a continuance of the hearing. Under subsection (a)(4)(A), the request must be in writing, supported by sufficient facts, and presented as soon as the need for the delay is known. Under subsection (a)(4)(B), the request may be granted by the hearing officer upon a showing of good cause, which additionally requires a showing of extraordinary and unforeseen circumstances when the request is made less than 30 days before the scheduled hearing.
- **(Former) Section 644, subdivision (b):** This current subdivision, which mandates an open hearing unless otherwise provided by law, is deleted as duplicative of identical language section 617.1, subdivision (a), for Article 2.5.
- **(New) Section 644, subdivision (b):** This new subdivision (b), as revised, merely replaces the letter from current subdivision (d) to consecutively follow the previous heading.
- **(New) Section 644, subdivision (c):** As revised, this new subdivision (c) merely replaces the letter for current subdivision (e) to consecutively follow the previous subdivision.
- **(Former) Section 644, subdivisions (d) through (i):** These current subdivisions, which specify the mechanics for conducting a hearing, are deleted as duplicative of the new provisions throughout subdivision (a) of section 644.
- **(New) Section 644, subdivisions (d) through (i):** As revised, these new subdivisions (d) through (i) merely place the letter for current sections (j) through (o), respectively, to consecutively follow the previous heading.
- **(Former) Section 644, subdivisions (p) and (q):** These current subdivisions, which specify the applicable law, are deleted as duplicative of the new provisions in section 640.1, subdivisions (a) and (b).
- **(Former) Section 644, subdivisions (r):** This current subdivision is deleted as duplicative of identical language in section 616.1 for Article 2.5, which requires a copy of the hearing procedures to be provided upon request at reasonable cost.

Section 645: The purpose of this revised regulation is to clarify the process by which the hearing officer will issue a proposed decision and to specify the appropriate considerations upon which the proposed decision may be based. It deletes duplicative language that already appears in section 619.1 for Article 2.5 concerning decisions by the Board and hearing officers. As with the preceding section, modifications to delete current subdivisions are designated as "former," and modifications to add new subdivisions are designated as "new." The specific purpose of each modified subdivision follows.

- **Section 645, subdivision (a):** This subdivision clarifies, once the administrative record closes, the hearing officer will prepare a proposed decision.
- **(Former) Section 645, subdivisions (b) through (e):** These current subdivisions, which specify required content for a proposed decision and appropriate considerations, are deleted as duplicative of identical language in section 619.1, subdivisions (b) through (e), of Article 2.5.
- **Section 645, subdivisions (f) and (g):** These subdivisions are modified solely to replace the letter from current subdivisions (f) and (g) to subdivisions (b) and (c), respectively, in order to consecutively follow the previous heading.
- **(New) Section 645, subdivision (d):** This new subdivision confirms that, for mixed claims where the claimant has not waived the expedited provisions in Penal Code section 851.865, 1485.55, or 4900, subdivision (b), the hearing officer may issue more than one proposed decision.

Claim Form: The purpose for the updated claim form, as incorporated by reference in section 640, subdivision (a), is to provide guidance to claimants concerning the specific type of information and documentation required by current law to submit a Penal Code section 4900 claim. The specific purpose for each section of the form follows.

- **Cover Page:** The updated claim form relocates information about eligibility for compensation from the cover page to, instead, a new section entitled “Informational Sheet,” which is located on the last two pages of the form. This modification allows for a more detailed explanation of the applicable statutes governing Penal Code section 4900 claims and the requirements for relief. It also increases processing efficiency by relocating the claimant’s name and contact information, detailed below in Section A, to the first page of the form.
- **Section A:** This section, entitled “Claimant Information,” is revised to appear on the first page of the form. Otherwise, this section continues to request the claimant’s name, date of birth, CDCR Inmate number, and contact information, including telephone number, mailing address, and email address. The revised version merely replaces the request for the claimant’s “Preferred Pronouns” in the current form with the claimant’s “Gender” instead, as it appears some claimants may not understand this technical terminology.
- **Section B:** No changes are proposed for this section, which is entitled “Attorney / Representative Information (if applicable).”
- **Section C:** This section, entitled “Erroneous Conviction(s) Information,” is revised for formatting but otherwise continues to request information about the claimant’s challenged conviction(s). The requested information includes: the county and criminal court case number, code violation, date of arrest and conviction, sentence imposed, length of sentence served, and amount of compensation requested. The new formatting is intended to highlight each item of necessary information, as claimants often fail to provide all requested data in the current form. The revised section also adds details about the deadline to submit a claim.
- **Section D:** This new section entitled “Post-Conviction Relief,” combines and expands upon the information requested in current Sections D and E, entitled “Factual Innocence Determination” and “Post-Conviction Proceedings (Excluding Direct Appeal)”, respectively. With a new yes-or-no question format, this section continues to inquire

whether the claimant's conviction was reversed on habeas or other enumerated statutory grounds and whether the claimant obtained a court finding of factual innocence. It also inquires whether the conviction was reversed on appeal or solely as a result of a change in the law, the specific statutory basis for dismissal of the charges, and whether the court granted or denied a motion for approval of claim under Penal Code section 1485.55, subdivision (d). Each question expressly requires the claimant to attach a copy of the applicable court decision for every affirmative answer. All of this requested information is necessary to determine whether relief may be available under Penal Code section 4900 and, if so, whether the claim falls within subdivision (a) or (b) or the automatic provisions of Penal Code section 851.865 or 1485.55. The revised section also adds details about the rejection process for incomplete forms and provides two examples of claims that fail to comply with Penal Code sections 4900 and 4901.

- **Section E:** This section, entitled "Statement of Factual Innocence," continues to require a written statement by the claimant to show that the charged offense for the challenged conviction either was not committed by the claimant or did not occur at all. Besides changing the section letter to consecutively following the previous heading, no changes are proposed for this section.
- **Section F:** This section, entitled "Statement of Injury," continues to require a written statement by the claimant to show that they would have been free from custody but for the erroneous conviction. As revised, this section clarifies that the statement may consist of either (1) a list of every conviction and resulting sentence that was imposed during the claimant's incarceration for the erroneous conviction, or (2) confirmation that no other convictions were imposed during that timeframe. This revision will assist claimants, as they often fail to disclose this necessary information and, instead, describe physical or emotional harm caused by their incarceration, which is not relevant to calculating compensation for Penal Code section 4900 claims.
- **Section G:** This section, entitled "Disqualification for Certain Guilty Pleas," continues to request information as to whether the claimant pleaded guilty and, if so, the reason for doing so. Besides changing the section letter to consecutively following the previous heading, no changes are proposed for this section.
- **Section H:** This section, entitled "Declaration Statement," continues to require the claimant's signature, under penalty of perjury, to verify the truth of all representations made by the claimant in the form. Besides changing the section letter to consecutively follow the previous heading, no changes are proposed for this section.
- **Privacy Notice on Collection:** This section is revised to provide greater specificity about the circumstances under which information received for a Penal Code section 4900 claim may be publicly disclosed.
- **Informational Sheet:** This new section, located on the last two pages of the form, provides detailed information about the administrative process governing Penal Code section 4900, as well as the substantive requirements to submit a claim and prevail upon the merits. The location of this section at the end of the form enables claimants to retain these pages for their own reference throughout the administrative process.

NECESSITY

The Board strongly believes that the proposed modifications to the regulations and claim form are reasonably necessary to ensure consistency with current law, clarify the basis for relief,

adopt new tools to resolve novel issues in a fair and consistent manner, and incorporate nonsubstantive changes that reorganize or rephrase existing regulations to render them easier to understand, especially for claimants representing themselves. The specific need for each modification is detailed below.

Section 640: This revised regulation is reasonably necessary to clarify the process for submitting a claim to CalVCB and referring that claim to the Attorney General for a response, as well as providing clarity, consistency, and transparency for the deadline and permissible content for that response. The revisions impact only subdivisions (a), (e), (f), and (g), as detailed below. The specific need for each modified subdivision follows.

- **Section 640, subdivision (a):** This revised subdivision is needed to update the required form for claimants to submit a claim from the outdated 2022 version to the current 2024 version.
- **Sections 640, subdivisions (b) through (d):** No changes are proposed.
- **Section 640, subdivision (e):** This revised subdivision is necessary to delete obsolete language in current subdivision (e)(1) that limits the CalVCB's authority to request a response from the Attorney General only for filed claims that are not subject to Penal Code sections 851.865 and 1485.55. Despite language in sections 851.865 and 1485.55 that prohibits a hearing on the underlying claim, SB 78's amendment of Penal Code section 4904 expressly authorizes the CalVCB to request evidence and argument on the issue of injury from the Attorney General or claimant for all claims. Accordingly, this revised subdivision is needed to confirm that a response from the Attorney General will be requested for each filed claim, even those subject to sections 851.865 and 1485.55. It is also needed to confirm that notice of the request for a response will be sent to both the Attorney General and the claimant.
 - **Section 640, subdivision (e)(1):** This new subdivision is needed to specify the process by which CalVCB requests a response from the Attorney General for a filed claim. The request must include the hearing officer's initial determination whether the claim falls within subdivision (a) or (b) of Penal Code section 4900 and whether Penal Code section 851.865 or 1485.55 applies, which may trigger different deadlines and burdens of proof to approve the claim. Either party may object to the initial determination, prompting reconsideration by the hearing officer.
 - **Section 640, subdivision (e)(2):** This new subdivision is needed to establish the process for handling a mixed claim, wherein only some, but not all, challenged convictions within a single claim fall within Penal Code section 851.865, 1485.55, or subdivision (b) of section 4900. As this new subdivision explains, absent a waiver by the claimant of the expedited timelines for the Attorney General's response and the Board's decision that apply to any portion of the claim under sections 851.865, 1485.55, and subdivision (b) of section 4900, then the claim may be resolved in a piecemeal fashion, with different due dates applicable to portions of the Attorney General's response. But as this new subdivision confirms, in the event of the claimant's waiver, then a single statutory deadline will apply that allows for the most time for the Attorney General to submit a single response and the hearing officer to issue a single proposed decision.

- **Section 640, subdivision (e)(3):** This new subdivision is needed to clarify the permissible content of the Attorney General's response in accordance with SB 78's amendment to Penal Code section 4904. For claims that fall exclusively within Penal Code section 851.865 or 1485.55, the Attorney General's response may only address injury. For all other claims, the Attorney General's response may also address innocence and guilt.
- **Section 640, subdivision (e)(4):** This revised subdivision, which is renumbered from current subdivision (e)(2), is needed to delete obsolete language that limited the scope of the automatic approval provisions in Penal Code sections 851.865 and 1485.55. This interpretation relied upon the statutory prohibition against a hearing in sections 851.865 and 1485.55. However, with SB 78's amendment to Penal Code section 4904 that allows CalVCB to receive evidence and argument on the issue of injury for any claim, as well as SB 78's expansion of the types of claims for which automatic approval is required, this interpretation is no longer persuasive. Accordingly, this revision is needed to comply with SB 78. This subdivision retains the still valid language that a single finding of factual innocence for any individual conviction is binding upon the Board.
- **Section 640, subdivision (f):** This revised subdivision is needed to confirm the definition of injury in accordance with Penal Code section 4904 and add an example of a scenario that falls outside of that definition. Specifically, it explains that injury requires a showing that, but for the erroneous conviction, the claimant would not have been in custody. No injury occurs, for example, when the claimant was concurrently incarcerated for another conviction. The addition of this specific example is necessary for the parties to readily understand this regulation, especially claimants representing themselves.
 - **Section 640, subdivision (f)(1):** This new subdivision is needed to confirm, based upon SB 78's amendment to Penal Code section 4904, that, for all claims, the hearing officer is authorized to request additional evidence or argument from either the Attorney General or the claimant to calculate compensation for the claimant's injury.
 - **Section 640, subdivision (f)(2):** This new subdivision is needed to confirm that, for all claims, the burden of proof to demonstrate injury remains upon the claimant, which includes claims for which approval is mandated without a hearing by Penal Code section 851.865 or 1485.55.

Section 640.1: This new section is needed to relocate, without substantive change, existing language in section 644 of Article 5, in order to highlight the applicable law that does and does not apply to Penal Code section 4900 claims. The Board believes this revision as a stand-alone section is reasonably necessary to render this regulation readily noticed and understood by the parties, especially for claimants representing themselves. The specific need for each proposed subdivision follows.

- **Section 640.1, subdivision (a):** This new subdivision, which relocates identical language in current section 644, subdivision (q), is needed to confirm that the general hearing procedures in Article 2.5 of Title 2 of the California Code of Regulations may apply to Penal Code section 4900 claims unless those procedures conflict or are inconsistent with any of the specific provision in Article 5.

- **Section 640.1, subdivision (b):** This new subdivision, which relocates identical language in current section 644, subdivision (p), is needed to confirm that the formal hearing provisions of the Administrative Procedure Act (APA) do not apply to Penal Code section 4900 claims.

Section 642: The Board believes this revised section is reasonably necessary to explain the process by which claims may be rejected by a hearing officer for failing to comply with the requirements of Penal Code sections 4900 and 4901 and to provide additional, illustrative examples of these types of noncompliant claims. These revisions, in addition to nonsubstantive stylistic changes, are needed to facilitate the parties' understanding of this process, especially for claimants representing themselves. The specific need for each modified subdivision follows.

- **Section 642, subdivision (a):** This modified subdivision is needed to confirm that the ensuing examples of noncompliant claims that may be rejected by hearing officer without being considered by the Board are merely illustrative and not comprehensive.
 - **Section 642, subdivision (a)(1):** This revised subdivision is needed to confirm that a claim, which fails to state facts upon which relief may be granted, is not in compliance with Penal Code sections 4900 and 4901. It is also needed to provide illustrative examples of this type of noncompliant claim. Finally, nonsubstantive revisions are needed to delete duplicative language for stylistic purposes.
 - **Section 642, subdivision (a)(2):** This revised subdivision is needed to delete duplicative language for stylistic purposes without substance change.
 - **Section 642, subdivision (a)(3):** This revised subdivision is needed to update the citation for former Penal Code 1170.95, which was renumbered as 1172.6 in 2022, as well as implement nonsubstantive stylistic changes for consistency and ease of understanding.
 - **Section 642, subdivision (a)(4):** This new subdivision is needed to add dismissal of a conviction, solely due to satisfactory competition of a sentence pursuant to Penal Code section 1203.4, as an illustrative example of a claim that fails to comply with Penal Code sections 4900 and 4901.
 - **Section 642, subdivision (a)(5):** This new subdivision is needed to add, as another illustrative example of a noncompliant claim, any claim for which injury is lacking as a matter of law, such as when an equivalent sentence was concurrently imposed for another unchallenged conviction.
- **Section 642, subdivision (b):** This subdivision, as revised, is needed to clarify and expand the process by which a submitted claim that fails to comply with Penal Code sections 4900 and 4901 may be cured and ultimately filed. It is also needed to make nonsubstantive stylistic changes for consistency and ease of understanding. Combined, these changes are needed to promote a process that ensures an opportunity for both the claimant and the Attorney General to address identified deficiencies before the claim is rejected by the hearing officer.
 - **Section 642, subdivision (b)(1):** No changes are proposed.
 - **Section 642, subdivision (b)(2):** As revised, the subdivision is needed to expressly allow for an extension of time for the claimant to submit a

response that cures the identified deficiencies. This subdivision specifies that the request for an extension must be submitted in writing with demonstrated good cause.

- **Section 642, subdivision (b)(3):** This new subdivision is needed to authorize the hearing officer to request a response from the Attorney General to address whether or not the claim complies with Penal Code sections 4900 and 4901. This new subdivision is also needed to specify the length of time for the Attorney General to submit the request and to allow an extension upon written request with good cause.
- **Section 642, subdivision (b)(4):** This new subdivision is needed to authorize the claimant to submit a reply to the Attorney General's response and to allow an extension upon written request for demonstrated good cause.
- **Section 642, subdivision (c):** This revised subdivision is needed to clarify that the filing date for a claim, which initially failed to comply with Penal Code sections 4900 and 4901, is calculated based upon the date the hearing officer received and considered the claimant's response that cured all of the identified deficiencies. As revised, it confirms that the filing date is not determined by the date the claimant submitted the response.
- **Section 642, subdivision (d):** This revised subdivision, which authorizes the hearing officer to reject a claim, is needed to confirm that the hearing officer's rejection constitutes a final decision, which is subject to judicial review by petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5.
- **Section 642, subdivision (e):** This new subdivision is needed to establish the legal consequence of a rejected claim in the event of a future claim. Specifically, it confirms that a claimant may submit a second claim if supported by new evidence or law that overcomes the identified deficiencies for the first, rejected claim. It further confirms that the timeliness of the second claim depends upon the date of its submission and may not relate back to the first, rejected claim.
 - **Section 642, subdivision (e)(1):** This new subdivision is needed to authorize the hearing officer's outright rejection of a second claim, without notice and 30-day opportunity to cure, when the second claim fails to overcome the identified deficiencies in the first rejected claim.

Section 642.1: The Board believes this new regulation is reasonably necessary to establish a process for resolving claims that the claimant either has abandoned or wishes to withdraw. The specific need for each modified subdivision follows.

- **Section 642.1, subdivision (a):** This new subdivision is needed to allow the claimant to withdraw a claim, upon request, any time before the Attorney General's submission of a response letter.
- **Section 642.1, subdivision (b):** This new subdivision is needed to allow the hearing officer to deem a claim withdrawn under two scenarios (i.e., (1) when the claimant failed to provide valid contact information and more than 90 days have passed since the claimant's last communication with CalVCB, and (2) when the claimant failed to respond to a request by the hearing officer and more than 90 days have passed since the request was made).

- **Section 642.1, subdivision (c):** This new subdivision is needed to prohibit withdrawal in three scenarios. First, as detailed in subdivision (c)(1), withdrawal is prohibited after the Attorney General submits a response letter, unless the parties agree otherwise. Second, as detailed in subdivision (c)(2), withdrawal is prohibited after a hearing has been scheduled, unless the parties agree otherwise. Third, as detailed in subdivision (c)(3), withdrawal is prohibited after the administrative record has closed. If any of these scenarios apply, then the administrative process must continue until a final decision is reached.
- **Section 642.1, subdivision (d):** This new subdivision is needed to establish the procedural prerequisites that must be followed by the hearing officer before a claim may be deemed withdrawn. Specifically, the hearing officer must provide notice to the parties and allow 30 days for a response. Notice may be sent to the parties at their last known address, even if that address no longer appears valid.
- **Section 642.1, subdivision (e):** This new subdivision is needed to establish the legal consequence of a withdrawn claim in the event of a future claim. It confirms that a claimant is not barred from submitting a second claim solely because their first claim was withdrawn. It further confirms that the timeliness of the second claim depends upon the date of its submission and may not relate back to the first, withdrawn claim.

Section 644: The Board believes this revised regulation is reasonably necessary to clarify the process for participating in a hearing before a hearing officer, as well as to make nonsubstantive changes that render this regulation easier to understand, especially for claimants representing themselves. The nonsubstantive changes include reorganizing existing provisions with section 644 by category and deleting duplicative provisions of Article 2.5. Given the extensive changes proposed, modifications to delete current subdivisions are designated as “former,” and modifications to add new subdivisions are designated as “new.” The specific need for each modified subdivision follows.

- **Section 644, subdivision (a):** This subdivision, as revised with multiple new subdivisions and subsections, is needed to clarify the mechanics of a hearing before a hearing officer in accordance with SB 78. In particular, it allows the hearing officer to schedule a hearing on a claim whenever permitted by statute. It deletes inconsistent language that authorized a hearing to be scheduled only upon receipt of the Attorney General’s response. This modification is needed to comport with SB 78’s amendment to Penal Code section 4904, which allows the Attorney General to submit a response on the issue of injury even for claims that are otherwise barred from a hearing by Penal Code section 851.865 or 1485.55.
 - **(New) Section 644, subdivision (a)(1):** This new subdivision is needed to incorporate, without substantive change, the provision in current subdivision (c) of section 644, which requires all hearings take place in Sacramento unless the hearing officer agrees to an alternative. To that end, revisions to the lettering of this subdivision are needed to consecutively follow the previous heading and to correct a typographical error. The needed revisions include the addition of subsection (a)(1)(A), which repeats and expands upon language in current subdivision (h) of section 644 concerning the circumstances under which a hearing may be conducted by electronic means, as well as subsection (a)(1)(B), which repeats identical language in current subdivision (i) of section 644 that specifies how the hearing must be

recorded. This reorganization of the regulation by subject matter, without substantive change, is needed to facilitate a better understanding of the rules governing the hearing technicalities.

- **(New) Section 644, subdivision (a)(2):** This new subdivision, which includes multiple subsections (a)(2)(A) through (E), repeats identical language in current subdivision (f), subsections (1) through (5), of section 644 concerning the length of allotted time for a hearing. This reorganization of the regulation, without substantive change, is needed to facilitate a better understanding of the applicable rules.
- **(New) Section 644, subdivision (a)(3):** This new subdivision, which includes new subsections (a)(3)(A) and (B), is needed to clarify and confirm each party's obligation to proceed at the hearing. Specifically, each party must appear and be ready to proceed at the hearing, with all their evidence and witnesses present. Under subsection (a)(3)(A), the party is responsible for securing the attendance of their witnesses and, if necessary, providing an interpreter. In addition, under subsection (a)(3)(B), any testimony by a party or witness must be given under oath and subject to cross-examination by the opposing party and the hearing officer.
- **(New) Section 644, subdivision (a)(4):** This new subdivision is needed to clarify and confirm the consequence of a party's failure to proceed and the process to continue the hearing date. Specifically, this subdivision allows the Board to decide a claim based on previously submitted evidence if a claimant fails to appear or proceed at the hearing. It adds new subsections (a)(4)(A) and (B), which detail the circumstances under which a party may request a continuance of the hearing.
- **(Former) Section 644, subdivision (b):** This current subdivision, which mandates an open hearing unless otherwise provided by law, needs to be deleted as duplicative of identical language section 617.1, subdivision (a), for Article 2.5.
- **(New) Section 644, subdivision (b):** This new subdivision (b), as revised, is needed to replace the letter from current subdivision (d) to consecutively follow the previous heading without substantive change.
- **(New) Section 644, subdivision (c):** As revised, this new subdivision (c) is needed to replace the letter for current subdivision (e) to consecutively follow the previous subdivision without substantive change.
- **(Former) Section 644, subdivisions (d) through (i):** These current subdivisions, which specify the mechanics for conducting a hearing, need to be deleted as duplicative of the new provisions throughout subdivision (a) of section 644.
- **(New) Section 644, subdivisions (d) through (i):** As revised, these new subdivisions (d) through (i) are needed to replace the letter for current sections (j) through (o), respectively, to consecutively follow the previous heading.
- **(Former) Section 644, subdivisions (p) and (q):** These current subdivisions, which specify the applicable law, need to be deleted as duplicative of the new provisions in section 640.1, subdivisions (a) and (b).
- **(Former) Section 644, subdivisions (r):** This current subdivision needs to be deleted as duplicative of identical language in section 616.1 for Article 2.5.

Section 645: The Board believes this revised regulation is reasonably necessary to clarify the process by which the hearing officer will issue a proposed decision and to specify the appropriate considerations upon which the proposed decision may be based. Deletions are needed for duplicative language that already appears in section 619.1 for Article 2.5 concerning decisions by the Board and hearing officers. As with the preceding section, modifications to delete current subdivisions are designated as “former,” and modifications to add new subdivisions are designated as “new.” The specific need for each modified subdivision follows.

- **Section 645, subdivision (a):** This subdivision is needed to clarify that, once the administrative record closes, the hearing officer will prepare a proposed decision.
- **(Former) Section 645, subdivisions (b) through (e):** These current subdivisions, which specify required content for a proposed decision and appropriate considerations, need to be deleted as duplicative of identical language in section 619.1, subdivisions (b) through (e), of Article 2.5.
- **Section 645, subdivisions (f) and (g):** These subdivisions need to be modified solely to replace the letter from current subdivisions (f) and (g) to subdivisions (b) and (c), respectively, in order to consecutively follow the previous heading, without substantive change.
- **(New) Section 645, subdivision (d):** This new subdivision is needed to confirm that, for mixed claims where the claimant has not waived the expedited provisions in Penal Code section 851.865, 1485.55, or 4900, subdivision (b), the hearing officer may issue more than one proposed decision.

Claim Form: The Board strongly believes that the proposed changes to the claim form, as incorporated by reference in section 640, subdivision (a), are reasonably necessary to provide guidance to claimants concerning the specific type of information and documentation required by current law to submit a Penal Code section 4900 claim. The specific need for each section of the form follows.

- **Cover Page:** This revision relocates information about eligibility for compensation from the cover page to, instead, a new and expanded section entitled “Informational Sheet” that is located on the last two pages of the form. This modification is needed to provide claimants with a more detailed explanation of the applicable statutes governing Penal Code section 4900 claims and the requirements for relief. It is also needed to increase processing efficiency by relocating the claimant’s information, detailed below in Section A, to the first page of the form.
- **Section A:** This revised section, entitled “Claimant Information,” is needed to appear on the first page of the form for improved processing efficiency. The revised version is also needed to replace the request for the claimant’s “Preferred Pronouns” with the claimant’s “Gender” instead, as it appears some claimants may not understand this technical terminology.
- **Section B:** No changes are proposed for this section.
- **Section C:** This revised section, entitled “Erroneous Conviction(s) Information,” is needed solely for formatting but otherwise continues to request information about the claimant’s conviction(s). The new formatting is needed to highlight each item of necessary information, as claimants often fail to provide all requested data in the current form. The revised section also adds needed details about the deadline to submit a claim.

- **Section D:** This new section entitled “Post-Conviction Relief,” is needed to combine and expand upon the information requested in current Sections D and E, entitled “Factual Innocence Determination” and “Post-Conviction Proceedings (Excluding Direct Appeal)”, respectively. The new yes-or-no question format is needed to elicit information about the specific basis for any relief that may have been granted to vacate or reverse the claimant’s conviction and emphasize the requirement to attach documentary support. All of this requested information is necessary to determine whether relief may be available under Penal Code section 4900 and, if so, whether the claim falls within subdivision (a) or (b) or the automatic provisions of Penal Code section 851.865 or 1485.55. Finally, the revised section is needed to provide details about the rejection process for incomplete forms and provide two examples of claims that fail to comply with Penal Code sections 4900 and 4901.
- **Section E:** This section, entitled “Statement of Factual Innocence,” solely needs a nonsubstantive revision to update the section letter to consecutively follow the previous heading.
- **Section F:** This revised section, entitled “Statement of Injury,” is needed to clarify that the statement may consist of either (1) a list of every conviction and resulting sentence that was imposed during the claimant’s incarceration for the erroneous conviction, or (2) confirmation that no other convictions were imposed during that timeframe. This revision is needed to assist claimants understand the specific information necessary for relief under Penal Code section 4900.
- **Section G:** This section, entitled “Disqualification for Certain Guilty Pleas,” needs a nonsubstantive revision to update the section letter to consecutively follow the previous heading.
- **Section H:** This section, entitled “Declaration Statement,” needs a nonsubstantive revision to update the section letter to consecutively follow the previous heading.
- **Privacy Notice on Collection:** This revised section is needed to provide greater specificity about the circumstances under which information received for a Penal Code section 4900 claim may be publicly disclosed.
- **Informational Sheet:** This new section, located on the last two pages of the form, is needed to provide detailed information about the administrative process governing Penal Code section 4900 claims, as well as the substantive requirements to submit a claim and prevail upon the merits.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of these regulations.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulations and modified claim form govern the process by which Penal Code section 4900 claims for erroneously convicted persons are submitted, reviewed, and decided. An approved claim results in payment, if sufficient funds are available, at the rate of \$140 per day of the claimant’s incarceration. Even with the recent trend of increasing claims submitted (i.e., 28 in 2021 to 67 in 2023) and approved (i.e., 7 claims in 2021 to 11 claims in 2023), the proposed modifications nevertheless affect a limited group of individuals. Moreover, the amount

of each approved claim is limited to \$140 per day of the claimant's incarceration, which has averaged approximately \$1 million per claimant. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

The Board has determined that the selected alternative will not affect:

(A) The creation or elimination of jobs within the State of California,

The proposed regulations do not impact jobs because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

The Board has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has no evidence indicating any potential significant adverse impact on business as a result of this proposed action. The Board has determined that the proposed regulations do not affect business because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to this rulemaking action.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has no evidence indicating any potential adverse impacts to small business are expected as a result of this proposed action. The Board has determined that the proposed

regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

ITEM 6D

ERRONEOUSLY CONVICTED PERSON (ECP) CLAIM FORM



VCB-41-00002 (Rev. 07/2024)

California Victim Compensation Board
P.O. Box 350, Sacramento, CA 95812-0350
Email: HearingOfficer@victims.ca.gov

For Official Use Only

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to Penal Code sections 4900, et seq. The attached Informational Sheet describes the requirements for relief and provides an overview of the administrative procedure for deciding these claims. To submit a claim, please carefully review and complete this form, attach all supporting documentation, and return it to CalVCB at the above address by either regular mail or email. A CalVCB representative will contact you once your submission has been received and considered.

Section A. Claimant Information

Claimant's Name: _____ Date of Birth: _____
CDCR Inmate Number: _____ Gender: _____
Email Address: _____ Telephone Number: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____

It is your ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section B. Attorney/Representative Information (if applicable)

Name of Attorney/Representative: _____
Email Address: _____ Telephone Number: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Signature: _____ Date: _____

An attorney or representative is not required in this administrative proceeding. If you are represented, your representative has an ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section C. Erroneous Conviction(s) Information

1. County of Conviction: _____ Case Number: _____

2. List the criminal offense for all erroneous felony conviction(s) and the prison term imposed for each.
(Attach additional pages as needed.)

Felony: _____ Code Section: _____ Sentence: _____

Felony: _____ Code Section: _____ Sentence: _____

Felony: _____ Code Section: _____ Sentence: _____

Felony: _____ Code Section: _____ Sentence: _____

(Example: Murder, Penal 187, 25 years to life)

Relief is available only for felony convictions for which a term of imprisonment was imposed. (Pen. Code, § 4900.) Relief is not available for misdemeanor convictions, felony charges that did not result in a conviction, or felony convictions for which probation was granted without imposition of any term of imprisonment. (Cal. Code Regs., tit. 2, § 642.)

State prison(s) where sentence was served: _____

3. Complete the following information about the length of your incarceration for the erroneous conviction(s).

Date of Arrest: _____ Date of Conviction: _____

Total Sentence Imposed: _____ Days Actually Served: _____

Date of Release from Imprisonment: _____

Date of Discharge from Parole/Supervision (if applicable): _____

Date of Dismissal or Acquittal of Charges on Retrial (if applicable): _____

Date Pardon Granted (if applicable): _____

Amount of Compensation Requested (calculated at \$140 per day of erroneous incarceration):

\$ _____

You must attach supporting documentation to confirm your conviction, imprisonment, and release from custody for the erroneous offense. (Cal. Code Regs., tit. 2, § 640, subd. (a)(2).) Please note that a claim may not be filed unless and until you have been released from custody. To be timely, the claim must be submitted within 10 years after release, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

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Section D. Post-Conviction Relief

Answer each of the following questions concerning the erroneous conviction(s):

1. Was it reversed on direct appeal?
 No Yes (*if yes, attach court decision*)
2. Was it vacated due to a change in the law under Penal Code section 1172.6 or former Penal Code section 1170.95?
 No Yes (*if yes, attach court decision*)
3. Was it vacated by a writ of habeas corpus?
 No Yes (*if yes, attach court decision*)
4. Was it vacated pursuant to Penal Code section 1473.6?
 No Yes (*if yes, attach court decision*)
5. Was it vacated pursuant to Penal Code section 1473.7, subdivision (a)(2)?
 No Yes (*if yes, attach court decision*)
6. If vacated or reversed, were you then acquitted at retrial?
 No Yes (*if yes, attach court decision*)
7. If vacated or reversed, were the charges then dismissed pursuant to Penal Code section 1385?
 No Yes (*if yes, attach court decision*)
8. If vacated or reversed, were the charges then dismissed pursuant to Penal Code section 1203.4?
 No Yes (*if yes, attach court decision*)
9. Did a court find you factually innocent under Penal Code section 851.865 or 1485.55?
 No Yes (*if yes, attach court decision*)
10. Did a court grant your motion for approval of a claim for compensation under subdivision (d) of Penal Code section 1485.55?
 No Yes (*if yes, attach court decision*)
11. Did a court deny your motion for approval of a claim for compensation under subdivision (d) of Penal Code section 1485.55?
 No Yes (*if yes, attach court decision*)
12. Did the Governor grant you a pardon?
 No Yes (*if yes, attach pardon*)

Your claim may be rejected for failing to provide a complete answer or attach all necessary documents. (Cal. Code Regs., tit. 2, § 640, subd. (a).) Please note a conviction is not erroneous solely due to a change in the law defining the underlying crime (e.g., Pen. Code, § 1172.6) or dismissal after satisfactory completion of the sentence (e.g., Pen. Code, § 1203.4). (Cal. Code Regs., tit. 2, § 642, subd. (a).)

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Section E. Statement of Factual Innocence

To present a claim to the Board, you must provide a statement of facts to show that the crime with which you were charged was either not committed at all, or, if committed, was not committed by you. (Pen. Code, § 4901, subd. (a); Cal Code Regs., tit. 2, § 640, subd. (a)(1)). *(Please attach additional paper if needed.)*

Section F. Statement of Injury

You bear the burden to prove, by a preponderance, that you sustained injury as a result of your erroneous conviction. Injury is shown if you would have been free from custody but-for the erroneous conviction. Please either (1) list every conviction and resulting sentence that was imposed at any time during your confinement for the erroneous conviction, or (2) confirm that no other convictions were imposed. (Pen. Code, § 4904; Cal. Code Regs., tit. 2, § 640, subd. (f).) *(Please attach additional paper if necessary.)*

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Section G. Disqualification for Certain Guilty Pleas

1. Did you enter a guilty plea to the conviction(s) for which you are seeking compensation under Penal Code section 4900?

No Yes

2. If yes, did you do so with the specific intent to protect another from prosecution?

No Yes

3. Please explain the reasons for your decision to enter a guilty plea.

Section H. Declaration Statement

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Printed Name: _____

Signature: _____ Date: _____

Privacy Notice on Collection

1. CalVCB collects this information based on California Penal Code sections 4900 et seq., and California Code of Regulations, title 2, sections 615.1 et seq. and 640 et seq.
2. All proceedings under Penal Code section 4900 are open to the public. Your claim may be listed on CalVCB's website, discussed by the Board during a public meeting, and included in CalVCB's annual report to the Legislature. See victims.ca.gov/legal/pc4900/.
3. All information collected for a Penal Code section 4900 claim is subject to public disclosure pursuant to the Public Records Act. See victims.ca.gov/legal/public-records-requests/.
4. CalVCB may disclose your personal information to another requester, only if required to do so by law or in good faith that such action is necessary to:
 - a. Conform to the edicts of the law or comply with legal process served on CalVCB or the site;
 - b. Protect and defend the rights or property of CalVCB; or,
 - c. Act under exigent circumstances to protect the personal safety of users of CalVCB, or the public.
5. The requested information is collected for the purpose of determining eligibility for compensation under Penal Code section 4900. Individuals are to provide only the information requested.
6. The information provided is voluntary.
7. The consequences of not providing the requested information could delay processing the claim or the claim not being filed or approved.
8. For questions regarding the information collected, please write to the following address: P.O. Box 350, Sacramento, CA 95812-0350, email CustodianOfRecords@victims.ca.gov, call (888) 883-3593, or contact the CalVCB Privacy Coordinator at InfoSecurityAndPrivacy@victims.ca.gov.

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INFORMATIONAL SHEET FOR ECP CLAIM FORM

Overview of Penal Code section 4900

Penal Code section 4900 claims are governed by the statutory provisions in Penal Code sections 4900 through 4906 and the regulatory provisions in Title 2 of the California Code of Regulations, sections 640 through 646 (i.e., Article 5), as well as sections 615.1 through 619.7 (i.e., Article 2.5). Relief under section 4900 is limited to claimants who are innocent of – meaning they did not commit – the felony offense, or offenses, they were convicted of and imprisoned for. (Pen. Code, § 4900, subd. (a).) Compensation will be awarded only if the claim is approved by the Board and sufficient funds are available. Compensation is limited to a set rate of \$140 per day of the claimant’s erroneous imprisonment. (Pen. Code, § 4904.)

Time Limitations

To obtain relief under Penal Code section 4900, the claimant must submit a claim within 10 years after a judgment of acquittal, dismissal of the charges, a pardon being granted, or the claimant’s release from custody, whichever is later. However, the claim cannot be filed until 60 days after a conviction is reversed, habeas petition is granted, or, if a case is pending upon an initial refiling, or until a complaint or information has been dismissed a single time. (Pen. Code, § 4901, subds. (a) & (c).)

Eligibility for Compensation

To be eligible for consideration, the claimant must have been convicted of a felony under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned or on parole for that offense. Compensation is barred for claimants who pled guilty to an offense to protect another from prosecution. (Pen. Code, § 4903, subd. (e).)

CaVCB’s Role

CaVCB serves as a neutral adjudicator, similar to a judge or court. **CaVCB does not investigate claims or provide legal advice.** It is the claimant’s responsibility to provide CaVCB with all relevant evidence and argument necessary to approve the claim. The Attorney General may appear as an opposing party and provide relevant evidence and argument to oppose the claim. The parties are expected to familiarize themselves with the applicable law and regulations. The claimant may retain, at their own expense, an attorney or representative of their choosing.

Procedure for Approving a Claim

The process begins with the submission of a completed claim form to CalVCB. A Hearing Officer reviews the claim form to determine whether it complies with Penal Code sections 4900 and 4901, which often takes between 30 and 60 days. Thereafter, the claimant will be notified if any additional information or argument is needed. The claim may be rejected by the Hearing Officer if any identified deficiencies are not timely cured. Otherwise, the claim is filed, and both the claimant and Attorney General will be notified of the next steps, which may include an in-person hearing before the Hearing Officer. Once all evidence and arguments are received, the record closes, and the Hearing Officer will draft a proposed decision to approve or deny the claim. CalVCB's three-member Board makes the final decision whether to approve or deny the claim in a public meeting, after notice to the parties with an opportunity to appear.

Burden of Proof

Generally, the claimant must prove by a preponderance of the evidence that 1) they did not commit the crime they were convicted of and 2) that they were injured by the erroneous conviction. The claimant is entitled to a hearing to prove both innocence and injury, at which the Attorney General may appear. (Pen. Code, § 4903, subd. (a).) There are three limited exceptions that apply only when a court has made certain findings:

- 1. Innocence Finding:** A court found the claimant factually innocent of the erroneous conviction pursuant to Penal Code section 851.865 or 1485.55 based on proof by a preponderance of evidence that the claimant did not commit the crime. If this exception applies, then CalVCB must approve the claim, without a hearing on the issue of innocence, for demonstrated injury within 90 days after the claim is filed. Nevertheless, CalVCB may request additional information from the parties as needed to calculate injury. (Pen. Code, §§ 851.865, 1485.55, subds. (a)-(c) & (g), 4902, subd. (a).)
- 2. PC 4900(b):** A court vacated the conviction by granting a writ of habeas corpus or motion pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed on remand or resulted in acquittal. If this exception applies, then CalVCB must approve the claim for demonstrated injury, unless the Attorney General timely objects with clear and convincing evidence of the claimant's guilt. If the Attorney General declines to object, then CalVCB must approve the claim within 90 days thereafter for demonstrated injury. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subd. (b), 4904.)
 - *Please note this exception only applies to vacated convictions under the specified circumstances. It does not apply, for example, to reversals on direct appeal or dismissals pursuant to Penal Code section 1172.6.*
- 3. PC 1485.55(d):** A court granted the claimant's motion for approval of a claim as an erroneously convicted offender pursuant to Penal Code section 1485.55, subdivision (d). If the motion is granted, then CalVCB must, upon application, approve the claim for demonstrated injury within 90 days. (Pen. Code, §§ 1485.55, subd. (d); 4904.)

To submit a claim, complete the Erroneously Convicted Person Claim Form in its entirety, attach all supporting documentation, and return it to CalVCB either by regular mail addressed to P.O. Box 350, Sacramento, CA 95812-0350, or by email addressed to HearingOfficer@victims.ca.gov. A CalVCB representative will contact you once your submission has been received and considered.

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ITEM 6E

ERRONEOUSLY CONVICTED PERSON CLAIM FORM

VCB-41-00002 (Rev. 05/2022)



For Official Use Only

California Victim Compensation Board
P.O. Box 350
Sacramento, CA 95812-0350

Email: HearingOfficer@victims.ca.gov

Please carefully review and complete this form, attach all supporting documentation, and return to CalVCB at the above address by either regular mail or email. A CalVCB representative will contact you once your submission has been received and considered.

Eligibility for Compensation Recommendation under Penal Code section 4900

If you were erroneously convicted and sentenced to state prison or incarcerated in county jail pursuant to Penal Code section 1170, subdivision (h), for a felony offense under California law, then you may be entitled to a recommendation for compensation under Penal Code section 4900. (Pen. Code, § 4900, subd. (a).) To be eligible for consideration, you must no longer be incarcerated for that conviction, and you must submit a completed claim form, with supporting documentation, within 10 years of your release from custody, dismissal of charges, pardon, or acquittal on retrial. (Pen. Code, § 4901; Cal. Code Regs., tit. 2, §§ 640, 642.)

With limited exceptions, you must present evidence to prove by a preponderance that (1) the charged crime was not committed at all or was not committed by you, and (2) you sustained injury as a result of your erroneous conviction and imprisonment. (Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).) Both of these elements are presumed, and a recommendation for compensation is automatically mandated by law, if a court has found you factually innocent for every offense underlying your incarceration. (Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).) Alternatively, if your conviction was vacated during a habeas proceeding or pursuant to Penal Code sections 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted upon remand, then a recommendation for compensation is mandated for your demonstrated injury, unless the Attorney General timely submits clear and convincing evidence of your guilt. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subd. (b).)

CALIFORNIA VICTIM COMPENSATION BOARD

P.O. Box 350 • Sacramento, CA 95812-0350

Phone: 800.777.9229 • Fax: 916.491.6441

Email: HearingOfficer@victims.ca.gov • www.victims.ca.gov

Compensation is calculated at a flat rate of \$140 per day of your erroneous imprisonment. (Pen. Code, § 4904.) Compensation is barred for any claimant who pled guilty with the specific intent to protect another from prosecution. (Pen. Code, § 4903, subd. (e).) In the event CalVCB approves your claim and recommends compensation, it is ultimately up to the Legislature to enact a bill to appropriate those funds on your behalf.

