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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of:

10 **Lombardo Palacios**

11 Claim No. 25-ECO-11

Proposed Decision

(Penal Code §§ 1485.55, 4900 et seq.)

12 **I. Introduction**

13 On February 25, 2025, Lombardo Palacios (Palacios) submitted a claim for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900. The claim is based upon Palacios' 2009 murder conviction, which was
16 vacated with a finding of factual innocence. The claim requests compensation in the amount of
17 \$898,100 for the injury sustained as a result of Palacios' wrongful imprisonment for 6,415 days.
18 Throughout this administrative proceeding, Palacios was represented by counsel Nicolas Walter
19 Tomas, Esq. (Tomas).

20 The Attorney General, represented by Deputy Attorney General Kathryn Althizer, responded to
21 the claim on March 21, 2025. The Attorney General agreed that Palacios is entitled to compensation
22 in the requested amount. The record closed later that same day.

23 The matter was assigned to CalVCB Senior Attorney Laura Simpton. As mandated by Penal
24 Code section 1485.55 and in accordance with Penal Code section 4904, it is recommended that
25 CalVCB approve the claim in the amount of \$898,100 if sufficient funds are available, upon
26 appropriation by the Legislature, as indemnification for the injury sustained by Palacios' incarceration
27 for 6,415 days as a result of his erroneous conviction.
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II. Procedural Background

On May 30, 2007, Palacios and Charlotte Pleytez (Pleytez) were arrested and jointly charged with murder, attempted murder, and enhancements for using a firearm and benefiting a gang in Los Angeles County Superior Court case number BA323521.¹ At that time, Palacios was 15 years old and Pleytez was 20 years old.² The two codefendants were tried together. On October 6, 2009, the jury found Palacios and Pleytez guilty of first-degree murder with gang and firearm enhancements but not guilty of attempted murder.³ Palacios was sentenced on January 22, 2010, to an indeterminate term of 50 years to life.⁴ Pleytez received an identical sentence.⁵

Palacios and Pleytez jointly appealed. In a consolidated opinion issued on July 19, 2011, the Second District Court of Appeal affirmed the judgment for both defendants.⁶ The California Supreme Court denied review on October 26, 2011.⁷

In August 2022, Pleytez retained a private investigator, which led to her representation by counsel Tomas.⁸ Tomas' representation eventually included Palacios. On November 7, 2022, Tomas submitted a request to the Conviction Integrity Unit of the Los Angeles County District Attorney (LADA) to review both Palacios and Pleytez's murder conviction.⁹ The request included new evidence implicating other persons in the crime. On October 17, 2024, following additional investigation, both codefendants and LADA filed a joint petition for habeas relief and motion for finding of factual

¹ Pen. Code, §§ 186.22, 187, 12022.53; Palacios Application (App.) at pp. 2-3, 29, 42, 73, 79, 81.

² App. at pp. 79, 81.

³ App. at pp. 42, 79.

⁴ App. at pp. 29, 79-80.

⁵ App. at pp. 81-82.

⁶ *People v. Pleytez et al.* (Cal. Ct. App., 2 Dist., July 19, 2011, No. B222059) available on Westlaw at 2011 WL 2936751, as modified on denial of reh'g (Aug. 4, 2011); Cal. Code Regs., tit. 2, § 617.8 (official notice). The appellate court decision is considered solely to the extent it does not conflict with the finding of factual innocence.

⁷ Docket for *People v. Pleytez et al.*, California Supreme Court case number S195693, available online at <https://appellatecases.courtinfo.ca.gov/>; Cal. Code Regs., tit. 2, § 617.8 (official notice).

⁸ App. at pp. 42-43.

