

California Victim Compensation and Government Claims Board
Open Meeting Minutes
May 15, 2014, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, California Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, May 15, 2014, at 10:03 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the April 10, 2014, Board Meeting

The Board approved the minutes of the April 10, 2014, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. No public comment was provided.

Item 3. Executive Officer Statement

Documentary Screening on Human Trafficking

In partnership with the California District Attorneys Association, CalVCP cohosted a screening of "Teenage Sex 4 \$ale: Human Trafficking in San Bernardino County" on April 30 at the Crest Theatre. The powerful documentary on human trafficking, produced by the San Bernardino County District Attorney's Office, exposes the problem of sexual exploitation in California. Board member and San Bernardino County District Attorney Michael Ramos provided a recorded message introducing the film and welcoming those in attendance. The viewing was aimed at raising awareness of domestic sex trafficking and highlighting current efforts to assist victims and administer justice.

CalVCP was joined by members of several District Attorneys' Offices and Victim Witness Centers, CHP training officers, Legislative staffers, multiple law enforcement groups, including Sheriff and Police departments, CSUS criminal justice students, local human trafficking nonprofits, and survivors of human trafficking.

Executive Officer Nauman stated that during the Q&A session, there was an emotional exchange by a young woman who learned about the screening that day. She shared her story of being kidnapped, held captive, and being involved in trafficking. She expressed her frustration with her experience of attempting to figure out how to receive help. Executive Officer Nauman stated that many in attendance from the nonprofit sector were able to offer their assistance.

Chairperson Batjer commented that she was unable to attend the screening, but heard wonderful things about it. She asked where the public could view the documentary.

Board member Ramos stated that the documentary could be downloaded from the San Bernardino County District Attorney website. He explained that the documentary has been shown in over 200 different settings in five different states. He commented that Chris Lee, the producer of the documentary, was nominated for the 2014 Emmy Awards in the short documentary category.

Annual National Association of Crime Victim Compensation Boards (NACVCB) Conference

The NACVCB held its Western Regional meeting in San Francisco on April 21-23. With participants from 18 states, California had the honor of being the host state and developing the program. CalVCP discussed emerging issues, the regulation regarding involvement in the qualifying crime of prostitution, extensive use of social media, and its strong relationship with OVC, among others. Executive Officer Nauman thanked CalVCP staff for their hard work in planning the event.

Chairperson Batjer thanked Executive Officer Nauman for her leadership and hard work.

Item 4. Legislative Update

Wayne Strumpfer, VCGCB Legislative Director, reported the following bills impacting the VCGCB:

AB 2685 (Cooley), regarding restitution collection, passed through the appropriation committee. It was on consent earlier in the week and is now on the Assembly floor.

SB 1031 (De Leon), the VCGCB's first Government Claims Bill of 2014, will appropriate \$776,946.59 to pay 332 claims approved by the Board from May 2013 through December 2013 and \$305,900 to pay the erroneous conviction claim of Mario Rocha. It is on the Senate Floor.

Item 5. Consideration of Organizational Applications for the 2014 California State Employees Charitable Campaign

Jon Myers, Deputy Executive Officer, Public Affairs Division, and Rose Domingo, Public Affairs Division, were in attendance. Andrew Sheehy, Senior Vice President, Resource Development, was in attendance on behalf of United Way California Capital Region.

Mr. Myers explained that each year the Victim Compensation and Government Claims Board (VCGCB) administers the California State Employees Charitable Campaign (CSECC). In previous years, the Board took on the challenge to certify eligibility of all charities involved in the campaign. The process required countless hours of staff time. Staff received the applications from the charities, made contact for any missing information, and established each charity status for eligibility under the program. This year, the VCGCB entered into an agreement with the United Way California Capitol Region (UWCCR) to assist in the CSECC. UWCCR now certifies the eligibility of charitable, non-profit organizations, which involves verification of the 501(c) (3) status and certification of compliance with the California Fair Employment and Housing Act, as well as other fields of required information.

Mr. Myers stated that UWCCR is utilizing a platform used at their national level for similar large campaigns, creating a more efficient means of verification. VCGCB staff's role was to work with the UWCCR in the transition of responsibilities to certify the eligibility of the charities. He explained that the Board's role was to approve three types of nonprofit organizations: Principal Combined Fund Drive agencies and their affiliated charities, the federation agencies and their affiliated charities, and independent charities. He stated that there were a combined total of 3,708 nonprofit organizations recommended for approval as certified 501(c) (3) organizations and eligible for the campaign. Mr. Myers reported that after the first year of the agreement with UWCCR, he was pleased with the results and the process, including their ability to receive applications electronically. He stated that he was looking to new efficiencies such as going digital rather than providing the Board with the large binder that contained the listing of the charities each year.