Section A. Claimant Information

Claimant's Name: _____ Date of Birth: _____
CDCR Inmate Number: _____ Preferred Pronouns: _____
Email Address: _____ Telephone Number: _____
Mailing Address: _____ City: _____ State: _____ ZIP: _____

It is your ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section B. Attorney/Representative Information (if applicable)

Name of Attorney/Representative: _____
Email Address: _____ Telephone Number: _____
Mailing Address: _____ City: _____ State: _____ ZIP: _____
Signature: _____ Date: _____

An attorney or representative is not required in this administrative proceeding. If you are represented, your representative has an ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section C. Erroneous Conviction(s) Information

County and Criminal Court Case Number for Erroneous Felony Conviction(s): _____

Penal Code (or Vehicle Code or Health and Safety Code) section for Erroneous Felony Conviction(s): _____

CALIFORNIA VICTIM COMPENSATION BOARD
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State prison(s) in which Claimant's sentence was served: _____

Date of Arrest: _____ Date of Conviction: _____

Sentence Imposed: _____ Days Actually Served: _____

Date of Release from Imprisonment (*you are not eligible to submit a claim if you are still incarcerated for the challenged conviction(s)*): _____

Date of Discharge from Parole/Supervision: _____

Date of Dismissal or Acquittal of Charges on Retrial: _____

Date of Pardon Granted: _____

Amount of Compensation Requested (*calculated at \$140 per day of your erroneous incarceration*):
\$ _____

You must attach supporting documentation to confirm your conviction, imprisonment, and release from custody for the challenged offense. (Cal. Code Regs., tit. 2, § 640, subd. (a)(2).)

Section D. Factual Innocence Determination

1. Has a court issued a finding of factual innocence for your challenged conviction(s) in any proceeding to grant habeas relief or vacate the judgment under Penal Code section 1473.6?
____ No. ____ Yes. If yes, you must attach a copy of the court's order to this claim form.
2. Did the court finding of factual innocence apply to each and every conviction underlying your entire sentence?
____ No. ____ Yes. If yes, you must attach a copy of the Abstract of Judgment or other documentation to confirm the calculation for your sentence.

Upon satisfactory proof that the answer to both of these questions is yes, then you may be entitled to an automatic recommendation for compensation within 30 days and without an administrative hearing.

Section E. Post-Conviction Proceedings (Excluding Direct Appeal)

1. Has a court vacated your challenged conviction(s) by granting habeas relief?
 No. Yes. If yes, you must attach a copy of the court’s order to this claim form.

2. Has a court vacated your challenged conviction(s) pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2)?
 No. Yes. If yes, you must attach a copy of the court’s order to this claim form.

3. If you answered yes to either #1 or #2 above, were the charges subsequently dismissed on remand or were you acquitted on retrial?
 No. Yes. If yes, you must attach a copy of the court’s order to this claim form.

Upon satisfactory proof that the answer is yes to questions #1 and #3 or #2 and #3, then you may be entitled to a recommendation for compensation for your demonstrated injury, unless the Attorney General timely submits clear and convincing evidence of your guilt.

Section F. Statement of Factual Innocence

Absent an exception, you bear the burden to prove your factual innocence by a preponderance of evidence. (Pen. Code, § 4900, subd. (a).) To present a claim to the Board, you must provide a statement of facts to show that the crime with which you were charged was either not committed at all, or, if committed, was not committed by you. *(Please attach additional paper if needed.)*



Section G. Statement of Injury

Absent an exception, you bear the burden to prove, by a preponderance, that you sustained injury as a result of your erroneous conviction. Injury is shown if you would have been free from custody but-for the erroneous conviction. To demonstrate injury, list every conviction and resulting sentence that was imposed at any time during your confinement for the erroneous conviction.

(Please attach additional paper if necessary.)

Section H. Disqualification for Certain Guilty Pleas

1. Did you enter a guilty plea to the conviction(s) for which you are seeking compensation under Penal Code section 4900?

___ No. ___ Yes.

2. If the answer is yes, did you do so with the specific intent to protect another from prosecution?

___ No. ___ Yes.

3. Please explain the reasons for your decision to enter a guilty plea.

Section I. Declaration Statement

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Printed Name: _____

Signature: _____ Date: _____

Privacy Notice on Collection

1. CalVCB collects this information based on California Government Code sections 13952 et seq. and 13954, Penal Code section 4900 et seq., and California Code of Regulations, title 2, section 640 et seq.
2. All information collected from this site is subject to, but not limited to, the Information Practices Act. See victims.ca.gov/legal/public-records-requests/.
3. This information is collected for the purpose of determining eligibility for compensation.
4. CalVCB may disclose your personal information to another requester, only if required to do so by law or in good faith that such action is necessary to:
 - a. Conform to the edicts of the law or comply with legal process served on CalVCB or the site;
 - b. Protect and defend the rights or property of CalVCB; and,
 - c. Act under exigent circumstances to protect the personal safety of users of CalVCB, or the public.
5. Individuals are to provide only the information requested.
6. The information provided is voluntary.
7. The consequences of not providing the requested information could delay filing the claim or the claim not being filed.
8. The information collected is used by the Legal staff to process your claim.
9. Any questions regarding the information collected, please write to the following address: P.O. Box 350, Sacramento, CA 95812-0350, email CustodianOfRecords@Victims.ca.gov, call (888) 833-3593, or contact the CalVCB Privacy Coordinator at InfoSecurityAndPrivacy@Victims.ca.gov.

ITEM 7

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

8
9 In the Matter of:

10 **Clayborne Dennis**

11 Claim No. 21-ECO-14

Proposed Decision

(Penal Code § 4900, subd. (a))

12 **I. Introduction**

13 On July 23, 2021, Clayborne Dennis (Dennis) submitted an application¹ for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900, which was supplemented on August 13, 2021², and September 27, 2021.
16 The claim is based on Dennis' 1988 conviction for second-degree murder, which was vacated
17
18
19

20 ¹ Dennis Application (App.) at p. 19. The pagination refers to the continuous page numbers for the
21 entire 160-page PDF file submitted on July 23, 2021, including the Erroneously Convicted Person
22 Claim Form (App. at pp. 1-2) *People v. Clayborne Dennis*, Second District Court of Appeal, case
23 number B301300 (*id.* at pp. 3-29); People's Concession to Petitioner's Motion Pursuant to Penal Code
Section 1170.95 in Los Angeles County Superior Court case number A709481-02 (*id.* at pp. 30-34);
Reporter's Transcript of Preliminary Examination in Los Angeles County Superior Court case number
A709481 (*id.* at pp. 35-160).

24 ² Dennis's Supplement (Supp.). The pagination refers to the continuous page numbers for the 9-page
25 PDF emailed on August 13, 2021, as a supplement to Dennis' application. This supplement includes
26 Dennis' previously submitted Erroneously Convicted Person Claim Form (Supp. at pp. 1-2), the
27 Abstract of Judgment dated February 4, 2021, resentencing Dennis to four years in state prison for
28 assault by means likely to produce great bodily injury (Pen. Code, 245, subd. (a)(1)) (*id.* at p. 3); minute
order from February 4, 2021, hearing (*id.* at pp. 4-5); and the Abstract of Judgment and sentencing
order dated December 2, 1988, reflecting Dennis' original conviction for second-degree murder (*id.* at
pp. 6-9).

1 pursuant to Penal Code section 1172.6.³ Dennis was then resentenced to four years, time served, for
2 felony assault by means likely to produce great bodily injury on February 4, 2021, and released on
3 February 10, 2021, after 34 years of imprisonment.⁴ Dennis seeks compensation in the amount of
4 \$1,566,040 for allegedly serving 11,186 days beyond the four-year sentence imposed for assault,
5 assuming half-time credits apply.⁵ Alternatively, Dennis requests, at minimum, \$107,940 for the 771
6 days Dennis remained incarcerated after January 1, 2019, when the natural and probable
7 consequence theory as a basis for murder was legislatively abolished.

8 The Attorney General objected to Dennis' claim on May 27, 2022, arguing that Dennis failed to
9 prove he is actually innocent of second-degree murder under the law as it existed when he committed
10 the crime. While the Attorney General disagrees that Dennis is entitled to compensation, they
11 alternatively argued that compensation, if any is due, amounts to \$1,507,520 for 10,768 days in prison
12 beyond his sentence for felony assault, because Penal Code section 4904 does not provide for half-
13 time credits.⁶ CalVCB Attorney Supervisor Sara Harbarger held a hearing on October 12, 2022, at
14 which both parties appeared. After receipt of post-hearing briefing, the administrative record closed on
15 December 12, 2022. The matter was reassigned to CalVCB Senior Attorney Kristen Sellers on
16 December 20, 2023. Throughout these proceedings, the Attorney General was represented by Deputy
17 Attorney General Jessica Leal, and Dennis was represented by Jeffrey L. Mendelman of Case Law
18 Limited.

19
20
21 ³ Effective Jan. 1, 2019, S.B. 1437 added former Pen. Code, § 1170.95, setting forth a procedure for
22 persons convicted of felony murder or murder under the natural and probable consequences doctrine to
23 petition the court to have their convictions vacated and to be resentenced on any remaining counts.
24 Pen. Code, § 1170.95 was renumbered to Pen. Code, § 1172.6, eff. June 30, 2022.

25 ⁴ Former Pen. Code, § 245, subd. (a)(1).

26 ⁵ Dennis' calculation for compensation is based on 11,916 days from the date of his conviction on June
27 27, 1988, to the date of his release on February 10, 2021, less 730 days (i.e., two years) for the felony
28 assault conviction. He argued that felony assault by means likely to cause great bodily injury was not a
strike offense, and as a result, Dennis would have served half of the four-year prison sentence.
Alternatively, to the extent half-time credits do not apply, Dennis requests compensation for 11,916
days imprisonment less 1,460 days (i.e., four years) for the assault conviction (i.e., \$1,463,840 for
10,456 days imprisonment).

⁶ Attorney General Response Letter (AGRL) at p. 19.

1 After considering all the evidence in the record, the claim is recommended for denial because
2 Dennis has failed to prove by a preponderance of the evidence that he is innocent of second-degree
3 murder as it was defined in 1987 when the murder occurred.

4 **II. Procedural Background**

5 **A. Dennis' Original Conviction**

6 On August 20, 1987, Dennis was arrested. Shortly thereafter, Dennis and co-defendant Juan
7 Moran (Moran) were charged with first-degree murder in Los Angeles County Superior Court case
8 number A709481.⁷ Following a preliminary hearing, both Dennis and Moran were held to answer to the
9 charge of first-degree murder. On June 21, 1988, Dennis and Moran pled guilty to second-degree
10 murder and were both sentenced to 15 years to life in prison.⁸

11 **B. Appellate Court Decision**

12 On January 25, 2019, Dennis filed a petition for resentencing under Penal Code section
13 1172.6. The district attorney filed an opposition to the petition on July 12, 2019. Shortly thereafter, the
14 trial court appointed counsel and ordered briefing by both parties. On September 6, 2019, the court
15 denied the petition, finding Dennis failed to make a prima facie showing that he was entitled to relief
16 based on its determination that Dennis pled guilty under a theory of implied malice, as opposed to the
17 natural and probable consequence theory. The court explained that while Senate Bill 1437 eliminated
18 the natural and probable consequence theory, the law pertaining to the implied malice theory
19 remained unchanged and thus, Dennis failed to meet his burden.

20 Dennis appealed, and the Second District Court of Appeal reversed the denial of his petition
21 with instructions that an evidentiary hearing be held. It found that absent "an admission to harboring
22 malice, it can be inferred Dennis pled guilty under the natural and probable consequences doctrine."⁹
23 The Appellate Court reasoned Dennis may have "'understood' that his act of participating in a group

24
25 ⁷ Pen. Code, § 187, subd. (a); Docket for *People v. Dennis*, Los Angeles County Superior Court case
26 number RF007944A, available online <https://www.lacourt.org/criminalcasesummary>; see also Cal.
27 Code Regs., tit. 2, § 617.8 (official notice.); AGRL at p. 6. The victim and witnesses are referred to by
28 their first name and last initial only to protect their privacy.

⁸ Pen. Code, §§ 187, subd. (a), 189, subd. (b); AGRL at p. 1; AGRL Exhibits (Exs.) at p. 23.

⁹ App. at p. 19.

1 assault was likely to result in death because it was objectively foreseeable that someone would hit the
2 victim hard enough to kill him, but [may] not have understood or agreed that he actually foresaw this
3 danger at the time of the assault.”¹⁰ The court further stated that “This would be a classic formulation
4 of the natural and probable consequences doctrine, as opposed to the doctrine of implied malice,
5 which ... requires awareness and conscious disregard of the risk of death.”¹¹ Accordingly, the
6 Appellate Court reversed the trial court’s order denying Dennis’ petition for resentencing pursuant to
7 Penal Code section 1172.6, and remanded the petition to the trial court with directions to issue an
8 order to show cause and set an evidentiary hearing.

9 **C. The Court Granted Dennis’ Petition for Relief Under Penal Code Section 1172.6**

10 On February 4, 2021, the district attorney conceded that they could not “show beyond a
11 reasonable doubt that [Dennis] could be convicted of murder under [the] newly amended Penal Code
12 sections 188 and 189.”¹² However, they definitively stated that there was evidence that Dennis
13 “intended to aid and abet an assault by means of force likely to produce great bodily injury on [the
14 victim].”¹³ The district attorney ultimately conceded Dennis’ motion pursuant to Penal Code section
15 1172.6, and the parties stipulated to assault by means of force likely to produce great bodily injury.¹⁴
16 The Los Angeles County Superior Court accepted the parties’ stipulation and vacated Dennis’ second-
17 degree murder conviction, sentencing him to four years in state prison, time served, for felony assault
18 by means likely to produce great bodily injury “as the law existed in 1987.”¹⁵ On February 10, 2021,
19 Dennis was released from custody, after having served 34 years in prison.

20 **D. Dennis’ Erroneously Convicted Person Claim**

21 On July 23, 2021, CalVCB received Dennis’ claim seeking compensation as an erroneously
22 convicted person under Penal Code section 4900. In his claim, Dennis alleged he served a total of

23 _____
24 ¹⁰ App. at pp. 24-25.

25 ¹¹ App. at p. 25.

26 ¹² App. at p. 33.

27 ¹³ *Ibid.*

28 ¹⁴ Brief in Support of the Claim of Clayborne Dennis at p. 53.

¹⁵ Supp. at 4.

1 11,186 days in custody, solely as a result of his erroneous convictions, from the date of his conviction
2 on June 21, 1988, to and excluding the date of his release on February 10, 2021. On August 3, 2021,
3 the CalVCB sent a letter to Dennis' counsel notifying him that Dennis' claim was incomplete.
4 Specifically, the CalVCB identified deficiencies that consisted of (1) missing court documentation and
5 (2) failure to raise a valid claim. The letter allowed Dennis 30 days to submit a response that cured
6 both issues.

7 On August 13, 2021, Dennis submitted a timely response via email. In it, he included the
8 following supporting documents: the original judgment and sentencing order for Dennis' 1988 second-
9 degree murder conviction in Los Angeles County Superior Court case number A709481; the court
10 order vacating that conviction on February 4, 2021, pursuant to Penal Code section 1172.6 and
11 imposing, instead, a reduced conviction for assault by means likely to cause great bodily injury; and
12 the revised Abstract of Judgment reflecting a single assault conviction in *People v. Dennis Clayborne*,
13 Los Angeles Superior Court case number A709481-02.¹⁶ As a result, Dennis cured the first deficiency
14 of missing court documentation. However, additional clarification was needed pertaining to the second
15 deficiency, as it remained unclear whether Dennis raised a valid claim. The response asserted Dennis'
16 innocence as a direct accomplice to murder and as the actual killer; however, he did not address
17 whether he claimed to be actually innocent of the target offense that naturally and probably resulted in
18 the victim's death. Accordingly, on August 16, 2021, the CalVCB sent a letter to Dennis' counsel
19 seeking clarification as to whether Dennis claimed to be innocent of aiding and abetting an assault that
20 naturally and probably resulted in the victim's death. The letter allowed Dennis 45 days to respond.

21 On September 27, 2021, counsel for Dennis submitted a timely response wherein he asserted
22 that Dennis was actually innocent of murder as it existed at the time of the crime. Dennis argued that,
23 although he punched Melvin a single time, "such was not the proximate cause of death, nor did such
24 'naturally, probably, and foreseeably le[a]d to the victim's death."¹⁷ Further, he asserted that "The fact
25

26
27 ¹⁶ Some of the court records inconsistently refer to claimant as Clayborne Dennis and others as Dennis
28 Clayborne.

¹⁷ Dennis reply letter to the CalVCB dated September 27, 2021.

1 that other boys from Mr. Dennis' neighborhood continued to beat and ultimately murder [the victim]
2 was not foreseeable, or natural, or probable."¹⁸

3 On September 28, 2021, the CalVCB requested a response letter from the Attorney General
4 within 60 days in accordance with Penal Code section 4902. Following three extensions for
5 demonstrated good cause, the Attorney General timely submitted a response letter on May 27, 2022,
6 along with 19 exhibits amounting to 859 pages.¹⁹ Included in the exhibits were court records,
7 preliminary hearing transcripts, police reports, parole board hearing transcripts, psychological
8 evaluations, mental health evaluations, comprehensive risk assessments, and CDCR records.

9 The assigned Hearing Officer, Attorney Supervisor Sara Harbarger, held a hearing on October
10 12, 2022, at which both parties appeared remotely by videoconference. Dennis testified subject to
11 cross-examination by the Attorney General. Dennis also elicited testimony from an expert witness, who
12 appeared by videoconference. At the conclusion of the hearing, the Hearing Officer requested the
13 parties submit post-hearing briefs by 5:00 p.m. on December 12, 2022.²⁰ On December 12, 2022, both
14 the Attorney General and counsel for Dennis submitted timely post-hearing briefs and the
15 administrative record was closed immediately thereafter.²¹

16 **III. Factual Background**

17 **A. The Murder**

18 On August 17, 1987, at around midnight, Dennis and Ricky M., were walking back to the Pierce
19 Apartments complex when they came across the victim, Melvin, who was alone. There was a brief
20 verbal exchange before Dennis punched Melvin in the face.²² Melvin took off running as Dennis and
21 Ricky chased after him. Moran saw Dennis and Ricky chasing after Melvin, and he immediately joined
22 the pursuit.²³ When Dennis, Ricky, and Moran (together "the assailants") caught up to Melvin in a

23
24 ¹⁸ *Ibid.*

25 ¹⁹ AGRL at pp. 1-21; AGRL Exs. at pp. 1-859.

26 ²⁰ Cal. Code Regs., tit. 2, § 644, subd. (k).

27 ²¹ Cal. Code Regs., tit. 2, § 644, subd. (m).

28 ²² AGRL Exs. at pp. 689, 691.

²³ AGRL Exs. at p. 690.

1 parking lot, Dennis pushed him against the wall.²⁴ The assailants repeatedly punched Melvin. At one
2 point, Melvin either fell or was knocked down to the ground, and the assailants kicked him in the head
3 and upper body until he stopped moving.²⁵ Moran picked up a nearby shopping cart and threw it at
4 Melvin's chest while he was lying on the ground.²⁶ Hector M. felt Melvin's pulse and told the assailants,
5 "Hey, you guys better quit it because this guy's pulse is weak."²⁷ The assailants then walked over to a
6 group of friends, including members of a local street gang, the Pierce Park Boys (PPB), and led the
7 group of about 12 people back to where they left Melvin.²⁸ Members of the group repeatedly punched,
8 kicked, and slapped Melvin as he lay motionless on the ground.²⁹ Dennis and Ricky then kicked him
9 again, and Ricky's brother, Samuel M., removed Melvin's pants.³⁰ The group quickly fled. Melvin died
10 at the scene from brain damage caused by blunt force head injuries.³¹

11 **B. The Investigation**

12 **1. Anonymous Informants' Police Interview**

13 An informant, who wished to remain anonymous for fear of reprisal, called law enforcement to
14 report what happened with Melvin. The informant's friend told her that a local street gang was
15 responsible for the murder.³² Specifically, the informant's friend, who was also fearful of retaliation,
16 overheard some juveniles discussing the crime while the paramedics and police were still at the
17 scene. Although neither of them witnessed the crime, they shared that several juveniles who belonged
18 to a local street gang had beaten the victim to death. Both informants said Ricky, Moran, Felipe, and
19 Martin O. were involved.

21 ²⁴ AGRL Exs. at p. 761.

22 ²⁵ AGRL Exs. at pp. 587, 692.

23 ²⁶ AGRL Exs. at p. 691.

24 ²⁷ AGRL Exs. at p. 83.

25 ²⁸ AGRL Exs. at p. 587.

26 ²⁹ *Ibid.*

27 ³⁰ AGRL Exs. at p. 690.

28 ³¹ AGRL Exs. at p. 142.

³² AGRL Exs. at p. 687.

1 A third informant reached out to detectives, wishing to remain anonymous out of fear for his
2 life. He told detectives that a group of juveniles residing in the apartment complex formed a street
3 gang known as Pierce Park Boys. Numerous citizens who were afraid to report the Pierce Park Boys'
4 activities to the police told the informant that members of the Pierce Park Boys were responsible for
5 approximately 15 street robberies in the past few months. Each robbery involved the same motus
6 operandi. Each time, a group of boys targeted a lone male victim, beating him with their fists and feet
7 before stripping the victim of their valuables and clothes, in hopes the naked victim would be too
8 humiliated to report the incident to the authorities.³³ The informant gave detectives the following list of
9 names: Dennis, Moran, Felipe, Martin, Samuel, and Albert C.³⁴

10 2. Mary F.'s Police Interview

11 Mary told detectives that, at approximately 11:45 p.m. on August 17, 1987, she was walking
12 with her cousin in the Pierce Apartment Building parking lot when she observed Melvin lying on his
13 back, fully clothed.³⁵ She saw Dennis punch Melvin in the face.³⁶ Someone said to leave him alone.
14 Hector M. checked the victim's pulse on his wrist and neck. Mary walked up to her friend's apartment
15 and sat in front of the building talking to a group of people, which included Samuel, Martin, and
16 Rodney.³⁷ A couple of minutes later, Ricky walked up to them and asked for someone to walk with him
17 so he would not look suspicious.³⁸ Mary left with her cousin after about ten minutes and walked back
18 to her apartment. On her way home, she walked by Melvin again. Melvin was lying on the ground
19 naked, surrounded by Dennis, Felipe, Samuel, and an unknown Hispanic male.³⁹ Felipe kicked Melvin
20
21
22

23 ³³ AGRL Exs. at p. 688.

24 ³⁴ *Ibid.*

25 ³⁵ AGRL Exs. at p. 689.

26 ³⁶ *Ibid.*

27 ³⁷ *Ibid.*

28 ³⁸ *Ibid.*

³⁹ *Ibid.*

1 in the groin and then in the leg.⁴⁰ The next day, a friend told her that Moran admitted to hitting Melvin
2 in the head with a shopping cart.⁴¹

3 **3. Dennis' Police Interview**

4 Dennis was arrested on August 20, 1987, and agreed to speak with detectives after waiving his
5 *Miranda* rights.⁴² Dennis admitted that he struck Melvin after Melvin supposedly said something to
6 him.⁴³ Melvin then took off running and Dennis and Ricky chased after him, with Moran joining in the
7 pursuit. When they caught up to Melvin in the parking lot, they all hit him.⁴⁴ Melvin dropped to his
8 knees and Dennis kicked him in the shoulder.⁴⁵ Moran kicked Melvin five or six times, while Ricky
9 kicked him three or four times. Moran then grabbed a shopping cart, lifted it up and shoved it into
10 Melvin's chest.⁴⁶ They left, told a group of friends about what happened, and then returned to the
11 scene with their friends. Felipe then kicked Melvin in the head, and someone else removed Melvin's
12 pants.⁴⁷

13 **4. Ricky's Police Interview**

14 Ricky first told detectives that he was part of the larger group that returned to the scene
15 following the initial assault, but later admitted he was lying.⁴⁸ He was present when Dennis first
16 "jumped" the victim.⁴⁹ He then chased after the victim with Dennis as Moran joined in. Once they
17 caught up to Melvin in the parking lot, they all hit him.⁵⁰ Melvin hit Ricky but was then knocked down on
18

19
20 ⁴⁰ *Ibid.*

21 ⁴¹ *Ibid.*

22 ⁴² AGRL Exs. at p. 691.

23 ⁴³ *Ibid.*

24 ⁴⁴ *Ibid.*

25 ⁴⁵ *Ibid.*

26 ⁴⁶ *Ibid.*

27 ⁴⁷ *Ibid.*

28 ⁴⁸ AGRL Exs. at p. 692.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

1 the ground. Ricky, Dennis, and Moran all kicked the victim until he stopped moving.⁵¹ They left Melvin
2 lying on the ground to tell their friends what happened. When they returned with their friends, Melvin
3 was still lying in the same place on the ground.⁵²

4 **5. Moran's Police Interview**

5 Moran saw Dennis and Ricky chasing Melvin and joined in the pursuit. When they caught up to
6 Melvin, Dennis punched him two to three times.⁵³ Ricky punched him at least once. Melvin hit Ricky,
7 but then tripped and fell to the ground. Once Melvin was down, Dennis, Moran, and Ricky repeatedly
8 kicked him in the head until he became motionless.⁵⁴ Moran also admitted to pushing a shopping cart
9 into Melvin.⁵⁵ They left Melvin lying on the ground, told their friends about what happened, and led the
10 group back to where Melvin lay motionless.⁵⁶ Dennis and Ricky kicked him again and someone
11 removed his pants.⁵⁷

12 **6. Samuel M.'s Police Interview**

13 Samuel was with a group of people when Dennis came over and stated that he "needed some
14 help with a Black guy."⁵⁸ The group ran over to where Melvin was lying on the ground. Samuel
15 witnessed Dennis kick Melvin and Felipe slap him.⁵⁹

16 **7. Felipe's Police Interview**

17 Shortly after midnight, Felipe was hanging out with his friends in the alley by his house when
18 Ricky and Rodney B. came running up to them, stating that "some dooper" slapped him.⁶⁰ Felipe and
19 his friends followed them to the parking lot where Melvin was lying on the ground. Samuel punched

20 ⁵¹ *Ibid.*

21 ⁵² *Ibid.*

22 ⁵³ AGRL Exs. at p. 690.

23 ⁵⁴ *Ibid.*

24 ⁵⁵ *Ibid.*

25 ⁵⁶ *Ibid.*

26 ⁵⁷ *Ibid.*

27 ⁵⁸ Melvin is a Black male; see AGRL Exs. at pp. 184, 586, 690.

28 ⁵⁹ AGRL Exs. at p. 690.

⁶⁰ *Ibid.*

1 Melvin, Alberto stomped him, and Ricky hit him a couple of times in the jaw.⁶¹ Samuel then pulled the
2 victim's pants down.⁶² Felipe kicked him a couple of times, and the group then left.⁶³

3 **C. Evidence Presented at Preliminary Hearing**

4 **1. Mary's Testimony**

5 Mary testified that at approximately 11:45 a.m. on August 17, 1987, she left her apartment and
6 walked with her cousin, Michelle, to the parking lot behind her building where she saw the victim lying
7 on the ground.⁶⁴ Dennis and six other guys were standing around the victim, some of whom she
8 knew.⁶⁵ Specifically, she named Dennis, Ricky, and Felipe.⁶⁶ She could not remember the names of
9 the other perpetrators. She testified that as she and Michelle were walking to her friend's house, she
10 saw Dennis "sock" the victim with his fist once in the face while he was lying on the ground.⁶⁷ She did
11 not hear any sounds coming from the victim.⁶⁸ The victim was lying on his back and was not moving.⁶⁹
12 Hector, touched the victim's neck and said, "Hey, you guys better quit it because this guy's pulse is
13 weak."⁷⁰ She stayed at her friend's house for about 15 minutes before she walked back across the
14 parking lot on her way home.⁷¹

15 As she passed by a second time, the victim was still lying on the ground. However, he did not
16 have any clothes on.⁷² His pants were on the ground nearby.⁷³ When asked if the victim had clothes on

17
18 ⁶¹ *Ibid.*

19 ⁶² *Ibid.*

20 ⁶³ *Ibid.*

21 ⁶⁴ App. at pp. 38-39, 47.

22 ⁶⁵ App. at pp. 40-41.

23 ⁶⁶ *Ibid.*

24 ⁶⁷ App. at p. 42, 47, 58.

25 ⁶⁸ App. at p. 59.

26 ⁶⁹ App. at pp. 59, 63.

27 ⁷⁰ App. at p. 64.

28 ⁷¹ App. at pp. 43- 44.

⁷² App. at p. 44.

⁷³ App. at p. 66.

1 when she first passed by him, she answered, “yes.”⁷⁴ She observed Dennis, Ricky, and Felipe
2 standing “around” the victim but later clarified that Dennis was standing about eight or ten feet from
3 where the victim was lying.⁷⁵ She further confirmed that Dennis was “nowhere near the pants.”⁷⁶ She
4 witnessed Felipe kick the victim one time in the groin.⁷⁷ She then continued to walk back to her
5 apartment and went to bed.⁷⁸

6 On cross examination, Mary stated that earlier in the night, at about 10:30 p.m., she had been
7 drinking in the alley with several people, including Dennis, Ricky, and Felipe.⁷⁹ She left with Michelle
8 and walked to her apartment where they stayed for about 15 minutes.⁸⁰ When they returned to the
9 back parking lot, she saw the assailants standing around the victim who was lying on the ground.⁸¹
10 The victim was still.⁸² She was only three feet away from the victim as she was walking by.⁸³ She
11 stated that she “just glanced at him and kept walking.”⁸⁴ When asked how sure she was that Dennis
12 was the one she saw hit the victim, she answered unequivocally, “I’m definite.”⁸⁵ When challenged on
13 the fact that she previously told law enforcement, “I probably saw somebody hit him, but I’m not sure
14 who it was. I think it was [Dennis],” she explained that she was nervous while talking to the detective.⁸⁶
15 When asked if she noticed “signs of life” when she saw the victim lying on the ground, she first
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18 ⁷⁴ App. at p. 46.

19 ⁷⁵ App. at pp. 44- 45, 66.

20 ⁷⁶ App. at p. 67.

21 ⁷⁷ App. at pp. 45, 63.

22 ⁷⁸ App. at p. 46.

23 ⁷⁹ App. at pp. 48- 49.

24 ⁸⁰ App. at p. 53.

25 ⁸¹ App. at pp. 54- 55.

26 ⁸² App. at p. 55.

27 ⁸³ *Ibid.*

28 ⁸⁴ App. at p. 56.

⁸⁵ App. at p. 74.

⁸⁶ App. at p. 75.

1 answered “no,” but after refreshing her memory, testified that the first time she saw the victim, he
2 “moved a little bit, but not that much.”⁸⁷

3 **2. Detective Vojtecky Testimony**

4 Detective Vojtecky testified that on the night of the crime, he interviewed Moran for about an
5 hour to an hour and a half.⁸⁸ During the interview, Moran stated that he was walking through the
6 apartment complex when he saw Dennis and his friend Ricky come around the corner chasing the
7 victim.⁸⁹ He then joined the pursuit and chased the victim to the back parking lot of the apartments,
8 where they cornered him.⁹⁰ A physical altercation ensued.⁹¹ During the altercation, the victim swung at
9 Ricky. The victim “either fell or was knocked to the ground.”⁹² Once on the ground, Dennis, Moran, and
10 Ricky, all began kicking the victim in the upper body and head.⁹³ Moran insisted his kicks only landed
11 in the victim’s “chest and side area.”⁹⁴ Moran told Detective Vojtecky that he was primarily an observer
12 until the beating stopped and then he grabbed a nearby shopping cart and pushed it into the victim’s
13 shoulder.⁹⁵ While unclear how long the physical altercation lasted, at one point the victim was
14 motionless and the assailants left the location.⁹⁶ They went “around some buildings” in the apartment
15 complex and told a group of friends, both female and male, that “some guy” jumped Ricky.⁹⁷ While the
16 number of people in the group varied, Detective Vojtecky estimated that Moran returned to where the
17 victim was lying motionless on the ground with about 12 people.⁹⁸ Some of the original assailants,

18
19 ⁸⁷ App. at pp. 78-79.

20 ⁸⁸ App. at p. 83.

21 ⁸⁹ *Ibid.*

22 ⁹⁰ *Ibid.*

23 ⁹¹ App. at pp. 83- 84.

24 ⁹² App. at p. 84.

25 ⁹³ *Ibid.*

26 ⁹⁴ App. at p. 94.

27 ⁹⁵ App. at pp. 84- 85.

28 ⁹⁶ App. at p. 84.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

1 along with Felipe, now joined in and punched, slapped, and kicked the victim, who remained
2 motionless on the ground.⁹⁹ Moran indicated that, at some point, someone, he could not remember
3 who, removed the victim's pants.¹⁰⁰ The group then left and went home or to visit with friends.¹⁰¹

4 **3. Detective Caughey's Testimony**

5 Detective Caughey, who was assisting with the investigation, interviewed Dennis the night of the
6 crime.¹⁰² Dennis admitted he "hit the [victim]."¹⁰³ The victim then took off running while turning around to
7 call Dennis and Ricky "bitches."¹⁰⁴ Dennis and Ricky immediately chased the victim and were joined in
8 the pursuit by Moran.¹⁰⁵ Dennis admitted that when they caught up to the victim, each of the assailants
9 hit the victim "two or three times."¹⁰⁶ Melvin then hit Ricky and knocked him down.¹⁰⁷ And then the
10 victim was knocked down.¹⁰⁸ At that point, Dennis kicked the victim in the shoulder.¹⁰⁹

11 Moran grabbed a nearby shopping cart and shoved it toward the victim.¹¹⁰ The assailants then
12 went behind the building and told a group of friends what just happened. They all returned to the scene
13 of the crime together, where Felipe and two other individuals joined in the assault against the victim.¹¹¹
14 On cross-examination, when asked about witness statements that contradicted Dennis' claims,
15 Detective Caughey read aloud a statement from Ricky's brother, Samuel, which said, "Saw [Dennis]
16 kick him in the face and blood come out of his mouth. [Felipe] then went up and slapped the guy in the
17

18 ⁹⁹ *Ibid.*

19 ¹⁰⁰ App. at p. 85.

20 ¹⁰¹ *Ibid.*

21 ¹⁰² App. at p. 97.

22 ¹⁰³ App. at p. 103.

23 ¹⁰⁴ *Ibid.*

24 ¹⁰⁵ App. at p. 103.

25 ¹⁰⁶ App. at p. 104.

26 ¹⁰⁷ App. at pp. 104- 105.

27 ¹⁰⁸ App. at p. 105.

28 ¹⁰⁹ *Ibid.*

¹¹⁰ App. at p. 104.

¹¹¹ *Ibid.*

1 face. I tried to pick him up and shake him to wake him. He wouldn't move over, so I just laid him back
2 down."¹¹²

3 **4. Medical Examiner's Testimony**

4 James Wegner is a Deputy Medical Examiner with the Los Angeles County Coroner's Office.¹¹³
5 He testified that the cause of the victim's death was "blunt head injuries."¹¹⁴ Specifically, he observed
6 multiple abrasions, contusions, and lacerations over the victim's head and face.¹¹⁵ He further observed
7 brain injuries inside the victim's head, which resulted in his death.¹¹⁶ He described the brain injuries as
8 bruises on the brain, with the "brain swelling up consequent to the bruises."¹¹⁷ When asked if "blunt
9 injuries" can be inflicted by hands and feet, he responded, "Yes, certainly hands and feet can cause
10 blunt head injuries and blunt injuries anywhere on the body."¹¹⁸ He explained that blunt injuries include
11 any kind of injury that would result when something forcibly strikes the body, or the body forcibly strikes
12 something, or a combination of those.¹¹⁹ However, he lamented that associating which blows to the
13 head and/or face caused which bruises on the brain would be very difficult.¹²⁰ In this specific case, Dr.
14 Wegner stated that injuries to the victim's brain were associated with the injuries to his head and the
15 face, but it was not possible to point to one particular laceration or abrasion as the one associated with
16 the internal head injury because there were so many injuries to the head and face.¹²¹

17 Dr. Wegner also described blunt force injuries to the shoulder area of the victim's torso and an
18 abrasion on the right side of the victim's abdomen.¹²² Moreover, there were abrasions or scraping

19
20 ¹¹² App. at p. 112.

21 ¹¹³ App. at p. 122.

22 ¹¹⁴ App. at p. 123.

23 ¹¹⁵ *Ibid.*

24 ¹¹⁶ *Ibid.*

25 ¹¹⁷ App. at p. 123.

26 ¹¹⁸ App. at p. 124.

27 ¹¹⁹ *Ibid.*

28 ¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² App. at p. 125.

1 injuries on the victim's buttocks, over the sacrum area, and over the lowermost back area.¹²³ There
2 were also bruises on the victim's neck, which, in conjunction with hemorrhaging in the eyes and bitten
3 tongue, strongly suggest the victim was strangled or choked.¹²⁴

4 Notably, Dr. Wegner testified that while the victim had a small laceration on the upper lip and
5 some swelling with multiple lacerations to his lower lip, those injuries in and of themselves were not
6 "life-threatening or fatal."¹²⁵ He went on to opine, "as to significance regarding the cause of death, the
7 only way that the mouth blow could have significance... would be if that projected him backwards so he
8 hit his head."¹²⁶ The "injuries sustained to the lips would have no significance to the cause of death
9 directly."¹²⁷ Similarly, a kick to the right shoulder would not be life-threatening.¹²⁸

10 On cross-examination, Dr. Wegner agreed that those particular injuries could have been
11 sustained by someone grabbing the victim by the throat, lifting him up and slamming him down to the
12 ground.¹²⁹ The victim had what appeared to be defensive wounds on his arms.¹³⁰ Though, on cross-
13 examination, Dr. Wegner agreed the injuries that appeared to be defensive wounds could have equally
14 been sustained by scraping an abrasive surface such as the pavement.¹³¹ While the victim sustained
15 injuries to the lower portion of his body, in particular his legs, Dr. Wegner concluded that the victim's
16 head injuries were responsible for his death.¹³² The coroner was unable to decipher which injuries had
17 been sustained in which incident, as they all look alike in the autopsy.¹³³

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19
20 ¹²³ *Ibid.*

21 ¹²⁴ App. at pp. 125-126.

22 ¹²⁵ App. at p. 139.

23 ¹²⁶ App. at p. 141.

24 ¹²⁷ *Ibid.*

25 ¹²⁸ App. at p. 140.

26 ¹²⁹ App. at p. 134.

27 ¹³⁰ App. at p. 126.

28 ¹³¹ App. at p. 135.

¹³² App. at p. 127.

¹³³ *Ibid.*

1 **D. Dennis' Out of Court Admissions**

2 **1. 1987 Police Interview**

3 Dennis admitted that he struck Melvin when he first encountered him because Melvin "said
4 something to him and Ricky." He then told detectives that after he, Moran, and Ricky chased after
5 Melvin and caught up to him in the parking lot, all three of them hit him, and he dropped to his knees.
6 Dennis then kicked him in the shoulder while he was on the ground.¹³⁴

7 **2. September 1987 Psychiatric Evaluation**

8 Dennis said he was walking back to the apartment complex with Ricky when they encountered
9 Melvin, who wanted to buy drugs and "started talking nonsense."¹³⁵ Melvin took a swing at Dennis, and
10 he, in turn, punched Melvin back, "skinning him on the chin."¹³⁶ Melvin then started to run, as Dennis
11 and Ricky chased after him. When they caught up to Melvin in the parking lot, Ricky and Dennis both
12 hit Melvin.¹³⁷ Melvin stumbled and fell to the ground. Dennis then kicked Melvin in the right shoulder,
13 "just to let him know he couldn't mess with us."¹³⁸ Ricky kicked him in the arm. He and Ricky were
14 "worried because his eyes were still open."¹³⁹ Ricky felt Melvin's pulse in his neck and on his right
15 wrist, so "we knew the guy was alive when we left."¹⁴⁰ The assailants then left, and Ricky told his
16 brother, Samuel, what happened. Samuel "put the word out[,] and a whole bunch of other guys came
17 and started beating [Melvin]" while Dennis, Moran, and Ricky stood by and watched.¹⁴¹ Samuel took
18 Melvin's pants off. Dennis then went home and went to sleep.¹⁴²

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¹³⁴ AGRL Exs. at p. 691.

22 ¹³⁵ AGRL Exs. at p. 182.

23 ¹³⁶ *Ibid.*

24 ¹³⁷ *Ibid.*

25 ¹³⁸ *Ibid.*

26 ¹³⁹ *Ibid.*

27 ¹⁴⁰ AGRL Exs. at p. 182.

28 ¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

1 **3. 1988 Probation Report**

2 Dennis stated that he did not know Melvin when he “came out of nowhere swinging at him.”¹⁴³
3 He got into a fight with Melvin, who he believed was “loaded on cocaine.”¹⁴⁴ Melvin ran, and he and
4 Ricky gave chase. Dennis admitted that he beat Melvin up, as did some of his friends. Dennis claimed
5 he did not know Melvin was dead because when he left him, Melvin was moving. Melvin had “passed
6 out.”¹⁴⁵ The probation officer noted that he interviewed Detective Vojtecky, who stated, “in all of his
7 years on the police force he had never seen any offense so vicious.”

8 **4. March 1992 Psychiatric Evaluation**

9 Dennis admitted he took a life. The examiner noted that Dennis “was not able to tell his mother
10 that he actually killed the victim since he feels she would be offended.”¹⁴⁶ Melvin walked through his
11 apartment complex, “disrespected [Dennis] in some manner,” and “said something or did something
12 that provoked a fight.”¹⁴⁷ Dennis believed Melvin was simply knocked out, but when he returned with
13 the group of friends, he realized Melvin was dead.¹⁴⁸ According to the examiner, Dennis “generalized
14 about the need to stand one’s ground when is [*sic*] disrespected because some people if allowed to
15 get away may come back and stab him in the back.”¹⁴⁹ Dennis emphasized that if “one or the other
16 might be dead he would prefer it be the other.”¹⁵⁰

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¹⁴³ AGRL Exs. at p. 193.