⁹ App. at pp. 29-30, 42.

innocence in the Los Angeles County Superior Court.¹⁰ The joint petition was filed under seal to avoid public disclosure of sensitive information that may adversely impact the ongoing investigation into the true perpetrators of the shooting.¹¹

On December 20, 2024, the court concluded that the new evidence likely would have changed the outcome of the trial and, therefore, granted habeas relief pursuant to Penal Code section 1473. The court continued the hearing to consider the parties' remaining motion for a finding of factual innocence.¹² Nevertheless, Palacios and Pleytez were released from prison that same day.¹³ By then, as expressly found by the court, both Palacios and Pleytez had been continuously confined a total of 6,415 days from the date of their arrest on May 30, 2007, through the date of their release on December 20, 2024.¹⁴

On February 24, 2025, LADA filed a supplemental brief in support of the motion for a finding of factual innocence, which detailed additional exculpatory evidence.¹⁵ This brief was also filed under seal because of the ongoing investigation. At the hearing on February 25, 2025, the court granted the parties' joint motion, finding that Palacios and Pleytez had each proven their innocence by a preponderance of the evidence pursuant to subdivision (b) of Penal Code section 1485.55.¹⁶ Accordingly, the court ordered Palacios and Pleytez's criminal records in case number BA323521 be sealed and destroyed pursuant to Penal Code section 851.86.¹⁷

¹⁰ App. at pp. 8, 27-56 (with redactions).

¹¹ App. at p. 8.

¹² App. at pp. 9, 17-18, 25.

¹³ App. at pp. 3, 9, 18, 105.

¹⁴ App. at pp. 9, 14, 105; see also *People v. King* (1992) 3 Cal.App.4th 882, 886 (construing "days" for custody credit to include partial days). The number of days was confirmed using the online calculator located at <https://www.timeanddate.com/date/duration.html>.

¹⁵ App. at pp. 57-64 (with redactions).

¹⁶ App. at p. 12.

¹⁷ App. at p. 12.

1 The next day on February 25, 2025, counsel Tomas submitted a claim to CalVCB on behalf of
2 Palacios seeking compensation as an erroneously convicted person under Penal Code section 4900.¹⁸
3 The claim requested \$898,100 for 6,415 days incarceration solely as a result of Palacios' vacated
4 murder conviction.¹⁹ Among its supporting exhibits, the claim included heavily redacted versions of the
5 joint habeas petition and supplemental brief for a finding of factual innocence.²⁰ After confirming
6 compliance with Penal Code sections 4900 and 4901, CalVCB deemed the claim filed on February 27,
7 2025. CalVCB requested a response from the Attorney General on the issue of injury pursuant to
8 Penal Code section 4904.²¹

9 The Attorney General timely responded on March 21, 2025, agreeing that Palacios was entitled
10 to compensation in the requested amount for the entire duration of his confinement.²² Given the
11 parties' agreement, Palacios declined to submit an optional reply.²³ The record closed immediately
12 thereafter on March 21, 2025.²⁴

13 **III. Factual Background**

14 **A. The Shooting**

15 On the night of March 28, 2007, Hector F. (Hector) drove his SUV to a shopping center parking
16 lot in Los Angeles.²⁵ His fiancé Lennette B. (Lennette) was seated next to him in the front passenger
17 seat. The parking lot was located in territory claimed by the "White Fence" gang, and neither Hector
18 nor Lennette were members. Hector sold a small piece of crack cocaine to a local drug user. During
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22 ¹⁸ That same day, Tomas separately submitted a virtually identical claim to CalVCB on behalf of
23 Pleytez (i.e., claim 25-ECO-10).

24 ¹⁹ App. at pp. 1-108.

25 ²⁰ App. at pp. 27-56, 57-64.

26 ²¹ Pen. Code, § 4904, subd. (a); CalVCB email to parties sent on Feb. 27, 2025.

27 ²² Email sent by Deputy Attorney General Kathryn Althizer on Mar. 21, 2025, at 1:22 p.m.

28 ²³ Email sent by Tomas on Mar. 21, 2025, at 2:21 p.m.

²⁴ CalVCB email to parties sent on Mar. 21, 2025, at 2:44 p.m.

²⁵ The victim and witnesses are referred to by their first names only in an effort to protect their privacy.

