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

9 In the Matter of:

10 **Michael Anderson**

11 Claim No. 25-ECO-12

Proposed Decision

(Pen. Code, § 1485.55, subd. (d))

12 **I. Introduction**

13 On March 7, 2025, Michael Anderson (Anderson) submitted an application¹ to the California
14 Victim Compensation Board (CalVCB) seeking compensation as an erroneously convicted person
15 pursuant to Penal Code section 4900, which was supplemented on March 17, 2025.² The claim is
16 based on Anderson's 2003 murder conviction, which was reversed and vacated by a writ of habeas
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20 ¹ Anderson Application (App.) at pp. 1-111. The pagination refers to the continuous page numbers
21 for the two combined PDF files submitted on March 7, 2025, including the Erroneously Convicted
22 Person Claim Form (App. at pp. 1-7); Claimant's Supplemental Claim Information/Statement (*Id.* at
23 pp. 8-9); Index of Exhibits (*Id.* at p. 10); Memorandum of Decision, dated June 13, 2023, granting
24 habeas relief (*Id.* at pp. 11-22); Petition for Writ of Habeas Corpus, filed August 6, 2020 (*Id.* at pp.
25 23-60); Motion for Finding of Entitlement to Compensation for Wrongful Conviction Pursuant to
26 Penal Code Section 1485.55, filed December 27, 2024 (*Id.* at pp. 61-87); court order granting Motion
27 for Entitlement to Compensation for Wrongful Conviction Pursuant to Penal Code Section 1485.55,
28 dated February 28, 2025 (*Id.* at pp. 88-90); Arrest Report showing Claimant's date of arrest as
December 28, 2001 (*Id.* at p. 92); Booking Sheet showing Claimant's release date as June 26, 2024
(*Id.* at pp. 91-96); Reporter's Transcript of June 17, 2024, proceedings (*Id.* at pp. 97-111).

² Anderson Supplement (Supp.) at pp. 1-4. The pagination refers to the continuous page numbers
for the combined PDF files submitted via email on March 17, 2025, as a supplement to Anderson's
application. This supplement includes the signature page of the Erroneously Convicted Person
Claim Form (Supp. at p. 1), the Abstract of Judgment filed March 26, 2004 (*Id.* at pp. 2-3); and the
minute order from the February 28, 2025, hearing (*Id.* at p. 4).

1 corpus on June 13, 2023.³ Nearly a year later, the district attorney attempted to refile charges against
2 Anderson; however, due to unreasonable delays by the district attorney, the court dismissed the case,
3 and Anderson was released from custody on June 26, 2024.⁴ The claim lacks a finding of factual
4 innocence but includes an order mandating approval of compensation for demonstrated injury
5 pursuant to subdivision (d) of Penal Code section 1485.55.⁵ Anderson seeks compensation in the
6 amount of \$1,150,240 for 8,216 days imprisonment. Anderson is represented by Thomas Ian Graham
7 of Kravis, Graham, & Zucker, LLP. The Attorney General's Office is represented by Deputy Attorney
8 General Jessica Leal. By email dated April 3, 2025, the Attorney General agreed that Anderson is
9 entitled to compensation for the time he spent incarcerated from December 28, 2001, through June 26,
10 2024. However, based on the Attorney General's calculation, Anderson should be compensated for
11 8,217 days, which includes any partial days.⁶ The Attorney General maintained that Anderson's
12 demonstrated injury amounts to \$1,150,380 for having been imprisoned 8,217 days solely as a result
13 of his vacated convictions.

14 The matter was assigned to CalVCB Senior Attorney Kristen Sellers. As mandated by
15 subdivision (d) of Penal Code section 1485.55, it is recommended that CalVCB approve Anderson's
16 claim in the amount of \$1,150,380 if sufficient funds are available, upon appropriation by the
17 Legislature, as indemnification for the demonstrated injury sustained by his 8,217 days of
18 imprisonment resulting solely from his vacated convictions.

19 II. Procedural History

20 A. Anderson's Original Convictions

21 On December 28, 2001, Anderson was arrested for and later charged with murder in Los
22 Angeles County Superior Court case number BA226007.⁷ After his initial trial ended in a hung jury and
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24 ³ App. at pp. 15-25.