22 ¹⁴⁴ *Ibid.* According to the deputy medical examiner who performed the victim’s autopsy, Melvin
23 consumed cocaine at some point before his death, but was not under the influence of any intoxicating
substance at the time he died; see AGRL Exs. at pp. 154-155.

24 ¹⁴⁵ AGRL Exs. at p. 193.

25 ¹⁴⁶ AGRL Exs. at p. 694.

26 ¹⁴⁷ AGRL Exs. at pp. 694-695.

27 ¹⁴⁸ AGRL Exs. at p. 695.

28 ¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

1 **5. April 2005 Life Prisoner Evaluation**

2 Dennis said Melvin came out of nowhere, swinging at him.¹⁵¹ Dennis admitted that he beat the
3 victim, as did some of his friends.¹⁵² When he left, Melvin was still moving, emphasizing that “he had
4 only passed out.”¹⁵³

5 **6. April 2005 Mental Health Evaluation**

6 Dennis stated that Melvin made an offensive comment, and a fight ensued. Dennis could not
7 recall what Melvin said, other than it was “just something foolish.”¹⁵⁴ He admitted that he “fucked up,”
8 and “who was [he] to take another person’s life?”¹⁵⁵ When describing the crime, Dennis said that once
9 Melvin fell, “it was history.”¹⁵⁶ When asked to elaborate, he said, “Because [Melvin] never had the
10 opportunity to get back up. He hit his head on the concrete, and he was kicked.”¹⁵⁷ Dennis went on to
11 admit to playing the “most important part,” stating “Cause [*sic*] if I would have stopped and not chased
12 him down and pushed him and got into the fight with him, no one else would have done it [either].”¹⁵⁸
13 The evaluator noted that although Dennis denied ever belonging to a street gang, “numerous records
14 in his C-File identify him as a member of the ‘Pierce Park Boys.’”¹⁵⁹

15 **7. August 2008 Psychological Evaluation**

16 Dennis’ admitted that he beat up the victim.¹⁶⁰ When asked about his involvement in the crime,
17 Dennis explained, “[w]hen the victim ran, we should have let him alone.”¹⁶¹ He stated that he was trying

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20 ¹⁵¹ AGRL Exs. at p. 696.

21 ¹⁵² *Ibid.*

22 ¹⁵³ *Ibid.*

23 ¹⁵⁴ AGRL Exs. at p. 706.

24 ¹⁵⁵ *Ibid.*

25 ¹⁵⁶ AGRL Exs. at p. 707.

26 ¹⁵⁷ *Ibid.*

27 ¹⁵⁸ *Ibid.*

28 ¹⁵⁹ AGRL Exs. at p. 702.

¹⁶⁰ AGRL Exs. at p. 712.

¹⁶¹ *Ibid.*

1 to “be cool and a tough kid” and admitted that he was the “initiator.”¹⁶² When asked why the crime
2 turned violent, Dennis answered, “It was a group thing. We encouraged each other. We had no prior
3 problems with [the victim].”¹⁶³

4 **8. March 2011 Comprehensive Risk Assessment**

5 Dennis claimed that he was walking back to the apartments when Melvin jumped out from
6 behind some bushes, “took a swing” at Ricky, and then ran away. Dennis chased and then fought the
7 victim. Melvin “fell and hit his head and then we left. I went home.”¹⁶⁴ Ricky told his brother, who was at
8 a party at the time, about what happened and “everyone came out.”¹⁶⁵ Melvin “was still passed out or
9 deceased. They hit him, etc.”¹⁶⁶ Dennis stated that he came back to the scene after the police were
10 already there or on their way. He said he was only watching at that time.¹⁶⁷ When asked what he felt
11 and thought about his crime, he stated, “I could have stopped it. I let trying to be macho interfere with
12 my judgment.”¹⁶⁸ The evaluator noted that Dennis indicated that he “joined the ‘Pierce Park Boys,’ a
13 San Fernando Valley street gang associated with the Bloods, when he was 12 years old.”¹⁶⁹

14 **9. October 2013 Petition for Writ of Habeas Corpus**

15 In an undated, signed declaration, referenced as an exhibit in Dennis’ 2013 petition for habeas
16 corpus, Dennis admitted that he overreacted when Melvin jumped out of the bushes swinging. After
17 Melvin hit Ricky and ran off, “being the fighter [he] was,” Dennis thought to himself, “I can’t let [him] get
18 away with that!” Dennis then chased after Melvin, and when he caught up to him, he “fought him with
19 everything within [him],” explaining, “I did this to impress my circle of friends as well as the girls, and
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22 ¹⁶² *Ibid.*

23 ¹⁶³ *Ibid.*

24 ¹⁶⁴ AGRL Exs. at p. 725.

25 ¹⁶⁵ *Ibid.*

26 ¹⁶⁶ *Ibid.*

27 ¹⁶⁷ *Ibid.*

28 ¹⁶⁸ *Ibid.*

¹⁶⁹ AGRL Exs. at p. 718.

1 also to let the other's [*sic*] know that I'm a fighter to be feared, no matter if I'm high or sober."¹⁷⁰ Dennis
2 went on to say that "all [Melvin] wanted to do was get away, it wasn't like it was a planned attack on us,
3 we invaded upon his privacy as he was getting high, he was in fear of getting caught so he was only
4 defending himself so that he could escape."¹⁷¹

5 **10. March 2017 Comprehensive Risk Assessment**

6 According to Dennis, he was walking back to the apartment complex when Melvin jumped out
7 of the bushes and startled him. "He was running towards us."¹⁷² Melvin supposedly took a swing and
8 hit Ricky. "As instinct, I chased him, and we had a fight. Then he tried to run again. I chased him. I
9 didn't let him run away."¹⁷³ "Then when I hit him, he tried to defend himself and went down and he ain't
10 moving no more."¹⁷⁴ Then Ricky told his brother, and everyone returned to where Melvin was lying on
11 the ground. "I went to the store with two females, then it was over."¹⁷⁵ When asked about his
12 motivation for committing the crime, Dennis stated, "We was stupid. When he jumped out of the
13 bushes, I think he was in fear. He was ducking behind the bushes."¹⁷⁶ Dennis admitted that his
14 "stupidity led to the crime" and that he "could have been the reason it never started."¹⁷⁷ "I had the
15 power to stop it."¹⁷⁸ "[Melvin] did not deserve it, he was in fear."¹⁷⁹ Dennis also said he "took a deal"
16 because he believes what he did was wrong."¹⁸⁰

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20 ¹⁷⁰ AGRL Exs. at pp. 329, 852.

21 ¹⁷¹ AGRL Exs. at p. 852.

22 ¹⁷² AGRL Exs. at p. 738.

23 ¹⁷³ *Ibid.*

24 ¹⁷⁴ *Ibid.*

25 ¹⁷⁵ *Ibid.*

26 ¹⁷⁶ *Ibid.*

27 ¹⁷⁷ *Ibid.*

28 ¹⁷⁸ AGRL Exs. at p. 739.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

1 **11. June 29, 2017, Parole Board Hearing**

2 Dennis testified under oath that he was walking back to the apartment complex when Melvin
3 jumped out of the bushes, and they startled each other.¹⁸¹ Dennis stated, for the first time, that Melvin
4 accidentally hit Ricky, but that Dennis took it as a sign of disrespect.¹⁸² While Dennis first claimed that,
5 “before he hit me, I decided to hit him,” he later admitted that when Melvin jumped out and accidentally
6 hit Ricky, “it was like, okay, he’s by himself [*sic*], let’s do him.”¹⁸³ Melvin fled, and when Dennis caught
7 up with him, he “pushed him against the wall, kept on hitting him, he went down.”¹⁸⁴ “He, you know, it
8 was pretty much kick and go then.”¹⁸⁵ When asked if he beat the victim to death, Dennis answered,
9 “Yes, sir.”¹⁸⁶ When asked why he used so much violence, as Melvin was not a threat, Dennis
10 responded, “True.”¹⁸⁷ Dennis asserted they did not intend to kill Melvin, but once “he went down and
11 never got back up, that’s when we realized, oh he dead.”¹⁸⁸ He went on to explain that other people
12 were not sure if Melvin was dead, so they decided to “just keep on kicking and strip him out of
13 everything. This was another thing we did in our neighborhood, jump on people and take their
14 properties and stuff.”¹⁸⁹ When asked if he stole from Melvin, Dennis replied, “Not personally, but we
15 stripped him of all his clothing.”¹⁹⁰ Dennis admitted that it was normal for his gang to beat people and
16 strip them of their clothing to humiliate them.¹⁹¹ When asked why he would want to humiliate him,
17 Dennis stated, “Just in case he get up and go tell the police or anybody. He wouldn’t tell them if he
18

19 _____
20 ¹⁸¹ AGRL Exs. at p. 761.

21 ¹⁸² AGRL Exs. at pp. 766-767.

22 ¹⁸³ AGRL Exs. at pp. 761, 767.

23 ¹⁸⁴ AGRL Exs. at p. 761.

24 ¹⁸⁵ *Ibid.*

25 ¹⁸⁶ AGRL Exs. at p. 762.

26 ¹⁸⁷ *Ibid.*

27 ¹⁸⁸ AGRL Exs. at pp. 762-763.

28 ¹⁸⁹ AGRL Exs. at p. 763.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

1 didn't have no clothes. The first thing you'd do is go get clothing, and we'd have time to get away."¹⁹²
2 He denied participating in the group attack after he left the victim on the ground."¹⁹³

3 Notably, during the 2017 hearing, while considering Dennis' truthfulness, the parole board read
4 the 2012 parole consideration hearing transcripts, quoting Dennis as saying, "...as we passed by some
5 bushes, I'm assuming we startled [Melvin], and as he jumped out scared, you know, I overreacted and
6 brutally, you know, started punching on him, chased him down."¹⁹⁴ Dennis further stated during the
7 2012 hearing, "... I overreacted, brutally beat the man for no reason at all, didn't deserve it."¹⁹⁵ The
8 parole board noted that based on Dennis' account in the 2012 hearing compared to the 2017 account,
9 Dennis was "getting further from the truth."¹⁹⁶

10 **E. The CalVCB Hearing**

11 Dennis and counsel for both parties appeared at the CalVCB hearing on October 12, 2022. As
12 detailed below, Dennis testified subject to cross-examination on the merits of his claim. Dennis also
13 called an expert witness, Daniel Russo, Esq. to testify as to murder liability as it existed in 1987.

14 **1. Dennis' Testimony**

15 Dennis testified on his own behalf. He admitted that he assaulted Melvin on the night of the
16 crime but did not intend to kill him.¹⁹⁷ On cross-examination, Dennis admitted to chasing Melvin with
17 two friends. After he caught up to Melvin, he hit him twice.¹⁹⁸ Dennis punched Melvin once while he
18 was standing and then kicked him once, but could not remember where he kicked him or if Melvin was
19 on the ground when he kicked him.¹⁹⁹ While Dennis admitted that Melvin died as a result of the
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22 ¹⁹² AGRL Exs. at pp. 763-764.

23 ¹⁹³ AGRL Exs. at p. 796.

24 ¹⁹⁴ AGRL Exs. at p. 801.

25 ¹⁹⁵ *Ibid.*

26 ¹⁹⁶ AGRL Exs. at p. 802.

27 ¹⁹⁷ CalVCB Hearing at 36:22.

28 ¹⁹⁸ CalVCB Hearing at 41:03.

¹⁹⁹ CalVCB Hearing at 41:20.

1 beating, he claimed Melvin passed away while he was at the store, insisting that when he came back
2 from the store, Melvin was “laid out.”²⁰⁰

3 When asked about prior admissions made under oath during the 2017 parole consideration
4 hearing, Dennis denied pushing Melvin against the wall.²⁰¹ The Attorney General then read the
5 transcript, quoting Dennis as saying, “When I caught up with him, pushed him against the wall, kept
6 on hitting him, he went down.”²⁰² Dennis agreed that she read his quote correctly.²⁰³ When asked if he
7 remembered admitting to beating Melvin to death, Dennis answered, “No.”²⁰⁴ The Attorney General
8 then read the transcript where Dennis was asked by the parole board, “You pretty much beat him to
9 death, didn’t you?” To which, Dennis replied, “Yes, sir.”²⁰⁵ Dennis then said he “somewhat”
10 remembered saying that.²⁰⁶ Dennis agreed that when Melvin fell to the ground and did not get back
11 up, he realized that he was dead.²⁰⁷ When asked if after he realized Melvin was dead, other people
12 kept hitting him, Dennis replied, “Vaguely.”²⁰⁸ Dennis agreed that he previously admitted to
13 overreacting when he chased Melvin down and punched him.²⁰⁹

14 Further, Dennis admitted that during the 2012 parole consideration hearing, he testified under
15 oath, “I overreacted, brutally beat the man for no reason at all, didn’t deserve it.”²¹⁰ When the Attorney
16 General presented Dennis with his signed declaration, Dennis admitted to writing, “I gave chase after
17 Melvin and when I caught up to Melvin I fought him with everything within me.”²¹¹ Dennis denied
18

19 ²⁰⁰ CalVCB Hearing at 42:29, 42:58.

20 ²⁰¹ CalVCB Hearing at 44:39.

21 ²⁰² CalVCB Hearing at 45:14; see also AGRL Exs. at p. 761.

22 ²⁰³ CalVCB Hearing at 45:39.

23 ²⁰⁴ CalVCB Hearing at 45:47.

24 ²⁰⁵ CalVCB Hearing at 46:00; see also AGRL Exs. at p. 762.

25 ²⁰⁶ CalVCB Hearing at 46:21.

26 ²⁰⁷ CalVCB Hearing at 46:41.

27 ²⁰⁸ CalVCB Hearing at 46:53.

28 ²⁰⁹ CalVCB Hearing at 49:00.

²¹⁰ CalVCB Hearing at 50:04; see also AGRL Exs. at p. 801.

²¹¹ CalVCB Hearing at 51:43; see also AGRL Exs. at p. 852.

1 initiating the beating, and instead, testified that Melvin was the one to initiate his own beating.²¹² When
2 the Attorney General asked if Melvin initiated his own beating by accidentally hitting his friend, Dennis
3 responded that he was not sure if it was an accident, and that “he came out of bushes and swung.”²¹³
4 When pressed on previous statements where Dennis said it was an accident, Dennis could not
5 recall.²¹⁴

6 The hearing officer asked who the first person to hit Melvin was and Dennis replied, “I think I
7 was.”²¹⁵ However, Dennis insisted that he only hit Melvin once on his face while he was standing.²¹⁶
8 When asked if he hit him a second time, Dennis stated, “No.”²¹⁷ Dennis reiterated that after he hit
9 Melvin, he went to the store.²¹⁸

10 **2. Expert Witness’ Testimony**

11 Daniel Russo, Esq. testified that he was admitted to practice law in 1977 and holds a
12 certification from the California State Bar as a specialist in criminal law.²¹⁹ Throughout his career, he
13 has handled in excess of 35 homicide trials, of which six or seven involved second-degree murder
14 under the implied malice theory and another six or seven involved second-degree murder under the
15 natural and probable consequences doctrine.²²⁰ Of all the second-degree murder cases he has
16 handled three distinctly involved a group assault.²²¹ He testified that in his opinion, murder liability as it
17 existed in 1987, and today, does not apply to the facts of this case.²²² Mr. Russo emphasized that
18 while he relied on the entire record, he found the appellate court decision and the district attorney’s

19
20 ²¹² CalVCB Hearing at 57:31.

21 ²¹³ CalVCB Hearing at 58:07.

22 ²¹⁴ CalVCB Hearing at 58:32.

23 ²¹⁵ CalVCB Hearing at 1:01:25.

24 ²¹⁶ CalVCB Hearing at 1:01:31.

25 ²¹⁷ CalVCB Hearing at 1:03:09.

26 ²¹⁸ CalVCB Hearing at 1:0:25.

27 ²¹⁹ CalVCB Hearing at 1:11:06, 1:11:35.

28 ²²⁰ CalVCB Hearing at 2:06:30, 2:07:43.

²²¹ CalVCB Hearing at 2:08:33.

²²² CalVCB Hearing at 1:26:38.

1 concession of critical importance and afforded them great weight.²²³ He pointed out that the district
2 attorney conceded Dennis could only be found liable for assault, and had they believed that death was
3 foreseeable, Dennis would have been charged with manslaughter.²²⁴ Relying on the medical
4 examiner's testimony at the preliminary hearing, Mr. Russo opined that the injuries Melvin sustained
5 as a result of Dennis' one punch could not cause death, noting there were no injuries to Melvin's
6 mouth.²²⁵ He also gave great weight to Mary's testimony during the preliminary hearing.²²⁶ When
7 asked if he had an opinion on whether Dennis demonstrated he is innocent of murder by a
8 preponderance of evidence, Mr. Russo replied that Dennis has made a showing by clear and
9 convincing evidence.²²⁷ He emphasized that the district attorney said Dennis was only liable for
10 assault and quoted the district attorney's concession brief that read in part, "There is no evidence that
11 [Dennis] actually killed [Melvin] with the one punch to his face."²²⁸ Mr. Russo argued that Melvin was
12 murdered, but not by Dennis.²²⁹ When asked what impact, if any, Dennis' statements during the parole
13 consideration hearings had, Mr. Russo stated that he did not put a lot of weight on those statements
14 because moral responsibility and legal responsibility are not the same thing.²³⁰

15 On cross-examination, Mr. Russo agreed that under the natural consequences doctrine, aider
16 and abettors need only to have shared intent as to the target crime, not the murder, however he
17 insists that simple assault alone cannot be the target crime.²³¹

21 ²²³ CalVCB Hearing at 1:27:12.

22 ²²⁴ CalVCB Hearing at 1:33:48.

23 ²²⁵ CalVCB Hearing at 1:29:30.

24 ²²⁶ CalVCB Hearing at 1:32:01.

25 ²²⁷ CalVCB Hearing at 1:35:46.

26 ²²⁸ CalVCB Hearing at 1:36:40; see also App. at p. 32.

27 ²²⁹ CalVCB Hearing at 1:40:24.

28 ²³⁰ CalVCB Hearing at 1:45:44.

²³¹ CalVCB Hearing at 2:12:22.

1 **IV. Determination of Issues**

2 Penal Code section 4900, subdivision (a), allows a person, who has been erroneously
3 convicted and imprisoned for a felony offense that they did not commit, to submit a claim for
4 compensation to CalVCB for the injury sustained.²³² Under subdivision (a) of section 4900, claimants
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.²³³ Once such a claim is received and filed, Penal Code section 4902 requires the Attorney
8 General to submit a written response pursuant to Penal Code section 4902.²³⁴ Thereafter, under Penal
9 Code section 4903, an informal administrative hearing before a hearing officer ensues, at which the
10 claimant and Attorney General may present evidence concerning innocence and injury.²³⁵ Upon the
11 requisite showing of innocence and injury, then pursuant to Penal Code section 4904, CalVCB shall
12 approve payment for the purpose of indemnifying the claimant for the injury sustained if sufficient funds
13 are available, upon appropriation by the Legislature, at a rate of \$140 per day for their erroneous
14 imprisonment.²³⁶

15 In limited circumstances, a different procedure may apply for claimants whose convictions have
16 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court
17 finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or
18 vacated conviction pursuant to Penal Code section 1473.6, then CalVCB must automatically approve
19 the claim, within 90 days and without a hearing, pursuant to Penal Code section 4904 for the injury
20 sustained.²³⁷ Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction
21 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,

22 _____
23 ²³² Pen. Code, § 4900.

24 ²³³ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ²³⁴ Pen. Code, § 4902, subd. (a).

26 ²³⁵ Pen. Code, § 4903, subd. (a).

27 ²³⁶ Pen. Code, § 4904, subd. (a).

28 ²³⁷ Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a), eff. Jan. 1, 2024; see also Cal. Code of
Regs., tit. 2, § 640, subds. (e)(1)-(2).

1 subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General
2 declines to object with clear and convincing proof of guilt, then CalVCB must approve the claim within
3 90 days pursuant to Penal Code section 4904 for the injury sustained.²³⁸ Unless one of these narrow
4 statutory exceptions applies, then the claimant bears the burden to prove innocence and injury by a
5 preponderance of the evidence under subdivision (a) of Penal Code section 4900.

6 When determining whether the claimant has satisfied their burden of proof, the Board may
7 consider the “claimant’s denial of the commission of the crime; reversal of the judgment of conviction;
8 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
9 crime....”²³⁹ The Board may also “consider as substantive evidence the prior testimony of witnesses
10 [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for
11 which claimant had an opportunity to object.”²⁴⁰ Ultimately, the Board may consider “any other
12 information that it deems relevant to the issue before it,” even if inadmissible under the traditional rules
13 of evidence, so long as “it is the sort of evidence on which reasonable persons are accustomed to rely
14 in the conduct of serious affairs.”²⁴¹

15 **A. Penal Code Section 4900, subdivision (a), Governs Dennis’ Claim**

16 Dennis seeks compensation for his two felony convictions in case number RF007944A, which
17 were both reversed on direct appeal. Neither of these convictions were reversed or vacated by grant of
18 habeas or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). As such, the burden-
19 shifting provision in subdivision (b) of Penal Code section 4900 does not apply. Moreover, Dennis lacks
20 a finding of factual innocence by any court under Penal Code section 1485.55 or 851.865. Thus,
21 Dennis’ claim does not fall within either of the limited statutory exceptions to subdivision (a) of section
22 4900. Accordingly, subdivision (a) governs the disposition of Dennis’ claim. He therefore bears the
23 burden to demonstrate innocence by a preponderance of the evidence.

24
25 _____
26 ²³⁸ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

27 ²³⁹ Cal. Code Regs., tit. 2, § 641, subd. (a).

28 ²⁴⁰ Cal. Code Regs., tit. 2, § 641, subd. (b).

²⁴¹ Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

1 **B. The Appellate Court’s Findings are Not Binding on the CalVCB**

2 By statute, the CalVCB is bound by “factual findings” made and “credibility determinations”
3 rendered during proceedings on a petition for habeas corpus, motion to vacate a judgment pursuant to
4 Penal Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a certificate of factual
5 innocence.²⁴² Notably, these statutory provisions omit decisions rendered by an appellate court on
6 direct appeal, or during proceedings under any provision not specifically enumerated.²⁴³

7 As a result, the CalVCB is not statutorily bound by a resentencing determination under Penal
8 Code section 1172.6, nor by the appellate court’s characterization of the evidence in an appeal from the
9 order summarily denying a petition pursuant to Penal Code section 1172.6.²⁴⁴ Consequently, and
10 contrary to Dennis’ assertion otherwise, neither the appellate court’s order reversing the summary
11 denial of his petition, nor the court’s finding he was eligible for relief in a proceeding under Penal Code
12 section 1172.6 are binding for purposes of these proceedings before the Board. Because Dennis’ case
13 falls outside the proceedings contemplated in sections 4903, 1485.5, and 1485.55, the appellate court
14 findings are not binding. In fact, Dennis conceded as much in his pre-hearing brief when he stated, “In
15 other relevant hearings before the Board, *but not directly governing here*, factual findings are binding on
16 the Attorney General, the factfinder and the Board.”²⁴⁵ (emphasis added.) Additionally, Dennis contends
17 that the Board need not address whether the findings in the appellate decision are binding because “the
18 result remains the same whether the findings are binding or not.”²⁴⁶

21 ²⁴² Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); see also *Gonzales v. California Victim*
22 *Compensation Board* (2023) 98 Cal.App.5th 427 (defining “factual findings” in this context to exclude
23 “the habeas court’s summary of, observations about, and characterizations of the trial record when the
habeas court is not finding facts after entering new evidence”).

24 ²⁴³ *Ibid.*; see also *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1211-1212 (“Appellate courts do not
25 make factual findings; we review ‘the correctness of a judgment [or order] as of the time of its
26 rendition’”); *People v. Cervantes* (2020) 46 Cal.App.5th 213, 224 (“appellate courts are not equipped to
accept new evidence and make factual findings”).

27 ²⁴⁴ Pen. Code, §§ 851.865, subd. (a), 1485.5, subds. (a)-(b), & (e); 4903, subd. (b).

28 ²⁴⁵ Brief in Support of the Claim of Clayborne Dennis at p. 3.

²⁴⁶ Supplemental Brief in Support of the Claim of Dennis Clayborne at p. 5.

1 The appellate court's decision also does not "collaterally estop" the Board from fulfilling its
2 statutory obligation to decide the new and separate issues being litigated here. While an appellate
3 court's determination of legal issues that were, or could have been, raised on direct appeal, may bind
4 the CalVCB under the doctrines of res judicata and collateral estoppel, neither doctrine applies in this
5 case, nor do they preclude consideration of the issues presented in this claim.²⁴⁷ In general, collateral
6 estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding.²⁴⁸
7 However, the issues being litigated in this claim are wholly discreet from the issues considered during
8 the pendency of Dennis' Penal Code section 1172.6 petition. As detailed below, the legal issues
9 previously argued and decided, both on direct appeal and in the 1172.6 proceeding, differ significantly
10 from the legal issues presented before the CalVCB.

11 Penal Code section 1172.6 allows a person convicted of murder to petition to have the
12 conviction vacated if (1) the complaint allowed the prosecution to proceed under a theory of murder
13 under the natural and probable consequences doctrine, (2) the petitioner was convicted of first- or
14 second-degree murder, and (3) the petitioner could not be convicted of murder after SB 1437's
15 changes to sections 188 and 189, which no longer permit murder convictions based on the natural and
16 probable consequences theory.²⁴⁹ Consequently, the sole issue on appeal was "whether Dennis made
17 a prima facie showing that he is 'entitled to relief' under section 1172.6 and is therefore entitled to an
18 evidentiary hearing where the People would have the burden of proving beyond a reasonable doubt
19 that Dennis is ineligible for resentencing," or otherwise stated, whether Dennis was convicted of murder
20 under the natural and probable consequences doctrine.²⁵⁰ The appellate court ultimately determined
21 that Dennis could have pled guilty under the natural and probable consequences theory, and remanded
22 the matter to the trial court with directions to show cause and set an evidentiary hearing pursuant to

23
24 ²⁴⁷ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206
25 (explaining "Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause
26 of action finally resolved in a prior proceeding" and "Collateral estoppel precludes relitigation of issues
27 argued and decided in a prior proceeding").

28 ²⁴⁸ *Tennison v. California Victim Comp. & Government Claims Bd.* (2007) 152 Cal.App.4th 1164, 1174.

²⁴⁹ Pen. Code, § 1172.6, subds. (a)(1)-(3).

²⁵⁰ App. at pp. 3-29.

1 1172.6.²⁵¹ The legal issue presented in the section 1172.6 proceeding was whether Dennis could be
2 convicted, beyond a reasonable doubt, of second-degree murder, as that crime was defined after the
3 passage of SB 1437, e.g., under a theory other than the natural and probable consequences
4 doctrine.²⁵²

5 The issue presented in Dennis' claim under Penal Code section 4900, on the other hand, is
6 whether Dennis can prove by a preponderance of evidence that the crime he was convicted of was not
7 committed at all, or not committed by him, according to the law in effect at the time the crime was
8 committed.²⁵³ In other words, Dennis must prove that he is actually innocent of second-degree murder
9 under any plausible theory, including under the natural and probable consequences theory, as that
10 remained a valid theory for conviction at the time this crime was committed. The issue of Dennis' actual
11 innocence was never previously litigated in the superior court, or the appellate court, nor was there a
12 final decision on the merits of Dennis' innocence.

13 Rather, the superior court simply found that, based on a change in legislation, a jury could not
14 find him guilty beyond a reasonable doubt of second-degree murder as it is now defined. The court did
15 not, however, issue a finding of factual innocence, establishing that Dennis did not commit the
16 underlying crime. In fact, the superior court determined that while the facts do not, under current law,
17 support a second-degree murder conviction, they do support a conviction for felony assault by means
18 likely to cause great bodily injury as the law existed in 1987, a determination which Dennis did not
19 appeal.²⁵⁴ Thus, even if the superior or appellate court's rulings were binding, they are of no
20 consequence in this administrative proceeding.

21
22
23
24 ²⁵¹ Former Pen. Code, § 1170.95, subd. (d).

25 ²⁵² SB 1437 prohibits a participant in a first-degree murder from being liable for murder unless the
26 person either was the actual killer, aided and abetted the killer with the intent to kill, or was a major
27 participant in the underlying felony and acted with reckless indifference to human life.

27 ²⁵³ Pen. Code, § 4900.

28 ²⁵⁴ Supp. at pp. 4-5.

1 **C. Dennis Bears the Burden of Proof**

2 Under subdivision (a) of section 4900, claimants bear the burden to prove that the crime with
3 which they were convicted either did not occur, or was not committed by them, and that they suffered
4 injury as a result of their erroneous conviction.²⁵⁵ While “[i]nnocence might well be predicated upon a
5 reasonable doubt of guilt,” the “[Ca]VCB’s] section 4900 determination is a civil determination of
6 culpability” that requires the claimant to “carry the burden of proof of innocence by a preponderance of
7 the evidence.”²⁵⁶ Consequently, to prevail in this claim, Dennis bears the burden of affirmatively
8 establishing, by a preponderance of the evidence, that he is actually innocent of the crime with which
9 he was erroneously convicted because the charged crime was either not committed at all or not
10 committed by him under the law in effect at the time the charged crime allegedly occurred.²⁵⁷ In other
11 words, Dennis must affirmatively prove that he is actually innocent of second-degree murder under any
12 plausible theory of culpability, including under the direct liability theory of implied malice or the indirect
13 liability theory of an aider and abettor as the natural and probable consequence of the assault. To
14 satisfy his burden, Dennis must demonstrate it is more likely than not that he did not commit this
15 offense, or that it never occurred.

16 **D. Dennis Concedes He Committed Assault by Means Likely to Produce Great Bodily**
17 **Injury**

18 It is undisputed that Dennis committed an assault by means likely to produce great bodily
19 injury.²⁵⁸ Great bodily injury refers to significant or substantial bodily injury or damage.²⁵⁹ It does not
20 refer to “trivial or insignificant injury or moderate harm.”²⁶⁰

21 Significantly, Dennis concedes that his conduct amounted to assault by means likely to
22 produce great bodily injury. In his pre-hearing brief, Dennis’ counsel affirmatively states that the

23 _____
24 ²⁵⁵ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ²⁵⁶ *Diola v. State Bd. of Control* (1982) 135 Cal.App.3d 580, 588 n.7.

26 ²⁵⁷ Pen. Code, § 4900.

27 ²⁵⁸ Former Pen. Code, § 245, subd. (a)(1).

28 ²⁵⁹ CALJIC 9.02.

²⁶⁰ CALJIC 9.02.

1 “reliable, competent evidence confirms [Dennis’] actions always constituted the crime of assault by
2 means likely to cause great bodily injury.”²⁶¹ Dennis’ counsel further states, the “facts to which Dennis
3 pled illustrate, [Dennis’] admitted conduct always constituted the crime of assault by means likely to
4 cause great bodily injury, which carries a maximum sentence of 4 years and is a non-strike offense as
5 the law existed in 1987 and 1988.”²⁶² Dennis’ counsel goes on to acknowledge: “The facts adduced by
6 the court in 1988, through the preliminary hearing testimony, also confirm that Mr. Dennis’ conduct
7 constituted the crime of assault by means likely to cause great bodily injury.”²⁶³

8 Additionally, Dennis remains validly convicted of felony assault by means likely to produce great
9 bodily injury.²⁶⁴ On February 4, 2021, the court reduced his second-degree murder conviction to felony
10 assault by means likely to produce great bodily injury “as the law existed in 1987,” and resentenced him
11 to four years in state prison, with time served.²⁶⁵

12 In fact, Dennis stipulated to a felony conviction for assault likely to produce great bodily, and,
13 on the date of the resentencing, the court noted that it “agreed to accept the stipulation of the
14 parties.”²⁶⁶ Dennis relies heavily on the district attorney’s concession brief; however, that reliance is
15 misguided. For example, Dennis emphasizes that in writing their concession brief, the district
16 attorney’s office “had all applicable facts and documents at its disposal and was given the opportunity
17 to present any and all evidence to suggest Mr. Dennis was not eligible for resentencing.” However, he
18 fails to acknowledge the district attorney’s office also repeatedly observed that ample evidence
19
20

21 ²⁶¹ Brief in Support of the Claim of Clayborne Dennis at p. 7.
22 ²⁶² Brief in Support of the Claim of Clayborne Dennis at p. 13.
23 ²⁶³ Brief in Support of the Claim of Clayborne Dennis at p. 14.
24 ²⁶⁴ Pen. Code, § 245, subd. (a)(1).
25 ²⁶⁵ App. at p. 32; Dennis’ Supplement (Supp.) at pp. 3-5. Pagination refers to continuous page numbers
26 for the nine-page document provided on August 13, 2021, as a supplement to Dennis’ application in
27 response to the CalVCB’s 30-day letter dated August 3, 2021. This supplement includes a revised
28 Erroneously Convicted Person Claim Form (pp. 1-2); Felony Abstract of Judgment filed February 4,
2021 (p. 3); Minute Order dated February 4, 2021 (pp. 4-5); and Report- Indeterminate Sentence filed
December 21, 1988 (pp. 6-9).
²⁶⁶ Brief in Support of the Claim of Clayborne Dennis at p. 55.

1 established Dennis “intended to aid and abet an assault by means of force likely to produce great
2 bodily injury on [the victim].”²⁶⁷

3 Notwithstanding Dennis’ concession that he committed, and remains validly convicted of,
4 assault by means likely to produce great bodily injury, Dennis also repeatedly asserts his “simple
5 assault” of the victim cannot serve as the basis for a murder conviction under the natural and probable
6 consequences doctrine. In furtherance of this theory, Dennis alleges his conduct was merely a simple
7 assault, consisting of one punch and one kick. However, the administrative record overwhelmingly
8 shows that Dennis’ conduct was more than the one punch to the face and one kick to the shoulder and
9 confirms, as is stated in the district attorney’s concession, the evidence amply supports his conviction
10 for assault by means likely to produce great bodily injury.

11 Several witnesses saw Dennis repeatedly punch and kick the victim. Specifically, Ricky told
12 police that he saw Dennis “jump” the victim *before* chasing after him. When he, Dennis, and Moran
13 caught up with Melvin, they all hit him. Moran saw Dennis punch Melvin “two to three times.”²⁶⁸ Mary
14 saw Dennis punch Melvin once in the face while he was lying on the ground.²⁶⁹ Ricky admitted that
15 once Melvin was on the ground, he, Dennis, and Ricky all began kicking him in the upper body and
16 head.²⁷⁰ They kicked Melvin until he stopped moving.²⁷¹ Knowing that Melvin had a weak pulse, the
17 assailants left Melvin motionless on the ground and then led a group of friends and members of the
18 Pierce Park Boys back to Melvin’s motionless body, with Dennis saying he needed “help with a Black
19 guy.”²⁷² At that point, the group beating started. Samuel reported Dennis then kicked Melvin in the face
20 and blood come out of his mouth.²⁷³ Moran also told police that Dennis and Clay kicked him again.²⁷⁴

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22 ²⁶⁷ Supplemental Brief in Support of Claim of Clayborne Dennis at p. 7; Brief in Support of the Claim of
23 Clayborne Dennis at pp. 52-53.

24 ²⁶⁸ AGRL Exs. at p. 690.

25 ²⁶⁹ AGRL Exs. at p. 689; see also App. at pp. 42, 47, 58, 59.

26 ²⁷⁰ App. at p. 84.

27 ²⁷¹ AGRL Exs. at p. 692.

28 ²⁷² AGRL Exs. at p. 690.

²⁷³ App. at p. 112.

²⁷⁴ AGRL Exs. at p. 690.

1 More importantly, and contrary to the claims Dennis made in these proceedings, Dennis has
2 repeatedly admitted his conduct included more than one punch and one kick to the victim. At the time
3 of his arrest, Dennis told police that he struck Melvin during their initial encounter because Melvin
4 supposedly said something to him. The three assailants chased him down and when they caught up
5 with him, Dennis admitted that they each hit him “two or three times.”²⁷⁵ He then kicked Melvin in the
6 shoulder while he was on the ground. In 1987, during an interview with a psychiatrist, Dennis stated
7 that Melvin “started talking nonsense” and took a swing at Dennis.²⁷⁶ Dennis then punched him back,
8 “skinning him on the chin.”²⁷⁷ He then chased Melvin down and hit him and kicked him in the shoulder
9 after Melvin was already on the ground, “just to let him know he couldn’t mess with us.”²⁷⁸ In 1988,
10 Dennis told a probation officer that Melvin “came out of nowhere swinging at him” and that he got into
11 a fight with Melvin, who he believed was “loaded on cocaine.”²⁷⁹ Dennis admitted that he beat up
12 Melvin with his friends.²⁸⁰

13 In 2005, during a life prisoner evaluation, Dennis stated that Melvin came out of nowhere
14 swinging at him and admitted that he beat the victim.²⁸¹ In 2005, during a mental health evaluation,
15 Dennis stated that Melvin said “something foolish” and a fight ensued. In 2008, during a psychological
16 evaluation, Dennis admitted to beating the victim.²⁸² In 2011, during a comprehensive risk assessment,
17 Dennis admitted to chasing Melvin down and getting into a fight with him.²⁸³ In a signed declaration
18 that accompanied his 2013 petition for habeas corpus, Dennis admitted that he chased after Melvin,
19 and when he caught up to him, he “fought him with everything within [him]” to let others know he is a
20

21 ²⁷⁵ App. at pp. 103, 104; AGRL Exs. at p. 691.

22 ²⁷⁶ AGRL Exs. at p. 182.

23 ²⁷⁷ *Ibid.*

24 ²⁷⁸ *Ibid.*

25 ²⁷⁹ AGRL Exs. at p. 193.

26 ²⁸⁰ *Ibid.*

27 ²⁸¹ AGRL Exs. at p. 696.

28 ²⁸² AGRL Exs. at p. 712.

²⁸³ AGRL Exs. at p. 725.

1 “fighter to be feared, no matter if [he’s] high or sober.”²⁸⁴ In 2017, during a comprehensive risk
2 assessment, Dennis admitted that he chased after Melvin and they had a fight.²⁸⁵ He admitted that
3 when he hit him, Melvin tried to defend himself and went down.²⁸⁶

4 In 2017, during a parole board hearing, Dennis testified that Melvin jumped out of the bushes
5 and accidentally hit Ricky. Dennis then admitted that, at that point, “it was like, okay, he’s by himself
6 [sic], let’s do him.”²⁸⁷ Dennis chased after Melvin and when he caught up to him, he admitted that he
7 “pushed him against the wall, *kept on hitting him*, he went down.” [emphasis added.] He went on to
8 say, “He, you know, it was pretty much kick and go then.”²⁸⁸ Notably, during the 2017 hearing, while
9 considering Dennis’ truthfulness, the parole board read Dennis’ admission during the 2012 parole
10 consideration hearing, that “...as we passed by some bushes, I’m assuming we startled [Melvin], and
11 as he jumped out scared, you know, I overreacted and brutally, you know, started punching on him,
12 chased him down ... I overreacted, brutally beat the man for no reason at all, didn’t deserve it.”²⁸⁹

13 Therefore, while Dennis testified at the hearing in this proceeding that he only punched Melvin
14 once while he was standing and then kicked Melvin once while he was on the ground, Dennis
15 concedes, and the record overwhelmingly establishes, that Dennis committed assault by means likely
16 to produce great bodily injury.

17 **E. Dennis Fails to Demonstrate Innocence of Second-Degree Murder**

18 As detailed below, Dennis has failed to affirmatively demonstrate by a preponderance of the
19 evidence that he is innocent of second-degree murder either under the implied malice theory or under
20 the natural and probable consequences doctrine, neither of which require an intent to kill. Thus, he has
21 failed to meet his burden. Having failed to prove that he did not commit murder or that the murder was
22 not committed at all, Dennis’ claim for compensation must therefore be denied.

23
24 ²⁸⁴ AGRL Exs. at p. 852.

25 ²⁸⁵ AGRL Exs. at p. 738.

26 ²⁸⁶ *Ibid.*

27 ²⁸⁷ AGRL Exs. at pp. 761, 767.

28 ²⁸⁸ AGRL Exs. at p. 761.

²⁸⁹ AGRL Exs. at p. 801.

1 **1. Second-Degree Murder as Defined in 1987**

2 In 1987, a defendant could be convicted of second-degree murder under either the implied
3 malice theory or the natural and probable consequences doctrine.²⁹⁰ Implied malice is a direct liability
4 doctrine. A defendant is guilty of second-degree murder under the implied malice theory if (1) the killing
5 resulted from an intentional act; (2) the natural consequences of the act are dangerous to human life
6 and (3) the act was deliberately performed with knowledge of the danger to, and with conscious
7 disregard for, human life.²⁹¹ Implied malice requires a defendant’s “awareness of the danger that his or
8 her conduct will result in another’s death.”²⁹² A defendant’s conscious disregard of the risk of bodily
9 injury alone is not enough.²⁹³ “To be liable for an implied malice murder, the direct aider and abettor
10 must, by words or conduct, aid the commission of the life endangering act, not the result of that act.”²⁹⁴

11 The natural and probable consequences doctrine, however, does not require malice and
12 pertains to the indirect liability of an aider and abettor. A defendant is guilty of second-degree murder
13 under the natural and probable consequences doctrine if the defendant (1) with knowledge of a
14 confederate’s unlawful purpose; (2) with the intent of committing, encouraging, or facilitating the
15 commission of any target crimes; (3) aided, promoted, encouraged, or instigated the commission of the
16 target crimes; (4) the defendant’s confederate committed an offense other than the target crimes; and
17 (5) the offense committed by the confederate was a natural and probable consequence of the target
18 crimes that the defendant encouraged or facilitated.²⁹⁵ The intent of an aider and abettor with respect to

19 _____
20 ²⁹⁰ The parties dispute whether the 1987 or 1988 version of the jury instructions defining second-degree
21 murder apply. The law did not change between 1987 and 1988, and both parties concede any
22 differences between the two versions are insignificant. Significantly, jury instructions are not themselves
23 the law and “are not authority to establish legal propositions or precedent.” (*People v. Morales* (2001)
24 25 Cal.4th 34, 48 n.7 (noting that jury instructions should not be cited as legal authority in appellate
25 opinions and “At most, when they are accurate... they restate the law.”) Nevertheless, because the
26 differences are insignificant and the 1988 revisions provide clarity, which ultimately benefits the
27 claimant, the CalVCB applies the 1988 version.

25 ²⁹¹ CALJIC 8.11.

26 ²⁹² *People v. Knoller* (2007) 41 Cal.4th 139,156.

27 ²⁹³ *People v. Knoller* (2007) 41 Cal.4th at 156.