1 the sale, a white car was parked nearby, with a female seated in the driver's seat and two male
2 passengers.²⁶

3 After the sale, Hector drove away but soon returned 15 minutes later. The white car was still
4 there, and it pulled up next to Hector's SUV. One of the male passengers shouted the word for "fence,"
5 which prompted Hector to reply that he wanted "no trouble."²⁷ Hector started to drive away. However,
6 one of the male passengers stepped out of the white car, walked up to Hector's SUV, and fired
7 approximately five times. Hector was hit several times and died of his injuries. Lennette was struck in
8 the shoulder and survived.²⁸

9 **B. Investigation**

10 Police investigators spoke to Lennette, who described the shooter as a Hispanic male,
11 approximately 18 to 20 years old, with short hair. Lennette described the driver as a Hispanic female,
12 approximately 20 to 22 years old, with long hair in a ponytail. After reviewing a picture book of "White
13 Fence" gang members that included photographs of just two women, Lennette identified Pleytez as the
14 driver and Palacios as the shooter.²⁹ However, Lennette was under the influence of a controlled
15 substance and had only a limited opportunity to view the culprits while under the stress of the
16 moment.³⁰ In addition, Lennette suffered from impaired vision that required the use of trifocal
17 corrective lenses.³¹ Nonetheless, Lennette, who testified at the preliminary hearing and trial, was
18 "99%" confident in her identifications of Palacios and Pleytez.³²

19 Investigators also spoke with two eyewitnesses, Elizabeth E. (Elizabeth) and Janet Y. (Janet).
20 They both described the driver as a Hispanic female with long hair in her early twenties. They also
21 described the shooter as a Hispanic male but provided differing estimates of his age. Elizabeth thought
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23 ²⁶ App. at pp. 30-31, 36; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *1.

24 ²⁷ App. at pp. 31-32; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *1.

25 ²⁸ App. at pp. 31-32; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *1.

26 ²⁹ App. at pp. 33, 54; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *2.

27 ³⁰ App. at pp. 32-33, 54.

28 ³¹ App. at p. 54.

³² App. at pp. 31-34, 39-40, 54-55; *People v. Pleytez, supra*, 2011 WL 2936751 at pp. *1-2.

1 the shooter was possibly 33 years old and wore a baseball cap, whereas Janet thought the shooter
2 was 20 to 25 years old with short hair. Both eventually identified Pleytez as the driver and Palacios as
3 the shooter but with varying degrees of confidence.³³ However, one investigator heard that someone
4 else, not named Palacios, was the shooter.³⁴

5 Based upon the three eyewitness identifications, 20-year-old Pleytez was arrested on May 30,
6 2007. A search of her home revealed no physical evidence linking her to the shooting that occurred on
7 March 28, 2007. When interrogated by police, Pleytez acknowledged that she had associated with
8 White Fence members but insisted she was not involved in the shooting. At trial, Pleytez testified that
9 she was innocent. Pleytez denied knowing Palacios.³⁵

10 Palacios, who was 15 years old, was also arrested on May 30, 2007. A search of his home
11 likewise revealed no physical evidence linking him to the shooting. When interrogated by police for
12 three hours, Palacios initially insisted he was innocent. But after investigators insisted that he was
13 guilty during a series of leading questions, Palacios eventually confessed that he was the shooter and
14 Pleytez was the driver.³⁶

15 Following a joint trial, the jury convicted both Palacios and Pleytez of Hector's murder.
16 Evidently, the jury acquitted both codefendants of Lennette's attempted murder due to lack of intent
17 rather than mistaken identity. At the combined sentencing hearing, Palacios blurted out, "I'm innocent"
18 and "It wasn't even me."³⁷ Pleytez similarly retorted, "This is unfair. The system is not fair."³⁸

19 C. Post-Conviction Evidence

20 After he was hired by Pleytez in 2022, private investigator Brown interviewed multiple persons
21 who confirmed that a female prisoner had admitted that Pleytez was "doing [her] time."³⁹ The name of
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23 ³³ App. at pp. 34-36, 40-41; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *1.

24 ³⁴ App. at pp. 36-37.

25 ³⁵ App. at pp. 37, 42; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *2.

26 ³⁶ App. at pp. 38-39; *People v. Pleytez, supra*, 2011 WL 2936751 at p. *2.

27 ³⁷ App. at p. 71.

28 ³⁸ App. at p. 72.

³⁹ App. at p. 44.