25 ⁴ App. at pp. 98, 112-113.

26 ⁵ Pen. Code, § 1485.55, subd. (d), as added by Stats.2023, c. 702 (S.B. 78), eff. Jan. 1, 2024.

27 ⁶ See Pen. Code, § 2900.5 (credit calculations); *People v. King* (1992) 3 Cal.App.4th 882, 886 ["the
28 'days' in section 2900.5 must be interpreted to include partial days"].

⁷ App. at p. 95.

1 mistrial, on March 19, 2003, a jury convicted Anderson of first-degree murder.⁸ The jury also found true
2 the special allegations that Anderson personally used a firearm during the commission of the offense
3 and committed the crime for the benefit of a criminal street gang.⁹ On March 5, 2004, Anderson was
4 sentenced to 50 years to life.¹⁰

5 The Second District Court of Appeal affirmed the judgment on October 11, 2005.¹¹ The
6 California Supreme Court subsequently denied review on January 18, 2006.¹² On April 12, 2007,
7 Anderson petitioned for federal habeas relief but his petition was denied and dismissed with prejudice
8 on March 30, 2010.¹³ Anderson's request for a certificate of appealability from the Ninth Circuit Court
9 of Appeals was denied on October 27, 2011.¹⁴

10 **B. Habeas Relief**

11 On August 10, 2020, Anderson filed a petition for writ of habeas corpus in the Los Angeles
12 County Superior Court and challenged his murder conviction in case number BA226007 based upon
13 two contentions: (1) there was newly discovered evidence of Anderson's actual innocence and (2) due
14 to ineffective assistance of counsel, he was deprived of his constitutional right to a fair trial.¹⁵ The
15 petition described the newly discovered evidence as a potential eyewitness to the crime. As it relates
16 to the ineffective assistance of counsel claim, Anderson argued that his trial counsel failed to locate
17 and interview the potential eyewitness after being informed by Anderson of his existence.¹⁶ On August
18 2, 2022, the court determined that an evidentiary hearing must be conducted solely on the issue of
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20 ⁸ Supp. at pp. 2-3.

21 ⁹ Pen. Code, §§ 187, subd. (a), 189, 186.22, subd. (b)(1), and 12022.53, subds. (b)-(e)(1); Supp. at
22 pp. 2-3.

23 ¹⁰ Supp. at pp. 2-3.

24 ¹¹ See *People v. Anderson* (October 11, 2005, B173982) [nonpub. opn.]. Cal. Code Regs., tit. 2, §
25 617.8 (official notice.).

26 ¹² App. at p. 33.

27 ¹³ App. at p. 33.

28 ¹⁴ App. at p. 33; Cal. Supreme Court No. S138808; Cal. Code Regs., tit. 2, § 617.8 (official notice.).

¹⁵ App. at p. 15.

¹⁶ App. at pp. 15-16.

whether Anderson was provided ineffective assistance of counsel during the pendency of his trial.¹⁷ Following evidentiary hearings held in March 2023, the court took the matter under submission.¹⁸

On June 13, 2023, the superior court granted the writ, finding that Anderson's trial attorney failed to properly investigate, interview, or call to the witness stand an eyewitness to the murder, Leonel, who would have provided exculpatory evidence.¹⁹ The court determined that "but for [the trial attorney's] deficient performance, there is a reasonable probability that Anderson would have been acquitted of the murder charge in this case."²⁰ Accordingly, the court vacated Anderson's murder conviction in case number BA226007 and allowed 60 days for the prosecution to retry the case.²¹ The prosecution announced their intention to retry Anderson and he remained in custody pending the refiling of charges.²²

Nearly one year later, on May 28, 2024, the prosecution refiled the same charges against Anderson in Los Angeles County Superior Court in case number 24CJCF03313-01.²³ However, on June 17, 2024, following a contested hearing, the superior court found there was "no excusable neglect" for the prosecution's delay in refiling the charges against Anderson.²⁴ The court thereby dismissed the case against Anderson and held it would not allow another filing.²⁵ Anderson was released from custody on June 26, 2024.²⁶

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¹⁷ App. at p. 16.