28 ²⁹⁴ *People v. Powell* (2021) 63 Cal.App.5th 689, 713.

²⁹⁵ *People v. Chiu* (2014) 59 Cal.4th 155, 161, 171-172.

1 the murder is irrelevant.²⁹⁶ Instead, the accomplice need only intend to facilitate a crime (“the target
2 offense”), such as an assault, which foreseeably led to another’s commission of murder. In other words,
3 Dennis must show that he did not actually aid and abet (i.e., aid, promote, encourage, or instigate) the
4 target crime of assault which naturally, probably, and foreseeably led to the victim’s death.²⁹⁷

5 After careful consideration of all the evidence, the record fails to demonstrate by a
6 preponderance that Dennis is innocent of second-degree murder under the implied malice theory. The
7 record further fails to demonstrate by a preponderance that Dennis did not aid and abet the assault that
8 naturally and probably caused the victim’s murder. The evidence is summarized below.

9 **2. Dennis Not Innocent under Natural and Probable Consequences Doctrine**

10 The overall evidence fails to show by a preponderance that Dennis is innocent of second-
11 degree murder as an aider and abettor under the natural and probable consequences doctrine, which
12 was still valid in 1987. To the contrary, it appears that Dennis not only participated in the group beating,
13 but he played a major role in the beating, which naturally and probably led to Melvin’s murder.

14 Dennis not only knew of the group’s intention to physically assault Melvin, but he repeatedly
15 expressed his own intention to commit, encourage, and facilitate the brutal beating. Dennis admitted
16 that when Melvin accidentally hit Ricky, he took that as a sign of disrespect and thought to himself, “I
17 can’t let this dude get away with that!”²⁹⁸ He also indicated that Melvin being alone was a motivating
18 factor for the assault, admitting, “it was like, okay, he’s by hisself [*sic*], let’s do him.”²⁹⁹ He then fought
19 him with “everything within him.”³⁰⁰ He wanted to fight Melvin to impress his circle of friends, but also to
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24 ²⁹⁶ *People v. Chiu* (2014) 59 Cal.4th 155, 164.

25 ²⁹⁷ Dennis App. Ex. 1 at pp. 9-10 (*People v. Clayborne Dennis*, Second District Court of Appeal case
26 number B301300, opinion filed October 14, 2020, explaining theory for indirect accomplice liability).

27 ²⁹⁸ AGRL Exs. at pp. 766-767, 846.

28 ²⁹⁹ AGRL Exs. at pp. 761, 767.

³⁰⁰ AGRL Exs. at p. 846.

1 let others know that he is a “fighter to be feared.”³⁰¹ He kicked Melvin in the shoulder while he was lying
2 on the ground “just to let him know he couldn’t mess with [them].”³⁰²

3 Significantly, Dennis explicitly admitted that he was the “initiator” and the first person to hit
4 Melvin.³⁰³ He further admitted to playing “the most important part,” explaining that if he would not have
5 chased Melvin down, pushed him, and fought him, no one else would have either.³⁰⁴ While Dennis
6 testified in the proceedings before the CalVCB that he only punched Melvin once in the face while
7 Melvin was still standing and then kicked him once in the shoulder while he was lying on the ground,
8 the evidence does not support his contention. In fact, there is overwhelming evidence, including witness
9 statements and Dennis’ own admissions, that further undermines his claims.

10 Ricky saw Dennis “jump” Melvin before they chased after him. Dennis himself repeatedly
11 admitted that he punched Melvin for the first time during their initial encounter, *before* chasing after
12 him.³⁰⁵ Dennis also admitted that when he caught up to Melvin, he hit him two to three times while he
13 was standing.³⁰⁶ He later admitted that he pushed him against the wall and “*kept on hitting him*” until
14 “he went down.”³⁰⁷ Dennis repeatedly declared that he beat Melvin up and “fought him with everything
15 within [him].”³⁰⁸ He admitted that he overacted and “brutally ... started punching on him.”³⁰⁹ When
16 describing his participation in the crime, he stated, “[a]s instinct, I chased him, and we had a fight. Then
17 he tried to run again. I chased him. I didn’t let him run away.”³¹⁰ Mary saw Dennis punch Melvin in the
18 face after Melvin was already on the ground.³¹¹ Ricky said they all hit Melvin and kicked him until he

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20 ³⁰¹ AGRL Exs. at p. 846.

21 ³⁰² AGRL Exs. at p.182.

22 ³⁰³ AGRL Exs. at pp. 712; CalVCB Hearing at 1:01:25.

23 ³⁰⁴ AGRL Exs. at p. 707.

24 ³⁰⁵ App. at p. 103; AGRL Exs. at pp. 182, 193, 691, 761, 801.

25 ³⁰⁶ AGRL Exs. at pp. 104-105.

26 ³⁰⁷ AGRL Exs. at p. 761. (Emphasis added.)

27 ³⁰⁸ AGRL Exs. at pp. 193, 329, 696, 712, 852.

28 ³⁰⁹ AGRL Exs. at p. 801.

³¹⁰ AGRL Exs. at p. 738.

³¹¹ AGRL Exs. at p. 61.

1 stopped moving.³¹² Moran saw Dennis punch Melvin two to three times and once Melvin was down,
2 Dennis, Moran, and Ricky repeatedly kicked Melvin in the head until he became motionless.³¹³ Dennis
3 admitted that “it was pretty much kick and go then.”³¹⁴

4 While it is undisputed that Dennis kicked Melvin in the shoulder while he was lying on the
5 ground, both Moran and Samuel also saw Dennis kick Melvin *after* he returned with the group of 12
6 people, despite Dennis’ insistence that he was simply an observer at that point.³¹⁵ Dennis explained the
7 violence was “a group thing,” stating, “[w]e encouraged each other. We had no prior problems with [the
8 victim].”³¹⁶ While Dennis now denies being involved in the manner he previously represented in a
9 signed declaration to the court, during psychological examinations, at parole board hearings, during
10 assessments in preparation for parole hearings, and during interviews with the police, is it more likely
11 than not Dennis did not, as he now contends, merely punch Melvin once and kick Melvin once.

12 His testimony during these proceedings and his denial of the commission of the crime may be
13 considered by the CalVCB; however, it is not enough to establish his innocence.³¹⁷

14 Dennis relies heavily on the medical examiner’s testimony that the injuries Melvin sustained on
15 his lips were not “life-threatening or fatal” and that those injuries alone would have “no significance to
16 the cause of death directly.”³¹⁸ Similarly, a kick to the right shoulder would not be life-threatening.³¹⁹ In
17 other words, Dennis contends his alleged one punch to the face and one kick to the shoulder were
18 insignificant to Melvin’s cause of death. However, this inference presupposes that Dennis only punched
19 Melvin once and the evidence simply does not support that. The medical examiner also concluded that
20 it was not possible to attribute Melvin’s brain damage to any one injury because there were so many

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22 ³¹² AGRL Exs. at pp. 691-692.

23 ³¹³ App. at p. 84; AGRL Exs. at p. 690.

24 ³¹⁴ AGRL Exs. at p. 761.

25 ³¹⁵ AGRL Exs. at p. 690.

26 ³¹⁶ AGRL Exs. at p. 712.

27 ³¹⁷ Cal. Code Regs., tit. 2, § 641, subd. (a).

28 ³¹⁸ AGRL Exs. at pp. 139-141.

³¹⁹ AGRL Exs. at p. 140.

1 injuries to his face and head.³²⁰ Irrespective of who threw the fatal blow, Dennis' active participation in
2 crime, as detailed above, makes him equally liable for murder as an aider and abettor under the natural
3 and probable consequences doctrine.³²¹

4 Dennis also relies on Mary's testimony that she saw Dennis punch Melvin once in the face while
5 Melvin was lying on the ground and then, about 15 minutes later, saw Dennis standing eight to ten feet
6 away from Melvin while other members of the group continued beating him. During the CalVCB
7 hearing, Dennis' expert stated that in forming his opinion that Dennis is innocent of murder, he gave
8 great weight to Mary's testimony.³²² However, Mary did not see the entire beating, at least 15 minutes'
9 worth, while other witnesses, some of whom also participated in the beating, did. More importantly,
10 Dennis has maintained that he only punched Melvin once while he was standing, but Mary saw Dennis
11 punch Melvin while he was lying face up on the ground.³²³ It can be reasonably inferred that Mary did
12 not witness Dennis' one and only punch, but rather, she witnessed Dennis' continued beating of Melvin
13 after he was lying on the ground. Mary's testimony, coupled with Dennis' own admissions show that
14 Melvin's beating continued over a period of at least 15 minutes and that Dennis was much more
15 involved than he now contends.

16 Dennis testified under oath during the 2017 parole board consideration hearing and again at the
17 CalVCB hearing, that he was at the store when Melvin died. However, Dennis' testimony is not credible.
18 His version of events has shifted significantly over time and key portions of his testimony are
19 undermined by his own statements as well as several eyewitness accounts. For example, Dennis has
20 repeatedly admitted to standing by and watching the group continue to beat Melvin after he recruited 12
21 people and led them back to where Melvin remained motionless on the ground.³²⁴ Moran and Samuel
22 saw Dennis kick Melvin during that group beating, while Mary saw Dennis standing eight to ten feet
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25 ³²⁰ App. at p. 124.

26 ³²¹ CALJIC 3.00.

27 ³²² CalVCB Hearing at 1:32:01.

28 ³²³ App. at pp. 59, 63.

³²⁴ CalVCB Hearing at 42:29, 42:58; see also AGRL Exs. at pp. 182, 725, 796.

1 away from Melvin’s body when she passed by.³²⁵ Notably, Dennis did not mention being at the store at
2 the time of Melvin’s death until 30 years after the crime.

3 During the CalVCB hearing, Dennis’ expert witness, Mr. Russo, testified that in his opinion,
4 murder liability as it existed in 1987, and today, does not apply to the facts of this case.³²⁶ He indicated
5 that after reviewing the record, he gave great weight to the medical examiner’s testimony as well as
6 Mary’s eyewitness account, and concluded that Melvin was murdered, just not by Dennis. Mr. Russo
7 went so far as to say that Dennis demonstrated his innocence by clear and convincing evidence.³²⁷ He
8 also speculated that had the district attorney believed Melvin’s death was foreseeable, they would have
9 charged Dennis with manslaughter.³²⁸ However, his opinion as to Dennis’ innocence is of minimal
10 exculpatory weight as it is largely based on the premise that Dennis punched Melvin once in the face
11 and kicked him once in the shoulder. A scenario that is overwhelmingly outweighed by the inculpatory
12 evidence in the record, namely Dennis’ own repeated admissions of guilt.

13 In addition, Mr. Russo’s opinion that Dennis’ conduct amounted to only a “simple assault” and
14 thus, could not be the basis for the target crime under the natural and probable consequence doctrine
15 is unpersuasive, most notably because it is inconsistent with the law. In fact, the Second District
16 Appellate Court, after reviewing the preliminary hearing transcripts, in determining whether Dennis
17 made a prima facie case for relief under Penal Code section 1172.6, disagreed. The court found that if
18 Dennis intended to, and did in fact, participate in a simple assault, under the natural and probable
19 consequences doctrine, Dennis “would be guilty of murder because of his participation in the group
20 assault, notwithstanding the absence of an intent to kill.”³²⁹

21 Nevertheless, the issue of whether Dennis’ conduct was simple assault or assault by means
22 likely to produce great bodily injury is moot as Dennis previously, and repeatedly, conceded that his

23 ³²⁵ AGRL Exs. at pp. 112, 690; App. at pp. 44- 45, 66.

24 ³²⁶ CalVCB Hearing at 1:26:38.

25 ³²⁷ CalVCB Hearing at 1:35:46.

26 ³²⁸ CalVCB Hearing at 1:33:48.

27 ³²⁹ *People v. Clayborne Dennis*, Second District Court of Appeal, case number B301300, opinion filed
28 October 14, 2020, available at 2020 WL 6053546, docket accessible at
<https://appellatecases.courtinfo.ca.gov/>.

1 actions “always constituted the crime of assault by means likely to cause great bodily injury” and the
2 facts adduced through the preliminary hearing “confirm that [Dennis’] conduct constituted the crime of
3 assault by means likely to cause great bodily injury.”³³⁰ Significantly, Dennis stipulated in court to a
4 felony conviction for assault likely to produce great bodily injury and remains validly convicted of felony
5 assault likely to produce great bodily injury.³³¹ Though not necessarily determinative in this
6 administrative proceeding, Dennis’ concession supports the overwhelming evidence demonstrating
7 Dennis’ guilt of the target crime. As a result, the only real question is whether the target crime, assault
8 by means likely to produce great bodily injury, naturally, probably, and foreseeably led to Mevin’s
9 murder.

10 Melvin’s murder was indisputably the natural and probable consequence of the group beating
11 that Dennis not only encouraged but also actively participated in, and Dennis made several statements
12 acknowledging he was aware Melvin was at risk of dying during this crime. Dennis initiated the assault
13 by repeatedly punching Melvin, chasing him, and fighting him with everything within him. Dennis,
14 Moran, and Ricky kicked Melvin until he no longer moved. Hector M. checked Melvin’s pulse and said,
15 “Hey, you guys better quit it because this guy’s pulse is weak.” Dennis admitted he and Ricky were
16 “worried because his eyes were open.”³³² Dennis admitted he knew Melvin was dead once he “went
17 down and never got back up,” yet left Melvin’s motionless body on the ground, recruited a group of
18 friends, telling them that he needed “help with a Black guy.” He then led the group of 12, many of whom
19 belonged to the Pierce Park Boys, back to where Melvin remained motionless and continued to
20 participate in the group beating that pursued. While others stomped, kicked, punched, and slapped
21 Melvin’s motionless body, Dennis kicked him again and then stood by and watched before heading
22 home and going to bed. During the CalVCB hearing, Dennis admitted that the group beat Mevin even
23 after he realized Melvin was dead.³³³ Whether Dennis actively participated in the beating after he knew
24 Melvin was dead, his recruitment of approximately 12 people to continue what he started after learning

25 ³³⁰ Brief in Support of the Claim of Clayborne Dennis at p. 13-14.

26 ³³¹ Brief in Support of the Claim of Clayborne Dennis at pp. 53, 55, 57.

27 ³³² AGRL Exs. at p. 182.

28 ³³³ CalVCB Hearing at 46:53.

1 that Melvin's pulse was weak and his eyes were open, shows the extent of his involvement and that
2 Melvin's murder was inevitable, let alone foreseeable. This was an assault that was so violent that
3 Detective Vojtecky, the investigating detective, said "in all of his years on the police force he had never
4 seen any offense so vicious."³³⁴

5 Overall, the record contains convincing evidence of Dennis' guilt for second-degree murder as
6 an aider and abettor under the natural and probable consequences doctrine.

7 **3. Dennis is Not Innocent Under the Implied Malice Theory**

8 Even if Dennis was able to prove his innocence as an aider and abettor under the natural and
9 probable consequences doctrine, the evidence fails to show by a preponderance that Dennis is
10 innocent of second-degree murder under the implied malice theory. To establish he was innocent of
11 second-degree implied malice murder, Dennis must prove, it is more likely than not, that (1) Melvin's
12 death did not result from an intentional act; or (2) the natural consequences of the act were not
13 dangerous to Melvin's life; or (3) the act that led to Melvin's death was not deliberately performed with
14 knowledge of the danger to, and with conscious disregard for, Melvin's life.³³⁵ Dennis had to prove he
15 was not "aware of the danger that his conduct would result in another's death" and did not aid, with his
16 words or actions, in the commission of the life endangering act, not the result of that act."³³⁶

17 The evidence shows that Dennis and his friends intended to beat Melvin so severely that it
18 resulted in death. By his own admission, Dennis took a life.³³⁷ During the 2017 parole board hearing,
19 while under oath, Dennis admitted that he beat the victim to death and when asked why he used so
20 much violence, as Melvin was not a threat, Dennis responded, "True."³³⁸ Dennis asserted they did not
21 intend to kill Melvin, but once "he went down and never got back up, that's when we realized, oh he
22 dead."³³⁹ He went on to explain that other people were not sure if Melvin was dead, so they decided to

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24 ³³⁴ AGRL Exs. at p. 194.

25 ³³⁵ CALJIC 8.11.

26 ³³⁶ *People v. Powell* (2021) 63 Cal.App.5th 689, 713.

27 ³³⁷ AGRL Exs. at pp. 694, 777.

28 ³³⁸ AGRL Exs. at p. 762.

³³⁹ AGRL Exs. at pp. 762-763.

1 “just keep on kicking and strip him out of everything.” Dennis previously stated that he believed Melvin
2 was simply knocked out, but when he returned with the group of friends, he realized Melvin was
3 dead.³⁴⁰ During the CalVCB hearing, Dennis admitted that *after* he realized Melvin was dead, other
4 people kept hitting him.³⁴¹

5 The natural consequence of the brutal beating was undoubtedly dangerous to human life. When
6 Mary first walked by and saw Dennis punch Melvin once in the face, Melvin was already lying on the
7 ground, barely moving.³⁴² After 15 minutes, she walked by again and saw Dennis standing eight to ten
8 feet away from Melvin, who laid on the ground, motionless and half-naked. It is reasonable to infer that
9 Melvin was lying motionless on the ground as he was continuously beaten by a group of three to 12
10 people for nearly 15 minutes and, at some point during this event, died. In fact, the medical examiner
11 confirmed, Melvin’s death was the result of the intentional beating effected first by Dennis and then by
12 the group of friends that Dennis encouraged to join in.

13 The evidence shows that Dennis acted with conscious disregard for human life. Dennis
14 admitted that he fought Melvin with everything within him and that he wanted others to know he was a
15 “fighter to be feared.”³⁴³ He chased Melvin, pushed him down, and “kept on hitting him.”³⁴⁴ He
16 overreacted and “brutally beat the [victim] for no reason at all.”³⁴⁵ He admitted he beat the victim to
17 death.³⁴⁶ The very nature and extent of Melvin’s injuries show the brutality of the assault. This was an
18 assault that was so violent Detective Vojtecky said “in all of his years on the police force he had never
19 seen any offense so vicious.”³⁴⁷ The medical examiner concluded that it was not possible to attribute
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22 ³⁴⁰ AGRL Exs. at p. 695.

23 ³⁴¹ CalVCB Hearing at 46:53.

24 ³⁴² App. at p. 78- 79.

25 ³⁴³ AGRL Exs. at p. 846.

26 ³⁴⁴ AGRL Exs. at p. 761.

27 ³⁴⁵ AGRL Exs. at p. 805.

28 ³⁴⁶ AGRL Exs. at p. 765.

³⁴⁷ AGRL Exs. at p. 194.

1 Melvin's brain damage to any one injury because there were so many injuries to his face and head.³⁴⁸
2 Even if Dennis did not inflict the fatal blow, he knew what he was doing was dangerous to human life
3 and consciously engaged in the conduct anyway. Dennis initiated what he admits was a "brutal"
4 assault, which continued even after Melvin laid motionless on the ground, and after Dennis knew
5 Melvin was deceased.

6 Dennis' own sworn statements show that he was aware his actions posed a danger to Melvin's
7 life. He admitted he knew Melvin was dead when Melvin "went down and did not get back up," yet the
8 beating continued.³⁴⁹ In fact, the beating was so severe that Dennis was "worried because his eyes
9 were open" and they had to check his pulse.³⁵⁰ Even if Dennis believed Melvin was still alive when they
10 left him, he knew his pulse was weak.³⁵¹ Yet still, Dennis recruited and led a group of 12 people back
11 to where Melvin was lying on the ground. At that point, Dennis realized Melvin was dead, but the group
12 continued to punch, kick, stomp, and slap Melvin's motionless body, as Dennis kicked him again.³⁵²

13 The Second District Appellate Court determined that the available evidence is "insufficient to
14 justify a finding of implied malice," explaining that Dennis' "blows alone cannot serve as the basis for a
15 finding of implied malice."³⁵³ Similarly, the Los Angeles District Attorney's Office stated that "the
16 prosecution does not possess any evidence that proves beyond a reasonable doubt [Dennis] knew his
17 conduct endangered the life of another and acted with conscious disregard for human life."³⁵⁴ However,
18 reasonable doubt as to Dennis' conduct does not preclude the CalVCB from finding insufficient
19 evidence of Dennis' innocence.³⁵⁵ Dennis pled guilty to second-degree murder and did not go to trial, so
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21 ³⁴⁸ App. at p. 124.

22 ³⁴⁹ AGRL Exs. at pp. 762-763.

23 ³⁵⁰ AGRL Exs. at p. 182.

24 ³⁵¹ AGRL Exs. at p. 695.

25 ³⁵² AGRL Exs. at p. 695.

26 ³⁵³ AGRL Exs. at p. 529.

27 ³⁵⁴ Brief in Support of Claim of Clayborne Dennis at p. 53.

28 ³⁵⁵ See, e.g. *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 ("a court finding of factual innocence must be made by at least a preponderance of the evidence and must reflect a determination that the person charged and convicted of an offense did not commit the crime").

1 the appellate court, and the district attorney's office, were both limited to the evidence contained in the
2 preliminary hearing transcripts. The CalVCB is allowed to consider all information that it deems relevant
3 to the issue before it even if inadmissible in any other proceeding, including police interviews and the
4 out-of-court statements and admissions.³⁵⁶ Thus, the CalVCB remains free to determine whether, in its
5 view, the weight of evidence presented in this administrative proceeding satisfies Dennis' burden to
6 prove his innocence by a preponderance of evidence.

7 After considering all the evidence detailed above, Dennis has failed to prove he is more likely
8 innocent than guilty of murder under either the natural and probable consequences doctrine or the
9 implied malice theory. The burden rests upon Dennis to affirmatively demonstrate that he did not
10 commit the murder, or that the murder never occurred. Accordingly, his application as an erroneously
11 convicted person under Penal Code section 4900 must be denied.

12 **V. Conclusion**

13 In accordance with subdivision (a) of Penal Code section 4900, the undersigned Hearing
14 Officer recommends that the CalVCB deny Dennis' claim. He has failed to demonstrate by a
15 preponderance of evidence that he did not commit the offense for which he was convicted and
16 imprisoned. Dennis is, therefore, ineligible for compensation as an erroneously convicted person.

17
18
19 Date: June 25, 2024

Kristen Sellers

Kristen Sellers
Hearing Officer
California Victim Compensation Board

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28 ³⁵⁶ Cal. Code Regs., tit. 2, § 641, subds. (c)-(f).

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July 2, 2024

Board Liaison, CalVCB,
400 R Street, 5th Floor
Sacramento, CA 95812
Email: board.meeting@victims.ca.gov

RE : Penal Code Section 4900 Claim of Clayborne
Dennis (21-ECO-14)

SENT VIA EMAIL

Dear California Victims Compensation Board:

Claimant submits the following further argument given the proposed decision:

(1) Are the facts stated in the Proposed Decision supported by the evidence in the hearing record?

No. Oddly, the hearing officer who presided over the hearing, Officer Harbarger, did not author the proposed decision. (*See* Proposed Decision at p. 47 [signed by Officer Sellers].) Officer Sellers's principal "facts" used to deny Mr. Dennis's claim are simply not supported by the *reliable* evidence at the hearing. Officer Sellers, without citation, claims "it appears that Dennis not only participated in the group beating, but he played a major role in the beating, which naturally and probably led to Melvin's murder." (Proposed Decision at 38:12-13.) There is simply no reliable evidence to support such a claim. Mr. Dennis's

comments made as a child to the police or a mental health evaluator, or as an adult to the parole board are clearly unreliable. Children are not equipped to overcome the coerciveness of a police interrogation, especially when the administrative record noted that Mr. Dennis was immature for his age from his duly subpoenaed school file. Comments to the parole board are clearly an attempt by an inmate, who had been serving decades for an offense committed as a child, to take maximum responsibility in an attempt to gain a parole date. Even reaching the comments themselves, none suggest that Mr. Dennis himself intended to commit anything more than a simple battery (i.e., “I can’t let this dude get away with that!” “it was like, okay, he’s by himself, let’s do him”, he fought with “everything within him”, he wanted to let others know he is a “fighter to be feared”, he kicked Melvin “just to let him know he couldn’t mess with [them]”, that Dennis was the “initiator” and first person to hit Melvin). To be clear, there is no evidence anywhere in the record to suggest that Mr. Dennis ever said he intended to kill Mr. Reeves, nor is there any statement by any witness that Mr. Dennis stated he wanted anyone to beat Mr. Reeves unconscious. Moreover, there is no evidence of any weapon being used by Mr. Dennis or by others at his direction. Officer Sellers then baselessly claims, without citation to the record, that Mr. Dennis’s testimony at the hearing before the Board, which she did not personally preside over, is “undermine[d]” by “overwhelming evidence, including witness statements and Dennis’ own admissions”. (Proposed Decision at 39:8-9.) Officer Sellers relies on Ricky’s statement that he saw Dennis “jump” Melvin. (Proposed Decision at 39:10.) Of course, Ricky was an admitted liar (Proposed Decision at 9:15), child co-participant who allegedly made such a statement without Mr. Dennis having any opportunity to challenge it. (*See* Proposed Decision at 9:14-10:3.) Officer Sellers also cherry-picks parts of a parole board hearing claiming that Mr. Dennis “kept on hitting him” (emphasis removed) when the full statement says “And the only—only thing I know was **defend**, you know? Before he hit me, I decided to hit him. He ran off. **We** gave chase. When I caught up with him, pushed him against the wall, kept on hitting him, he went down. He, you know, it was pretty much kick and go then.” (AGRL 761:20-25 [bold added].) It is unclear who did the additional hitting and it is clear that any hitting was done to defend.

Officer Sellers next turns to a statement by co-participant Moran that Mr. Dennis similarly had no opportunity to challenge as it is contained in the arrest report. (AGRL at p. 690.) Moran, as a child, allegedly told the police “Clay punched victim two-three times” and “Once he was down, Juan, Ricky and Clay kicked the victim numerous times in the head until he became motionless.” (AGRL at 690.) Of course, the medical examiner testimony does not bear such out as noted by the Second District Court of Appeal, nor did anyone observe such. Officer Sellers also relies on another statement contained in the police report where one Samuel Martinez states he “observed Clay kick him”. (AGRL at 690.) Again, Mr. Dennis had no opportunity to challenge this statement, nor is it borne

out in any of the objective and reliable evidence such as the medical evidence showing a lack of mouth injuries or broken teeth.

In attempting to dismiss Mr. Dennis's objective presentation of reliable facts, to wit, the objective witness Mary Flores's account and the medical examiner's testimony, Officer Sellers speculates "It can be reasonably inferred that Mary did not witness Dennis' one and only punch, but rather, she witnessed Dennis' continued beating of Melvin after he was lying on the ground." (Proposed Decision at p. 41:11-13.) There is simply no evidentiary basis for this inference, especially since no other reliable witness claims that Mr. Dennis punched Mr. Reeves while he was lying on the ground.

Officer Sellers next claims that "Melvin's murder was indisputably the natural and probable consequences of the group beating that Dennis not only encouraged but also actively participated in, and Dennis made several statements acknowledging he was aware Melvin was at risk of dying during this crime." (Proposed Decision at 43:10-12.) Not so, as rejected by the Second District Court of Appeal. Officer Sellers uses a phrase devoid of context that to claim that "Dennis admitted he and Ricky were 'worried because his eyes were open.'" (Proposed Decision at p. 43:15-16.) However, the context is that Mr. Dennis, as a child, stated to a psychiatrist "I kicked him in the right shoulder just to let him know he couldn't mess with us. Ricky kicked him in the arm and we were worried because his eyes were open. Ricky felt his pulse in his neck and on his right wrist and **we knew the guy was alive when we left.**" (AGRL at 182 [bold added].) Clearly, Mr. Dennis did not believe that Mr. Reeves was dead or dying, nor is there any conduct thereafter that would suggest Mr. Dennis appreciated the risk of death *before* the battery. Officer Sellers then, without any evidence, suggests that "Melvin's murder was inevitable, let alone foreseeable." (Proposed Decision at p. 44:2.) Officer Sellers then then parrots the unreliable, foundationless hearsay of Detective Vojtecky contained in the Probation Report that "in all of his years on the police force he had never seen any offense so vicious." (AGRL at 194; see also Proposed Decision at p. 44:2-4.) Despite such being a baseless opinion with no evidentiary value, Officer Sellers uses such to suggest that somehow the Detective's exaggerated opinion was relevant to Mr. Dennis's mental state.

Officer Sellers shockingly states that "the medical examiner confirmed, Melvin's death was the result of an intentional beating effected first by Dennis and then by the group of friends that Dennis encouraged to join in." (Proposed Decision at 45:10-13.) Of course, no citation to the record is provided.

(2) Does the Proposed Decision contain an accurate statement of the applicable law?

No. Officer Sellers claims "the issue of whether Dennis' conduct was simple assault or assault by means likely to produce great bodily injury is moot as Dennis previously, and repeatedly, conceded that his actions 'always constituted the crime of assault by means likely to cause great bodily injury' and the facts adduced through the preliminary hearing 'confirm that [Dennis'] conduct constituted the

crime of assault by means likely to cause great bodily injury.” (Proposed Decision at p. 42:21-43:3.) “Dennis stipulated in court to a felony conviction for assault likely to produce great bodily injury and remains validly convicted of felony assault likely to produce great bodily injury.” (Proposed Decision at p. 43:3-5.) Officer Sellers over-states the concession/conviction. The concession/conviction is that simple assault plus the natural and probable consequences doctrine only gets to assault by means likely to cause great bodily injury, not murder.

In *People v. Spring*, the Fourth District Court of Appeal reduced a conviction of second-degree murder, finding that a single hit—that did not knock the victim off his feet or render him unconscious—was “not an act involving a high degree of probability that it [would] result in death.” (*People v. Spring* (1984) 153 Cal.App.3d 1199, 1204 (citing *People v. Conley* (1966) 64 Cal.2d 310, 321 (emphasis added)).)

In arriving at this decision, the Court also relied on *People v. Munn* to delineate between assault/battery and murder. (*People v. Munn* (1884) 65 Cal. 211.) In *Munn*, the defendant, without adequate provocation, struck the victim in the face several times with his fists. (*Id.* at 212.) The *post mortem* examination found that the defendant happened to hit the victim in the thinnest part of the skull, causing a blood clot that led to the victim’s death. (*Ibid.*) With this information, the court stated that “[i]t does not appear from the evidence in this case that there was any intention on the part of the defendant to kill the deceased, and the physician who made the *post mortem* examination states that an ordinary blow would not have produced the fracture which resulted in the death of [the victim].” (*Id.* at 213.) As such, the court concluded that the defendant’s actions were “a simple assault and battery under the Penal Code, as the assault was not with a weapon or instrument, or by any means or force likely to produce great bodily injury.” (*Id.* at 214.) This holding was supported by the established belief that “an assault made without the use of a deadly weapon with intent to do more bodily harm, and not to murder, is a misdemeanor, nothing more.” (*Id.* at 213 (citing *People v. Murat* (1873) 45 Cal. 281.)) Officer Sellers omits and fails to address this case law, and instead attempts to undermine the clear facts that Mr. Dennis engaged in a simple battery per the only objective witness, Mary Flores.

Instead, the Proposed Decision appears to backtrack to a narrative that the Los Angeles District Attorney’s Office and the Second District Court of Appeal already rejected as lacking in an evidentiary basis to suggest, via speculation, that Mr. Dennis was a child gang member hellbent on killing Melvin Reeves. (*See* Proposed Decision.) It was this dull analysis that sent a 16 year-old to adult prison for 34-years for punching someone one time by the only objective account and perhaps kicking the person one additional time.

Officer Sellers then claims that “Even if Dennis was able to prove his innocence as an aider and abettor under the natural and probable consequences doctrine, the evidence fails to show by a preponderance that Dennis is innocent of

second-degree murder under the implied malice theory.” (Proposed Decision at p. 44:8-10.) Officer Sellers claims that “The evidence shows that Dennis and his friends intended to beat Melvin so severely that it resulted in death.” (Proposed Decision at p. 44:17-18.) Officer Sellers relies on a statement where Mr. Dennis said “True” at a 2017 parole board hearing as to why so much violence was used as Melvin was not a threat. (Proposed Decision at p. 44:18-20.) As the Second District Court of Appeal noted in analyzing the plea colloquy, “Hindsight may be 20/20, but it is not a basis for a finding of malice.” Court of Appeal Opinion in B301300 Oct. 14, 2020. (Dennis Claim at p. 21; Exhibit 5 to AG’s Letter Brief; Dennis Brief at p. 21) “Malice ‘is a mental state that must be formed *before* the act that causes the death is committed.’ (CALCRIM No. 520...” (*Ibid.* [emphasis in original].) There is no evidence in the record to suggest that Mr. Dennis had any appreciation that other boys in his neighborhood could beat someone to death prior to the death of Mr. Reeves.

(3) Does the Proposed Decision correctly apply the applicable law?

No. First, evidence, even at an administrative hearing, must be reliable. As described above, Officer Sellers principally relies on extra-judicial statements that lack reliability to conclude that Mr. Dennis failed to carry his burden. The statements lack reliability on their face and are not probative of the issues before the Board. For example, the statements materially relied upon are extra-judicial, by child co-participants who had a clear motive to place blame on others, or both. Perhaps realizing such, Officer Sellers focuses on statements by Mr. Dennis that he made as a child or before the parole board decades later; none of which state that Mr. Dennis, back in 1987, intended to kill anyone, encouraged others to kill, or appreciated that there was a risk that Mr. Reeves would die.

Second, the natural and probable consequences doctrine or the implied malice theory, even in 1987 or 1988, only move the needle so far to measure whether a person is guilty of murder. Officer Sellers does not even attempt to articulate, let alone apply the case law identified above. (*People v. Spring* (1984) 153 Cal.App.3d 1199; *People v. Conley* (1966) 64 Cal.2d 310; *People v. Munn* (1884) 65 Cal. 211.) The omission is speaks for itself.

(4) Is there additional evidence that the Board should consider?

No.

(5) If the Board should consider additional evidence, why was it not presented at the hearing?

Not applicable.

(6) If the Board rejects the Proposed Decision, what further action should the Board take to resolve the matter?

The Board should reverse the Proposed Decision, and compensate Mr. Dennis for the over three decades in prison he served beginning as a child for a crime he did not commit.

///

Very Truly Yours,
CASE LAW LTD.

Jeffrey Mendelman

Jeffrey L. Mendelman
Attorney for Claimant Clayborne Dennis

Cc: Jessica Leal, Deputy Attorney General

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 **Jofama Coleman**

11 Claim No. 24-ECO-20

Proposed Decision

(Penal Code §§ 1485.55, 4900 et seq.)

12 **I. Introduction**

13 On March 14, 2024, Jofama Coleman (Coleman) 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, which was supplemented before filing on April 29, 2024. The claim is based
16 upon Coleman’s imprisonment for a 2006 murder conviction, which was vacated in 2024 with a finding
17 of factual innocence pursuant to Penal Code section 1485.55. Coleman is represented by attorney
18 Ellen J. Eggers. The claim, as supplemented and subsequently amended, requests compensation in
19 the amount of \$907,340 for 6,481 days incarceration.

20 Deputy Attorney General Jessica Leal appeared on behalf of the Attorney General. By
21 response submitted on June 4, 2024, the Attorney General agreed with Coleman’s calculation for
22 compensation in accordance with Penal Code section 4904.¹ The matter was assigned to CalVCB
23 Senior Attorney Laura Simpton. As mandated by Penal Code section 1485.55, it is recommended that
24 the CalVCB approve the claim in the amount of \$907,340 if sufficient funds are available, upon
25 appropriation by the Legislature, as indemnification for the injury sustained by Coleman’s incarceration
26 for 6,481 days solely as a result of his erroneous conviction.

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28 ¹ Pen. Code, § 4904, as amended by Stats.2023, c. 702 (S.B. 78), § 5, eff. Jan. 1, 2024 (authorizing
“documents and evidence from both parties” as needed to calculate compensation).

1 **II. Procedural Background**

2 On October 5, 2004, Coleman was charged as an accomplice with one count of murder in Los
3 Angeles County Superior Court case number YA059765.² The charge arose from a fatal drive-by
4 shooting that occurred in 2003, during which Coleman was alleged to have been the driver. When the
5 charge was filed, Coleman was already imprisoned for an unrelated offense of assault with a deadly
6 weapon in Los Angeles County Superior Court case number YA048176.³

7 On April 28, 2006, following a jury trial, Coleman was convicted of first-degree murder in case
8 number YA059765. He was sentenced on August 16, 2007, to an indeterminate term of 25 years to life
9 imprisonment.⁴ The court credited Coleman 1,006 days for actual time served, which suggested that
10 Coleman’s confinement solely as a result of his murder conviction commenced on November 13,
11 2004.⁵ However, as the parties agree and prison records confirm, the overlapping sentence for
12 Coleman’s unrelated conviction for assault with a deadly weapon in case number YA048176
13 concluded on April 6, 2006.⁶ As a result, Coleman’s incarceration solely as a result of his murder
14 conviction commenced the following day on April 7, 2006.

15 Coleman appealed. On January 29, 2009, the Court of Appeal affirmed the judgment, and the
16 California Supreme Court denied review on April 1, 2009.⁷ Coleman subsequently pursued federal
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18 ² Pen. Code, § 187; Coleman Application (App.) at pp. 2, 5. The pagination refers to the continuous
19 page numbers for the 63-page PDF file.

20 ³ Pen. Code, §§ 245, 12021; Coleman App. at p. 5; Coleman Declaration and Supporting Exhibits
(Decl.) at pp. 1, 7, 10, submitted via email by counsel Eggers on Apr. 1, 2024.

21 ⁴ Coleman App. at pp. 8-9.

22 ⁵ Coleman App. at p. 9; see also Pen. Code, § 2900.5, subd. (b) (awarding presentencing credit “only
23 where the custody to be credited is attributable to proceedings related to the same conduct for which
24 the defendant has been convicted” with credit “given only once for a single period of custody
attributable to multiple offenses for which a consecutive sentence is imposed”).

25 ⁶ Coleman Decl. at p. 2; Coleman Injury Response (IR) at p. 1, submitted via email by counsel Eggers
26 on June 5, 2024; California Department of Corrections and Rehabilitation (CDCR) record of External
Movements (External Movements), submitted via email by Deputy Attorney General Jessica Leal on
June 5, 2024.

27 ⁷ *People v. Coleman*, Court of Appeal, Second District, case number B202597, unpublished decision
28 available at 2008 WL 5401645, docket accessible at <https://appellatecases.courtinfo.ca.gov/>. (See Cal.
Code Regs., tit. 2, § 617.8 (official notice).)

1 habeas relief, which was denied by the district court on June 1, 2015.⁸ On January 13, 2023, with the
2 assistance of counsel Eggers, Coleman requested the Los Angeles County District Attorney’s Office
3 (LADA) review his case for factual innocence.⁹

4 On December 19, 2023, while the LADA’s review was ongoing, the California Board of Parole
5 Hearings deemed Coleman suitable for release and scheduled his parole date for July 14, 2024.
6 Before that date, on December 26, 2023, the Governor granted a “Reprieve of Sentence,” which
7 rendered Coleman “immediately eligible to be transferred to an alternative custody placement in the
8 community approved by the Division of Adult Parole Operations.”¹⁰ The reprieve was based, in part,
9 upon an anticipated court finding of factual innocence. As the Governor explained, Coleman’s “transfer
10 to an appropriate alternative placement in the community to continue serving the remaining six months
11 of his sentence is consistent with public safety and in the interest of justice.”¹¹ The Governor cautioned
12 that the “reprieve allowing Mr. Coleman to continue serving his sentence in the community under the
13 supervision of the California Department of Corrections and Rehabilitation (CDCR) is temporary and
14 may be nullified at any time for any reason, resulting in Mr. Coleman’s immediate return to CDCR
15 custody.”¹²

16 On January 3, 2024, Coleman was released from prison subject to electronic in-home detention
17 as a special condition of parole.¹³ By then, he had been incarcerated for 6,481 days since April 7,
18 2006, when his imprisonment solely for murder commenced.¹⁴ Coleman did not sustain any new
19 convictions during this period of confinement.¹⁵

21 ⁸ *Coleman v. Allison* (C.D. Cal. 2015) 223 F.Supp.3d 1035, 1051, aff’d sub nom. *Coleman v. Sherman*
22 (9th Cir. 2018) 715 Fed.Appx. 756.

23 ⁹ Coleman App. at p. 23.

24 ¹⁰ Coleman App. at p. 61.

25 ¹¹ Coleman App. at p. 61.

26 ¹² Coleman App. at p. 61.

27 ¹³ Coleman App. at pp. 24, 62; Email from counsel Eggers, sent Apr. 1, 2024.

28 ¹⁴ The number of days was calculated using the online “Days Calculator” located at <https://www.timeanddate.com/date/duration.html>.

¹⁵ Coleman App. at p. 5; External Movements at pp. 1-3.

1 On February 27, 2024, the LADA conceded that Coleman was entitled to relief in a joint petition
2 filed in the Los Angeles County Superior Court. Specifically, the joint petition requested habeas relief
3 to vacate Coleman’s murder conviction pursuant to Penal Code section 1473 on the basis of new
4 evidence that likely would have changed the outcome of the trial.¹⁶ The joint petition further requested
5 a finding of factual innocence pursuant to Penal Code section 1485.55 because the new evidence
6 “establishes by a preponderance of the evidence that Jofama Coleman was not the driver of the van
7 involved in the 2003 murder....”¹⁷

8 In a hearing on February 27, 2024, the court granted the joint petition in its entirety and
9 dismissed the case in the interest of justice pursuant to Penal Code section 1385.¹⁸ In addition, the
10 court ordered Coleman’s immediate release from any custodial terms that were imposed as a result of
11 this case.¹⁹ Accordingly, Coleman’s electronic monitoring was removed the next day on February 28,
12 2024.²⁰ Thus, Coleman spent 56 days after his incarceration subject to supervised release.²¹

13 On March 14, 2024, Coleman submitted a claim to the CalVCB seeking compensation as an
14 erroneously convicted person under Penal Code section 4900. The claim originally requested
15 compensation in the amount of \$992,040 for a total of 7,086 days in custody for murder, which
16 included a portion of time during which Coleman was simultaneously serving the sentence for his
17 unrelated assault with a deadly weapon conviction, as well as the period of time during which Coleman
18 was released from prison subject to electronic in-home detention. By email sent on March 19, 2024, to
19 both Coleman and the Attorney General’s representatives, the CalVCB acknowledged receipt of
20 Coleman’s claim. However, the CalVCB explained that the claim was premature under Penal Code

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23 ¹⁶ Coleman App. at p. 23.