1 the prisoner, as well as the persons interviewed, are redacted in this administrative proceeding.
2 Further investigation by LADA, which is also redacted in this proceeding, yielded additional evidence
3 implicating other suspects besides Palacios and Pleytez. As conceded by LADA, “a preponderance of
4 the evidence” established that Palacios and Pleytez “were not present at, nor did they participate in,
5 the March 28, 2007 shooting.”⁴⁰ To bolster this conclusion, LADA reviewed Palacios’ mental health
6 record as an inmate, which confirmed that Palacios had repeatedly told his treating psychologist that
7 he was innocent.⁴¹ LADA also interviewed Palacios, who insisted he is innocent and his involuntary
8 confession was false.⁴² Finally, LADA interviewed Pleytez, who insisted she was innocent too.⁴³

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
12 CalVCB. Typically, the claimant bears the burden to prove by a preponderance that (1) the crime with
13 which they were convicted either did not occur or was not committed by them and (2) they suffered
14 injury as a result of their erroneous conviction.⁴⁴ In this context, injury means that, but for the
15 erroneous conviction, the claimant would have been free from custody.⁴⁵ Once a properly submitted
16 claim is filed, Penal Code section 4902 requires the Attorney General to submit a written response,
17 after which an informal administrative hearing ensues pursuant to Penal Code section 4903. If the
18 claimant satisfies their burden at the hearing, then Penal Code section 4904 requires CalVCB to
19 approve payment for the purpose of indemnifying the claimant for the demonstrated injury, at the rate
20 of \$140 per day of their incarceration, if sufficient funds are available, upon appropriation by the
21 Legislature.⁴⁶ No compensation is authorized for any time spent on supervised released.⁴⁷

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23 ⁴⁰ App. at p. 55.

24 ⁴¹ App. at p. 61.

25 ⁴² App. at pp. 60-62.

26 ⁴³ App. at pp. 62-63.

27 ⁴⁴ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

28 ⁴⁵ Cal. Code of Regs., tit. 2, § 640, subd. (f).

⁴⁶ Pen. Code, § 4904, subd. (a).

1 Significantly, a different and expediated process occurs for claimants with a court finding of
2 factual innocence. Under subdivision (b) of Penal Code section 1485.55, when a court has vacated a
3 judgment by grant of habeas relief, “the person may move for a finding of factual innocence by a
4 preponderance of the evidence that the crime with which they were charged was either not committed
5 at all or, if committed, was not committed by the petitioner.”⁴⁸ If the court makes such a finding, then
6 under subdivision (c) of section 1485.55, “the [CalVCB] board shall, without a hearing, recommend to
7 the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section
8 4904.”⁴⁹ Even then, CalVCB is statutorily obligated by Penal Code section 4904 to determine the
9 extent of injury caused by the erroneous conviction and incarceration.⁵⁰ To that end, CalVCB may
10 “request from both parties additional documents or arguments as needed to calculate
11 compensation.”⁵¹ The burden to prove injury rests with the claimant by a preponderance of the
12 evidence.⁵²

13 **A. Innocence**

14 As mandated by the Los Angeles County Superior Court’s finding under Penal Code section
15 1485.55, CalVCB unequivocally accepts that Palacios is factually innocent of all charges in case
16 number BA323521.⁵³ This binding court finding was based, in part, upon LADA’s concession that a
17 preponderance of newly discovered evidence exonerates Palacios and implicates other suspects.⁵⁴
18 Although the new evidence is largely redacted in this administrative proceeding, the record
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20 ⁴⁷ *Ibid.*; see also proposed Pen. Code, § 4904, subd. (d), conditionally operative July 1, 2024, subject
21 to appropriation, as added by Stats.2022, c. 771 (A.B. 160), § 21; Governor’s May Revision (2024-25),
22 Introduction at pp. 9-10 (rejecting A.B. 160’s conditional expenditures due to “the negative multiyear
23 projections” to the General Fund), available at <https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>.

24 ⁴⁸ Pen. Code, § 1485.55, subd. (b).

25 ⁴⁹ Pen. Code, § 1485.55, subd. (c).

26 ⁵⁰ Pen. Code, § 4904, subd. (a).

27 ⁵¹ Pen. Code, § 4904, subd. (a), as amended by Stats. 2023, c. 702 (S.B. 78), § 5, eff. Jan. 1, 2024.