¹⁸ App. at p. 16.

¹⁹ App. at p. 24.

²⁰ App. at p. 24.

²¹ App. at p. 25.

²² App. at p. 67.

²³ App. at pp. 101-114.

²⁴ App. at pp. 112-113.

²⁵ App. at pp. 112-113.

²⁶ App. at p. 98.

1 **C. Motion For Relief Under Penal Code Section 1485.55, Subdivision (d)**

2 On February 28, 2025, the superior court granted Anderson's motion for relief pursuant
3 subdivision (d) of Penal Code section 1485.55.²⁷ This subdivision, which was effective January 2024,
4 mandates CalVCB's approval within 90 days upon a properly submitted Penal Code section 4900
5 claim for demonstrated injury if, inter alia, the district attorney fails to present clear and convincing
6 proof of guilt.²⁸ At the February 28, 2025, hearing, the parties submitted on the Motion for Finding of
7 Entitlement to Compensation pursuant to Penal Code Section 1485.55, subdivision (d) and the moving
8 papers.²⁹ The court ultimately found Anderson entitled to compensation pursuant to Penal Code
9 sections 4900 et. seq. and issued the order to the parties in open court that day.³⁰

10 **D. Anderson's Erroneously Convicted Person Claim**

11 On March 7, 2025, Thomas Ian Graham of Kravis, Graham, & Zucker, LLP, submitted an
12 Erroneously Convicted Person Claim seeking compensation on behalf of Anderson as an erroneously
13 convicted person pursuant to Penal Code section 4900.³¹ In this claim, Anderson requests \$1,150,240
14 in compensation, for the 8,216 days (e.g., 22 years, 5 months) he was erroneously imprisoned, which
15 includes the date of his arrest on December 28, 2001, to the date of his release, on June 26, 2024.³²

16 On March 18, 2025, CalVCB filed Anderson's claim and invited the Attorney General's Office to
17 provide a response on the issue of injury only. On April 4, 2025, the Attorney General's Office provided
18 a response stipulating that Anderson is entitled to compensation but calculating his injury to include
19 partial days, from the date of his arrest on December 28, 2001, to and including the date of his release
20 from custody on June 26, 2024, for a total of \$1,150,380, or \$140 for 8,217, instead of 8,216, days of
21 imprisonment. The administrative record closed on April 7, 2025.

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24 ²⁷ App. at pp. 88-90.

25 ²⁸ Pen. Code, § 1485.55, subd. (d), as added by Stats.2023, c. 702 (S.B. 78), eff. Jan. 1, 2024).

26 ²⁹ Supp. at p. 4.

27 ³⁰ Supp. at p. 4.

28 ³¹ App. at pp. 1-111.

³² App. at p. 5.

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A. The Shooting

On the evening of September 19, 2001, at 6:30 p.m., Raymond, a member of the Dirty Old Men (DOM) gang, was fatally shot on the sidewalk near a payphone.³³ He suffered a total of five gunshots, including shots to the upper chest, head, right arm, and back.³⁴

Police interviewed several witnesses at the scene. Fabiola was inside her third-floor apartment, looking out the window, when she noticed a vehicle, which she described as a blue 1980's Oldsmobile Cutlass, park on the corner of the street. She then observed the front passenger exit the vehicle and shoot the victim approximately three to four times.³⁵ The shooter then retreated to the vehicle and got into the front passenger side as the vehicle sped off. She described the shooter as a Black male, five feet seven inches, and 150 pounds and the driver of the vehicle as a Black male.³⁶

Fabiola's husband, Jose, was in a nearby liquor store when he heard approximately four gunshots.³⁷ Jose then ran out of the store and observed a Black male, who was five-foot seven or five-foot eight and 150 to 160 pounds, running toward a blue 1980's Oldsmobile Cutlass and entering the front passenger seat of the vehicle.³⁸ Jose watched as the blue car drove away. Jose was only able to identify the driver of the vehicle as a Black male.³⁹

The police notified Raymond's girlfriend, Shequina, that Raymond had been murdered.⁴⁰ Several days later, Shequina read a newspaper article that described the suspect's vehicle as a blue, four-door car.⁴¹ Two weeks later she saw a car matching the vehicle's description in her neighborhood.