24 ¹⁷ Coleman App. at pp. 53-57.

25 ¹⁸ Coleman App. at pp. 59-60.

26 ¹⁹ Coleman App. at p. 60.

27 ²⁰ Coleman App. at p. 3; Coleman Decl. at p. 2; Email from counsel Eggers, sent Apr. 1, 2024.

28 ²¹ The number of days was calculated using the online “Days Calculator” located at <https://www.timeanddate.com/date/duration.html>.

1 section 4901, as 60 days had not yet passed since Coleman’s convictions were reversed on February
2 27, 2024. Consequently, the CalVCB agreed to stay the proceedings until April 29, 2024.

3 Meanwhile, the CalVCB requested additional documents to confirm the dates of Coleman’s
4 incarceration. To that end, Coleman submitted additional materials, including his declaration signed on
5 April 1, 2024. Based on these materials, Coleman amended his request for compensation to \$915,040
6 for 6,536 days, which still included time spent on electronic in-home detention.

7 On April 29, 2024, the CalVCB notified the parties that Coleman’s supplemented claim was
8 now timely and deemed it filed in accordance with Penal Code sections 4900 and 4901. The CalVCB
9 acknowledged that the automatic provisions in Penal Code section 1485.55 applied, given Coleman’s
10 finding of factual innocence. Pursuant to Penal Code section 4904, the CalVCB requested a response
11 from the Attorney General by May 16, 2024, solely on the issue of injury, to confirm the amount of
12 compensation requested. The CalVCB added that, in the event the Attorney General’s calculation
13 differed, Coleman would receive a final opportunity to reply.

14 The Attorney General timely responded on May 16, 2024. The Attorney General objected to
15 compensation for any time spent on electronic in-home detention as contrary to the plain meaning of
16 Penal Code section 4904.²² The Attorney General further objected to compensation for any period of
17 time during which Coleman was concurrently incarcerated for his unrelated conviction. As initially
18 calculated by the Attorney General, Coleman’s compensation amounted to \$753,900 for just 5,385
19 days confinement solely for murder.²³

20 On May 17, 2024, Coleman withdrew his request for compensation for any time spent on
21 electronic in-home detention.²⁴ Coleman nevertheless disagreed with the Attorney General’s custodial
22 calculation. Over the next two weeks, the parties continued to confer with each other and pursue
23 additional documentation to confirm the exact dates of Coleman’s incarceration solely for murder.

26 ²² Pen. Code, § 4904, subd. (a) (authorizing \$140 “per day of incarceration served”).

27 ²³ Email from Deputy Attorney General Jessica Leal, sent May 16, 2024.

28 ²⁴ Email from counsel Eggert, sent May 17, 2024.

1 By separate emails sent on June 4, 2024, both parties agreed that Coleman was entitled to
2 compensation in the amount of \$907,340 for 6,481 days imprisonment. As support, the Attorney
3 General attached a CDCR record of Coleman's external movements, which confirmed that Coleman's
4 sentence for his unrelated assault conviction terminated on April 6, 2006.²⁵ As further support,
5 Coleman included an excerpt from CDCR's Comprehensive Risk Assessment for the Board of Parole
6 Hearings, which likewise confirmed that the unrelated sentence terminated on April 6, 2006.²⁶
7 Consequently, as both parties agreed, Coleman's incarceration solely as a result of his vacated murder
8 conviction commenced on April 7, 2006, and concluded upon his release from prison 6,481 days later
9 on January 3, 2024. Following receipt of both parties' submissions, the administrative record closed on
10 June 4, 2024.

11 III. Factual Background

12 A. Trial Evidence

13 On May 10, 2003, at approximately 9:00 p.m. in the evening, 16-year-old Jose R. (Jose) was
14 fatally shot.²⁷ The shooting occurred as Jose was walking down the street in front of his house in Los
15 Angeles. Seconds earlier, a white van stopped in the middle of the street. A passenger stepped out of
16 the vehicle and approached Jose. The passenger fired approximately 15 times, striking Jose multiple
17 times in the face and chest. Jose died of his injuries. The passenger returned to the van, and the van
18 drove away.²⁸

19 Jose's friends Andres S. (Andres) and 15-year-old Albert S. (Albert) were in front of Jose's
20 home, and they both observed the shooting from a distance of approximately 216 feet.²⁹ Immediately
21 thereafter, Albert and Andres rushed to Andres' car and pursued the fleeing van. However, the van
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23 ²⁵ External Movement, at p. 3.

24 ²⁶ Coleman IR at pp. 1, 3.

25 ²⁷ The victims and witnesses are referred to by first name only in an effort to preserve their privacy.

26 ²⁸ Coleman App. at pp. 12-13, 24; *People v. Coleman, supra*, 2008 WL 5401645, *1-2. The appellate
27 court decision is considered solely to the extent it does not conflict with the superior court's binding
determination of factual innocence. (Cal. Code Regs., tit. 2, § 641, subd. (f).)

28 ²⁹ Coleman App. at pp. 4-5, 24-26; *People v. Coleman, supra*, at p. *2.

1 soon stopped, and the passenger stepped out and aimed his gun at Andres' car. Andres hurriedly
2 backed up and drove away. Albert and Andres escaped without injury.³⁰

3 At the time of the shooting, Jose's younger brother Jesse R. (Jesse) was in the backyard. Upon
4 hearing the first shots, Jesse ran to the front yard, arriving just as the van fled the scene. Jesse's friend
5 Carlos L. (Carlos) was standing next to him at that time. From their brief glimpse, Jesse and Carlos
6 commented to each other that the driver of the van may have been Coleman, who was 20 years old.³¹
7 Earlier that day, Jose had told Jesse about a recent confrontation with Coleman's younger brother.³²

8 When law enforcement arrived on scene, none of the surviving victims or witnesses identified
9 the shooter or the driver. A couple days later, Jesse told police that Coleman was the driver. Shortly
10 thereafter, Carlos likewise identified Coleman as the driver, although he did not refer to Coleman by
11 name.³³ Maria R. (Maria), who was friends with Jose's family and happened to be seated in her van
12 down the street when the shooting occurred, generally described the race of the driver. However,
13 Maria was unable to identify Coleman from a photographic lineup, and she testified at trial that
14 Coleman only "looks like" the driver.³⁴

15 By comparison, Albert tentatively identified the driver as a member of the Dog Pound
16 Gangsters (DPG) when speaking to responding officers on scene. Shortly thereafter, Albert told police
17 that the driver may have been Coleman based on statements made by Jose's brother.³⁵ Meanwhile,
18 Albert provided inconsistent names and descriptions of the shooter before eventually identifying 15-
19 year-old Abel Soto (Soto), with whom Albert had attended middle school."³⁶ When asked about these
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23 ³⁰ Coleman App. at pp. 13-14, 24-25.

24 ³¹ Coleman App. at pp. 27-28.

25 ³² Coleman App. at pp. 12-13, 25-26; *People v. Coleman, supra*, at p. *2.

26 ³³ Coleman App. at pp. 4-5, 9, 43; *People v. Coleman, supra*, at pp. 1-2.

27 ³⁴ Coleman App. at pp. 9, 28; *People v. Coleman, supra*, at p. 2.

28 ³⁵ Coleman App. at pp. 4-5, 13-14, 25-26; *People v. Coleman, supra*, at p. 2.

³⁶ Coleman App. at pp. 4-5, 27-28; *People v. Coleman, supra*, at p. 2.

1 inconsistencies during cross-examination, Albert admitted that he was willing to name the wrong
2 individuals in order to avoid retribution from the actual culprits.³⁷

3 In October 2004, over a year after Jose’s death, Coleman was charged with Jose’s murder and
4 subsequently convicted by a jury. No physical evidence linked Coleman to the murder, and he
5 presented an alibi defense at trial.³⁸ Two years later in April 2006, Soto was also charged with Jose’s
6 murder, plus two counts of assault with a deadly weapon, for which he was eventually convicted by a
7 second jury after the first jury was unable to reach a verdict.³⁹

8 **B. Exculpatory Evidence**

9 Jose’s brother Jesse repudiated his identification of Coleman in a declaration signed April 17,
10 2023. Jesse admitted, contrary to his previous statements and testimony, that he did not actually see
11 Coleman driving the van. Jesse explained that his identification of Coleman was merely based on
12 rumor. Jesse appeared at Coleman’s parole hearing in July 2023, where he apologized to Coleman for
13 his false testimony at Coleman’s trial.⁴⁰

14 In 2012 and 2023, three witnesses separately confirmed to investigators that “Suspect 1”
15 admitted to murdering Jose shortly after the shooting occurred in May 2003. All three further confirmed
16 that Coleman and Soto had no involvement whatsoever with Jose’s murder according to Suspect 1’s
17 version of events. None of these three witnesses had any relationship with Coleman or Soto.⁴¹

18 Surveillance footage from a video rental store confirmed that Coleman entered the premises at
19 9:25 p.m. on the night of the shooting with his girlfriend, where they stayed for 15 minutes before
20 leaving with three videos. Though not impossible, the timing rendered it highly unlikely that Coleman
21 was able to switch vehicles, companions, and locations within this 25-minute window.⁴² Not only did
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23 ³⁷ Coleman App. at pp. 30-31.

24 ³⁸ Coleman App. at pp. 31, 45-51; *People v. Coleman, supra*, at p. 2.

25 ³⁹ *People v. Abel Soto*, Second District Court of Appeal, case number B203546, unpublished opinion
26 filed Feb. 27, 2009, available on Westlaw at 2009 WL 486698. (Cal. Code Regs., tit. 2, § 617.8 (official
notice).)

27 ⁴⁰ Coleman App. at pp. 42-45.

28 ⁴¹ Coleman App. at pp. 35-42.

⁴² Coleman App. at pp. 46-51.

1 Coleman’s girlfriend Evelyn M. confirm Coleman’s alibi when testifying at trial, but so did Coleman’s
2 friend Aaron A. in a declaration signed in February 2024.⁴³

3 Additional evidence exculpates Coleman. Dr. John Wixted, an expert in memory and
4 eyewitness identification, opined in a 41-page declaration that the identifications of Coleman by Jesse
5 and Carlos were unreliable.⁴⁴ Dr. Wixted further opined that Albert’s identifications of Coleman and
6 Soto were unreliable, as was Maria’s identification of Coleman. Finally, the LADA discovered new
7 evidence implicating two other persons, besides Soto and Coleman, in Jose’s murder.⁴⁵

8 **IV. Determination of Issues**

9 Penal Code section 4900 allows a person, who has been erroneously convicted and
10 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to the
11 CalVCB.⁴⁶ To be timely, Penal Code section 4901 requires submission of the claim “within a period of
12 10 years ... after dismissal of charges” but not “until 60 days have passed since the date of reversal of
13 conviction or granting of the writ, or while the case is pending upon an initial refiling, or until a
14 complaint or information has been dismissed a single time.”⁴⁷ Thus, a claim is premature and cannot
15 be filed before the court order reversing the challenged conviction is final.⁴⁸

16 Typically, under subdivision (a) of Penal Code section 4900, claimants bear the burden to
17 prove by a preponderance that (1) the crime with which they were convicted either did not occur or
18 was not committed by them and (2) they suffered injury as a result of their erroneous conviction.⁴⁹
19 Once such a claim is received and filed, Penal Code section 4902 requires the Attorney General to
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22 ⁴³ Coleman App. at pp. 31, 45-46.

23 ⁴⁴ Coleman App. at pp. 5, 51-53.

24 ⁴⁵ Coleman App. at pp. 31-45 (redactions).

25 ⁴⁶ Pen. Code, § 4900, subd. (a).

26 ⁴⁷ Pen. Code, § 4901, subd. (c).

27 ⁴⁸ See Cal. Rules of Court, Rule 8.308, subd. (a) (in criminal cases, requiring “notice of appeal ... filed
within 60 days after the rendition of the judgment”).

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

1 submit a written response.⁵⁰ Thereafter, under Penal Code section 4903, a hearing before a hearing
2 officer ensues, at which the claimant and Attorney General may present evidence concerning
3 innocence and injury.⁵¹ Upon the requisite showing, Penal Code section 4904 requires approval of the
4 claim, at a rate of \$140 per day of incarceration, if sufficient funds are available.⁵²

5 An exception to this process occurs when a claimant obtains a court finding of factual
6 innocence. Under subdivision (b) of Penal Code section 1485.55, after a court has granted a writ of
7 habeas corpus, “the person may move for a finding of factual innocence by a preponderance of the
8 evidence that the crime with which they were charged was either not committed at all or, if committed,
9 was not committed by the petitioner.”⁵³ If the court makes such a finding, then under subdivision (c) of
10 section 1485.55, “the [CalVCB] board shall, without a hearing, approve payment to the claimant,
11 pursuant to Section 4904, if sufficient funds are available, upon appropriation by the Legislature.”⁵⁴
12 The board’s approval is mandated “within 90 days of the filing of the claim....”⁵⁵

13 Penal Code section 4904, in turn, provides that, upon a finding “that the claimant has sustained
14 injury through their erroneous conviction and imprisonment,” then the board “shall approve payment for
15 the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon
16 appropriation by the Legislature.”⁵⁶ Section 4904 specifies that the “amount of the payment shall be a
17 sum equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include
18 any time spent in custody, including a county jail, that is considered to be part of the term of
19 incarceration.”⁵⁷ But even with a finding of factual innocence, the CalVCB is statutorily obligated to
20 determine the extent of injury caused by the erroneous conviction and incarceration and may “request
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22 ⁵⁰ Pen. Code, § 4902, subd. (a).

23 ⁵¹ Pen. Code, § 4903, subd. (a).

24 ⁵² Pen. Code, § 4904.

25 ⁵³ Pen. Code, § 1485.55, subd. (b).

26 ⁵⁴ Pen. Code, § 1485.55, subd. (c).

27 ⁵⁵ Pen. Code, § 4902, subd. (a).

28 ⁵⁶ Pen. Code, § 4904, subd. (a).

⁵⁷ Pen. Code, § 4904, subd. (a).

1 from both parties additional documents or arguments as needed to calculate compensation.”⁵⁸ The
2 burden to prove injury rests with the claimant by a preponderance of the evidence.⁵⁹

3 **A. Innocence**

4 Pursuant to the court’s finding under Penal Code section 1485.55, the CalVCB unequivocally
5 accepts that Coleman is factually innocent of murder in case number YA059765. As determined by the
6 superior court, a preponderance of the evidence exonerates Coleman. This exonerating evidence
7 includes sealed evidence of third-party culpability, as well as the absence of any physical evidence
8 connecting Coleman to the crime, recantation and impeachment of the witnesses who identified
9 Coleman, and Coleman’s alibi defense as corroborated by surveillance footage. Accordingly, the
10 administrative record amply demonstrates Coleman’s innocence for purposes of compensation under
11 Penal Code section 4900 as an erroneously convicted offender.⁶⁰

12 **B. Injury**

13 The record further demonstrates that Coleman’s injury amounts to 6,481 days of imprisonment.
14 As detailed above, Penal Code section 4904 confirms that the amount of compensation to be
15 approved for the claimant’s injury “shall be a sum equivalent to one hundred forty dollars (\$140) per
16 day of incarceration served, and shall include any time spent in custody, including a county jail, that is
17 considered to be part of the term of incarceration.”⁶¹ This compensation is “for the purpose of
18 indemnifying the claimant for the injury” sustained “through their erroneous conviction and
19 imprisonment....”⁶² In this context, injury “may be established by showing that, but for the erroneous
20 conviction, the claimant would not have been in custody.”⁶³

21 The current version of Penal Code section 4904 does not authorize compensation for any time
22 spent on supervised release. Admittedly, in 2022, Assembly Bill (A.B.) 160 conditionally amended

23 _____
24 ⁵⁸ Pen. Code, § 4904, as amended by Stats.2023, c. 702 (S.B. 78), § 5, eff. Jan. 1, 2024.

25 ⁵⁹ Pen. Code, § 4904; Cal. Code of Regs. tit. 2, § 644, subd. (d); see also Evid. Code, § 500.

26 ⁶⁰ Pen. Code, §§ 1485.55, 4902, subd. (a).

27 ⁶¹ Pen. Code, § 4904, subd. (a).

28 ⁶² Pen. Code, § 4904, subd. (a).

⁶³ Cal. Code of Regs., tit. 2, § 640, subd. (f).

1 section 4904, effective July 1, 2024, to augment compensation at the rate of \$70 per day for time spent
2 “on supervised release....”⁶⁴ However, this conditional amendment shall become operative “only if
3 General Fund moneys over the multiyear forecasts beginning in the 2024-2025 fiscal year are
4 available....”⁶⁵ As the Governor recently confirmed in the May Revise Budget for 2024-2025, no funds
5 are available to trigger this conditional amendment for augmented compensation.⁶⁶ Accordingly, even
6 after July 1, 2024, no compensation is authorized by section 4904 for any time spent on supervised
7 release.⁶⁷

8 As both parties agree, Coleman’s demonstrated injury amounts to 6,481 days during which he
9 was incarcerated solely as a result of his erroneous murder conviction in case number YA059765.⁶⁸
10 This period commenced on April 7, 2006, the day after the sentence for his unrelated assault
11 conviction in case number YA048176 terminated on April 6, 2006, when Coleman remained in custody
12 awaiting trial for murder in case number YA059765.⁶⁹ This period continued through and including the
13 date of his conditional release from prison on January 3, 2024.⁷⁰ As both parties agree, this period
14 excludes the 56 days that Coleman spent on electronic in-home detention from January 4, 2024,
15

16 ⁶⁴ Pen. Code, § 4904, subd. (b)(1), as amended by Stats.2022, c. 771 (A.B. 160), § 21, subject to
17 appropriation.

18 ⁶⁵ *Ibid.*; see also proposed Pen. Code, § 4904, subd. (d), operative July 1, 2024, subject to
19 appropriation, as added by Stats.2022, c. 771 (A.B. 160), § 21.

20 ⁶⁶ Governor’s May Revision (2024-25), Introduction at pp. 9-10 (expressly excludes triggered
21 expenditures from 2022 for the Victim Compensation Program from 2024-2025 budget due to “the
22 negative multiyear projections” to the General Fund), available online at [https://ebudget.ca.gov/2024-
23 25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf](https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf).

24 ⁶⁷ Citing Penal Code section 3, the Attorney General alternatively argues that, even if A.B. 160’s
25 conditional amendment to Penal Code section 4904 were operable, it cannot retroactively apply in
26 Coleman’s case because he filed his claim before the operative date of July 1, 2024. (Pen. Code, § 3
27 (“No part of it is retroactive, unless expressly so declared”.) However, the CalVCB need not resolve
28 whether or not the conditional amendment to section 4904 applies to Coleman’s claim given the lack of
an appropriation to implement A.B. 160.

⁶⁸ Coleman IR at p. 1, Email from counsel Eggers, sent June 4, 2024; Email from Jessica Leal, sent
June 4, 2024.

⁶⁹ Coleman Decl. at p. 2; External Movements, at p. 3.

⁷⁰ Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th 882,
886 (construing “days” for custody credit to include partial days).

1 through February 28, 2024.⁷¹ But for his erroneous murder conviction, Coleman would not have spent
2 6,481 days “illegally behind bars, away from society, employment, and [his] loved ones.”⁷² Given the
3 statutory rate of \$140 per day, Coleman is therefore entitled to indemnification in the amount of
4 \$907,340 for his injury if sufficient funds are available upon appropriation by the Legislature.

5 **V. Conclusion**

6 As mandated by Penal Code section 1485.55, the undersigned hearing officer recommends the
7 CalVCB approve payment to Coleman in the amount of \$907,340 for his claim as an erroneously
8 convicted offender under Penal Code section 4900, if sufficient funds are available, upon appropriation
9 by the Legislature, as indemnification for the injury sustained by his 6,481 days of imprisonment solely
10 as a result of his vacated conviction.

11
12 Date: June 10, 2024



13 _____
14 Laura Simpton
15 Hearing Officer
16 California Victim Compensation Board
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26 _____
27 ⁷¹ Email from counsel Eggers, sent May 17, 2024; see also Pen. Code, § 4904, subd. (a).

28 ⁷² *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400, 1405.

ITEM 9

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5
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 on Remand

(Penal Code § 4900, subd. (a))

12 **I. Introduction**

13 On March 23, 2022, Truman Simon (Simon) submitted an application¹ 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
26 _____
27 ¹ Simon Application (App.) at p. 1. The pagination refers to the continuous page numbers for the 19-
28 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).

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

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

8 II. Procedural Background

9 1. Simon's Original Convictions

10 On April 21, 2018, Simon was arrested and subsequently charged with one count of assault
11 with a firearm and one count of criminal threats in Kern County Superior Court case number
12 RF007944A.² Enhancements were further alleged for Simon's prior strike conviction, prior serious
13 felony conviction, and prior prison commitment.³ R.E. and I.R. were charged as co-defendants and
14 jointly tried with Simon before a single jury.⁴ Simon and R.E. were tried as accomplices while I.R. was
15 the alleged perpetrator. On August 1, 2018, the jury acquitted R.E. and I.R., evidently due to
16 identification concerns, but found Simon guilty of both assault with a firearm and criminal threats.⁵
17 Following a bench trial, the court found true all of Simon's alleged enhancements.⁶ On August 28,
18 2018, the court sentenced Simon to 11 years in state prison, which included six years for committing
19 assault with a firearm with a strike prior, and a five year enhancement for having a prior serious felony
20 conviction.⁷ The four-year sentence imposed for making criminal threats was stayed.⁸

21
22 ² Pen. Code, §§ 245, subd. (a)(2), 422; Docket for *People v. Simon*, Kern County Superior Court case
23 number RF007944A, available online <https://www.kern.courts.ca.gov/online-services/case-information>;
see also Cal. Code Regs., tit. 2, § 617.8 (official notice.)

24 ³ Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (c)-(j), 667, subd. (a), 667.5, subd. (b); Attorney
25 General Response Letter (AGRL) at p. 1; AGRL Exhibits (Exs.) at p. 23.

26 ⁴ Simon's co-defendants are referred to by their initials only to protect their privacy. Simon and R.E.
are brothers.

27 ⁵ AGRL Exs. at pp. 479-480.

28 ⁶ AGRL Exs. at pp. 58-62.

⁷ AGRL Exs. at pp. 509-510.

1 **2. Simon’s Convictions Reversed on Direct Appeal**

2 Simon appealed to the Fifth District Court of Appeal, arguing that there was insufficient
3 evidence to support his convictions. On December 29, 2020, in a 2-1 decision, the appellate court
4 reversed Simon’s convictions for assault with a firearm and criminal threats.⁹

5 Specifically, the appellate court found that the “evidence [was] insufficient to prove Simon was
6 an aider and abettor because insufficient evidence established: (1) Simon shared the gunman’s
7 criminal purpose, and (2) that he intended to aid and abet any crimes.”¹⁰ The court reasoned that
8 “confronting a person, even while angry, is not inherently criminal,” and Simon’s presence alone was
9 not sufficient to establish he aided and abetted the assault with a deadly weapon or criminal threats.¹¹
10 The court reversed Simon’s convictions for insufficient evidence with directions his convictions be
11 vacated and a judgment of acquittal be entered as to each count.¹²

12 In dissent, Justice Poochigian concurred that insufficient evidence established Simon knew the
13 direct perpetrator had a gun, intended to use the gun, or that he actually saw the direct perpetrator
14 pull the gun out and point it at Eric. Consequently, Justice Poochigian agreed, insufficient evidence
15 established Simon was guilty of assault with a firearm or criminal threats. However, Justice
16 Poochigian concluded there was “substantial evidence to find that Simon aided and abetted the direct
17 perpetrator’s repeatedly stated intent to harm [Eric] based on their mistaken belief he had been
18 involved in the bar fight.” Justice Poochigian therefore concluded that, while the evidence was
19 insufficient to establish Simon was guilty of assault with a deadly weapon, substantial evidence
20 established Simon was guilty of simple assault.¹³ Accordingly, Justice Poochigian stated that he would
21 have modified Simon’s conviction, in lieu of granting him a new trial, to reflect a conviction for the

22
23 ⁸ AGRL at p. 1; AGRL Exs. at pp. 63-64,155-156.

24 ⁹ 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 ¹⁰ AGRL Exs. at p. 714.

27 ¹¹ AGRL Exs. at p. 715.

28 ¹² *People v. Simon*, Fifth District Court of Appeal, case number F078189, at p. 7.

¹³ AGRL Exs. at pp. 722-723.

1 lesser included offense of simple assault,¹⁴ in place of his original conviction for assault with a firearm
2 and making criminal threats.¹⁵

3 On April 7, 2021, the Kern County Superior Court vacated Simon's convictions and dismissed
4 the case, without a finding of factual innocence.¹⁶ Simon was released from custody on April 12, 2021,
5 after having been confined a total of 1,088 days since his arrest on April 21, 2018.¹⁷

6 **3. Simon's Erroneously Convicted Person Claim**

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

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

21 On September 6, 2022, CalVCB received an email from the Attorney General stating that their
22 office received correspondence from Simon, showing a return address at Wasco State Prison. The

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24 ¹⁴ The appellate court did not find, nor did Simon contend, the court erred in finding Simon suffered
both a prior strike and a prior serious felony conviction.

25 ¹⁵ AGRL Exs. at p. 718.

26 ¹⁶ AGRL Exs. at pp. 1,436-1,437.

27 ¹⁷ 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 ¹⁸ Cal. Code Regs., tit. 2, § 616.2.

1 next day, the CalVCB mailed a letter to Simon at the Wasco State Prison address, notifying him that
2 the administrative proceedings were stayed and requesting he confirm his new contact information as
3 it is his duty to promptly inform the CalVCB of any change of address.¹⁹ On September 26, 2022, the
4 CalVCB received a letter from Simon stating that he was incarcerated in California State Prison,
5 Solano and would likely be there until his release date on January 18, 2023. Shortly thereafter, the
6 CalVCB lifted the stay and sent a second request for a response letter from the Attorney General.

7 Following two extensions for demonstrated good cause, the Attorney General timely submitted
8 a response letter on February 27, 2023, along with 13 exhibits amounting to nearly 2,000 pages.²⁰
9 Included in the exhibits were court records, trial transcripts, police reports, the probation report, CDCR
10 records, and documents related to Simon’s criminal history.

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

15 **III. Factual Background**

16 **A. The Crime**

17 On April 21, 2018, at approximately 2:00 a.m., Simon, R.E., and I.R. were involved in a
18 physical altercation outside of the TTT Tavern in the town of Ridgecrest located in Kern County.²¹ The
19 altercation started inside the bar when Simon insulted another patron’s wife, but quickly moved
20 outside.²² Officer Rowland, who was patrolling the area, witnessed the physical altercation in progress.
21 He immediately responded and called for backup.²³ Once on scene, he observed I.R. actively fighting
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23

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25 ¹⁹ Cal. Code Regs., tit. 2, § 616.2.

26 ²⁰ AGRL at pp. 1-19; AGRL Exs. At pp. 1-1,954.

27 ²¹ App. At p. 6.

28 ²² AGRL Exs. At p. 673.

²³ AGRL Exs. At p. 327.

1 an unknown Hispanic male.²⁴ Simon attempted to approach the fight, but was stopped by a bouncer
2 and the two began physically fighting.²⁵ R.E. had fallen and was lying on the cement nearby.²⁶ Officers
3 briefly detained Simon, R.E., and I.R., and searched them for weapons but found none.²⁷ The three
4 men were ultimately released; however, Simon and R.E.'s cousin, Kimberly, was arrested for public
5 intoxication and taken into custody.²⁸

6 About an hour later, Simon, R.E., and I.R. showed up at the home of Simon's friend Eric, which
7 was walking distance from TTT Tavern, and began banging on his front door.²⁹ At the time, Eric lived
8 with his mother (Gladys) and two younger siblings, all of whom were asleep.³⁰ Eric awoke to the sound
9 of loud banging on his front door. When he answered the door, Simon and two other men were
10 standing in a half circle facing him. Eric immediately recognized Simon but did not know either of the
11 men standing with him. All three men began screaming at Eric, accusing him of being involved in the
12 altercation at TTT Tavern earlier that night. Simon was "doing most of the talking."³¹ Almost
13 immediately, the man standing in the middle, later identified as I.R., pulled a gun out of his pocket,
14 pointed it directly at Eric, and repeatedly asked, "Are you ready to die today?"³² During the
15 confrontation, Gladys approached the doorway, yelled at the three men, and demanded that they
16 leave.³³ The three men eventually complied, with Simon apologizing to Gladys as they walked away.

20 ²⁴ AGRL Exs. At pp. 325-326, 328; The victims and witnesses are referred to by their first names
21 only in an effort to protect their privacy.

22 ²⁵ AGRL Exs. at p. 328.

23 ²⁶ *Ibid.*

24 ²⁷ App. at p. 6.

25 ²⁸ App. at p. 14; AGRL Exs. at pp. 324, 378, 673.

26 ²⁹ AGRL Exs. at pp. 244, 673.

27 ³⁰ AGRL Exs. at p. 244.

28 ³¹ AGRL Exs. at p. 673.

³² AGRL Exs. at pp. 673, 721.

³³ AGRL Exs. at p. 276.

1 Gladys followed the men down the street as she called 9-1-1 and watched them enter an apartment
2 complex just one block away, which was later determined to be R.E.'s apartment.³⁴

3 Soon thereafter, law enforcement detained Simon and I.R. near R.E.'s apartment.³⁵ Officers
4 asked Eric if he would participate in an infield lineup, but he declined, fearful of retaliation from the
5 perpetrators.³⁶ Gladys, however, was willing to participate in an infield lineup. Officers drove her to a
6 nearby apartment, where Simon and I.R. were both seated on the curb.³⁷ Gladys positively identified
7 Simon and I.R. as two of the men she confronted at her house that night, specifically identifying I.R. as
8 the gunman. Shortly thereafter, at a second infield lineup, she identified R.E. as the third man present
9 that night.³⁸ All three men were arrested and taken into custody.³⁹ Law enforcement conducted an
10 extensive search of R.E.'s apartment and the surrounding area, but the gun was never recovered.⁴⁰

11 **B. Evidence Presented at Trial**

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

13 Officer Rowland testified that at about 2:00 a.m. on the date of the crime, he was on patrol and
14 witnessed a physical altercation involving Simon, R.E., and I.R. outside TTT Tavern.⁴¹ I.R. was
15 physically fighting another patron, Simon was fighting a bouncer, and R.E. was on the cement.⁴² The
16 altercation started because Simon insulted the patron's wife.⁴³ He described the patron as a tall
17 Hispanic man, in his mid-20's, with a "stocky build" and "long-ish slicked back black hair."⁴⁴ All three
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20 ³⁴ AGRL Exs. at pp. 276, 673.

21 ³⁵ App. at p. 3.

22 ³⁶ AGRL Exs. at p. 673.

23 ³⁷ AGRL Exs. at pp. 673- 674.

24 ³⁸ AGRL Exs. at p. 336.

25 ³⁹ AGRL Exs. at pp. 673- 674.

26 ⁴⁰ AGRL Exs. at p. 674.

27 ⁴¹ AGRL Ex. at p. 325.

28 ⁴² AGRL Ex. at p. 328.

⁴³ AGRL Ex. at pp. 329-330.

⁴⁴ *Ibid.*

1 men were detained and pat-searched but no weapons were found.⁴⁵ They were ultimately released;
2 however, Simon and R.E.'s cousin, Kimberly, was arrested for public intoxication and taken into
3 custody.⁴⁶ Officer Rowland did not see Eric anywhere in the area that night, but noted that the TTT
4 Tavern was about a 10 to 15 minute walk to Eric's house.⁴⁷

5 **2. Eric's Testimony**

6 Eric testified that at about 3:00 a.m., he awoke to the sound of banging on his front door.⁴⁸
7 When he opened the door, he immediately recognized Simon as his best friend's brother; however, he
8 did not know who the other two men were.⁴⁹ In fact, Eric repeatedly testified that he did not know the
9 two men with Simon and, notably was unable to positively identify them as I.R. and R.E..⁵⁰ He
10 emphasized Simon was not the one with the gun but was "definitely there."⁵¹

11 The three men were standing close together in a half circle, with the gunman in the middle,
12 slightly behind the other two men, and Simon to his right.⁵² He described the men as standing on a
13 little square cement area, right in front of the door.⁵³ Because Eric knew Simon, he did not initially
14 "think there was going to be a problem."⁵⁴ However, all three men started screaming at him about a bar
15 fight and accusing him of somehow being involved.⁵⁵ During the confrontation, Simon was doing most
16 of the talking, repeatedly accusing Eric of being at TTT Tavern earlier in the evening and blaming Eric
17 for his cousin's arrest.⁵⁶ Eric testified that Simon, I.R., and R.E. were "looking for some guy," and that

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19 ⁴⁵ AGRL Ex. at pp. 331-332.

20 ⁴⁶ AGRL Ex. at p. 325.

21 ⁴⁷ AGRL Ex. at pp. 325-327.

22 ⁴⁸ AGRL Exs, at p. 240.

23 ⁴⁹ AGRL Exs. at pp. 249, 258.

24 ⁵⁰ AGRL Exs. at p. 240.

25 ⁵¹ AGRL Exs. at pp. 254-255.

26 ⁵² AGRL Exs. at pp. 254-255, 263.

27 ⁵³ AGRL Exs. at p. 262.

28 ⁵⁴ AGRL Exs. at p. 258.

⁵⁵ AGRL Exs. at p. 241.

⁵⁶ AGRL Exs. at pp. 241, 263, 673.

1 they were trying to connect [Eric] to everything, “which did not make any sense.”⁵⁷ While he could not
2 remember the name of the person the three men were looking for, Eric confirmed that he himself did
3 not fit that person’s physical description.⁵⁸ To the contrary, Eric emphasized that the three men knew
4 his name and “knew who [he] was.”⁵⁹

5 “Almost right away,” the man in the center of the half circle pulled out a gun, pointed it directly
6 at his chest, and asked, “Are you ready to die?”⁶⁰ Eric estimated the gun was pointed at him for eight
7 or nine minutes and described fearing for his family’s safety.⁶¹ During that time, Gladys came to the
8 door and confronted the three men.⁶² She was “in their face,” yelling at them and telling them to
9 leave.⁶³ She told them they needed to grow up and asked the gunman why he had a gun.⁶⁴ As they
10 were walking away, Gladys told them, “I don’t know why you guys are walking away. I know where you
11 live. I’m calling the cops right now.”⁶⁵ The encounter with the three men lasted approximately 10 to 20
12 minutes.⁶⁶ Eric testified that the men lived “right down the street” from him, but then later clarified that
13 he does not know where they live, but that he regularly sees them hanging out at the house down the
14 street from him.⁶⁷ He emphasized that “they all hang out” at the house down the street and that he and
15 his family can see them from their house.⁶⁸ Upon arrival, law enforcement asked Eric to participate in
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19 ⁵⁷ AGRL Exs. at p. 263.

20 ⁵⁸ AGRL Exs. at p. 263.

21 ⁵⁹ *Ibid.*

22 ⁶⁰ AGRL Exs. at pp. 243, 264.

23 ⁶¹ AGRL Exs. at pp. 243, 264-265.

24 ⁶² AGRL Exs. at p. 245.

25 ⁶³ AGRL Exs. at pp. 245, 247.

26 ⁶⁴ AGRL Exs. at p. 245.

27 ⁶⁵ AGRL Exs. at p. 248.

28 ⁶⁶ AGRL Exs. at p. 248.

⁶⁷ AGRL Exs. at pp. 249-253.

⁶⁸ AGRL Exs. at p. 253.

1 an infield lineup to potentially identify the people involved, but he refused, stating that he was
2 intimidated at the time.⁶⁹ He emphatically stated that he was not at TTT Tavern at all that night.⁷⁰

3 **3. Gladys' Testimony**

4 Gladys testified that she awoke to a loud banging on her front door.⁷¹ She heard screaming and
5 then went to the front door and saw three men standing at the door confronting her son, Eric.⁷² One of
6 the men had a gun.⁷³ They were cursing and using the "N word a lot."⁷⁴ They kept repeating, "You
7 were there."⁷⁵ She ran to her room to get properly dressed and returned as the confrontation started
8 escalating. The man holding the gun asked Eric if he was ready to die.⁷⁶ She got angry, made herself
9 "big like a bear," and started yelling and screaming at them to get out.⁷⁷ She described being "face-to-
10 face" with the men, estimating she was about eight to ten inches away from them.⁷⁸ The three men
11 turned around and started walking away, as Simon apologized.⁷⁹ 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."⁸⁰ 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.⁸¹ In the courtroom, Gladys positively identified Simon,
15 R.E., and I.R. as the three men at her front door that night.⁸²

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17 ⁶⁹ AGRL Exs. at p. 255.

18 ⁷⁰ AGRL Exs. at p. 270.

19 ⁷¹ AGRL Exs. at p. 272.

20 ⁷² AGRL Exs. at pp. 272-274.

21 ⁷³ AGRL Exs. at p. 274.

22 ⁷⁴ AGRL Exs. at p. 273.

23 ⁷⁵ *Ibid.*

24 ⁷⁶ *Ibid.*

25 ⁷⁷ AGRL Exs. at pp. 273, 276.

26 ⁷⁸ AGRL Exs. at p. 276.

27 ⁷⁹ AGRL Exs. at pp. 276- 277, 290.

28 ⁸⁰ AGRL Exs. at p. 276.

⁸¹ AGRL Exs. at p. 281.

⁸² AGRL Exs. at pp. 277-278.

1 **IV. Determination of Issues**

2 Penal Code section 4900, subdivision (a), allows a person, who has been erroneously
3 convicted and imprisoned for a felony offense that they did not commit, to submit a claim for
4 compensation to the CalVCB for the injury sustained.⁸³ Under subdivision (a) of section 4900,
5 claimants bear the burden to prove by a preponderance that (1) the crime with which they were
6 convicted either did not occur or was not committed by them and (2) they suffered injury as a result of
7 their erroneous conviction.⁸⁴ Once such a claim is received and filed, Penal Code section 4902
8 requires the Attorney General to submit a written response.⁸⁵ Thereafter, under Penal Code section
9 4903, an informal administrative hearing before a hearing officer ensues, at which the claimant and
10 Attorney General may present evidence concerning innocence and injury.⁸⁶ Upon the requisite
11 showing of innocence and injury, then pursuant to Penal Code section 4904, CalVCB shall approve
12 payment for the purpose of indemnifying the claimant for the injury sustained if sufficient funds are
13 available, upon appropriation by the Legislature, at a rate of \$140 per day for their erroneous
14 imprisonment.⁸⁷

15 In limited circumstances, a different procedure may apply for claimants whose convictions have
16 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court
17 finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or
18 vacated conviction pursuant to Penal Code section 1473.6, then the CalVCB must automatically
19 approve the claim, within 90 days and without a hearing, pursuant to Penal Code section 4904 for the
20 injury sustained.⁸⁸ Second, under subdivision (b) of Penal Code section 4900, if the claimant's
21 conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or
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23 ⁸³ Pen. Code, § 4900.

24 ⁸⁴ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ⁸⁵ Pen. Code, § 4902, subd. (a).

26 ⁸⁶ Pen. Code, § 4903, subd. (a).

27 ⁸⁷ Pen. Code, § 4904, subd. (a).

28 ⁸⁸ Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a), eff. Jan. 1, 2024; see also Cal. Code of
Regs., tit. 2, § 640, subds. (e)(1)-(2).

1 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney
2 General declines to object with clear and convincing proof of guilt, then the CalVCB must approve the
3 claim within 90 days pursuant to Penal Code section 4904 for the injury sustained.⁸⁹ Unless one of
4 these narrow statutory exceptions applies, then the claimant bears the burden to prove innocence and
5 injury by a preponderance of the evidence under subdivision (a) of Penal Code section 4900. When
6 determining whether the claimant has satisfied their burden of proof, the Board may consider the
7 “claimant’s denial of the commission of the crime; reversal of the judgment of conviction; acquittal of
8 claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the crime....”⁹⁰
9 The Board may also “consider as substantive evidence the prior testimony of witnesses [that] claimant
10 had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant
11 had an opportunity to object.”⁹¹ Ultimately, the Board may consider “any other information that it deems
12 relevant to the issue before it,” even if inadmissible under the traditional rules of evidence, so long as
13 “it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of
14 serious affairs.”⁹² No presumption is made as a result of Simon’s failure to obtain a finding of factual
15 innocence.

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

17 Simon seeks compensation for his two felony convictions in case number RF007944A, which
18 were both reversed on direct appeal. Neither of these convictions were reversed or vacated by grant of
19 habeas or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). As such, the burden-
20 shifting provision in subdivision (b) of Penal Code section 4900 does not apply. Moreover, Simon lacks
21 a finding of factual innocence by any court under Penal Code section 1485.55 or 851.865. Thus,
22 Simon’s claim does not fall within either of the limited statutory exceptions to subdivision (a) of section
23 4900. Accordingly, subdivision (a) governs the disposition of Simon’s claim. He therefore bears the
24 burden to demonstrate innocence by a preponderance of the evidence.

25 ⁸⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

26 ⁹⁰ Cal. Code Regs., tit. 2, § 641, subd. (a).

27 ⁹¹ Cal. Code Regs., tit. 2, § 641, subd. (b).

28 ⁹² Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

1 **B. The Appellate Court’s Decision is Not Binding on the CalVCB**

2 The CalVCB has broad authority to consider all relevant evidence when deciding a claimant’s
3 application for compensation. By statute, the CalVCB is bound by “factual findings” and “credibility
4 determinations” rendered by a court during proceedings on a petition for habeas corpus, motion to
5 vacate judgment pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), or an application
6 for a certificate of factual innocence.⁹³ Notably, these statutory provisions omit decisions rendered by
7 an appellate court on direct appeal, or during proceedings under any provision not specifically
8 enumerated.⁹⁴ Because Simon’s case falls outside the proceedings contemplated in sections 4903,
9 1485.5, and 1485.55, the appellate court findings are not binding. In other words, the CalVCB is not
10 statutorily bound by an appellate court’s decision on direct appeal, nor by the appellate court’s
11 characterization of the evidence. Consequently, the appellate court’s determination that insufficient
12 evidence supported the jury’s finding that the prosecution proved Simon’s *guilt beyond a reasonable*
13 *doubt* is not binding for purposes of these proceedings, where Simon bears the burden of affirmatively
14 proving his innocence by a preponderance of the evidence.