28 ⁵² *Ibid.*; see also Evid. Code, § 115.

⁵³ App. at p. 12; Pen. Code, §§ 1485.55, subds. (b) & (c), 4902, subd. (a).

⁵⁴ App. at pp. 29, 52-56, 57-64.

1 nevertheless demonstrates Palacios' innocence for purposes of compensation under Penal Code
2 section 4900.⁵⁵

3 **B. Injury**

4 The record further demonstrates Palacios' injury amounts to \$898,100. Penal Code section
5 4904 specifies that the amount of compensation to be approved for the claimant's injury "shall be a sum
6 equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include any
7 time spent in custody, including a county jail, that is considered to be part of the term of
8 incarceration."⁵⁶ This compensation is "for the purpose of indemnifying the claimant for the injury"
9 sustained "through their erroneous conviction and imprisonment...."⁵⁷ In this context, the term "injury"
10 refers to "the unique harm suffered when factually innocent persons are imprisoned."⁵⁸ Stated
11 differently, the requisite injury contemplated by section 4904 is "each day ... spent illegally behind bars,
12 away from society ... and their loved ones" solely as a result of the erroneous conviction.⁵⁹ To that end,
13 injury "may be established by showing that, but for the erroneous conviction, the claimant would not
14 have been in custody."⁶⁰

15 Here, the record demonstrates that Palacios spent over 17 years incarcerated for his erroneous
16 murder conviction in case number BA323521. For this conviction, Palacios received a prison sentence
17 of 50 years to life. Solely as a result of that sentence, Palacios spent a total of 6,415 days in custody
18 from his arrest on May 30, 2007, to and including his release on December 20, 2024.⁶¹ Palacios did
19 not sustain any other criminal charges or convictions throughout this period of time.⁶² Thus, Palacios
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22 ⁵⁵ Pen. Code, §§ 1485.55, subds. (b) & (c), 4902, subd. (a).

23 ⁵⁶ Pen. Code, § 4904.

24 ⁵⁷ Pen. Code, § 4904.

25 ⁵⁸ Senate Floor Analysis of Sen. Bill No. 635 (Reg. Sess. 2015-2016), as amended Sep. 3, 2015, at
26 pp. 4-5.

27 ⁵⁹ *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

28 ⁶⁰ Cal. Code of Regs., tit. 2, § 640, subd. (f).

⁶¹ *King, supra*, 3 Cal.App.4th at p. 886 (construing "days" for custody credit to include partial days).


⁶² App. at pp. 9, 105.

1 would have been free but for his erroneous murder conviction.⁶³ At the statutory rate of \$140 for each
2 of these 6,415 days, Palacios' injury as an erroneously convicted offender amounts to \$898,100.⁶⁴

3 **V. Conclusion**

4 As mandated by Penal Code section 1485.55, the undersigned hearing officer recommends
5 CalVCB approve payment to Palacios in the amount of \$898,100 for his claim as an erroneously
6 convicted offender under Penal Code section 4900 if sufficient funds are available,⁶⁵ upon
7 appropriation by the Legislature, as indemnification for the injury sustained by his 6,415 days of
8 imprisonment solely as a result of his vacated conviction.

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10 Date: April 8, 2025



11 Laura Simpton
12 Hearing Officer
13 California Victim Compensation Board
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22 ⁶³ Cal. Code of Regs., tit. 2, § 640, subd. (f).

23 ⁶⁴ Pen. Code, § 4904, subd. (a).

24 ⁶⁵ Of the initial \$8 million appropriated by Assembly Bill 107 (i.e., the Budget Act of 2024) for CalVCB's
25 payment of approved claims under Penal Code section 4900 for the 2024-2025 fiscal year,
26 approximately \$445,460 in funds currently remain. Nonetheless, as Assembly Bill 107 recognized,
27 "Upon order of the Department of Finance, [this] amount ... may be increased by an amount not in
28 excess of any total unpaid claim amounts pursuant to Sections 4900 and 4904 of the Penal Code."
(A.B. 107, Ch. 22 at pp. 777-778.) Accordingly, any additional appropriations will be applied to
outstanding claims, in the order approved, absent a contrary directive from the Legislature or
Department of Finance.