³³ App. at p. 39. The victims and witnesses are referred to by their first names only to protect their privacy.

³⁴ App. at p. 39.

³⁵ App. at p. 39.

³⁶ App. at p. 39.

³⁷ App. at p. 40.

³⁸ App. at p. 40.

³⁹ App. at p. 40.

⁴⁰ App. at p. 40.

⁴¹ App. at p. 17.

1 She contacted the police and reported the location of the vehicle and the license plate number.⁴²
2 Detectives determined that the vehicle was a 1981 Chevrolet registered to Anderson's wife, and that
3 Anderson had received numerous traffic citations while driving the vehicle.⁴³ Shequina told police that
4 she heard rumors that a Rollin' 40s gang member named "J-Rock" shot Raymond and that Anderson,
5 also known as "Tiny G-Biscuit," had been involved in the shooting as well.⁴⁴

6 Three months after the shooting, detectives showed Fabiola and Jose six-pack photo arrays
7 containing photographs of "J-Rock" and Anderson, as well as a photograph of the suspect's car.⁴⁵
8 Fabiola was unable to make any identifications.⁴⁶ Jose immediately identified Anderson's photograph
9 and confirmed Anderson was the person he saw get into the driver's seat of the blue vehicle just
10 before the car fled the scene.⁴⁷ Jose also stated that the Chevrolet registered to Anderson's wife
11 looked like the one he saw on the day of the shooting, but he was not certain.⁴⁸

12 **B. Evidence Presented at the March 12, 2003, Trial**

13 Fabiola testified that, at the time of the shooting, she was in her third-floor apartment when she
14 heard two to three gunshots.⁴⁹ She looked out her window and saw a guy with a gun get into the
15 passenger side door of a blue car, describing him as a "Black skinny guy."⁵⁰ She was unable to identify
16 Anderson in court as the person she saw get into the passenger side of the blue car.⁵¹

17 Jose testified that at the time of the shooting, he was in the liquor store when he heard four or
18 five gunshots.⁵² He looked through the front window and saw a man running from the area of a
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20 ⁴² App. at p. 40.

21 ⁴³ App. at p. 40.

22 ⁴⁴ App. at p. 40.

23 ⁴⁵ App. at pp. 40-41.

24 ⁴⁶ App. at p. 41.

25 ⁴⁷ App. at p. 41.

26 ⁴⁸ App. at p. 41.

27 ⁴⁹ App. at p. 43.

28 ⁵⁰ App. at p. 43.

⁵¹ App. at p. 43.

⁵² App. at p. 43.

1 payphone, around the rear of the vehicle, and get into the driver's side of the vehicle.⁵³ When he got
2 into the driver's seat, the vehicle took off.⁵⁴ Although Jose previously identified Anderson in a six-pack
3 photo array as the person he saw get into the driver's side of the vehicle on the night of the shooting,
4 at trial Jose testified that he did not tell detectives Anderson was the driver, but rather only that he
5 looks like the guy.⁵⁵ When asked if the driver of the car was in the courtroom that day, Jose answered,
6 "No."⁵⁶ When asked if anyone in the courtroom "look[ed] like the person who was driving that car,"
7 Jose answered, "No."⁵⁷ Jose stated that the person in the picture he selected in the six-pack photo
8 array only looked like the shooter because he had an Afro.⁵⁸

9 Shequina testified that she heard consistent rumors from people in the neighborhood that "J-
10 Rock" was the person that shot Raymond, and that Anderson was not "J-Rock."⁵⁹ She told detectives
11 that the person on trial, Anderson, did not do the shooting.⁶⁰ After prosecutors played a recording of
12 her earlier statements to police implicating Anderson, or "Tiny G-Biscuit," Shequina explained that she
13 only brought up Anderson's name because she knew he had a car similar to the one the newspaper
14 had reported as being involved in the shooting.⁶¹

15 A police officer testified that he had several interactions with Anderson between 1998 and
16 2001, and that Anderson had admitted to being a member of the Rollin' 40's Crips.⁶² The officer further
17 testified that in September of 2001, there was a feud between DOM, Raymond's gang, and the Rollin'
18 40's Crips.⁶³ He opined that Raymond's shooting was done to benefit the Rollin' 40's Crips.⁶⁴

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20 ⁵³ App. at p. 44.