15 The appellate court’s decision also does not “collaterally estop” the Board from fulfilling its
16 statutory obligation to decide the new and separate issues being litigated here. While an appellate
17 court’s determination of legal issues that were, or could have been, raised on direct appeal, may bind
18 the CalVCB under the doctrines of res judicata and collateral estoppel, neither doctrine applies in this
19 case, nor do they preclude consideration of the issues presented in this claim.⁹⁵ In general, collateral

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21 ⁹³ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); see also *Gonzales v. California Victim*
22 *Compensation Board* (Cal. Ct. App., Dec. 29, 2023, No. B323360) 2023 WL 9016418, at *9 (defining
23 “factual findings” in this context to exclude “the habeas court’s summary of, observations about, and
characterizations of the trial record when the habeas court is not finding facts after entering new
evidence”).

24 ⁹⁴ *Ibid.*; see also *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1211-1212 (“Appellate courts do not
25 make factual findings; we review ‘the correctness of a judgment [or order] as of the time of its
26 rendition’”); *People v. Cervantes* (2020) 46 Cal.App.5th 213, 224 (“appellate courts are not equipped to
accept new evidence and make factual findings”).

27 ⁹⁵ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206
28 (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”).

1 estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding.⁹⁶
2 However, the issues being litigated in this claim are wholly discreet from the issues considered on
3 direct appeal. “When considering a challenge to the sufficiency of the evidence to support a conviction,
4 [the appellate court] review[s] the entire record in the light most favorable to the judgment to determine
5 whether it contains substantial evidence- that is, evidence that is reasonable, credible, and of solid
6 value– from which a reasonable trier of fact could find the defendant guilty beyond a reasonable
7 doubt.”⁹⁷

8 The issue presented in Simon’s claim under Penal Code section 4900, on the other hand, is
9 whether Simon can prove by a preponderance of evidence that the crime he was convicted of was not
10 committed at all, or not committed by him, according to the law in effect at the time the crime was
11 committed.⁹⁸ In other words, Simon must prove that he is *actually innocent* of aiding and abetting an
12 assault with a deadly weapon and criminal threats, not whether the prosecution presented substantial
13 evidence of his guilt at trial. The issue of Simon’s actual innocence was never previously litigated in the
14 appellate court, nor was there a final decision on the merits of Simon’s *innocence*. The court did not
15 issue a finding of factual innocence, establishing that Simon did not commit the crime. In fact, in his
16 dissent, Justice Poochigian stated that he would have modified Simon’s conviction for assault with a
17 deadly weapon to reflect a conviction for the lesser included offense of simple assault.⁹⁹ The appellate
18 court simply found that a jury could not find Simon guilty beyond a reasonable doubt, and a reasonable
19 doubt as to Simon’s guilt does not preclude the CalVCB from finding Simon failed to present sufficient
20 evidence to establish his actual innocence.¹⁰⁰

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24 ⁹⁶ *Tennison v. California Victim Comp. & Government Claims Bd.* (2007) 152 Cal.App.4th 1164, 1174.

25 ⁹⁷ *People v. Lindberg* (2008) 45 Cal.4th 1, 27.

26 ⁹⁸ Pen. Code, § 4900.

27 ⁹⁹ AGRL Exs. at p. 718.

28 ¹⁰⁰ See, e.g. *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (“a court finding of factual innocence must be made by at least a preponderance of the evidence and must reflect a determination that the person charged and convicted of an offense did not commit the crime”).

1 **C. Simon Has Failed to Establish His Innocence**

2 Under subdivision (a) of section 4900, claimants bear the burden of proving that the crime with
3 which they were convicted either did not occur, or was not committed by them, and that they suffered
4 injury as a result of their erroneous conviction.¹⁰¹ While “[i]nnocence might well be predicated upon a
5 reasonable doubt of guilt,” the “[CalVCB’s] section 4900 determination is a civil determination of
6 culpability” that requires the claimant to “carry the burden of proof of innocence by a preponderance of
7 the evidence.”¹⁰² Consequently, to prevail in this claim, Simon bears the burden of affirmatively
8 establishing, by a preponderance of the evidence, that he is actually innocent of the crime with which
9 he was erroneously convicted because the charged crime was either not committed at all or not
10 committed by him.¹⁰³ In other words, Simon must affirmatively prove that he is actually innocent of
11 aiding and abetting assault with a firearm and criminal threats. To satisfy his burden, Simon must
12 demonstrate it is more likely than not that he did not commit this offense, or that it never occurred.

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

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

20 “A person aids and abets the commission of a crime when he or she, acting with (1) knowledge
21 of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or
22 facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages, or instigates
23 the commission of the crime.”¹⁰⁴ In other words, a person aids and abets a crime if that person knows of
24 the perpetrator’s criminal purpose and gives aid and encouragement with the intent or purpose of

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26 ¹⁰¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

27 ¹⁰² *Diola v. State Bd. of Control* (1982) 135 Cal.App.3d 580, 588 n.7.

28 ¹⁰³ Pen. Code, § 4900.

¹⁰⁴ *People v. Nguyen* (2015) 61 Cal.4th 1015, 1054.

1 facilitating the perpetrator's commission of the crime.¹⁰⁵ The crime of assault with a firearm is defined
2 as the willful commission of an act that by its nature would directly result in the application of a force to
3 a person with a present ability to apply that force, such as by pointing a loaded gun at another.¹⁰⁶ The
4 crime of criminal threats is defined as a willful, immediate, and unconditional threat to unlawfully kill
5 another that reasonably causes the victim to fear for their safety, even if the defendant does not
6 actually intend to carry out the threat.¹⁰⁷ "Among the factors which may be considered in making the
7 determination of aiding and abetting are: presence at the scene of the crime, companionship, and
8 conduct before and after the offense."¹⁰⁸ However, mere presence alone is insufficient to establish
9 aiding and abetting.¹⁰⁹

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

16 **2. Simon Has Failed to Satisfy His Burden**

17 As for evidence of his innocence, Simon provides only an unsupported declaration, relying
18 primarily on the appellate court's reversal of his convictions. First, he asserts the "victim stated in trial
19 that I did not commit this crime."¹¹⁰ However, this is contradicted by the testimony elicited at trial. Eric
20 testified that when he answered the door on April 21, 2018, he immediately recognized Simon as his
21 best friend's brother. He stated unequivocally that although Simon was not the one with the gun he
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24 ¹⁰⁵ *People v. Beeman* (1984) 35 Cal.3d 547, 560.

25 ¹⁰⁶ Pen. Code, § 245; CALCRIM 875.

26 ¹⁰⁷ Pen. Code, § 422; CALCRIM 1300.

27 ¹⁰⁸ *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094.

28 ¹⁰⁹ CALCRIM 401; see also *People v. Nguyen* (2015) 61 Cal.4th 1015, 1055.

¹¹⁰ App. at p. 2.

1 was “definitely there” and the most vocal during the eight or nine minutes the firearm was pointed at
2 his chest.¹¹¹

3 Despite Simon bearing the burden of proof in this administrative proceeding, he offers no other
4 details or circumstances to negate an inference of guilt from the administrative record. Notwithstanding
5 repeated opportunities to provide a sworn statement of his innocence, Simon declined to deny, under
6 penalty of perjury, that he was aware of I.R.’s intent to threaten and point a loaded gun at Eric. He did
7 not, for example, express surprise that I.R. had a gun. He did not deny knowing I.R. had a gun, nor did
8 he deny knowing the gun was loaded. Significantly, Simon declined an opportunity to appear at an
9 administrative hearing where he would have had an opportunity to testify under oath, and be subject to
10 cross-examination by the Attorney General, about the crimes against Eric. He would have been
11 afforded an opportunity to detail his knowledge and involvement in the crime he was charged with, yet,
12 knowing he bore the burden of proof, waived his right to a hearing on this claim. Accordingly, Simon’s
13 conclusory declaration is not persuasive.

14 Second, Simon contends the appellate court’s decision is sufficient to establish his
15 innocence.¹¹² However, a court’s finding that there was insufficient evidence to support a conviction is
16 not equivalent to a finding of factual innocence.¹¹³ Here, the appellate court’s finding insufficient
17 evidence established Simon’s *guilt* beyond a reasonable doubt does not satisfy Simon’s burden to
18 demonstrate his *innocence* by a preponderance of the evidence in this proceeding. In fact, the
19 appellate court’s determination that the evidence was insufficient to support Simon’s convictions means
20 only that there was not enough evidence presented at trial for a reasonable jury to find him guilty
21 beyond a reasonable doubt. A finding of insufficient evidence to satisfy the most demanding standard of
22 proof to convict a defendant of a crime is not, at all, equivalent to finding that a particular defendant is

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24 ¹¹¹ AGRL Exs. at pp. 254-255.

25 ¹¹² App. at p. 2.

26 ¹¹³ *Gonzalez v. California Victim Comp. Bd.* (2023) 98 Cal.App.5th 427; *Diola, supra*, 135 Cal.App.3d at
27 p. 588 n. 7; see also *Tennison v. Cal. Victim Comp. and Gov. Claims Bd.* (2007) 152 Cal.App.4th 1164,
28 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 more likely innocent than not of committing the crime. Indeed, the evidence might prove by a
2 preponderance that the defendant is more likely guilty than innocent, yet still be insufficient to convict.
3 Accordingly, the appellate court's reversal of Simon's convictions for insufficient evidence fails to
4 persuade that he is likely innocent of the underlying charges.

5 Incidentally, the jury's acquittal of Simon's co-defendants, even if potentially exculpating, fails to
6 demonstrate his innocence. The jury's verdict reflects uncertainty as to who committed the assault and
7 criminal threats, not whether those crimes occurred. Although Eric was unable to positively identify
8 Simon's co-defendants during trial, Gloria was. Not only did she pursue the assailants as she called 9-
9 1-1 but did not hesitate to fully cooperate with law enforcement by participating in two in-field lineups,
10 positively identifying Simon's co-defendants, one of which as the gunman. Eric's refusal to identify
11 Simon's co-defendants during the trial is unsurprising as he also refused to participate in the in-field
12 lineups at the time of the crime, stating that he was fearful of retaliation.¹¹⁴ It is reasonable to infer that
13 Eric's fear of reprisal continued to and through the trial, as he lived only a few blocks away from the
14 assailants and indicated that he saw them together regularly. More importantly, the acquittal of Simon's
15 co-defendants is not determinative as to Simon's guilt or innocence. There is ample evidence
16 identifying Simon as the culprit who aided and abetted the assault with a firearm and criminal threats.
17 Reasonable doubt to convict Simon's co-defendants of these crimes does not preclude CalVCB from
18 finding insufficient evidence of Simon's innocence.

19 **3. It is More Likely than Not Simon Committed the Charged Crimes**

20 It is undisputed that Simon was one of the three men who confronted Eric at his home at about
21 3:00 a.m. on April 18, 2021. Eric repeatedly identified Simon as one of the perpetrators, stating that
22 when he opened the door, he immediately recognized Simon as his best friend's brother.¹¹⁵ In fact,
23 because Eric knew Simon, he did not believe there was a problem.¹¹⁶ Similarly, Gladys positively
24 identified Simon as one of the three men who confronted her son, first during an infield lineup and later
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26 ¹¹⁴ AGRL Exs. at pp. 255, 673.

27 ¹¹⁵ AGRL Exs. at pp. 249, 258.

28 ¹¹⁶ AGRL Exs. at p. 258.

1 at trial.¹¹⁷ Notably, Simon has never denied being present that night. Nor has Simon denied that I.R.
2 possessed a gun that he pointed at Eric's chest while asking if he was ready to die.

3 While the jury's verdict reflects reasonable doubt as to the identity of the two men who
4 accompanied Simon, the administrative record reveals it was likely R.E. and I.R. While Simon and R.E.
5 are brothers, Simon and I.R., the alleged gunman, also had a personal relationship. Eric testified that
6 he regularly saw Simon, R.E., and I.R. hanging out at the house down the street, which was later
7 identified as R.E.'s apartment.¹¹⁸ He could see R.E.'s apartment from his house and saw Simon, R.E.,
8 and I.R. there "all the time."¹¹⁹ Moreover, Officer Rowland testified that the physical altercation at TTT
9 Tavern started because Simon insulted another patron's wife and when the fight moved outside, I.R.
10 physically fought the patron while Simon was stopped by a bouncer.¹²⁰ Simon, R.E., and I.R. were
11 briefly detained while Simon and R.E.'s cousin was arrested for public intoxication.¹²¹ Being detained
12 and watching someone they knew get arrested provided them with a common purpose to confront and
13 threaten Eric. This was more than a mere association, but rather, the group's misguided effort to
14 retaliate for the bar fight and Simon and R.E.'s cousin's arrest. After being released, the three men
15 were together for about an hour before they all showed up at Eric's house, banging on his front door,
16 and threatening him. While these circumstances may be insufficient to prove beyond a reasonable
17 doubt that Simon knew of the gunman's criminal intent, they fail to preclude such an inference in this
18 administrative proceeding where the burden of persuasion falls upon Simon.¹²²

19 Evidence in the record strongly suggests that Simon knew I.R. had a firearm at the time of the
20 crime. The physical altercation at TTT Tavern took place at closing time, about 2:00 a.m. Officer
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22 ¹¹⁷ AGRL Exs. at pp. 277-278, 673-674.

23 ¹¹⁸ AGRL Exs. at pp. 249-253.

24 ¹¹⁹ AGRL Exs. at p. 253.

25 ¹²⁰ AGRL Exs. at pp. 329-332.

26 ¹²¹ AGRL Exs. at pp. 324, 378, 673.

27 ¹²² *Diola v. State Bd. of Control* (1982) 135 Cal.App.3d 580, 588 n.7 (noting that while "Innocence might
28 well be predicated upon a reasonable doubt of guilt," the "board's section 4900 determination is a civil
determination of culpability" that requires the claimant to "carry the burden of proof of innocence by a
preponderance of the evidence").

1 Rowland testified that when Simon, R.E., and I.R. were detained and searched for weapons, none were
2 found.¹²³ He also testified that Eric's residence was only a 10 to 15 minute walk from TTT Tavern, but
3 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.¹²⁴
4 Simon never explained what occurred during that hour or where the three men were. However, the men
5 had ample time to retrieve a firearm before going to Eric's to threaten him. That the gun was loaded
6 may be inferred from the nature of I.R.'s verbal threats to shoot Eric immediately.

7 Further, when Eric answered the door, he saw Simon and two other men standing close
8 together in a half circle in front of the door.¹²⁵ I.R. was in the middle, slightly behind Simon.¹²⁶ Eric
9 testified that the gunman pointed the gun at him "almost right away" and for eight or nine minutes
10 repeatedly asked him if he wanted to die that night.¹²⁷ Based on the proximity of where Simon and I.R.
11 were standing, next to each other on a "little square" cement area right in front of the door, it may be
12 reasonably inferred that Simon heard I.R. repeatedly threaten Eric's life. It may be further inferred that
13 Simon observed the gun during the eight or nine minutes that I.R. pointed it at Eric's chest. At no point
14 did Simon seem surprised by the gun or attempt to stop or deescalate the situation. To the contrary,
15 Simon continued to yell at Eric while I.R. was pointing a gun at his chest. Simon only apologized once
16 Gladys got "in their face" and chased them off.¹²⁸ Thus, Simon continued to escalate the encounter
17 during and immediately after the assault with a firearm and criminal threats.

18 Finally, the record reflects that Simon instigated the confrontation. Eric repeatedly testified that
19 he only recognized Simon and did not know the other two men. What's more, the men knew Eric's
20 name, which suggests that Simon was the one who led R.E. and I.R. to Eric's house, still angry about
21 the bar fight and his cousin being arrested.¹²⁹ All three men were yelling and screaming, but Simon was

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23 ¹²³ AGRL Exs. at pp. 331-332.

24 ¹²⁴ AGRL Exs. at pp. 244, 325-327, 673.

25 ¹²⁵ AGRL Exs. at pp. 254-255, 263.

26 ¹²⁶ *Ibid.*

27 ¹²⁷ AGRL Exs. at pp. 264-265.

28 ¹²⁸ AGRL Exs. at pp. 245, 247.

¹²⁹ AGRL Exs. at p. 263.

1 “doing most of the talking for them,” accusing Eric of being involved.¹³⁰ R.E.’s apartment was only a few
2 blocks away from Eric’s home, leaving Simon, R.E., and I.R. more than enough time to retrieve a
3 firearm before showing up at Eric’s at 3:00 a.m. to threaten him. Because Simon led R.E. and I.R. to
4 Eric’s home and I.R. pulled the gun out “almost right away,” it is reasonable to assume that threatening
5 to kill Eric with a firearm was part of the plan.

6 As urged by the Attorney General, Simon has a lengthy criminal history, which includes felony
7 convictions for robbery and resisting an executive officer.¹³¹ Between June 2016 and June 2022, Simon
8 had fourteen criminal cases filed against him in Kern County and pled guilty to domestic violence
9 charges five times.¹³² According to the probation report, he violated probation numerous times and “is a
10 danger to society.”¹³³ At a minimum, in this informal proceeding where traditional rules of evidence do
11 not apply, Simon’s prior convictions may be considered as impeachment evidence of his credibility, as
12 well as to show intent or the absence of mistake.¹³⁴ Although this factor is incriminating, it is of relatively
13 minimal inculcating weight.¹³⁵

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

16 **4. Overall Evidence Fails to Demonstrate Innocence**

17 After considering all the inculcating and exculcating evidence detailed above, Simon has failed
18 to prove he is more likely innocent than guilty of his vacated convictions for aiding and abetting assault
19 with a firearm and criminal threats. The burden rests upon Simon to affirmatively demonstrate that he
20 did not commit these offenses, or they never occurred. To that end, it is Simon’s burden to show that,
21 on the night of the crime, he did not know the gunman intended to commit assault with a firearm and
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23 ¹³⁰ AGRL Exs. at p. 673.

24 ¹³¹ AGRL at pp. 5-11.

25 ¹³² AGRL at p. 6.

26 ¹³³ AGRL at p. 4.

27 ¹³⁴ Evid. Code, §§ 788, 1101; *People v. Wheeler* (1992) 4 Cal.4th 284; Cal. Code Regs., tit. 2, § 641,
subd. (d).

28 ¹³⁵ Even if this factor is excluded, the result of this decision remains the same given the overall record.

1 criminal threats and that before or during the commission of the crime, he did not intend to aid and abet
2 the gunman in an assault with a firearm and criminal threats against Eric.¹³⁶ Simon's sole reliance on
3 the reversal of his convictions due to insufficient evidence is misguided. An appellate court's
4 determination that insufficient evidence established a claimant's *guilt* for purposes of a criminal
5 proceeding, is not sufficient to establish a claimant's *innocence* for purposes of Penal Code section
6 4900. Moreover, the administrative record before the CalVCB includes additional evidence not
7 presented at trial. Thus, the CalVCB remains free to determine whether, in its view, the weight of
8 evidence presented in this administrative proceeding satisfies Simon's burden to prove his innocence
9 by a preponderance of evidence.

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

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

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28 ¹³⁶ CALCRIM 401.

1 **V. Conclusion**

2 In accordance with subdivision (a) of Penal Code section 4900, the undersigned Hearing
3 Officer recommends that CalVCB deny Simon's claim. He has failed to demonstrate by a
4 preponderance of evidence that he did not commit the offenses for which he was convicted and
5 imprisoned. Simon is, therefore, ineligible for compensation as an erroneously convicted person.
6

7 Date: June 26, 2024

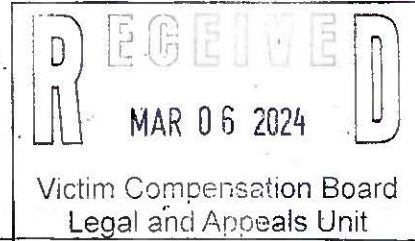
Kristen Sellers

8 _____
9 Kristen Sellers
10 Hearing Officer
11 California Victim Compensation Board
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REBUTTAL RECEIVED

TRUMAN SIMON
C.D.C. # 6576 BV
5150 O'Byrnes Ferry Rd.
Jamestown, California 95327

PETITIONER / PLAINTIFF IN PRO PER



TRUMAN SIMON

Petitioner / Plaintiff,

vs.

OFFICE OF ATTORNEY
GENERAL, et al.

Defendant(s) / Respondent(s).

Case No. 22-ECO-21

PROOF OF SERVICE BY MAIL

I am a state prisoner currently confined at Sierra Conservation Center, and over 18 years old. I am [not] a party to this action. My address is: 5150 O'Byrnes Ferry Road, Jamestown, CA. 95327. I am readily familiar with this prison's practice for collecting and processing of documents for mailing with the United States Postal Service. The documents are placed in a mail bag and thereafter deposited with the with the United States Post Office on the next business day.

On 2-25-24, I served the documents identified below by placing copies in a sealed, postage-paid envelope and giving the envelope to a correctional officer at Sierra Conservation Center to be deposited in the United States Mail and delivered to the parties listed below:

DOCUMENT(S) SERVED

DEFENDANT'S RESPONSE TO PROPOSED BY WAY
OF LETTER BRIEF

PARTY(S) SERVED

GOVERNMENT CLAIMS OFFICE
400 R STREET, 5TH FLOOR
SACRAMENTO, CALIFORNIA 95832

ATTORNEY GENERAL'S OFFICE
455 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94103

Considering my state prisoner status and the manner in which I served the foregoing documents, I am entitled to the benefit of the "prison mailbox rule" as set forth in *Houston v. Lack*, 487 U.S. 266 (1988) and *Moore v. Twomey*, 120 Cal.App.4th 910 (2004). I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on the date specified below, at Jamestown, California.

2-25-24
DATE

TRUMAN SIMON
PRINTED NAME

f. Simon
SIGNATURE

1 TRUMAN SIMON CDC #BVL6578
2 5150 O'BYRNES FERRY ROAD
3 JAMESTOWN, CALIFORNIA 95327
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8 CALIFORNIA VICTIM CLAIM BOARD
9 CALVCB

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12 TRUMAN SIMON
13 CLAIMANT,
14 VS,
15 OFFICE OF ATTORNEY GENERAL
16

CLAIM NO. 22-ECO-11

17
18 TO: GOVERNMENT CLAIM BOARD AND
19 ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA
20 COMES NOW, TRUMAN SIMON, SUBMITS
21 THIS LETTER BRIEF IN SUPPORT OF HIS CLAIM AND
22 IN OPPOSITION TO ATTORNEY GENERAL'S RESPONSE.

23 THIS BRIEF IS PREDICATED ON THE FOLLOWING:
24 1. THE CLAIMANT WAS FOUND TO BE
25 INNOCENT OF THE CHARGE OF AIDER AND ABETTOR OF THE
26 OFFENSE (CRIMINAL THREAT) AND (ASSAULT WITH A FIREARM)
27 WITHIN THE MEANING OF PENAL CODE SECTIONS 245(A)(2),
28 AND PENAL CODE SECTION 422.

1 2. the courts findings have the
2 preclusive affect AND bar Relitigation of the
3 merits of court finding insufficient evidence.
4

5 3. the Attorney General MAY not
6 Act AS A JUDICIAL FACT FINDER AFTER A COURT HAS
7 FOUND INSUFFICIENT EVIDENCE TO SUSTAIN CHARGES
8 dismissed in violations of the Rule of Separation
9 of Powers. [see Annexed case People v. Simon
10 2020 CAL. APP. unpublished LEXIS 8636]

11 4. the Record reflect there is no
12 evidence of CRIMINAL intent shared by
13 CLAIMANT with respects to the offenses
14 CRIMINAL threat AND ASSAULT with a FIREARM
15 which the proposed decision would violate the
16 Rule of stare decisis.

17 wherefore, this BOARD should not
18 adopt the proposed decision AND should adopt
19 the demands of the LAWS cited in the unpublished
20 court opinion case of TRUMAN Simon cited supra,
21 AND because there is no ADDITIONAL evidence to
22 consider that would refute the findings of the
23 COURT OF APPEALS.
24

25
26 Date: february, 25, 2024

Respectfully submitted,

TRUMAN Simon
CLAIMANT

27
28



Warning

As of: February 24, 2024 8:48 PM Z

People v. Simon

Court of Appeal of California, Fifth Appellate District

December 29, 2020, Opinion Filed

F078189

Reporter

2020 Cal. App. Unpub. LEXIS 8636 *; 2020 WL 7764963

THE PEOPLE, Plaintiff and Respondent, v. TRUMAN DARNELL SIMON, Defendant and Appellant.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

Prior History: [*1] APPEAL from a judgment of the Superior Court of Kern County, No. RF007944A, Gregory A. Pulskamp, Judge.

Core Terms

firearm, gunman, assault, aiding and abetting, gun, criminal purpose, insufficient evidence, aider and abettor, confronted, no evidence, bar fight, perpetrator's, convicted, front, door, criminal threat, yelling, commission of a crime, reasonable inference, altercation, inferring

Counsel: Denise M. Rudasill, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Kathleen A. McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

Judges: SNAUFFER, J.; SMITH, J. concurred. POOCHIGIAN, Acting P. J., Dissenting.

Opinion by: SNAUFFER, J.

Opinion

Truman Darnell Simon was involved in altercation at a bar. After the altercation he, along with two other men, confronted the victim regarding the events at the bar. During the confrontation, one of the men accompanying Simon produced a firearm and threatened the victim's life. Simon was convicted of aiding and abetting assault with a firearm and criminal threats.

Simon now argues the evidence was insufficient to sustain the convictions. We agree. The evidence failed to sufficiently prove he knew of and intended to assist the gunman's crimes. The judgment is reversed.

BACKGROUND

Charges

The Kern County District Attorney charged Simon with two crimes: Assault with a firearm (Pen. Code,¹ § 245, subd. (a)(2)) and criminal [*2] threats (§ 422). The charges included three enhancement allegations: A prior strike conviction (§§ 667, subds. (b)-(i) & 1170.12, subds. (c)-(j)), a prior serious felony conviction (§ 667, subd. (a)), and a prior prison commitment (§ 667.5, subd. (b)).

Trial Evidence

Simon, his brother Royontae Elliot, and Isaachar Ray were involved in a physical altercation with other people at a bar after midnight. A police officer patrolling the area noticed the fight and detained the three men. The officer pat-searched them for weapons but found none. The men were ultimately released.

¹Undesignated statutory references are to the Penal Code.

Around an hour later, Simon and two males started "banging" on the front door to a residence "within walking distance" of the bar. The eventual victim answered the door and saw three men standing in a "half circle." The trio started yelling at the victim; Simon was the most vocal. It was clear the trio was looking for someone other than the victim but still wanted to know if he was "connected" to the incident at the bar.

"Almost right away," the man in the back brandished a firearm, pointed it at the victim, and asked him if he was ready to die. The conversation continued for "about ten minutes" before the commotion awakened the victim's mother. She confronted the trio, asked why "they" had a "gun," [*3] and told them to leave. As the trio complied by dispersing, Simon apologized.

Nearly 20 minutes later, law enforcement detained Simon and Ray near Elliot's apartment. The apartment is down the street and visible from the victim's house. Afterwards, Elliot was detained in the same location. The victim's mother identified the three men as the same men she confronted outside her home.

Law enforcement subsequently searched Elliot's apartment "for ... anything that would indicate that a possible firearm could have been" present. The search was fruitless.

Verdict and Sentence

Simon and Elliot were tried as direct aiders and abettors. Ray was the alleged gunman. Elliot and Ray were acquitted but Simon was convicted of both crimes. The court found his prior conviction allegations true. He was sentenced to serve 11 years in state prison.

DISCUSSION

Simon claims his convictions are supported by insufficient evidence. As noted, he was tried as a direct aider and abettor.² After carefully reviewing the record, we conclude the evidence is insufficient to prove he

²There are two distinct forms of aiding and abetting liability. One, a person is liable for aiding and abetting intended crimes. Two, a person is liable for aiding and abetting intended crimes and any other reasonably foreseeable crimes. (*People v. Chiu* (2014) 59 Cal.4th 155, 158, 172 Cal. Rptr. 3d 438, 325 P.3d 972.) The latter theory was not presented to the jury and is not at issue.

aided and abetted the alleged crimes.

"When considering a challenge to the sufficiency of the evidence to support a conviction, we review [*4] the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27, 82 Cal. Rptr. 3d 323, 190 P.3d 664.) "We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence." (*Ibid.*) "We cannot, however, go beyond reasonable inferences into the realm of speculation, conjecture, surmise, or guesswork." (*People v. Perez* (2017) 18 Cal.App.5th 598, 607, 226 Cal. Rptr. 3d 820.)

"To prove that a defendant is an [aider and abettor] the prosecution must show that the defendant acted 'with knowledge of the criminal purpose of the perpetrator and with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.'" (*People v. Gomez* (2018) 6 Cal.5th 243, 279, 240 Cal. Rptr. 3d 315, 430 P.3d 791.) "When the offense charged is a specific intent crime, the accomplice must 'share the specific intent of the perpetrator'; this occurs when the accomplice 'knows the full extent of the perpetrator's criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator's commission of the crime.'" (*People v. McCoy* (2001) 25 Cal.4th 1111, 1118, 108 Cal. Rptr. 2d 188, 24 P.3d 1210.)

The evidence here is insufficient [*5] to prove Simon was an aider and abettor for two independent reasons: (1) there is no evidence he shared the gunman's criminal purpose, and (2) there is no evidence he intended to aid and abet any crimes.

The prosecution's inability to definitively prove the gunman's identity and to locate the brandished firearm are fatal defects in the evidence. Without this evidence, Simon's relationship to the gunman is unknown. The lone reasonable inference the evidence permits is that their relationship was amicable due to the simple fact they were together. Simply knowing a person does not impute knowledge of that person's criminal purpose. Without establishing a more definitive relationship, inferring Simon was aware of and shared the gunman's

criminal purpose is not reasonably possible.³ Guilt by mere association is not guilt beyond a reasonable doubt.

Simon is likewise not linked to the firearm. There is no evidence he owned the firearm or possessed it at some point prior to or after the crimes. His awareness of the firearm is a prerequisite necessary to reasonably infer he shared the gunman's criminal purpose. But inferring his knowledge of its presence in this case invites unwarranted speculation. [*6]

Indeed, the record discloses no evidence Simon was aware of the firearm while the crimes were committed. The testimony indicates the gunman was behind Simon without any further detail. There is no evidence the firearm was visible to Simon. And the threat itself did not reference the firearm.⁴ Consequently, inferring his knowledge of the firearm's presence is unreasonable. Without that inference, proving the shared criminal purpose element is not possible.⁵

Similarly missing is any evidence consistent with a criminal intent. There is no evidence Simon personally committed any crimes at the victim's house. His presence alone does not prove aiding and abetting. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1055, 191 Cal. Rptr. 3d 182, 354 P.3d 90; see *People v. Lewis* (2001) 26 Cal.4th 334, 369, 110 Cal. Rptr. 2d 272, 28 P.3d 34 [evidence of presence and "intimate

knowledge" of crimes alone cannot distinguish an accomplice from a mere eyewitness because it is insubstantial and speculative].) Neither can his "failure to take action to prevent a crime"⁶ (*People v. Lara* (2017) 9 Cal.App.5th 296, 322, 215 Cal. Rptr. 3d 91.)

The record does, of course, establish Simon went to the victim's house for a purpose related to the incident at the bar. And the jury could reasonably believe he had an amicable relationship with the gunman. But confronting a person, even while angry, is not inherently criminal. Simon's decision [*7] to go to the victim's house for a confrontational purpose is unquestionably distinct from deciding to go there with a specific criminal purpose intent on committing crimes. Without evidence connecting him to the gunman or the firearm it is impossible to infer, beyond a reasonable doubt, the requisite intent to aid and abet necessary to prove the crimes.⁷

In sum, there is no reasonable, credible, and solid evidence Simon shared the gunman's criminal purpose, knew of the firearm's presence, or intended to aid and abet any crime. Concluding otherwise would require conjecture and speculation. Accordingly, the evidence was insufficient to prove the crimes.

³In contrast, for example, two individuals with a proven history of repeatedly committing specific crimes together, utilizing a common plan or scheme, and which crimes exhibit distinctive or hallmark features might well permit the inferences necessary to prove aiding and abetting a crime. (E.g. *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 152, 112 Cal. Rptr. 3d 746, 235 P.3d 62 ["prosecution's argument ... that it was probable [defendants] acted in concert[] because they had a history of doing so ... was a proper argument based upon reasonable inferences"].) No such evidence is presented here.

⁴There is evidence the victim's mother confronted the group about the firearm. But at that point the gunman was "just holding" the firearm and the assault was already complete. Knowledge of the firearm after the crimes were complete, without more, does not alter the analysis.

⁵Because the evidence does not prove Simon shared the gunman's criminal purpose, it necessarily cannot prove his intent to commit the crimes. An individual cannot intend to aid and abet another person's crime without first knowing what crime that person intends to commit. We nonetheless separately examine the evidence relating to intent to aid and abet.

⁶The People argue "[t]here was no evidence that [Simon] objected or tried to distance himself from the group after the gunman pulled out the firearm and threatened" the victim. A similar argument was advanced in the trial court. As mentioned, there is no evidence Simon was aware of the firearm before the assault was complete. Neither is there evidence he could prevent the threat. Although the record discloses the threat was made "more than once" there is no further explanation. Uttering the threat completed the crime. To conclude Simon had the opportunity to prevent either crime but actively chose not to would require engaging in impermissible conjecture.

⁷We note that flight from the crime scene is also relevant to determining an alleged aider and abettor's guilt. (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1080, 172 Cal. Rptr. 3d 543.) Here, Simon did not flee. Rather, he left the crime scene—while apologizing—at the victim's mother's request. And he did nothing to conceal his participation in a crime which would suggest a guilty conscience. As far as the record reveals, he was entirely cooperative with law enforcement during his detention, identification, and arrest. This conduct is not consistent with aiding and abetting a crime. (See *id.* at p. 1081 [relevant factors include "conduct before and after the offense"].)

DISPOSITION

The judgment is reversed. Upon remand the trial court is directed to vacate the convictions and enter a judgment of acquittal on each count.

SNAUFFER, J.

I CONCUR:

SMITH, J.

Dissent by: POOCHIGIAN, Acting P. J.

Dissent

POOCHIGIAN, Acting P. J., Dissenting.

I respectfully dissent from the majority opinion's reversal of the judgment. It is a close question, but I agree there is insufficient evidence Simon knew one of his companions possessed a gun and aimed it at Hernandez. While Simon's conviction in count 2 for criminal threats is not supported by substantial [*8] evidence, I would reduce his conviction in count 1 for assault with a deadly weapon to the lesser included offense of simple assault, because there is substantial evidence to support Simon's conviction as an aider and abettor of assault.

"A 'person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.' [Citation.]" (People v. Marshall (1997) 15 Cal.4th 1, 40, 61 Cal. Rptr. 2d 84, 931 P.2d 262; People v. Nguyen (2015) 61 Cal.4th 1015, 1054, 191 Cal. Rptr. 3d 182, 354 P.3d 90.) In determining the requisite intent, "[e]vidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction." [Citation.]" (Nguyen, at p. 1055.)

"[I]n general neither presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission. [Citations.] However, [a]mong the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense." [*9]

(People v. Campbell (1994) 25 Cal.App.4th 402, 409, 30 Cal. Rptr. 2d 525; People v. Nguyen, supra, 61 Cal.4th at p. 1054.) Whether defendant aided and abetted the crime is a question of fact, and on appeal all conflicts in the evidence and reasonable inferences must be resolved in favor of the judgment. (People v. Frandsen (2019) 33 Cal.App.5th 1126, 1147-1148, 245 Cal. Rptr. 3d 658.)

"Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment." [Citations.]" (People v. Bean (1988) 46 Cal.3d 919, 932-933, 251 Cal. Rptr. 467, 760 P.2d 996; People v. Rodriguez (1999) 20 Cal.4th 1, 11, 82 Cal. Rptr. 2d 413, 971 P.2d 618.)

First, the jury's not guilty verdicts for Ray and Elliot do not undermine Simon's conviction as an aider and abettor. "[F]or a defendant to be found guilty under an aiding and abetting theory, someone other than the defendant must be proven to have attempted or committed a crime; i.e., absent proof of a predicate offense, conviction on an aiding and abetting theory cannot be sustained." (People v. Perez (2005) 35 Cal.4th 1219, 1225, 29 Cal. Rptr. 3d 423, 113 P.3d 100.) Hernandez consistently testified Simon [*10] was one of the men who confronted him at his house, Simon primarily did the yelling and shouting at him, and that Simon was not the man who pulled the gun and threatened him. By finding Simon guilty of the charged felony offenses of assault with a firearm and criminal threats, the jury necessarily found that the incident at Hernandez's house occurred, Simon was there with another man who threatened Hernandez, and Simon aided and abetted the gunman's repeated threats to kill him.

By finding Elliot and Ray not guilty, however, the jury found there was insufficient evidence to prove they were the two suspects who were with Simon that night. The record strongly implies the jury questioned the credibility of Ms. Ochoa's identifications of the two men because she incorrectly recounted the circumstances of the infield show ups and failed to tell officers that her daughter was also present and saw the suspects. More

importantly, Hernandez refused to participate in the infield show ups. At trial, he positively identified Simon and explained their past acquaintance but, when asked if he recognized anyone in the courtroom who was the gunman, he said no. Hernandez further testified he was "skeptical" [*11] whether Ray or Elliot came to his house with Simon that night.

There is, however, overwhelming evidence that Simon was one of the men who confronted Hernandez. Hernandez had previously met Simon, and thought everything would be okay when he opened the door because he immediately recognized him. Simon arrived at Hernandez's front door at 3:00 a.m. with two men and accused Hernandez of being involved in a fight at a bar. There is undisputed evidence that Simon was also at the nearby bar about an hour earlier and was involved in an altercation that started because he was talking to the wife of a Hispanic male. Simon was briefly detained and released, but his cousin was arrested for intoxication and taken to the police department.

Hernandez testified the three men were standing close together on the small front porch "like in a half circle" or a "little arc." Defendant stood on the right, the gunman was in "the middle in the back," and the third man was on the left side.

The three men were yelling and screaming at him, but Simon "was doing most of the talking for them. He was like, oh, they were at the bar, there was a bar fight, they went to jail or something. They were looking for some [*12] guy, which I do not remember the name, but they did say the name and somehow they were trying to connect me to everything which did not make any sense." The man with the gun pointed the weapon at Hernandez's chest "and said 'Are you ready to die?'"

The entirety of the record shows that Simon knew the two other men and intended to join them to angrily confront and threaten Hernandez based on their mistaken belief that he was somehow involved in the bar altercation. While all three men were shouting at Hernandez when he opened the front door, Simon did most of the yelling about the bar fight and someone getting arrested. In addition, the men knew Hernandez's name. Since Hernandez only knew Simon, it is reasonable to infer that Simon led his companions to Hernandez's house and told them his name.

The three men stood close together in a half circle in front of the door. Simon stood next to the gunman as the gunman repeatedly asked Hernandez whether he wanted to die that night. It was reasonable for the jury to

find that Simon heard the man who was standing next to him repeatedly threaten Hernandez's life. It was also reasonable to find that Simon shared the direct perpetrator's intent since [*13] Simon's conduct was the reason for the bar fight, he led the men to Hernandez's house, and he was the person who was primarily accusing Hernandez of complicity in the bar fight.

There is insufficient evidence, however, that Simon knew one of his compatriots had a gun, intended to use the gun, or that he actually saw the man pull the gun and aim it at Hernandez. The verbal threats were consistent with Simon's conduct in leading the men to Hernandez's house, and his angry demeanor in accusing Hernandez of somehow being involved in the bar fight that resulted in their cousin's arrest. Hernandez testified the gunman stood in the middle, between Simon and the third man, but the gunman was slightly behind both of them. Based on their positions, Simon certainly must have heard the gunman threaten to kill Hernandez, but there is no direct or circumstantial evidence that Simon knew he pulled the gun or saw it aimed at Hernandez as the verbal threats were made.

Simon was convicted of count 2, criminal threats in violation of Penal Code section 422,¹ which requires proof that the threat "was 'on its face and under the circumstances in which it [was] made, ... so unequivocal, unconditional, immediate, and specific as [*14] to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat.'" (People v. Toledo (2001) 26 Cal.4th 221, 227-228, 109 Cal. Rptr. 2d 315, 26 P.3d 1051.) Since there is insufficient evidence Simon knew his companion had a gun, Simon's conviction as an aider and abettor of criminal threats must be reversed as there is no evidence that the gunman's threats against Hernandez had the immediate prospect of execution of the threat.

Simon was also convicted of count 1, assault with a firearm, in violation of section 245, subdivision (a)(2). "An assault is 'an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.' (§ 240.)" (People v. Murray (2008) 167 Cal.App.4th 1133, 1139, 84 Cal. Rptr. 3d 676.) An assault is aggravated when committed with a firearm. (§ 245, subd. (a)(2); People v. Milward (2011) 52 Cal.4th 580, 585, 129 Cal. Rptr. 3d 145, 257 P.3d 748; In re Jonathan R. (2016) 3 Cal.App.5th 963, 970, 208 Cal. Rptr. 3d 159; People v. Cook (2001) 91 Cal.App.4th

¹ All further statutory references are to the Penal Code unless otherwise stated.

910, 920, 111 Cal. Rptr. 2d 204; People v. Fuller (1975) 53 Cal.App.3d 417, 421-422, 125 Cal. Rptr. 837.)

Given the insufficiency of the evidence regarding Simon's knowledge and intent regarding the firearm, his conviction as an aider and abettor of count 1 must also be reversed. However, the California Supreme Court has "long recognized that under ... sections 1181, subdivision 6, and 1260, an appellate court that finds that insufficient evidence supports the conviction for a greater offense may, in lieu of granting a new trial, modify the judgment of conviction to reflect a conviction for a lesser included offense." (People v. Navarro (2007) 40 Cal.4th 668, 671, 54 Cal. Rptr. 3d 766, 151 P.3d 1177, fn. omitted; People v. Bailey (2012) 54 Cal.4th 740, 748, 143 Cal. Rptr. 3d 647, 279 P.3d 1120.)