Chairperson Batjer commented that the development of a mobile app would be great because it would allow State employees the ability to easily contribute to the campaign.

Mr. Young stated that CSECC was founded 56 years ago. UWCCR looked at the undertaking of assisting VCGCB as a challenge, but a necessary one. He thanked Chairperson Batjer and the Board for their well-documented desire to streamline government and use technology. He stated that Executive Officer Nauman, Jon Myers, Anita Ahuja, and Rose Domingo were all very instrumental in giving UWCCR the latitude to use technology. In previous years, the process was labor intensive for nonprofits. As a result of the change, UWCCR saw an increase in the amount of participation this year. The new process decreased the amount of work performed by nonprofits, which meant they could spend more time fulfilling the mission of their organization.

The Board approved the 24 PCFD agencies, 941 PCFD-affiliated organizations, and 2,743 Non-affiliated organizations.

Item 6. Government Claims Program

Consent Agenda (Nos. 1-331)

The Board adopted the staff recommendations for item numbers 1-331, with the following exceptions: item numbers 73 and 280 were removed to allow the claimants an opportunity to address the Board; item number 181 was continued to the August 21st meeting to allow the claimant an opportunity to address the Board; and item number 320 was continued to the June 19th meeting to allow the claimant an opportunity to address the Board.

Consent Agenda Appearance

Item 73, G615333

Claim of Infinity Engineering

Afor Mbanwi appeared and addressed the Board on behalf of Infinity Engineering. Christi Silveira and Paul Elliott attended on behalf of the California Department of Transportation.

Nicholas Wagner, Government Claims Program Manager, explained that Infinity Engineering sought compensation in the amount of \$325,657.80 from the California Department of Transportation for unpaid invoices and lost revenue. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because it raised complex issues of fact and law not typically undertaken by the Board.

Ms. Mbanwi explained that her company, Infinity Engineering (Infinity), entered into a contract with the California Department of Transportation (Caltrans) to install four light poles in Tuolumne County at two intersections approximately five–seven miles apart. She stated that the resident engineer gave Infinity notice to proceed and Infinity began work on October 9, 2012. Infinity surveyed location one and Caltrans approved it for drilling; however, Caltrans later informed Infinity that they drilled at the wrong location. Consequently, Infinity had to recompact the hole. Ms. Mbanwi stated that the boring company could only bore a portion at the other location due to the condition of the site. She spoke with the inspector on site and informed him that the location was very rocky. She later received a premature termination by Caltrans. On April 10, 2013, the resident engineer took over the project and later told her that he was going out of business. On April 24, 2013, the resident engineer sent a letter to her bonding company claiming that her company caused damage. She explained that on June 2, 2013, Infinity attempted to complete a job that only required four hours. While onsite, Infinity mobilized, had flaggers on site, and were ready to work. As they were ready to begin, the resident engineer informed her that the lighting was not right and would not allow Infinity to work. She referred him to the Caltrans specifications that stated that a light tower or nightstands could be used. She explained that on that day she had three light towers and two nightstands. The resident engineer then informed her that he requested CHP on the wrong day and told Infinity to go to location one. She advised the resident engineer that there were no loops to be cut at location one and asked why he was sending Infinity to the next location. Thirty minutes later the electrical inspector said they could not work because they could not get the CHP. She stated that Caltrans was supposed to provide a memo if her company could not work. She stated that she pleaded with the resident engineer to let them work because it was their last night. She stated they performed all of the work, but just needed to cut the loops and finish the job.

Lastly, Ms. Mbanwi stated that she emailed the resident engineer and the next day he told her that if she continued to ask questions, Infinity would not be able to return. She explained that she worked with Caltrans previously and was unsure why there were so many problems in Tuolumne County.

Ms. Silveira stated that Caltrans recommended that the Board deny the claim due to its complexity.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 280, G616052

Claim of Michael Virgallito

Michael Virgallito appeared and addressed the Board. Mr. Virgallito provided the Board with copies of his government claim and additional documents. Jaeson White was in attendance on behalf of the California Highway Patrol.

Nicholas Wagner, Government Claims Program Manager, explained that Michael Virgallito requested leave to present a late claim for compensation from the California Highway Patrol in the amount of \$19,246.67 for bail and legal fees. He stated that Government Claims Program staff recommended that the Board deny the late application for failure to meet the criteria required in Government Code section 911.6. He further stated that if the Board determined that the late application should be granted, GCP staff recommended that the Board reject the claim because it raised complex issues of fact and law not typically undertaken by the Board.