21 ⁵⁴ App. at p. 44.

22 ⁵⁵ App. at p. 44.

23 ⁵⁶ App. at p. 44.

24 ⁵⁷ App. at p. 44.

25 ⁵⁸ App. at p. 44.

26 ⁵⁹ App. at p. 43.

27 ⁶⁰ App. at p. 43.

28 ⁶¹ App. at p. 43.

⁶² App. at p. 44.

⁶³ App. at p. 44.

Anderson took the witness stand in his own defense and denied shooting Raymond.⁶⁵ On the day of the shooting, he was at work from 6:30 a.m. to 3:00 p.m. His commute home from work that day was an hour-and-a-half to two hours. He drove his co-worker to Union Station and then drove home, arriving at 5:30 p.m.⁶⁶ He remained home with his wife and children the rest of the night.⁶⁷ Anderson's employer testified, confirming Anderson worked that day from 6:30 a.m. to 3:00 p.m., and Anderson's co-worker also testified on his behalf.⁶⁸

C. Habeas Evidence

In 2017, investigators with the District Attorney's Conviction Review Unit (CRU) interviewed an eyewitness, Leonel, who was with Raymond when he was murdered.⁶⁹ Leonel agreed to give Raymond a ride a few blocks away and as Leonel was driving, they drove past a group of guys.⁷⁰ Raymond became nervous and said, "I got beef with these people," and tried to cover his face, but said the guys saw him.⁷¹ Raymond was "really worried."⁷² Leonel then made a left turn and drove several blocks until he stopped at a light. At that moment, a car pulled up behind them on the left side, and Leonel told investigators, "Next thing I know, I [had] a gun to my head."⁷³ One person held a gun to Leonel's head, while two guys on the other side of the car started punching Raymond through the opened passenger side window.⁷⁴ They then opened the passenger side door and pulled Raymond out of the car.⁷⁵ Raymond started running but after only a few steps Leonel heard three to four

⁶⁴ App. at p. 44.

⁶⁵ App. at p. 44.

⁶⁶ App. at p. 45.

⁶⁷ App. at p. 45.

⁶⁸ App. at p. 45.

⁶⁹ App. at p. 45.

⁷⁰ App. at p. 45.

⁷¹ App. at p. 45.

⁷² App. at p. 45.

⁷³ App. at p. 45.

⁷⁴ App. at p. 45.

⁷⁵ App. at pp. 45-46.

1 gunshots and saw Raymond fall forward in front of the car.⁷⁶ The two assailants on the other side of
2 the car then retreated toward the rear of Leonel's car and he heard car doors slam.⁷⁷ The assailant
3 who had been holding a gun to Leonel's head then walked in front of Leonel's car near where
4 Raymond's body had fallen. Leonel heard three or four more gunshots. The man then returned to
5 Leonel and said, "Say anything and I'll kill you."⁷⁸ Leonel heard the assailant's car door close behind
6 him and then Leonel drove away.⁷⁹ Leonel was able to see the person who held the gun to his head
7 and fired the last several shots at Raymond.⁸⁰ Leonel knew Anderson from the neighborhood, and
8 Anderson was not the person who held the gun to his head.⁸¹ However, Leonel did not know if
9 Anderson was one of the other two assailants who were on the opposite side of his car because he did
10 not see them well.⁸² Leonel also did not see the kind of car they were driving.⁸³

11 Two years later, on August 5, 2019, Leonel was interviewed again by CRU.⁸⁴ In this interview,
12 Leonel confirmed that the first time he was contacted by anyone about what he witnessed was in 2017,
13 or early 2018, when Anderson's wife located him, but was unable to speak to him.⁸⁵ The next person
14 to contact him was an investigator for the Loyola Law School Project for the Innocent, who called
15 Leonel on the phone.⁸⁶ Leonel confirmed all the details of the crime that he relayed during his 2017
16 interview with the CRU.⁸⁷ He maintained that the assailant who held a gun to his head and fired the
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19 ⁷⁶ App. at p. 46.