Simple assault (§ 240) [*15] is a lesser included offense of an aggravated assault or assault with a firearm. (People v. McDaniel (2008) 159 Cal.App.4th 736, 747-748, 71 Cal. Rptr. 3d 845; People v. Beasley (2003) 105 Cal.App.4th 1078, 1086, 1088, 130 Cal. Rptr. 2d 717.) While there is insufficient evidence of assault with a firearm, there is overwhelming evidence that Simon was an aider and abettor to simple assault. Simon led his two companions to Hernandez's house because he believed Hernandez had been involved in the bar fight. They banged on the front door at 3:00 a.m. and initiated an angry confrontation. Simon did most of the yelling and shouting, and, while he may not have known about or seen the gun, he was standing next to and slightly in front of the man who repeatedly yelled at Hernandez about whether he wanted to die. There is substantial evidence to find that Simon aided and abetted the direct perpetrator's repeatedly stated intent to harm Hernandez based on their mistaken belief he had been involved in the bar fight.

POOCHIGIAN, Acting P. J.

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 **Abraham Villalobos**

11 Claim No. 24-ECO-32

Proposed Decision

(Penal Code §§ 1485.55, 4900 et seq.)

12 **I. Introduction**

13 On May 6, 2024, Abraham Villalobos (Villalobos) submitted an application¹ for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900. In this claim, Villalobos requests compensation for the 5,629 days he was
16 erroneously imprisoned for murder in Los Angeles County Superior Court case number VA061360
17 based on the order granting the parties' joint motion to vacate his conviction, find him factually
18 innocent, and seal his arrest records.² Villalobos is represented by Joseph Trigilio of the Loyola Law
19 School Project for the Innocent. The Attorney General's Office is represented by Kathryn Althizer. The
20

21 _____
22 ¹ Villalobos' Application (App.) included an Erroneously Convicted Person Claim Form; the March 6,
23 2024, order granting the Joint Petition for Writ of Habeas Corpus, Motion to Vacate, and Motion for
24 Finding of Factual Innocence and to Seal the Record pursuant to Penal Code section 851.86; minutes
25 from the March 6, 2024, hearing in the case against Ronald Velasquez; a redacted copy of the "Joint
26 Petition for Writ of Habeas Corpus and Motion to Vacate Pursuant to Penal Code sections 1473(b) and
27 1473.7, and Motion for Finding of Factual Innocence Pursuant to Penal Code section 1485.55(b);"
minutes from the March 6, 2024, hearing in the case against Villalobos; the Abstract of Judgment filed
on June 24, 2022; a request for documents sent to the Department of Corrections and Rehabilitation
(CDCR) on behalf of Villalobos; CDCR records of Villalobos' in-custody movement; a letter and a fax
sent to CDCR on behalf of Villalobos requesting documentation confirming his incarceration and
release from prison and parole; and a letter from CDCR confirming the date of Villalobos' release from
prison and then parole.

28 ² Pen. Code, §§ 851.86, 1473, subd. (a)(2), and 1485.55.

1 matter was assigned to CalVCB Senior Attorney Caitlin Christian. As mandated by Penal Code
2 sections 851.865 and 1485.55, it is recommended that the CalVCB approve Villalobos' claim in the
3 amount of \$788,060 as indemnification for the injury sustained through this erroneous conviction if
4 sufficient funds are available upon appropriation by the Legislature.³

5 **II. Procedural History**

6 **A. Villalobos' Erroneous Conviction**

7 On September 28, 2000, Villalobos was arrested for the charges later filed against him in Los
8 Angeles County Superior Court case number VA061360.⁴ In that case, Villalobos was charged with
9 second degree murder with an enhancement for committing a crime for the benefit of a criminal street
10 gang.⁵ The co-defendant, Ronald Velasquez (Velasquez), was charged with first-degree murder with
11 enhancements for the personal use of a firearm and committing a crime for the benefit of a criminal
12 street gang. On October 23, 2001, the jury found both men guilty and found true all of the alleged
13 enhancements. On January 30, 2002, the superior court struck the finding Velasquez and Villalobos
14 committed this crime for the benefit of a criminal street gang. Villalobos was then sentenced to 15
15 years to life with a 15-year minimum parole eligibility date.⁶

16 **B. Initial Attempts at Post-Conviction Relief were Unsuccessful**

17 Villalobos' Motion for a New Trial was denied on January 31, 2002, and, on August 21, 2003,
18 the Court of Appeal affirmed his conviction and sentence in full.⁷ On March 14, 2007, Villalobos'
19 Petition for Writ of Habeas Corpus was denied. Villalobos was found suitable for parole on September
20

21 ³ Pen. Code, §§ 1485.55, subds. (b)-(c), 4904.

22 ⁴ The May 24, 2024, email from the Attorney General's Office responding to the CalVCB's May 10,
23 2024, request for a response on the issue of injury, confirming Villalobos' September 28, 2000, arrest.

24 ⁵ *People v. Ronald Velasquez, et al.* (August 21, 2003, B156742) [nonpub. opn.] at pp. 1, 12
25 [confirming the originally imposed enhancements for committing these crimes in furtherance of a
26 criminal street gang were stricken as to both Villalobos and Velasquez]; Cal. Code Regs., tit. 2, § 617.8,
subd. (b) [authorizing official notice of documents listed in Evidence Code section 452]; Evid. Code, §
452, subd. (d) [authorizing judicial notice of court records].

27 ⁶ App. at pp. 34, 70; *People v. Ronald Velasquez, et al.* (August 21, 2003, B156742) [nonpub. opn.] at
pp. 1, 12.

28 ⁷ *People v. Ronald Velasquez, et al., supra*, at pp. 2, 11.

1 18, 2015. He was released from custody on February 25, 2016, and deported to Mexico, where he
2 continues to reside.⁸ Villalobos remained on parole until March 6, 2024.⁹

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

4 On March 4, 2024, counsel for Villalobos, counsel for Velasquez, and the District Attorney's
5 office filed a "Joint Petition for Writ of Habeas Corpus and Motion to Vacate Pursuant to Penal Code
6 sections 1473(b) and 1473.7, and Motion for Finding of Factual Innocence Pursuant to Penal Code
7 section 1485.55(b)."¹⁰ On March 6, 2024, the court granted the parties' motion in full.¹¹ As to Villalobos
8 in particular, the court recalled, vacated, and set aside Villalobos' conviction based on new evidence,
9 found him factually innocent of all charges, and ordered his records be sealed.¹²

10 **D. Villalobos' Erroneously Convicted Person Claim**

11 On May 6, 2024, Villalobos submitted an Erroneously Convicted Person Claim Form requesting
12 compensation in the amount of \$993,160 in compensation, which included \$140 per day for each of
13 the 5,628 days Villalobos alleged he was imprisoned (e.g., from September 29, 2000, the date after his
14 arrest, through and including the date of his release, February 25, 2016) for his erroneous murder
15 conviction (e.g., \$787,920) and \$70 per day for 2,932 days served on parole (e.g., \$205,240) following
16 his release.¹³ At the CalVCB's request, his application was supplemented on May 8, 2024, with an
17 email confirming the abstract of judgment indicated Villalobos' imprisonment began on October 1,
18 2000, not September 28, 2000.

19 On May 10, 2024, Villalobos' claim was filed, and the Attorney General's Office was invited to
20 provide a response on the issue of injury only.¹⁴ On May 24, 2024, the Attorney General's Office
21 provided a response and supporting documentation establishing Villalobos correctly asserted he was

22 _____
23 ⁸ App. at pp. 34-35, 73-74.

24 ⁹ App. at pp. 34-35.

25 ¹⁰ App. at p. 13.

26 ¹¹ App. at pp. 8-12.

27 ¹² Pen. Code, § 851.86.

28 ¹³ App. at p. 3.

¹⁴ Pen. Code, § 4904, subd. (a).

1 originally imprisoned on September 28, 2000. Noting the law does not presently authorize
2 compensation for days served on parole, the Attorney General's Office contends Villalobos is entitled
3 to \$140 per day for 5,629 days of imprisonment, which includes the date of his arrest through and
4 including the date of his release (e.g. September 28, 2000, through and including February 25, 2016)
5 for a total of \$788,060 in compensation as indemnification sustained through his erroneous
6 incarceration. The administrative record closed on May 28, 2024.

7 **III. Statement of the Facts**

8 **A. The Crime**

9 At 2:50 a.m. on September 2, 2000, the victim, Michael, was at Dalila's apartment.¹⁵ Dalila and
10 her boyfriend were already asleep in their room. Mona, Dalila's daughter, was in the shower. Michael
11 was sitting on the living room sofa with Mona's friend Roberta when they heard the gate to the
12 apartment swing open and then shut. Roberta got up to glance out the window, told Michael two men
13 were approaching Dalila's apartment, and then returned to the couch. When the men knocked on the
14 door, Michael looked through the peephole. Michael left the living room to tell Mona through the
15 bathroom door that Velasquez was there. Mona asked Michael to tell Velasquez she was in the shower.
16 Michael returned to the living room and, as he began to open the door, repeated that Mona was in the
17 shower. Michael had only partially opened the door when someone reached in and shot him twice in
18 the chest. Michael fell back into the living room, and the two men outside fled. Dalila awoke to the
19 sound of the gunshots and called 9-1-1. Shortly thereafter, Michael was transported to the hospital,
20 where he was pronounced dead.¹⁶

21 **B. Initial Witness Statements**

22 Guillermina lived in the apartment below Dalila. Guillermina told police she heard gunshots and
23 then saw two Hispanic males running down the stairs from Dalila's apartment, through the courtyard,
24 and out onto the street where they got into a late 80's or 90's blue or black compact car that
25 immediately sped off. Based on the way the men got into the car, Guillermina suspected the driver was
26

27 ¹⁵ Witnesses are referred to by only a first or last name to protect their identities.

28 ¹⁶ App. at p. 17.

1 already seated inside.

2 Roberta told police she looked out the window after hearing the apartment building's gate open
3 and shut. She briefly watched as two men approached the apartment. Roberta then returned to the sofa
4 before one of the men loudly knocked and announced that he was looking for Mona. She watched as
5 Michael looked through the peephole and then went to the bathroom to tell Mona that Velasquez was at
6 the door. Michael returned to the door and, as he opened it, Roberta saw a muzzle flash and heard two
7 gunshots. Michael fell backward into the living room, and the two men ran off. Roberta described the
8 men as Hispanic males between the ages of 16 and 18 with shaved heads and no facial hair.¹⁷

9 According to Roberta the shooter wore a blue flannel shirt and dark pants. The other man wore a light
10 blue jersey with white letters. Roberta believed she could identify the two men if she saw them again.¹⁸

11 Mona told police that Velasquez, a member of the gang Brown Nation, and a man named
12 Torres, who belonged to a gang called Dog Patch, both called her several times that day to invite her to
13 a party at a motel that evening. During their last call, Torres and Velasquez were together and again
14 invited Mona to the party. Mona knew Velasquez and Torres were interested in her, but she was not
15 interested in either of them, and, as a result, each time they called, she declined their invitation. Yet,
16 Velasquez ended his last call to Mona by saying he was heading over to pick her up. Mona got into the
17 shower, and, when Michael told her Velasquez was at the door, Mona asked him to tell Velasquez that
18 she was in the shower. Moments later, Mona heard gunshots and yelling. By the time she was out of
19 the shower the suspects were gone.¹⁹ Shortly thereafter, Torres called Mona to ask who was with
20 Velasquez and what they were telling the police. Mona suspected Torres was the man with Velasquez
21 but noted Torres had long hair, not a shaved head like the man Roberta had seen.

22 Mona believed that she was the intended target of the shooting, not Michael. Mona explained
23 that, until about one week before the shooting, Mona was spending a lot of time with Dog Patch
24 members. However, she abruptly stopped hanging out with Dog Patch members when they learned
25

26 ¹⁷ App. at p. 19.

27 ¹⁸ App. at p. 19.

28 ¹⁹ App. at p. 19.

1 Mona's relatives were members of a Dog Patch rival gang, Tortilla Flats. A few days later, there was a
2 drive-by shooting at a house where many Dog Patch members hung out. Now, a few days after the
3 drive-by, Michael was shot in Mona's living room. Given the timing of these events, Mona worried Dog
4 Patch thought she shared the location of the Dog Patch house with members of Tortilla Flats and
5 blamed her for the drive-by. Mona noted that Torres was a member of Dog Patch. Velasquez was a
6 member of Brown Nation, not Dog Patch, but Mona believed Brown Nation and Dog Patch were allies
7 and that Brown Nation often did Dog Patch's "dirty work."²⁰

8 Dalila confirmed Velasquez and Torres called Mona several times that day. During their search
9 of the apartment, police took down the phone numbers from Mona's call log and reviewed an address
10 book. The address book had two entries for Velasquez, with the notation "BN," and another entry for
11 Cesar, whose father owned a blue Nissan sedan that was parked outside of Cesar's home after the
12 shooting.²¹

13 **C. Velasquez was Identified as the Shooter and Arrested**

14 1. Roberta was Reinterviewed at 4:30 a.m. and 12:40 p.m.

15 Despite initially saying she saw only the muzzle flash of the gun, at 4:30 a.m., just over an hour
16 after her initial interview, Roberta said she saw Velasquez fire the shots that killed Michael.²² Eight
17 hours later, at around 12:40 p.m. on September 2, 2000, Roberta was interviewed again. During this
18 interview, Roberta said she saw the shooter's hand and "believed" it was Velasquez. Despite originally
19 indicating the shooter was wearing a flannel shirt, and the other man was wearing a jersey, Roberta
20 had changed her mind. She now believed Velasquez was wearing a blue jersey, and, therefore, that the
21 shooter was wearing a blue jersey. Roberta confirmed that both Velasquez and Torres called Mona
22 several times that evening. Roberta shared Mona's belief that Dog Patch had identified Mona as a
23 "snitch" and sent Velasquez to shoot Mona, not Michael.²³ When Roberta looked at the first
24 photographic line-up, which contained a photo of Velasquez, she was "not sure" whether the shooter

25 ²⁰ App. at p. 20.

26 ²¹ App. at p. 21.

27 ²² App. at p. 21.

28 ²³ App. at p. 22.

1 was depicted. Yet, when she took a second look, she identified Velasquez as one of the men at the
2 door and claimed she saw Velasquez raise his hand and shoot Michael twice.²⁴

3 2. Mona was Reinterviewed at 4:30 a.m. and 1:00 p.m.

4 Police also reinterviewed Mona at 4:30 a.m. Mona said Michael swore “on everything he loved”
5 that Velasquez was at the door. Mona said Michael was not a gang member, and she did not know why
6 anyone would want to shoot him. Mona reiterated her belief that Dog Patch and other affiliated gangs
7 wanted to “get her” because they blamed her for the Dog Patch drive-by. She interpreted the shooting
8 to be a message that she was in danger. Mona spoke to the police again that afternoon, at around 1:00
9 p.m. on September 2, 2000. Mona reiterated that she received several calls from Velasquez and Torres
10 and one call from Cesar that day. Each time, they invited her to a party, but she declined. During their
11 last call, Velasquez, Torres, and Cesar were all together. Mona emphasized that she was the intended
12 target of the shooting because Dog Patch held her responsible for the recent drive-by of a house where
13 Dog Patch members hung out. Mona identified Velasquez and Cesar from photographic line-ups and
14 Torres from an individual photograph.²⁵

15 3. Velasquez was Arrested at 1:30 p.m. on September 2, 2000.

16 Officers began surveilling Velasquez’s residence at 11:00 a.m. on September 2, 2000. At
17 approximately 1:20 p.m., Velasquez emerged from his home with a friend. Velasquez was wearing a
18 light blue jersey with white numbers. As they walked down the street, Velasquez told his friend a story
19 and began to simulate having a gun in his hand and then firing the gun forward. He was arrested at
20 1:30 p.m. One particle of gunshot residue was found on Velasquez’s hand and another six were found
21 on his jersey.²⁶ After initially agreeing to talk to the police, once questioned about the murder,
22 Velasquez denied being involved and asked for a lawyer.

23 **D. Events Leading to Villalobos’ Identification and Arrest**

24 During her initial interview, Roberta said she saw the two men from the window but saw only the
25

26 ²⁴ App. at pp. 21-22.

27 ²⁵ App. at pp. 24-25.

28 ²⁶ App. at p. 26.

1 muzzle flash when Michael opened the door. She “recognized” the man with Velasquez, as she had
2 met him once before, but she did not know his name.²⁷ An hour and a half later, at 4:30 a.m., Roberta
3 reiterated that she saw both men approaching the apartment when she looked out the window and
4 again said she had seen the man with Velasquez once before but did not know his name.²⁸

5 During her interview eight hours later, at 12:40 p.m. on September 2, 2000, Roberta told the
6 police that when Velasquez reached in to shoot Michael, she “glanced” at the man he was with, but her
7 view was “not good.” Roberta had “thought about it real hard” since her initial interview, at
8 approximately 3:15 a.m., and believed the man with Velasquez was the man who approached her
9 boyfriend three weeks earlier at a restaurant and invited him to join Brown Nation. She did not know his
10 name but described him as having “a bigger face and bug eyes that stick out.” Roberta told police she
11 “wish[ed] for certain she knew who they were” but maintained she would be able to identify the man
12 with Velasquez if she saw him again.²⁹

13 Two days later, on September 4, 2000, Roberta said that, after conferring with her boyfriend,
14 going over the incident in her mind, and reenacting the incident, she recognized the man with
15 Velasquez because she had seen him three weeks earlier while at a restaurant with her boyfriend. She
16 said the man was a Brown Nation member whose name may be Villalobos.³⁰ On September 6, 2000,
17 Roberta told police she now remembered the man with Velasquez; he was a Brown Nation gang
18 member named Villalobos. Mona, who was also present said Brown Nation often had parties at motels
19 on the weekends, but she otherwise would not know where to find Villalobos.³¹

20 Later that day, a confidential informant provided police with a photo of Velasquez and his
21 associates, including a photo of Villalobos. When asked, the informant also provided police with
22 Villalobos’ home address, which was then used to obtain a DMV photo for use in a photographic line-

23
24
25 ²⁷ App. at p. 21.

26 ²⁸ App. at pp. 21-22.

27 ²⁹ App. at pp. 22-23.

28 ³⁰ App. at p. 23.

³¹ App. at p. 23.

1 up.³² On September 15, 2000, Roberta identified Villalobos as the man wearing the blue and white
2 flannel shirt. She was “positive” her identification was correct and again described Villalobos as having
3 “bulging” eyes.³³

4 On September 28, 2000, police searched Villalobos’ home. According to the resulting report,
5 Villalobos had “two plaid shirts” in his closet. Police did not photograph the shirts, nor did they note the
6 color or fabric. No gunshot residue was found on Villalobos or his clothing.³⁴ Villalobos was arrested
7 and taken into custody.³⁵ Villalobos agreed to talk to the police. He denied any involvement in the
8 shooting. Villalobos went to a party on the night of September 1, 2000, and stayed until around 2:00
9 a.m. on September 2, 2000, when he left with three friends: Billy, Antonio, and Racoon. Villalobos
10 denied going to Dalila’s apartment and did not know anything about the shooting.³⁶ There is no
11 indication police contacted Billy, Antonio, or Racoon to investigate his alibi.

12 **E. Guillermina’s October 5, 2000, Identification**

13 Despite originally saying she awoke from the sound of the gunshots, on October 5, 2000,
14 Guillermina said she was already awake when the two men entered the apartment building.³⁷
15 Guillermina said one of the men was banging on Dalila’s door and said “let me in” several times before
16 she heard Michael ask who was at the door. The visitor then identified himself as Velasquez and asked
17 for Mona. Michael responded that Mona was in the shower. Guillermina then heard Michael open the
18 door, repeating that Mona was in the shower.³⁸ Guillermina next heard two shots and then saw two
19 men run down the stairs, past her door, and out onto the street, where they got into a small blue or
20 possibly black Nissan or Honda. Guillermina said one of the men was young, had a light complexion
21 and short hair, and was wearing a blue and white football jersey. She did not get a good look at the
22

23 ³² App. at p. 27.

24 ³³ App. at p. 24.

25 ³⁴ App. at pp. 27, 32.

26 ³⁵ App. at p. 27.

27 ³⁶ App. at p. 28.

28 ³⁷ App. at pp. 24-25.

³⁸ App. at p. 26.

1 other man, who she said was wearing dark clothing. When she looked at the photographic line-ups,
2 Guillermina said Velasquez looked familiar, but she did not identify Velasquez or Villalobos as the men
3 she saw in the courtyard on September 2, 2000.³⁹

4 **F. Investigation Into Torres' Involvement**

5 On September 28, 2000, police searched Torres' home. During their search of Torres' room,
6 police found a blue and white plaid shirt and numerous pieces of paper with Torres' gang moniker and
7 gang graffiti. Torres was not taken into custody. Neither Torres' person, nor his blue and white plaid
8 flannel were tested for gunshot residue.⁴⁰

9 Police interviewed Torres on October 17, 2000. Torres said he was at his uncle's house all
10 night. He denied attending the motel party or even seeing Velasquez or Cesar that night. Torres said
11 he did not know Cesar or Velasquez well, did not hang out with them, and did not like people who were
12 affiliated with Brown Nation. Torres initially also denied knowing anyone who lived at Dalila's
13 apartment but then admitted he knew Mona's relatives were members of a Dog Patch rival gang.
14 Torres admitted he called Mona once, to invite her to his uncle's house. Torres knew Mona had slept
15 with some of his friends, and Torres hoped to sleep with her also. When confronted with the phone
16 records, which showed several calls both before and after the shooting, Torres admitted to calling
17 Mona one other time that evening but continued to deny calling her at any point after the shooting.⁴¹
18 Police did not follow up with Torres' uncle to confirm Torres' alibi.⁴²

19 **G. Evidence Presented at the Trial that Resulted in Villalobos' Erroneous Conviction**

20 1. Evidence of Third-Party Culpability was Not Presented

21 The court denied Villalobos' motion to introduce evidence of third-party culpability based on the
22 evidence indicating it was Torres, not Villalobos, who accompanied Velasquez to Dalila's apartment
23 that night, despite the call logs confirming Torres' repeated phone calls before and after the shooting,
24 as well as the shirts found in his closet. The court deemed the call logs admissible but held the content

25 ³⁹ App. at p. 26.

26 ⁴⁰ App. at pp. 28-29.

27 ⁴¹ App. at p. 29.

28 ⁴² App. at p. 29.

1 of those calls inadmissible.⁴³

2 2. Roberta and Guillermina Identified Velasquez as the Shooter

3 Roberta identified Velasquez as the shooter, adding he was wearing a blue jersey at the time of
4 the crime. She testified Villalobos was with Velasquez at the time of the shooting and wore a blue plaid
5 flannel. Roberta said she met Villalobos two or three times before she saw him on September 2, 2000.
6 In addition to meeting him at a restaurant with her boyfriend, Roberta saw Villalobos at least two other
7 times at her mother's apartment building. On one occasion, Villalobos even helped Roberta transport
8 her mother, when her mother's wheelchair broke. Roberta testified she "immediately" recognized both
9 men as they approached Dalila's apartment.⁴⁴

10 Despite being unable to identify the men who fled Dalila's apartment on the night of the
11 shooting, or during her interview on October 5, 2000, the day before trial, Guillermina identified
12 Velasquez as one of the men she saw dashing through the courtyard on September 2, 2000. Similarly,
13 although she previously reported she was unable to describe the man who was wearing the blue and
14 white jersey, at trial, Guillermina testified Velasquez was wearing a blue and white jersey when she saw
15 him run through the courtyard just after the shooting. She went on to also claim, for the first time, that
16 Velasquez had visited her apartment months prior to the shooting and identified himself as
17 Velasquez.⁴⁵

18 3. Mona and the Gang Expert Provided Motive and Context

19 Mona testified that Velasquez, Michael, and her brother, Adam, were all friends and frequently
20 hung out at Dalila's apartment. All three boys were members of a tagging crew called CLV until it
21 disbanded in the summer of 2000. After CLV disbanded, some of its members, including Velasquez,
22 joined a gang called Brown Nation. Other CLV members, including Adam, joined a gang called Tortilla
23 Flats. Mona admitted her cousin was also a member of Tortilla Flats, and the apartment where she
24 lived was in Tortilla Flats territory. Mona testified that Dog Patch and Tortilla Flats were rivals and that,
25

26 ⁴³ App. at pp. 29-30.

27 ⁴⁴ App. at p. 30.

28 ⁴⁵ App. at p. 31.

1 after several months of spending time with Dog Patch members, about one week before the shooting,
2 she abruptly stopped hanging out with Dog Patch members. Mona further testified that, on the day of
3 the shooting, she received several phone calls from Velasquez, a Brown Nation member, Torres, a
4 member of Dog Patch, and Cesar, a member of the East Side Longo, including at least one call from
5 Torres after the shooting.⁴⁶ Mona was not allowed to testify to what was discussed during those calls.

6 Two detectives testified as gang experts. The detectives confirmed that, after the tagging crew
7 CLV disbanded in the summer of 2000, many of its members joined either Brown Nation or Tortilla
8 Flats, which was a Dog Patch rival. One of the detectives indicated that he recently interviewed a
9 Brown Nation gang member, Reyes, during his investigation of an unrelated murder. Although Reyes
10 was not charged with or convicted of the murder he was arrested for, the detective testified that Reyes
11 committed a murder with a Dog Patch member and, during his interrogation for that crime, admitted
12 that Brown Nation and Dog Patch had “cliqued up.”⁴⁷ Based solely on Reyes statement and Mona’s
13 claims, the detective concluded Brown Nation had become a clique of Dog Patch, Tortilla Flats was
14 their mutual enemy, and Brown Nation members served as the “foot soldiers” for Dog Patch. The
15 detective therefore inferred Villalobos and Velasquez set out to shoot Mona, not Michael, based on
16 their shared affiliation with Brown Nation, Mona’s history with Dog Patch, the phone calls Mona
17 received from Brown Nation and Dog Patch members earlier that day, and her familial association with
18 Tortilla Flats.⁴⁸

19 4. The Defense’s Case

20 Billy, one of the friends Villalobos left the party with on September 2, 2000, testified he was with
21 Villalobos at the party from about 11:00 p.m. to 3:15 a.m. on September 2, 2000, and that he saw
22 Velasquez at the party that night.⁴⁹

23 Edgardo, a member of Brown Nation, testified that Brown Nation was not a clique of Dog Patch,
24 the gangs did not commit crimes together, as far as he knew neither Villalobos nor Velasquez were

25 ⁴⁶ App. at pp. 31-32.

26 ⁴⁷ App. at pp. 32-33.

27 ⁴⁸ App. at pp. 32-33.

28 ⁴⁹ App. at p. 34.

1 members of Brown Nation, and, regardless, a Brown Nation gang member would not carry out an order
2 from Dog Patch.⁵⁰

3 **H. Admissions and Investigation Leading to the Finding of Factual Innocence**

4 1. Evidence Introduced During Habeas Proceedings

5 In his 2005, 2007, and 2011 petitions for writ of habeas corpus, Velasquez admitted he was at
6 Dalila's apartment the night of the shooting, but Villalobos was not. Velasquez went to the door with
7 Torres, thinking they were there to pick up Mona, but Torres then unexpectedly shot Michael.
8 Velasquez did not know Torres would, or planned to, shoot someone.⁵¹ Over the course of several
9 years, a private investigator conducted interviews confirming Velasquez's claims.

10 On January 6, 2005, a private investigator (PI) interviewed Reyes, the source the detective
11 purportedly relied on when he testified that Brown Nation and Dog Patch were allies. Reyes, who was
12 still a member of Brown Nation, adamantly denied telling law enforcement that Brown Nation and Dog
13 Patch were aligned. To the contrary, while Tortilla Flats and Dog Patch were enemies, Brown Nation
14 never had an issue with Tortilla Flats, and individuals from different gangs socializing together does not
15 mean their respective gangs are aligned.⁵²

16 On January 11 and 26, 2005, the PI interviewed Olguin and Cesar, respectively. Both men
17 admitted they were with Velasquez and Torres at the time of the shooting. Both men said they waited in
18 the car while Velasquez and Torres went up to Mona's apartment. Not long after that, the two men
19 heard gunshots, and, moments later, Velasquez and Cesar ran back to the car. Velasquez yelled at
20 Torres, asking why he "did that." Velasquez smiled and bragged before ending the argument by
21 shooting another round into the floorboard of Cesar's car. Olguin believed Torres shot off the gun in the
22 car so that all four men would have gunshot residue on their clothes in the event they were pulled over.
23 Cesar and Olguin dropped Velasquez and Torres back at the party and left. Both men confirmed
24
25

26 ⁵⁰ App. at p. 34.

27 ⁵¹ App. at pp. 35-36.

28 ⁵² App. at p. 45.

1 Villalobos was not with them that night.⁵³

2 The PI also reinterviewed Mona, Dalila, and Guillermina in 2005, 2006, and 2007, respectively.
3 All three women said Roberta repeatedly admitted she had not actually seen either of the men's faces
4 when they came to the door.⁵⁴ She saw only the shooter's hand and the sleeve of the plaid flannel shirt
5 the shooter was wearing. Roberta told Guillermina and Mona she only knew Velasquez was present
6 because she heard Michael say his name, and she believed Velasquez was the shooter because she
7 had seen him wear plaid flannel shirts on prior occasions. Roberta told them she "decided" Villalobos
8 was with Velasquez after conferring with her boyfriend. Guillermina also disclosed Roberta would not
9 have been able to see the men from the window as she originally claimed because the staircase the
10 men used was not visible from Dalila's apartment.⁵⁵

11 Guillermina admitted Villalobos was not one of the men she saw the night of the shooting. Mona
12 said she was surprised to hear Roberta say she had encountered Villalobos on multiple occasions in
13 her mother's apartment complex because Roberta previously told Mona she had seen Villalobos only
14 once, at a restaurant with her boyfriend.⁵⁶ After the shooting, Dalila heard rumors that Torres was the
15 shooter. She noted that Velasquez would not have shot Michael because the boys were "good
16 friends."⁵⁷ Dalila also disclosed that Torres called right after the shooting and told Dalila they better not
17 tell the police who committed the shooting. Dalila continued to get threatening calls from Torres,
18 including threats that Roberta better "keep her mouth shut." As a result of these threats, Roberta left the
19 area.⁵⁸

20 On September 2, 2015, the private investigator interviewed Antonio. Antonio was at the party
21 with Billy and Villalobos the night of the shooting. Antonio overheard Velasquez and Torres say they
22 were leaving to pick up Mona. At some point after that, Antonio left the party with Villalobos and another

23
24 ⁵³ App. at pp. 39-40.

25 ⁵⁴ App. at pp. 42-44.

26 ⁵⁵ App. at p. 45.

27 ⁵⁶ App. at pp. 42-43.

28 ⁵⁷ App. at p. 43.

⁵⁸ App. at p. 44.

1 friend. Antonio also said that Villalobos, like Velasquez, would not have shot Michael because
2 Villalobos was also good friends with Michael. Antonio admitted he did not come forward earlier
3 because he was afraid of Torres, who was an older gang member.⁵⁹

4 On August 21, 2017, Torres' uncle, Lupe, confirmed that, although Velasquez was present,
5 Torres was the one who shot Michael. Lupe said late one night, Torres was in his backyard with a small
6 handgun, which Torres dismantled and defaced before discarding the pieces in various garbage cans
7 throughout the neighborhood.⁶⁰ Shortly thereafter, Lupe learned Torres shot someone. When
8 confronted, Torres admitted it was true. Torres told Lupe he was with someone from Brown Nation at
9 the time of the shooting and characterized Brown Nation as a tagging crew, not the type of gang that
10 would commit a murder.⁶¹

11 2. The Conviction Integrity Unit's Investigation

12 On May 11, 2021, Velasquez wrote a letter to the Conviction Integrity Unit (CIU), detailing his
13 involvement in the shooting and requesting the CIU investigate his case. Velasquez reiterated he went
14 to the apartment with Torres but had no knowledge of Torres' plans. Velasquez again asserted
15 Villalobos was not present and provided a detailed timeline of that evening.

16 According to Velasquez's timeline, Velasquez left the party with Torres and Olguin in Cesar's
17 car to pick up Mona. Velasquez and Torres were seated in the backseat. Velasquez had only met
18 Torres twice before but knew Mona's family and had been to their home many times.⁶² Cesar parked
19 out front, and, when Valesquez got out of the car to go retrieve Mona, Torres followed. When
20 Velasquez knocked on the door, Torres moved off to the side, just out of view. Velasquez and Michael
21 had a short exchange before Torres reached out and shot Michael two or three times. Velasquez
22 panicked, ran down the stairs, and got back into Cesar's car, with Torres following close behind him.⁶³
23 Cesar drove off quickly, asking what happened. Torres smiled and said, "I got myself a tuna fish,"

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25 ⁵⁹ App. at p. 42.

26 ⁶⁰ App. at pp. 46-47.

27 ⁶¹ App. at p. 47.

28 ⁶² App. at p. 37.

⁶³ App. at pp. 37-38.

1 meaning a member of Tortilla Flats. Velasquez yelled that Michael was not a member of the rival gang.
2 Torres yelled back and an argument ensued, until Torres shot a hole in the floorboards. At that point,
3 Velasquez stopped yelling, afraid he would be shot next. The four men returned to the motel.
4 Velasquez went back into the party. Torres got out of the car but did not return to the party. Cesar and
5 Olguin drove off. Velasquez had not seen or spoken to Cesar or Olguin since that night. Velasquez did
6 not tell anyone what had happened.

7 The CIU's investigation also revealed that, at the time of the shooting, Torres and Villalobos
8 physically resembled each other. The men could easily be mistaken for each other, especially if they
9 were seen only briefly.⁶⁴ A review of Torres' phone logs showed Torres called Mona 15 times between
10 10:45 p.m. on September 1, 2000, and 4:19 a.m. on September 2, 2000, including six times after the
11 shooting.⁶⁵ These logs corroborated the statements provided by Mona and Dalila both at the time of the
12 crime and in their more recent interviews.

13 When the CIU visited Dalila's apartment to reenact the crime, they confirmed Roberta would not
14 have been able to see either of the men's faces from the sofa where she was seated, given its position
15 in relation to the door and where Michael must have been standing at the time he was shot.⁶⁶

16 A CIU gang expert also reviewed the case. The gang expert interviewed several Brown Nation
17 and Dog Patch gang members, who confirmed Mona was never targeted by their gangs and their
18 gangs never shared an alliance or enemies. The expert also observed that, at the time of the original
19 trial, the police incorrectly believed the two people in the car were Velasquez and Villalobos, both of
20 whom identified as Brown Nation. Based on the new evidence, they knew the passengers in the car all
21 belonged to different gangs, which made it unlikely they would set out to commit a crime together, as
22 gang members typically only commit crimes with members of their own gang, to ensure loyalty.⁶⁷

23 The CIU was unable to interview Torres, who was killed in a drive-by shooting on October 12,
24 2001, eleven days before the jury found Velasquez and Villalobos guilty. The CIU noted Torres was

25 ⁶⁴ App. at p. 48.

26 ⁶⁵ App. at p. 51.

27 ⁶⁶ App. at p. 52.

28 ⁶⁷ App. at pp. 54-55.

1 under investigation for other murders at the time of his death.⁶⁸

2 Based on its investigation, the CIU concluded that Villalobos and Velasquez did not commit the
3 murder they were convicted of, and the parties – counsel for Villalobos, counsel for Velasquez, and the
4 District Attorney’s office – jointly petitioned for a finding that Velasquez and Villalobos were factually
5 innocent of this crime.⁶⁹

6 **IV. Determination of Issues**

7 Penal Code section 4900 allows a person, who has been erroneously convicted and
8 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to the
9 CalVCB. Specifically, subdivision (a) of section 4900 provides:

10 Any person who, having been convicted of any crime against the state amounting to a
11 felony and imprisoned in the state prison or incarcerated in county jail pursuant to
12 subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor
13 for the reason that the crime with which they were charged was either not committed at
14 all or, if committed, was not committed by the person, or who, being innocent of the
15 crime with which they were charged for either of those reasons, shall have served the
16 term or any part thereof for which they were imprisoned in state prison or incarcerated in
17 county jail, may, under the conditions provided under this chapter, present a claim
18 against the state to the California Victim Compensation Board for the injury sustained by
19 the person through the erroneous conviction and imprisonment or incarceration.⁷⁰

20 To prevail on a claim under Penal Code section 4900, claimants typically bear the burden of
21 proving, by a preponderance of the evidence, that the crime with which they were convicted either did
22 not occur or was not committed by them and that they suffered an injury as the result of their
23 erroneous conviction.⁷¹ However, if the claimant has already established their innocence by obtaining
24 a finding of factual innocence under Penal Code section 1485.55 or 851.86, the claimant only bears
25 the burden of establishing their injury.

26 Under Penal Code section 1485.55, subdivision (b), “if the court has granted a writ of habeas
27 corpus or vacated a judgment pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section
28

25 ⁶⁸ App. at p. 55.

26 ⁶⁹ App. at pp. 16-17.

27 ⁷⁰ Pen. Code, § 4900, subd. (a); 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).

28 ⁷¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

1 1473.7, the person may move for a finding of factual innocence by a preponderance of the evidence
2 that the crime with which they were charged was either not committed at all or, if committed, was not
3 committed by the petitioner.” Penal Code section 851.86 further provides that when a “conviction is set
4 aside based upon a determination that the person was factually innocent of the charge, the judge shall
5 order that the records in the case be sealed, including any record of arrest or detention[.]” A finding of
6 factual innocence made under either provision “shall be binding” on the CalVCB “for a claim presented
7 ... pursuant to Penal Code section 4900,” and “[u]pon application” the CalVCB “shall, without a
8 hearing, approve payment to the claimant pursuant to Penal Code section 4904.”⁷²

9 However, even when the claimant has been found factually innocent, the CalVCB remains
10 statutorily obligated to determine the extent of the injury caused by the erroneous conviction and may
11 request additional documents and arguments from the parties as needed to complete this calculation.⁷³
12 In this context, injury means that, but for the erroneous conviction, the claimant would have been free
13 from custody.⁷⁴ Upon the requisite showing of innocence and injury, the CalVCB “shall approve
14 payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available,
15 upon appropriation by the Legislature.”⁷⁵ The “amount of the payment shall be a sum equivalent to one
16 hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in
17 custody, including in a county jail, that is considered to be part of the term of incarceration[]” for the
18 erroneous conviction.⁷⁶

19 **A. Innocence**

20 Pursuant to Penal Code sections 1485.55 and 851.865, the CalVCB unequivocally accepts that
21 Villalobos is factually innocent of all the crimes he was charged with in Los Angeles County Superior
22 Court case number VA061360. As determined by the superior court, and consistent with the parties’
23 joint motion for a finding of factual innocence, a preponderance of the evidence establishes Villalobos

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25 ⁷² Pen. Code, §§ 851.86, 851.865, and 1485.55, subds. (b)-(c).

26 ⁷³ Pen. Code, §4904, subd. (a).

27 ⁷⁴ Cal. Code Regs., tit. 2, § 640, subd. (f).

28 ⁷⁵ Pen. Code, § 4904.

⁷⁶ Pen. Code, § 4904, subd. (a); Cal. Code Regs., tit. 2, § 640, subd. (f).

1 was innocent of the charged offenses. Multiple witnesses confirmed Villalobos was not present when
2 the crime occurred, and the only witness who did identify Villalobos has since been discredited. In
3 addition, subsequent investigation revealed that, contrary to the witness' statements, she would not
4 have been able to see the men from Dalila's apartment window, nor when the two men came to the
5 door. Lastly, Villalobos' absence was confirmed both by witnesses confirming Villalobos' absence and
6 evidence corroborating that Torres, not Villalobos, was with Velasquez that night. Accordingly, the
7 administrative record amply demonstrates Villalobos was innocent of the charged offense and,
8 therefore, was erroneously convicted of this crime for purposes of compensation under Penal Code
9 section 4900.

10 **B. Injury**

11 Penal Code sections 4900 et seq. authorize compensation "for the purpose of indemnifying the
12 claimant for the injury" sustained "through their erroneous conviction and imprisonment...."⁷⁷ The term
13 "injury" refers to "whatever harm is suffered by a person who is wrongly imprisoned...."⁷⁸ Injury "may
14 be established by showing that, but for the erroneous conviction, the claimant would not have been in
15 custody."⁷⁹ Upon such a showing, Penal Code section 4904 authorizes compensation in the amount of
16 "one hundred forty dollars (\$140) per day of incarceration served and shall include any time spent in
17 custody, including a county jail, that is considered to be part of the term of incarceration."⁸⁰

18 In 2022, Penal Code section 4904 was conditionally amended to also allow for compensation in
19 the amount of \$70 for each day spent on supervised release, effective July 1, 2024, if certain
20 budgetary conditions were met.⁸¹ However, as was recently confirmed in the May Revise Budget for
21 2024-2025, the conditions required for enactment of this amendment have not been met, and the law,
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23 ⁷⁷ Pen. Code, § 4904.

24 ⁷⁸ Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at pp. 4-5.

25 ⁷⁹ Cal. Code of Regs., tit. 2, § 640, subd. (f).

26 ⁸⁰ Pen. Code, § 4904.

27 ⁸¹ Pen. Code, § 4904, subd. (b)(1), as amended by Stats.2022, c. 771 (A.B. 160), § 21, subject to
28 appropriation; see also proposed Pen. Code, § 4904, subd. (d), operative July 1, 2024, subject to
appropriation, as added by Stats.2022, c. 771 (A.B. 160), § 21.

1 therefore, does not presently authorize payment for time served on supervised release or parole.⁸²
2 Consequently, Villalobos' request for compensation in the amount of \$205,240, e.g. \$70 for each of the
3 2,932 days he served on parole, must be denied.

4 The CalVCB otherwise agrees with the Attorney General's determination that Villalobos was
5 imprisoned for his erroneous conviction in Los Angeles County Superior Court case number VA061360
6 for 5,629 days, which includes one day more than the number of days Villalobos originally alleged.
7 This includes the day of Villalobos' arrest, September 28, 2000, through and including the day of his
8 release from prison on February 25, 2016. Given the statutory rate of \$140 per day, the CalVCB
9 therefore also agrees with the Attorney General that Villalobos is entitled to indemnification for his
10 erroneous conviction in the amount of \$788,060, e.g. \$140 per day for 5,629 days of imprisonment, if
11 sufficient funds are available upon appropriation by the Legislature.⁸³

12 **V. Conclusion**

13 As mandated by Penal Code sections 851.865 and 1485.55, the undersigned hearing officer
14 recommends the CalVCB approve payment to Villalobos in the amount of \$788,060 as indemnification
15 for the injury he sustained through the 5,629 days he was imprisoned solely for his erroneous
16 convictions in Los Angeles County Superior Court case number VA061360, if sufficient funds are
17 available upon appropriation by the Legislature.