Mr. Virgallito stated that on May 19, 2013, he was driving with his six-year-old son and his son's friend. He explained that he had a busy day that day. He attended a t-ball game and later a birthday party where he consumed two glasses of beer. Thereafter, he and the children set out for a family outing. While traveling northbound on I-5 in Stockton, he as well as other vehicles were stopped in a construction zone. He stated that CHP Officer informed him that he was pulled over for using a closed lane. The officer informed him that he smelled beer in the vehicle and asked him how much he had to drink. He told the officer that he had 2 ½ glasses of beer at a birthday party an hour ago. Mr. Virgallito stated that given his weight, height, and metabolism, he thought he should be able to drive. He stated that the officer conducted a DUI investigation, he had a blood alcohol level of .09, and was arrested for DUI. He stated that the officer informed him that he had never processed a DUI arrest with children involved. He explained that the officer allowed his friends to pick up the children and take possession of his car. The CHP told him that he would be charged a misdemeanor and he would be out of jail quickly. The officer transported him to San Joaquin County Jail where he was later booked.

He stated that he was shocked when jail personnel informed him that he was charged with a \$170,000 felony bond on child endangerment. He told them that the officer advised him that it would be a misdemeanor and he would be released because he had a low BAC. He was told that he had to post a \$17,000 bail or wait until an arraignment a couple days later. He stated that he was scheduled to facilitate an important work meeting the next day and could have potentially lost his job if he did not attend. Consequently, his wife withdrew money from their savings account and their children's college fund to bail him out.

In December 2013, he travelled to Stockton in an effort to get the charge reduced to a wet reckless and misdemeanor. In January 2014, he received a copy of the original arrest report and noticed that most all items checked on the report were noted as a misdemeanor; however, on one section of the report, the officer accidentally made a mistake when listing the Penal Code section resulting in it being deemed a felony. He explained that the situation cost his family \$25,000 for a first offense of a wet and reckless. He stated that he paid his fine, attended classes, paid his DMV fees, and paid his attorney a \$3,000 retainer.

Mr. White explained that the claim was based on an incident that occurred on May 19, 2013, and the claim was filed on January 22, 2014, approximately eight months from the date of the incident. He

stated that Mr. Virgallito had six months to file. Further, he recommended that the Board deny the claim for failure to meet the criteria required in Government Code section 911.6.

Mr. Virgallito stated that, pursuant to the VCGCB website, claims for death or injury to a person, damage to personal property or damage to growing crops must be filed within six months after the incident occurred and all other claims must be filed within one year after the incident occurred. He stated there was no damage to his personal property or to crops so he filed his claim within one year. He explained that he was aware that he had a claim in January 2014.

Chairperson Batjer asked Chief Counsel Strumpfer to provide the Board with clarification.

Chief Counsel Strumpfer explained that a person must file a claim within six months for personal injuries. He stated that the question would be when did Mr. Virgallito realize that he had a claim. He added that whether or not the Board decided that the claim was late or not, there was a complicated issue regarding his damages. For instance, questions such as did Mr. Virgallito receive his bail money back, what part of the costs for the DUI were based on his misdemeanor DUI, and also what did he suffer from any possible mistake the CHP made. Lastly, Mr. Strumpfer recommended that the Board reject the claim for the complications that should be determined in court.

Board member Ramos stated that the issues to be considered were when did the clock start to run, when did he receive notice, and when did he realize it was a felony. He stated that Mr. Virgallito may be able to move forward if he could show that he was under the six-month time period, depending on notice.

Chairperson Batjer stated that she was troubled by the information that Mr. Virgallito did or did not receive and the timeliness of it; however, she stated that he could take the matter to the court for relief.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation to deny the late application for failure to meet the criteria required in Government Code section 911.6 and reject the claim because it raised complex issues of fact and law not typically undertaken by the Board.

Item 7. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Item 8. Claim of Francisco Carrillo (Pen. Code, § 4900 et seq.)

Francisco Carrillo was in attendance. Ellen Eggers, claimant's attorney, attended on behalf of Mr. Carrillo. Heather Gimle attended on behalf of the California Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Carrillo was convicted of murder and attempted murder. During Mr. Carrillo's writ of habeas corpus, the court found that the witnesses who had recanted their original testimony in court were credible and that the one witness who did not recant was not credible. The court also found that Mr. Carrillo's alibi was credible. He stated that under the new law, Penal Code section 1485.5, the Board is bound to the court's credibility determinations; therefore, the Hearing Officer found that there was evidence of Mr. Carrillo's innocence by a preponderance of the evidence. The Hearing Officer recommended approval of Mr. Carrillo's claim in the amount of \$683,300, which represented \$100 a day for each day served in prison.

Mr. Carrillo thanked the Board for allowing his claim to reach this point in the process. Ms. Eggers stated that she did not have a statement, but could answer questions, if requested.

Ms. Gimle stated that the Attorney General's Office would submit on the Hearing Officer's recommendation.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the hearing officer's recommendation to approve the claim.