20 ⁷⁷ App. at p. 46.

21 ⁷⁸ App. at p. 46.

22 ⁷⁹ App. at p. 46.

23 ⁸⁰ App. at p. 46.

24 ⁸¹ App. at p. 46.

25 ⁸² App. at p. 46.

26 ⁸³ App. at p. 46.

27 ⁸⁴ App. at p. 46.

28 ⁸⁵ App. at p. 46.

⁸⁶ App. at p. 76.

⁸⁷ App. at p. 77.

1 final shots at Raymond was not Anderson, but he could not describe the other two assailants on the
2 other side of the car, other than they were both Black men.⁸⁸

3 **IV. Determination of Issues**

4 Penal Code section 4900 allows a person, who has been erroneously convicted and
5 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
6 CalVCB. Typically, the claimant bears the burden to prove by a preponderance that (1) the crime with
7 which they were convicted either did not occur or was not committed by them and (2) they suffered
8 injury as a result of their erroneous conviction.⁸⁹ In this context, injury means that, but for the
9 erroneous conviction, the claimant would have been free from custody.⁹⁰ Once a properly submitted
10 claim is filed, Penal Code section 4902 requires the Attorney General to submit a written response,
11 after which an informal administrative hearing ensues pursuant to Penal Code section 4903. If the
12 claimant satisfies their burden at the hearing, then Penal Code section 4904 requires CalVCB to
13 approve payment for the purpose of indemnifying the claimant for the demonstrated injury, at the rate
14 of \$140 per day of their incarceration, if sufficient funds are available, upon appropriation by the
15 Legislature.⁹¹ No compensation is authorized for any time spent on supervised released.⁹²

16 In limited circumstances, a different and expediated procedure may apply to properly filed
17 claims by claimants whose convictions have been reversed under specified circumstances. First,
18 under Penal Code section 1485.55 or 851.865, if the claimant received a court finding of factual
19 innocence, then CalVCB must approve the claim, without a hearing and within 90 days, for the
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22 ⁸⁸ App. at p. 77.

23 ⁸⁹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

24 ⁹⁰ Cal. Code of Regs., tit. 2, § 640, subd. (f).

25 ⁹¹ Pen. Code, § 4904.

26 ⁹² Pen. Code, § 4904; see also proposed Pen. Code, § 4904, subd. (d), conditionally operative July
27 1, 2024, subject to appropriation, as added by Stats.2022, c. 771 (A.B. 160), § 21; Governor's May
28 Revision (2024-25), Introduction at pp. 9-10 (rejecting A.B. 160's conditional expenditures due to
"the negative multiyear projections" to the General Fund), available at <https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>.

1 demonstrated injury.⁹³ Second, under subdivision (b) of Penal Code section 4900, if the claimant's
2 conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or
3 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney
4 General declined to object with clear and convincing proof of guilt, then CalVCB must approve the
5 claim, without a hearing and within 90 days, for the demonstrated injury.⁹⁴ Third, under recently-added
6 subdivision (d) of section 1485.55, if a court granted a motion for relief based upon a conviction that
7 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
8 subdivision (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed
9 to timely object with clear and convincing proof of the claimant's guilt, then CalVCB must approve the
10 claim, without a hearing and within 90 days, for the demonstrated injury.⁹⁵ While a court order under
11 subdivision (d) of section 1485.55 does not constitute a finding of factual innocence, it nevertheless
12 requires expedited approval of a filed claim.⁹⁶

13 Even when approval is mandated under any of these three, enumerated circumstances,
14 CalVCB is statutorily obligated by Penal Code section 4904 to determine the extent of injury caused by
15 the erroneous conviction and incarceration.⁹⁷ To that end, CalVCB may "request from both parties
16 additional documents or arguments as needed to calculate compensation."⁹⁸ The burden to prove
17 injury rests with the claimant by a preponderance of the evidence.⁹⁹

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21 ⁹³ Pen. Code, §§ 851.865; 1485.55, subds. (a), (b), and (e), 4902, subd. (a); see also Cal. Code of
22 Regs., tit. 2, § 640, subds. (e)(1)-(2).