18
19 Date: June 25, 2024

Caitlin Christian

Caitlin Christian
Hearing Officer
California Victim Compensation Board

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26 ⁸² Governor's May Revision (2024-25), Introduction at pp. 9-10 (expressly excludes triggered
27 expenditures from 2022 for the Victim Compensation Program from 2024-2025 budget due to "the
28 negative multiyear projections" to the General Fund), available online at <https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>.

⁸³ Pen. Code, § 4904, subd. (a).

ITEM 11

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

8
9 In the Matter of:

10 **Ronald Velasquez**

11 Claim No. 24-ECO-33

Proposed Decision

(Penal Code §§ 851.865, 1485.55, and 4900 et seq.)

12 **I. Introduction**

13 On May 7, 2024, Ronald Velasquez (Velasquez) submitted an application¹ for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900, which was supplemented on May 16, 2024.² In this claim, Velasquez
16 requests compensation for 8,587 days of imprisonment for his erroneous murder conviction in Los
17 Angeles County Superior Court case number VA061360 based on the order granting the parties' joint
18 motion to vacate his conviction, find him factually innocent of all charges, and seal his arrest records.
19 (Pen. Code, §§ 851.86, 1473, subd. (a)(2), and 1485.55.) Velasquez is represented by John Hanusz of
20 Hanusz Law. The Attorney General's Office is represented by Kathryn Althizer. The matter was
21

22 _____
23 ¹ Velasquez's Application (App.) included an Erroneously Convicted Person Claim Form (pages 1-7);
24 the March 6, 2024, order granting the Joint Petition for Writ of Habeas Corpus, Motion to Vacate, and
25 Motion for Finding of Factual Innocence and to Seal the Record pursuant to Penal Code section 851.86
26 (pages 8-10); minutes from the March 6, 2024, hearing (pages 11-12); a redacted copy of the "Joint
27 Petition for Writ of Habeas Corpus and Motion to Vacate Pursuant to Penal Code sections 1473(b) and
28 1473.7, and Motion for Finding of Factual Innocence Pursuant to Penal Code section 1485.55(b)"
(pages 13-67); the Abstract of Judgment filed on February 4, 2002 (pages 68-69).

² The application was supplemented (Supp.) by an email confirming Mr. Velasquez seeks
compensation for 8,587 days (page 1), a declaration confirming Mr. Velasquez's term of incarceration
was solely attributable to his erroneous conviction (page 2), and a letter from the Los Angeles County
Sheriff's Department confirming Mr. Velasquez's release from custody (page 3).

1 assigned to CalVCB Senior Attorney Caitlin Christian. As mandated by Penal Code sections 851.865
2 and 1485.55, it is recommended that the CalVCB approve Velasquez's claim in the amount of
3 \$1,202,180 as indemnification for the injury sustained through this erroneous conviction if sufficient
4 funds are available upon appropriation by the Legislature.³

5 **II. Procedural History**

6 **A. Velasquez's Erroneous Conviction**

7 On September 2, 2000, Velasquez was arrested for the charges later filed against him in Los
8 Angeles County Superior Court case number VA061360. In that case, Velasquez was charged with
9 first-degree murder with enhancements for the personal use of a firearm and committing a crime for
10 the benefit of a criminal street gang. The co-defendant, Abraham Villalobos (Villalobos) was charged
11 with second-degree murder with an enhancement for committing this crime for the benefit of a criminal
12 street gang. On October 23, 2001, a jury found both men guilty and found true all of the alleged
13 enhancements.⁴ On January 30, 2002, the superior court struck the finding Velasquez and Villalobos
14 committed this crime for the benefit of a criminal street gang. Velasquez was then sentenced to 50
15 years to life in prison with a 15-year minimum parole eligibility date.⁵

16 **B. Initial Attempts at Post-Conviction Relief were Unsuccessful**

17 Velasquez's Motion for a New Trial was denied on January 30, 2002, and, on August 21, 2003,
18 the Court of Appeal affirmed his conviction and sentence in full.⁶ On March 4, 2005, Velasquez's Writ
19 of Habeas Corpus was denied by the superior court. His petitions for writ of habeas corpus in the
20 California Court of Appeal, California Supreme Court, and United States District Court were all denied
21 or dismissed as untimely.⁷

22
23 ³ Pen. Code, §§ 1485.55, subs. (b)-(c), 4904.

24 ⁴ Pen. Code, §§ 186.22, subd. (b), 187, subd. (a) and 12022.53, subd. (d); App. at pp. 68-69.

25 ⁵ App. at pp. 34, 68-69; see also *People v. Ronald Velasquez, et al.* (August 21, 2003, B156742)
26 [nonpub. opn.] at pp. 1, 12; Cal. Code Regs., tit. 2, § 617.8, subd. (b) [CalVCB has authority to take
official notice of documents listed in Evidence Code section 452]; Evid. Code, § 452, subd. (d)
[authorizing judicial notice of court records].

27 ⁶ *People v. Ronald Velasquez, et al., supra*, at pp. 2, 11.

28 ⁷ App. at p. 34.

1 **C. Post-Conviction Relief was Granted**

2 On March 4, 2024, counsel for Velasquez, counsel for Villalobos, and the District Attorney’s
3 Office filed a “Joint Petition for Writ of Habeas Corpus and Motion to Vacate Pursuant to Penal Code
4 sections 1473(b) and 1473.7, and Motion for Finding of Factual Innocence Pursuant to Penal Code
5 section 1485.55(b).”⁸ On March 6, 2024, the court granted the parties’ motion in full. As to Velasquez,
6 in particular, the court granted the parties’ Joint Petition for Writ of Habeas Corpus based on new
7 evidence,⁹ vacated his conviction and the related enhancements, directed that Velasquez be released
8 from custody, found Velasquez factually innocent of the charge in this case,¹⁰ and ordered the records
9 be sealed.¹¹

10 **D. Valesquez’s Erroneously Convicted Person Claim**

11 On May 7, 2024, Valesquez submitted an Erroneously Convicted Person Claim Form seeking
12 compensation for the term of imprisonment resulting from his erroneous murder conviction and the
13 related enhancements in Los Angeles County Superior Court case number VA061360.¹² At the
14 CalVCB’s request, his application was supplemented with additional supporting documents on May 16,
15 2024. As supplemented, Velasquez’s claim seeks compensation in the amount of \$1,202,180 for the
16 8,587 days of imprisonment resulting from Velasquez’s erroneous convictions.¹³

17 Velasquez’s claim was filed on May 21, 2024, and the Attorney General’s Office was invited to
18 provide a response on the issue of injury only.¹⁴ On June 11, 2024, the Attorney General’s Office
19 provided a response, indicating it agreed with Velasquez’s injury calculation, and supplemental
20 documentation, confirming he was imprisoned from September 2, 2000, through March 6, 2024, for a
21

22 _____
23 ⁸ App. at p. 13.

24 ⁹ Pen. Code, § 1473, subds. (b)(1)(C)(i)-(ii).

25 ¹⁰ Pen. Code, § 1485.55, subd. (b).

26 ¹¹ Pen. Code, § 851.8.

27 ¹² App. at p. 3.

28 ¹³ App. at p. 3; Supp. at p. 1.

¹⁴ Pen. Code, § 4904, subd. (a).

1 total of 8,587 days. On June 12, 2024, the administrative record closed.¹⁵

2 **III. Statement of the Facts**

3 **A. The Crime**

4 At 2:50 a.m. on September 2, 2000, the victim, Michael, was at Dalila's apartment.¹⁶ Dalila and
5 her boyfriend were already asleep in Dalila's room. Mona, Dalila's daughter, was in the shower. Mona's
6 new boyfriend, Ramon, was asleep in her bed. Michael was sitting on the living room sofa with Mona's
7 friend Roberta, when they heard the gate to the apartment building swing open and then shut. Roberta
8 got up to glance out the window, told Michael two men were approaching Dalila's apartment, and then
9 returned to the couch. When the men knocked on the door, Michael looked through the peephole.
10 Michael left the living room to tell Mona through the bathroom door that Velasquez was there. Mona
11 asked Michael to tell Velasquez she was in the shower. Michael returned to the living room and, as he
12 began to open the door, repeated that Mona was in the shower. Michael had only partially opened the
13 door when someone reached in and shot him twice in the chest. Michael fell back into the living room,
14 and the two men outside fled. Dalila awoke to the sound of the gunshots and called 9-1-1. Shortly
15 thereafter, Michael was transported to the hospital, where he was pronounced dead.¹⁷

16 **B. The Investigation**

17 1. Initial Witness Statements

18 Guillermina lived in the apartment below Dalila. Guillermina told police she heard gunshots and
19 then saw two Hispanic males running down the stairs from Dalila's apartment, through the courtyard,
20 and out onto the street where they got into a late 80's or 90's blue or black compact car that
21 immediately sped off. Based on the way the men got into the car, Guillermina suspected the driver was
22 already seated inside.

23 Roberta told police she looked out the window after hearing the apartment building's gate open
24 and shut. She briefly watched as two men approached the apartment. Roberta then returned to the sofa
25

26 ¹⁵ Supp. at p. 1.

27 ¹⁶ Witnesses are referred to by only a first or last name to protect their identities.

28 ¹⁷ App. at p. 17.

1 before one of the men loudly knocked and announced that he was looking for Mona. She watched as
2 Michael looked through the peephole and then went to the bathroom to tell Mona that Velasquez was at
3 the door. Michael returned to the door and, as he opened it, Roberta saw a muzzle flash and heard two
4 gunshots. Michael fell backward into the living room, and the two men ran off. Roberta described the
5 men as Hispanic males between the ages of 16 and 18 with shaved heads and no facial hair.¹⁸
6 According to Roberta, the shooter wore a blue flannel shirt and dark pants. The other man wore a light
7 blue jersey with white letters. Roberta believed she could identify the two men if she saw them again.¹⁹

8 Mona told police that Velasquez, a member of the gang Brown Nation, and a man named
9 Torres, who belonged to a gang called Dog Patch, both called her several times that day to invite her to
10 a party at a motel that evening. During their last call, Torres and Velasquez were together, and again
11 invited Mona to the party. Mona, who had a reputation for sleeping with gang members, knew
12 Velasquez and Torres were interested in her, but she was not interested in either of them. As a result,
13 each time they called, she declined their invitation. Yet, Velasquez ended his last call to Mona by
14 saying he was heading over to pick her up. Mona got into the shower, and, when Michael told her
15 Velasquez was at the door, Mona asked him to tell Velasquez that she was in the shower. Moments
16 later, Mona heard gunshots and yelling. By the time she was out of the shower, the suspects were
17 gone.²⁰ Shortly thereafter, Torres called Mona to ask who was with Velasquez and what they were
18 telling the police. Mona suspected Torres was the man with Velasquez but noted Torres had long hair,
19 not a shaved head like the man Roberta had seen.

20 Mona believed that she was the intended target of the shooting, not Michael. Mona explained
21 that, until about one week before the shooting, Mona was spending a lot of time with Dog Patch
22 members. However, she abruptly stopped hanging out with Dog Patch members when they learned
23 Mona's relatives were members of a Dog Patch rival gang, Tortilla Flats. A few days later, there was a
24 drive-by shooting at a house where many Dog Patch members hung out. Now, a few days after the
25

26 ¹⁸ App. at p. 19.

27 ¹⁹ App. at p. 19.

28 ²⁰ App. at p. 19.

1 drive-by, Michael was shot in Mona's living room. Given the timing of these events, Mona worried Dog
2 Patch thought she shared the location of the Dog Patch house with members of Tortilla Flats and
3 blamed her for the drive-by. Mona noted that Torres was a member of Dog Patch. Mona admitted that
4 Velasquez was a member of Brown Nation, not Dog Patch, but she believed Brown Nation and Dog
5 Patch were allies and that Brown Nation often did Dog Patch's "dirty work."²¹

6 Dalila confirmed Velasquez and Torres called Mona several times that day. During their search
7 of the apartment, police took down the phone numbers from Mona's call log and reviewed an address
8 book. The address book had two entries for Velasquez, with the notation "BN," and another entry for
9 Cesar, whose father owned a blue Nissan sedan that was parked outside of Cesar's home after the
10 shooting.²²

11 2. Roberta was Reinterviewed at 4:30 a.m. and 12:40 p.m.

12 Despite initially saying she saw only the muzzle flash of the gun, at 4:30 a.m., just over an hour
13 after her initial interview, Roberta said she saw Velasquez fire the shots that killed Michael.²³ Eight
14 hours later, at around 12:40 p.m. on September 2, 2000, Roberta was interviewed again. During this
15 interview Roberta said she saw the shooter's hand and "believed" it was Velasquez. Despite originally
16 indicating the shooter was wearing a blue flannel shirt, and the other man was wearing a jersey,
17 Roberta had changed her mind. She now believed Velasquez was wearing a blue jersey and, therefore,
18 that the shooter was wearing a blue jersey. Roberta confirmed that both Velasquez and Torres called
19 Mona several times that evening. Roberta believed Dog Patch had identified Mona as a "snitch" after
20 the drive-by and sent Velasquez to shoot Mona, not Michael.²⁴ When Roberta looked at the first
21 photographic line-up, which contained a photo of Velasquez, she was "not sure" whether the shooter
22 was depicted. Yet, when she took a second look, she identified Velasquez as one of the men at the
23 door and claimed she saw Velasquez raise his hand and shoot Michael twice. After looking at another
24

25 ²¹ App. at p. 20.

26 ²² App. at p. 21.

27 ²³ App. at p. 21.

28 ²⁴ App. at p. 22.

1 photographic line-up, Roberta said: "I wish for certain I knew who they were."²⁵

2 3. Mona was Reinterviewed at 4:30 a.m. and 1:00 p.m.

3 Police also reinterviewed Mona at 4:30 a.m. Mona said Michael swore "on everything he loved"
4 that Velasquez was at the door. Mona said Michael was not a gang member, and she did not know why
5 anyone would want to shoot him. Mona reiterated her belief that Dog Patch and other affiliated gangs
6 wanted to "get her" because they blamed her for the Dog Patch drive-by. She interpreted the shooting
7 to be a message that she was in danger. Mona spoke to the police again later that afternoon, at around
8 1:00 p.m. on September 2, 2000. Mona reiterated that she received several calls from Velasquez and
9 Torres and one call from Cesar that day. Each time, they invited her to a party, but she declined. During
10 their last call, Velasquez, Torres, and Cesar were all together. Mona emphasized that she was the
11 intended target of the shooting because Dog Patch held her responsible for the recent drive-by of a
12 house where Dog Patch members hung out. Mona identified Velasquez and Cesar from photographic
13 line-ups and Torres from an individual photograph.

14 **C. Velasquez's Arrest**

15 Officers began surveilling Velasquez's residence at 11:00 a.m. on September 2, 2000. At
16 approximately 1:20 p.m., Velasquez emerged from his home with a friend. Velasquez was wearing a
17 light blue jersey with white numbers. As they walked down the street, Velasquez told his friend a story
18 and began to simulate having a gun in his hand and then firing the gun forward. He was arrested at
19 1:30 p.m. One particle of gunshot residue was found on Velasquez's hand and another six were found
20 on his jersey.²⁶ After initially agreeing to talk to the police, once questioned about the murder,
21 Velasquez denied being involved and asked for a lawyer.

22 **D. Identification and Arrest of Villalobos**

23 During her initial interview, Roberta said only that she would be able to identify the man who
24 was with Velasquez if she saw him again. An hour and a half later, Roberta said she recognized the
25 man with Velasquez but did not know his name. When she was interviewed eight hours after that, at
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27 ²⁵ App. at pp. 21-22.

28 ²⁶ App. at p. 26.

1 12:40 p.m. on September 2, 2000, Roberta thought the man with Velasquez was a man she and her
2 boyfriend met at a restaurant three weeks earlier. Two days later, on September 4, 2000, Roberta said
3 she conferred with her boyfriend and now believed the man with Velasquez was a Brown Nation gang
4 member named Villalobos. On September 6, 2000, Roberta reiterated Villalobos was the man with
5 Velasquez at the time of the shooting. Mona, who was also present, told police Brown Nation often had
6 parties at motels on the weekends, but she otherwise would not know where to find Villalobos.²⁷ Later
7 that day, a confidential informant provided police with a photo of Velasquez and his associates,
8 including a photo of Villalobos. The informant provided police with Villalobos' home address, which
9 was then used to obtain a DMV photo for use in a photographic line-up.²⁸ On September 15, 2000,
10 Roberta identified Villalobos as the man wearing the blue and white flannel shirt. She was "positive"
11 Villalobos was the man who was standing beside Velasquez at the time of the shooting.²⁹

12 On September 28, 2000, police searched Villalobos' home. According to the resulting report,
13 Villalobos had "two plaid shirts" in his closet. Police did not photograph the shirts, nor did they note the
14 color or fabric. No gunshot residue was found on Villalobos or his clothing.³⁰ Villalobos was arrested
15 and taken into custody.³¹ Villalobos agreed to talk to the police. He denied any involvement in the
16 shooting. Villalobos went to a party on the night of September 1, 2000, and stayed until around 2:00
17 a.m., when he left with three friends. Villalobos denied going to Dalila's apartment and did not know
18 anything about the shooting.³²

19 **E. Guillermina's October 5, 2000, Identification**

20 Despite originally saying she awoke from the sound of the gunshots, on October 5, 2000, just
21 over a month after the shooting, Guillermina said she was already awake when the two men entered
22

23
24 ²⁷ App. at p. 23.

25 ²⁸ App. at p. 27.

26 ²⁹ App. at p. 24.

27 ³⁰ App. at pp. 27, 32.

28 ³¹ App. at p. 27.

³² App. at p. 28.

1 the apartment building.³³ Guillermina said one of the men was banging on Dalila's door and said "let me
2 in" several times before she heard Michael ask who was at the door. The visitor then identified himself
3 as Velasquez and asked for Mona. Michael responded that Mona was in the shower. Guillermina then
4 heard Michael open the door, repeating that Mona was in the shower.³⁴ Guillermina next heard two
5 shots and then saw two men run down the stairs, past her door, and out onto the street, where they got
6 into a small blue or possibly black Nissan or Honda.

7 Guillermina said one of the men was young, had a light complexion and short hair, and was
8 wearing a blue and white football jersey. She did not get a good look at the other man, who she said
9 was wearing dark clothing. When she looked at the photographic line-ups, Guillermina said Velasquez
10 looked familiar because he had visited Dalila's apartment in the past. She did not identify anyone in the
11 second line-up, which included Villalobos. She did not identify Velasquez or Villalobos as the men she
12 saw in the courtyard on September 2, 2000.³⁵

13 **F. Investigation Into Torres' Involvement**

14 On September 28, 2000, police searched Torres' home. During their search of Torres' room,
15 police found a blue and white plaid shirt and numerous pieces of paper with Torres' moniker and gang
16 graffiti. Torres was not taken into custody. Neither Torres' person, nor his blue and white plaid flannel
17 were tested for gunshot residue.³⁶

18 Police interviewed Torres on October 17, 2000. Torres said he was at his uncle's house all
19 night. He denied attending the motel party or even seeing Velasquez or Cesar that night. Torres said
20 he did not know Cesar or Velasquez well, did not hang out with them, and did not like people who were
21 affiliated with Brown Nation. Torres initially also denied knowing anyone who lived at Dalila's
22 apartment but then admitted he knew Mona's relatives were members of a Dog Patch rival gang.
23 Torres admitted he called Mona once, to invite her to his uncle's house. Torres knew Mona had slept
24 with some of his friends, and Torres hoped to sleep with her also. When confronted with the phone

25 ³³ App. at pp. 24-25.

26 ³⁴ App. at p. 26.

27 ³⁵ App. at p. 26.

28 ³⁶ App. at pp. 28-29.

1 records, which showed several calls both before and after the shooting, Torres admitted to calling
2 Mona one other time that evening but continued to deny calling her at any point after the shooting.³⁷
3 Police did not follow up with Torres' uncle to confirm Torres' alibi.³⁸

4 **G. Evidence Presented at the Trial that Resulted in Velasquez's Erroneous Conviction**

5 1. Evidence of Third-Party Culpability was Not Presented

6 The court denied Villalobos' motion to introduce evidence of third-party culpability based on the
7 evidence indicating it was Torres, not Villalobos, who accompanied Velasquez to Dalila's apartment
8 that night, despite the call logs confirming Torres' repeated phone calls before and after the shooting,
9 as well as the shirts found in his closet. The court deemed the call logs admissible but held the content
10 of those calls inadmissible.³⁹

11 2. Roberta and Guillermina Identified Velasquez as the Shooter

12 Roberta identified Velasquez as the shooter, adding he was wearing a blue jersey at the time of
13 the crime. She testified Villalobos was with Velasquez at the time of the shooting and wore a blue and
14 white plaid flannel. Roberta said she met Villalobos two or three times before she saw him on
15 September 2, 2000. In addition to meeting him at a restaurant with her boyfriend, Roberta had seen
16 Villalobos at least two other times at her mother's apartment building. On one occasion, Villalobos even
17 helped Roberta transport her mother, when her mother's wheelchair broke. Roberta testified she
18 "immediately" recognized both men as they approached Dalila's apartment.⁴⁰

19 Despite being unable to identify the men who fled Dalila's apartment on the night of the
20 shooting, or during her interview on October 5, 2000, the day before trial, Guillermina identified
21 Velasquez as one of the men she saw dashing through the courtyard on September 2, 2000. Similarly,
22 although she previously reported she was unable to describe the man who was wearing the blue and
23 white jersey, at trial, Guillermina testified Velasquez was wearing a blue and white jersey when she saw
24 him run through the courtyard just after the shooting. She went on to also claim, for the first time, that

25 ³⁷ App. at p. 29.

26 ³⁸ App. at p. 29.

27 ³⁹ App. at pp. 29-30.

28 ⁴⁰ App. at p. 30.

1 Velasquez had visited her apartment months prior to the shooting and identified himself as
2 Velasquez.⁴¹

3 3. Mona and the Gang Expert Provided Motive and Context

4 Mona testified that Velasquez, Michael, and her brother, Adam, were all friends and frequently
5 hung out at Dalila's apartment. All three boys were members of a tagging crew called CLV until it
6 disbanded in the summer of 2000. After CLV disbanded, some of its members, including Velasquez,
7 joined a gang called Brown Nation. Other CLV members, including Adam, joined a gang called Tortilla
8 Flats. Mona admitted her cousin was also a member of Tortilla Flats and knew the apartment where
9 she lived was in Tortilla Flats territory. Mona testified that Dog Patch and Tortilla Flats were rivals and
10 that, after several months of spending time with Dog Patch members, about one week before the
11 shooting, she abruptly stopped hanging out with Dog Patch members. Mona further testified that on
12 the day of the shooting she received several phone calls from Velasquez, a Brown Nation member,
13 Torres, a member of Dog Patch, and Cesar, a member of the East Side Longo, including at least one
14 call from Torres after the shooting.⁴² Mona was not permitted to testify to what was discussed during
15 those calls.

16 Two detectives testified as gang experts. The detectives confirmed that, after the tagging crew
17 CLV disbanded in the summer of 2000, many of its members joined either Brown Nation or Tortilla
18 Flats, which was a Dog Patch rival. One of the detectives indicated that he recently interviewed a
19 Brown Nation gang member, Reyes, during his investigation of an unrelated murder. Although Reyes
20 was not charged with or convicted of the murder he was arrested for, the detective testified that Reyes
21 committed a murder with a Dog Patch member and, during his interrogation for that crime, admitted
22 that Brown Nation and Dog Patch had "cliqued up."⁴³ Based solely on Reyes statement and Mona's
23 claims, the detective concluded Brown Nation had become a clique of Dog Patch, Tortilla Flats was
24 their mutual enemy, and Brown Nation members served as the "foot soldiers" for Dog Patch. The
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26 ⁴¹ App. at p. 31.

27 ⁴² App. at pp. 31-32.

28 ⁴³ App. at pp. 32-33.

1 detective therefore inferred Villalobos and Velasquez set out to shoot Mona, not Michael, based on
2 their shared affiliation with Brown Nation, Mona's history with Dog Patch, the phone calls Mona
3 received from Brown Nation and Dog Patch members that day, and her familial association with Tortilla
4 Flats.⁴⁴

5 4. Defense Witnesses

6 Billy, one of the friends Villalobos left the party with on September 2, 2000, testified he was with
7 Villalobos at the party from about 11:00 p.m. to 3:15 a.m. on September 2, 2000, and that he saw
8 Velasquez at the party that night.⁴⁵

9 Edgardo, a member of Brown Nation, testified that Brown Nation was not a clique of Dog Patch,
10 the gangs did not commit crimes together, as far as he knew neither Villalobos nor Velasquez were
11 members of Brown Nation, and, regardless, a Brown Nation gang member would not carry out an order
12 from Dog Patch.⁴⁶

13 **H. Admissions and Investigation Leading to the Finding of Factual Innocence**

14 1. Evidence Introduced During Habeas Proceedings

15 In his 2005, 2007, and 2011 petitions for writ of habeas corpus, Velasquez admitted he was at
16 Dalila's apartment the night of the shooting, but Villalobos was not. Velasquez went to the door with
17 Torres, thinking they were there to pick up Mona, but Torres then unexpectedly shot Michael.
18 Velasquez did not know Torres would, or planned to, shoot someone.⁴⁷ Over the course of several
19 years, a private investigator conducted interviews confirming Velasquez's claims.

20 On January 6, 2005, a private investigator (PI) interviewed Reyes, the source the detective
21 purportedly relied on when he testified that Brown Nation and Dog Patch were allies. Reyes, who was
22 still a member of Brown Nation, adamantly denied telling law enforcement that Brown Nation and Dog
23 Patch were aligned. To the contrary, while Tortilla Flats and Dog Patch were enemies, Brown Nation
24 never had an issue with Tortilla Flats. Reyes had known Torres since they were young teens and

25 ⁴⁴ App. at p. 33.

26 ⁴⁵ App. at p. 34.

27 ⁴⁶ App. at p. 34.

28 ⁴⁷ App. at pp. 35-36.

1 denied there being any relationship between Torres' gang, Dog Patch, and his own, Brown Nation.
2 Reyes noted Mona had slept with many of his friends, and he had explained to the detective before
3 Velasquez's trial that individuals from different gangs socialized; however, having social ties did not
4 mean the individuals' respective gangs are aligned.⁴⁸

5 On January 11 and 26, 2005, the PI interviewed Olguin and Cesar, respectively. Both men
6 admitted they were with Velasquez and Torres at the time of the shooting. Both men said they left the
7 party together in Cesar's car to go pick up Mona. Before they left, Cesar called Mona to let her know
8 they were on their way to pick her up. En route, Torres insisted they stop at his uncle's house, so that
9 he could pick up a gun before they headed into rival gang territory. Velasquez and Olguin objected, but
10 Cesar acquiesced. Torres emerged from his uncle's house with a small handgun, which he tucked into
11 his waistband. When they arrived at Mona's apartment building, Cesar and Olguin waited in the car
12 while Velasquez and Torres ran upstairs to get Mona.⁴⁹

13 A few minutes later, they heard gunshots. Velasquez and Torres ran back to the car. Olguin
14 recalled Velasquez yelling at Torres, asking why he "did that," noting "everyone" in the apartment knew
15 him. Cesar also remembered Velasquez yelling at Torres, asking why he "did that" and saying "he [wa]s
16 not from the Flats." Torres responded he did not care and "that's how gangsters do it." Cesar sped off.
17 The fight between Velasquez and Torres continued, until Torres fired another round into the floorboard
18 of Cesar's car.⁵⁰ Olguin believed Torres shot the gun in the car to get gunshot residue on all four of
19 them, so that they would all be implicated in the event they were stopped by the police.⁵¹ According to
20 Olguin, Torres then demanded Cesar drive to a nearby house, where Torres left the gun. Cesar and
21 Olguin dropped Velasquez and Torres back at the party and left. Both men confirmed Villalobos was
22 not with them that night.⁵²

23 The PI also reinterviewed Mona, Dalila, and Guillermina in 2005, 2006, and 2007, respectively.

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25 ⁴⁸ App. at p. 45.

26 ⁴⁹ App. at p. 39.

27 ⁵⁰ App. at p. 39.

28 ⁵¹ App. at p. 40.

⁵² App. at pp. 39-40.

1 All three women said Roberta repeatedly admitted she had not actually seen either of the men's faces
2 when they came to the door.⁵³ She saw only the shooter's hand and the sleeve of the plaid flannel shirt
3 the shooter was wearing. Roberta told Guillermina and Mona she only knew Velasquez was present
4 because she heard Michael say his name, and she believed Velasquez was the shooter because she
5 had seen him wear plaid flannel shirts on prior occasions. Roberta told them she "decided" Villalobos
6 was with Velasquez after conferring with her boyfriend. Guillermina also disclosed that Roberta would
7 not have been able to see the men from the window as she originally claimed because the staircase the
8 men used was not visible from Dalila's apartment.⁵⁴ Mona said she was surprised to hear Roberta say
9 she had encountered Villalobos on multiple occasions in her mother's apartment complex because
10 Roberta previously told Mona she had seen Villalobos only once, at a restaurant with her boyfriend.⁵⁵
11 After the shooting, Dalila heard rumors that Torres shot Michael. She noted that Velasquez would not
12 have shot Michael because the boys were "good friends."⁵⁶ Dalila also disclosed that Torres called right
13 after the shooting and told Dalila they better not tell the police who committed the shooting. Dalila
14 continued to get threatening calls from Torres, including threats that Roberta better "keep her mouth
15 shut." As a result of these threats, Roberta left the area.⁵⁷

16 On September 2, 2015, the private investigator interviewed Antonio. Antonio was at the party
17 with Villalobos the night of the shooting. Antonio overheard Velasquez and Torres say they were
18 leaving to pick up Mona and then watched them leave. At some point after that, Antonio left the party
19 with Villalobos and another friend. Antonio also said that Villalobos, like Velasquez, would not have
20 shot Michael because Villalobos was also friends with Michael. Antonio admitted he did not come
21 forward earlier because he feared Torres, who was an older gang member.⁵⁸

22 On August 21, 2017, Torres' uncle, Lupe, confirmed that, although Velasquez was present,
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24 ⁵³ App. at pp. 42-44.

25 ⁵⁴ App. at p. 45.

26 ⁵⁵ App. at pp. 42-43.

27 ⁵⁶ App. at p. 43.

28 ⁵⁷ App. at p. 44.

⁵⁸ App. at p. 42.

1 Torres was the one who shot Michael. Lupe said late one night, Torres was in his backyard with a small
2 handgun, which Torres dismantled and defaced before discarding the pieces in various garbage cans
3 throughout the neighborhood.⁵⁹ Shortly thereafter, Lupe learned Torres shot someone. When
4 confronted, Torres admitted it was true. Torres told Lupe he was with someone from Brown Nation at
5 the time of the shooting and characterized Brown Nation as a tagging crew, not the type of gang that
6 would commit a murder.⁶⁰

7 2. The Conviction Integrity Unit's Investigation

8 On May 11, 2021, Velasquez wrote a letter to the Conviction Integrity Unit (CIU), detailing his
9 involvement in the shooting and requesting the CIU investigate his case. Velasquez reiterated he went
10 to the apartment with Torres but had no knowledge of Torres' plans. Velasquez again asserted
11 Villalobos was not present and provided a detailed timeline of that evening.

12 According to Velasquez's timeline, Velasquez left the party with Torres and Olguin in Cesar's
13 car to pick up Mona. Velasquez and Torres were seated in the backseat. Velasquez had only met
14 Torres twice before but knew Mona's family and had been to their home many times.⁶¹ Torres asked to
15 stop by his uncle's house to get a gun because Torres knew Mona lived in rival gang territory. Although
16 the three other men did not want to stop because Mona's house was not in rival territory for them,
17 Cesar relented and drove to Torres' uncle's home. Torres returned from his uncle's house with a small
18 handgun tucked into his waistband and Cesar drove to Mona's apartment building.

19 When Velasquez got out of the car to retrieve Mona, Torres followed him out of the car and up
20 the stairs. As Velasquez knocked on the door, Torres moved off to the side, just out of view. Velasquez
21 and Michael had a short exchange before Torres reached out and shot Michael two or three times.
22 Velasquez panicked, ran down the stairs, and got back into Cesar's car, with Torres following close
23 behind him.⁶² Cesar drove off quickly, asking what happened. Torres smiled and said, "I got myself a
24 tuna fish," meaning a member of Tortilla Flats. Velasquez yelled that Michael was not a member of

25 ⁵⁹ App. at pp. 46-47.

26 ⁶⁰ App. at p. 47.

27 ⁶¹ App. at p. 37.

28 ⁶² App. at pp. 37-38.

1 Tortilla Flats. Torres yelled back and an argument ensued, until Torres shot a hole in the floorboards. At
2 that point, Velasquez stopped yelling, afraid he would be shot next. The four men returned to the motel.
3 Velasquez went back into the party. Torres got out of the car but did not return to the party. Cesar and
4 Olguin drove off. Velasquez had not seen or spoken to Cesar or Olguin since that night. Velasquez did
5 not tell anyone what had happened.

6 The CIU's investigation also revealed that, at the time of the shooting, Torres and Villalobos
7 physically resembled each other. The men could easily be mistaken for each other, especially if they
8 were seen only briefly.⁶³ A review of Torres' phone logs showed Torres called Mona 15 times between
9 10:45 p.m. on September 1, 2000, and 4:19 a.m. on September 2, 2000, including six times after the
10 shooting.⁶⁴ These logs corroborated the statements provided by Mona and Dalila both at the time of the
11 crime and in their more recent interviews.

12 When the CIU visited Dalila's apartment to reenact the crime, they confirmed Roberta would not
13 have been able to see either of the men's faces from the sofa where she was seated, given its position
14 in relation to the door and where Michael must have been standing at the time he was shot.⁶⁵

15 A CIU gang expert also reviewed the case. The gang expert interviewed several Brown Nation
16 and Dog Patch gang members, who confirmed their gangs never shared an alliance and that Mona was
17 never targeted by Dog Patch. At the time of the original trial, officers incorrectly believed this crime was
18 committed by Villalobos and Velasquez, who both belonged to Brown Nation, and, therefore, that they
19 committed this crime in their capacity as members of Brown Nation. Based on the new evidence
20 obtained through their investigation, however, the CIU now knew the four men in the car, Cesar, Olguin,
21 Velasquez, and Torres, all belonged to different gangs. Since gang members typically only commit
22 crimes with members of their own gang, to ensure loyalty, it was unlikely that the individuals who went
23 to Mona's apartment that night would set out to commit a crime together. He noted it was particularly
24 unlikely that Velasquez and Torres conspired to commit this crime together as they barely knew each
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26 ⁶³ App. at p. 48.

27 ⁶⁴ App. at p. 51.

28 ⁶⁵ App. at p. 52.

1 other and thus would not have trusted each other enough to commit such a serious crime together.⁶⁶

2 The CIU was unable to interview Torres, who was killed in a drive-by shooting on October 12,
3 2001, eleven days before the jury found Velasquez and Villalobos guilty. The CIU noted Torres was
4 under investigation for other murders at the time of his death.⁶⁷

5 Based on its investigation, the CIU concluded that Velasquez and Villalobos did not commit the
6 murder they were convicted of, and the parties – counsel for Velasquez, counsel for Villalobos, and the
7 District Attorney’s office – jointly petitioned for a finding that Velasquez and Villalobos were factually
8 innocent of this crime.⁶⁸

9 IV. Determination of Issues

10 Penal Code section 4900 allows a person, who has been erroneously convicted and
11 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to the
12 CalVCB.⁶⁹ Specifically, subdivision (a) of section 4900 provides:

13 Any person who, having been convicted of any crime against the state amounting to a
14 felony and imprisoned in the state prison or incarcerated in county jail pursuant to
15 subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor
16 for the reason that the crime with which they were charged was either not committed at
17 all or, if committed, was not committed by the person, or who, being innocent of the
18 crime with which they were charged for either of those reasons, shall have served the
term or any part thereof for which they were imprisoned in state prison or incarcerated in
county jail, may, under the conditions provided under this chapter, present a claim
against the state to the California Victim Compensation Board for the injury sustained by
the person through the erroneous conviction and imprisonment or incarceration.⁷⁰

19 To prevail on a claim under Penal Code section 4900, claimants typically bear the burden of
20 proving, by a preponderance of the evidence, that the crime with which they were convicted either did
21 not occur or was not committed by them and that they suffered an injury as the result of their
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24 ⁶⁶ App. at pp. 54-55.

25 ⁶⁷ App. at p. 55.

26 ⁶⁸ App. at pp. 16-17.

27 ⁶⁹ Pen. Code, § 4900, subd. (a).

28 ⁷⁰ Pen. Code, § 4900, subd. (a); 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 erroneous conviction.⁷¹ However, if the claimant has already established their innocence by obtaining
2 a finding of factual innocence under Penal Code section 1485.55 or 851.86, the claimant only bears
3 the burden of establishing their injury.⁷²

4 Under Penal Code section 1485.55, subdivision (b), “if the court has granted a writ of habeas
5 corpus or vacated a judgment pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section
6 1473.7, the person may move for a finding of factual innocence by a preponderance of the evidence
7 that the crime with which they were charged was either not committed at all or, if committed, was not
8 committed by the petitioner.” Penal Code section 851.86 further provides that when a “conviction is set
9 aside based upon a determination that the person was factually innocent of the charge, the judge shall
10 order that the records in the case be sealed, including any record of arrest or detention[.]” A finding of
11 factual innocence made under either provision “shall be binding” on the CalVCB “for a claim presented
12 ... pursuant to Penal Code section 4900,” and “[u]pon application” the CalVCB “shall, without a
13 hearing, approve payment to the claimant pursuant to Penal Code section 4904.”⁷³

14 However, even when the claimant has been found factually innocent, the CalVCB remains
15 statutorily obligated to determine the extent of the injury caused by the erroneous conviction and may
16 request additional documents and arguments from the parties as needed to complete this calculation.⁷⁴
17 In this context, injury means that, but for the erroneous conviction, the claimant would have been free
18 from custody.⁷⁵ Upon the requisite showing of innocence and injury, the CalVCB “shall approve
19 payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available,
20 upon appropriation by the Legislature.”⁷⁶ The “amount of the payment shall be a sum equivalent to one
21 hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in
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23

24 ⁷¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ⁷² Pen. Code, §§ 851.865; 1485.55, subds. (c)-(d).

26 ⁷³ Pen. Code, §§ 851.86, 851.865, and 1485.55, subds. (b)-(c).

27 ⁷⁴ Pen. Code, §4904, subd. (a).

28 ⁷⁵ Cal. Code Regs., tit. 2, § 640, subd. (f).

⁷⁶ Pen. Code, § 4904.

1 custody, including a county jail, that is considered to be part of the term of” imprisonment for the
2 erroneous conviction.⁷⁷

3 **A. Innocence**

4 Pursuant to Penal Code sections 851.865 and 1485.55, the CalVCB unequivocally accepts that
5 Velasquez is factually innocent of the crime he was charged with in Los Angeles County Superior
6 Court case number VA061360. As determined by the superior court, and consistent with the parties’
7 joint motion, a preponderance of the evidence establishes Velasquez was factually innocent of the
8 murder of his friend Michael. Velasquez provided sworn statements indicating he had no knowledge of
9 Torres’ intent prior to the shooting. His statements are corroborated by witnesses who observed
10 Velasquez’s surprise and anger after the shooting, as well as the accounts of witnesses and a gang
11 expert confirming the unlikelihood that Torres would have conspired to commit a crime with Velasquez,
12 who belonged to a different gang and barely knew Torres. The only witness who identified Velasquez
13 as the shooter has since been discredited, and her claims Velasquez was the shooter are inconsistent
14 with evidence establishing Velasquez had no motive to shoot his friend at an apartment Velasquez
15 himself frequented. Finally, the record amply demonstrates Torres committed the murder Velasquez
16 was convicted of. Torres was in rival gang territory, bragged about committing the crime Velasquez
17 was convicted of, made numerous threatening phone calls to potential witnesses after the shooting,
18 and was seen dismantling and defacing the murder weapon shortly after Michael was shot.

19 Accordingly, the administrative record amply supports the superior court’s finding that
20 Velasquez was neither the direct perpetrator of, nor did he aid and abet in the murder of his friend,
21 Michael, on the night of September 2, 2000, and he, therefore, was erroneously convicted of this crime
22 for purposes of compensation under Penal Code section 4900.

23 **B. Injury**

24 Penal Code sections 4900 et seq. authorize compensation “for the purpose of indemnifying the
25 claimant for the injury” sustained “through their erroneous conviction and imprisonment....”⁷⁸ The term
26

27 ⁷⁷ Pen. Code, § 4904, subd. (a); Cal. Code Regs., tit. 2, § 640, subd. (f).

28 ⁷⁸ Pen. Code, § 4904.

1 “injury” refers to “whatever harm is suffered by a person who is wrongly imprisoned....”⁷⁹ Injury “may
2 be established by showing that, but for the erroneous conviction, the claimant would not have been in
3 custody.”⁸⁰ Upon such a showing, Penal Code section 4904 authorizes compensation in the amount of
4 “one hundred forty dollars (\$140) per day of incarceration served and shall include any time spent in
5 custody, including a county jail, that is considered to be part of the term of incarceration.”⁸¹

6 In this claim, the CalVCB agrees with the parties that Velasquez’s injury includes the 8,587
7 days he was imprisoned solely for his convictions in Los Angeles County Superior Court case number
8 VA061360. This includes the date of his arrest, on September 2, 2000, through and including the date
9 of his release, on March 6, 2024. Given the statutory rate of \$140 per day, the CalVCB therefore also
10 agrees with the parties’ calculation that Velasquez is entitled to indemnification for his erroneous
11 convictions in the amount of \$1,202,180 if sufficient funds are available upon appropriation by the
12 Legislature.⁸²

13 V. Conclusion

14 As mandated by Penal Code sections 851.865 and 1485.55, the undersigned hearing officer
15 recommends the CalVCB approve payment to Velasquez in the amount of \$1,202,180 as
16 indemnification for the injury he sustained through the 8,587 days he was imprisoned for his erroneous
17 convictions in Los Angeles County Superior Court case number VA061360, if sufficient funds are
18 available upon appropriation by the Legislature.

19
20 Date: June 25, 2024

Caitlin Christian

Caitlin Christian
Hearing Officer
California Victim Compensation Board

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26 ⁷⁹ Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at pp. 4-5.

27 ⁸⁰ Cal. Code of Regs., tit. 2, § 640, subd. (f).

28 ⁸¹ Pen. Code, § 4904.

⁸² Pen. Code, § 4904, subd. (a).