23 ⁹⁴ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

24 ⁹⁵ Pen. Code, § 1485.55, subd. (e).

25 ⁹⁶ See *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (confirming that "a court finding of factual
26 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").

27 ⁹⁷ Pen. Code, § 4904.

28 ⁹⁸ Pen. Code, § 4904, as amended by Stats. 2023, c. 702 (S.B. 78), § 5, eff. Jan. 1, 2024.

⁹⁹ Pen. Code, § 4904; see also Evid. Code, § 115.

1 **A. Innocence**

2 Here, Anderson’s claim falls within the mandatory approval provision of subdivision (d) of Penal
3 Code section 1485.55. Specifically, the court granted Anderson’s motion for relief. In addition,
4 Anderson timely submitted a claim to CalVCB for compensation in accordance with Penal Code
5 sections 4900 and 4901. Consequently, CalVCB is required by subdivision (d) of section 1485.55 to
6 approve compensation for the injury sustained by Anderson if sufficient funds are available, upon
7 appropriation by the Legislature.¹⁰⁰ No finding is made by CalVCB as to the weight of inculpatory and
8 exculpatory evidence contained in the administrative record. Nor is any presumption drawn from the
9 lack of a finding of factual innocence.¹⁰¹

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....”¹⁰² The term
13 “injury” refers to “whatever harm is suffered by a person who is wrongly imprisoned....”¹⁰³ Injury “may
14 be established by showing that, but for the erroneous conviction, the claimant would not have been in
15 custody.”¹⁰⁴ Upon such a showing, Penal Code section 4904 authorizes compensation in the amount
16 of “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.”¹⁰⁵

18 In this claim, CalVCB agrees with the Attorney General that Anderson’s injury includes the
19 8,217 days he was imprisoned solely for his erroneous convictions in Los Angeles County Superior
20 Court case number BA226007. This includes the date of his arrest on December 28, 2001, to and
21 including the date of his release on June 26, 2024 (e.g., 8,217 days). Given the statutory rate of \$140

23 ¹⁰⁰ Pen. Code, §§ 4900, subd. (b), 4904.

24 ¹⁰¹ Pen. Code, § 1485.55, subd. (f) (“A presumption does not exist” for failing to obtain a finding of
25 factual innocence).

26 ¹⁰² Pen. Code, § 4904.

27 ¹⁰³ Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at pp. 4-5.

28 ¹⁰⁴ Cal. Code of Regs., tit. 2, § 640, subd. (f).

¹⁰⁵ Pen. Code, § 4904.

1 per day, CalVCB also agrees with the Attorney General's calculation that Anderson is entitled to
2 indemnification for his erroneous convictions in the amount of \$1,150,380 if sufficient funds are
3 available upon appropriation by the Legislature.¹⁰⁶

4 **V. Conclusion**

5 As mandated by Penal Code section 1485.55, subdivision (d), the undersigned hearing officer
6 recommends CalVCB approve payment to Anderson in the amount of \$1,150,380 as indemnification
7 for the injury he sustained through the 8,217 days he was imprisoned solely for his erroneous
8 convictions in Los Angeles County Superior Court case number BA226007, if sufficient funds are
9 available upon appropriation by the Legislature.

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11 Date: April 10, 2025

Kristen Sellers

Kristen Sellers
Hearing Officer
California Victim Compensation Board

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24 ¹⁰⁶ Pen. Code, § 4904, subd. (a); Of the initial \$8 million appropriated by Assembly Bill 107 (i.e., the
25 Budget Act of 2024) for CalVCB's payment of approved claims under Penal Code section 4900 for the
26 2024-2025 fiscal year, approximately \$445,460 in funds currently remain. Nonetheless, as Assembly
27 Bill 107 recognized, "Upon order of the Department of Finance, [this] amount ... may be increased by
28 an amount not in 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.