Item 9. Claim of Jose Luis Diaz (Pen. Code, § 4900 et seq.)

M. Gerald Schwartzbach addressed the Board on behalf of Luis Diaz. Larenda Delaini appeared and addressed the Board on behalf of the California Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Diaz was convicted of rape and attempted rape. Over a period of time while he was in prison, the District Attorney received information and DNA testing was performed as well as identification work and it was determined that the rapist was not Mr. Diaz. He stated that Mr. Diaz's case first came to the Board approximately 17 years after Mr. Diaz's release from prison. VCGCB staff denied the claim for timeliness. Mr. Diaz appealed before the Superior Court who found it timely and ordered the Board to approve the claim. The Hearing Officer recommended approval the claim in the amount of \$305,300, which represented \$100 a day for each day served in prison.

Mr. Schwartzback stated that although he supported the hearing officer's recommendation, it was stated in the record that the District Attorney joined in the habeas corpus petition. In addition, counsel for the District Attorney's Office told Mr. Diaz that he regretted that he had been wrongfully convicted. Also, a judgment of acquittal was entered and there was a dismissal for insufficiency of evidence.

Ms. Delaini explained that the Attorney General's Office made no representations as to Mr. Diaz's claim of actual innocence because they were not involved in any of the investigations that occurred in the superior court and were not provided any documentation that the Santa Clara County District Attorney's Office utilized in making their decision. She stated that the District Attorney's Office stipulated to jurisdiction and innocence and the Board was compelled to make a recommendation to the legislature that payment be made to Mr. Diaz. Lastly, she stated that the Attorney General's Office submitted on the recommendation of the Hearing Officer.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the hearing officer's recommendation to approve the claim.

Item 10. Claim of Charles Holmes III (Pen. Code, § 4900 et seq.)

Wayne Strumpfer, VCGCB Chief Counsel, stated that Robert Schlein, Mr. Holmes' attorney, was flying in from San Diego. Staff received notification from Mr. Schlein that his plane was delayed due to mechanical problems but would be landing in Sacramento shortly. Mr. Strumpfer stated that he offered to move the item after Closed Session so that Mr. Schlein could address the Board.

Chairperson Batjer stated that the Board was fine with moving it to the end of the agenda.

Item 11. Claim of Johnny Williams (Pen. Code, § 4900 et seq.)

Melissa O'Connell was in attendance on behalf of Mr. Williams. Larenda Delaini addressed the Board on behalf of the Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Williams was convicted of lewd acts and attempted rape of a nine-year-old girl. DNA testing was done after Mr. Williams spent a considerable amount of time in prison. DNA evidence concluded factual innocence for him. At the habeas corpus hearing, it was uncontested and the court found factual innocence; therefore, under

the new law, Penal Code section 1485.5, the Board should approve the claim in the amount \$461,600, \$100 a day for each day spent in prison.

Ms. Delaini explained that the Attorney General's Office made no representations as to Mr. Williams' claim of actual innocence because they were not involved in any of the investigations that occurred in Alameda County Superior Court. However, because the District Attorney stipulated to innocence and the habeas petition was granted on the grounds of innocence under the new amendments to Penal Code section 4900, the Board was obligated to recommend payment to the legislature. Lastly, she stated that the Attorney General's Office would otherwise submit on the recommendation of the Hearing Officer.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the hearing officer's recommendation to approve the claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:00 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel at 11:00 a.m. to deliberate on proposed decision numbers 1-86.

Open Session

The Board reconvened into open session at 11:22 a.m. Chairperson Batjer stated that number 73 was inadvertently listed on the agenda twice; however, it was correctly listed as number 65.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the hearing officer's recommendations to approve proposed decision number 1-86, with the exception of number 73.

Item 10. Claim of Charles Holmes III (Pen. Code, § 4900 et seq.)

Robert Schlein addressed the Board on behalf of Mr. Holmes. He submitted documentation for the Board's review in support of Mr. Holmes' claim. Larenda Delaini addressed the Board on behalf of the Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Holmes pled guilty to not registering as a sex offender under Penal Code section 290 and served time in prison when, in fact, he did not need to register as a sex offender. Prior to the change in the law, the fact that Mr. Holmes pled guilty could have been considered by the Board as contributing to his own conviction; however, with the amendment to the law, that was not a factor to be considered. He stated that the Hearing Officer recommended approval of the claim.

Mr. Schlein stated that he was in agreement with the proposed decision of the hearing officer. He stated that Mr. Holmes established pecuniary loss, which was supported by the documentation he submitted to the Board.

Ms. Delaini stated that Mr. Holmes is a "three-striker" and a sex offender with a criminal history spanning 32 years in three states. Since his release, he has been convicted twice of residential burglary. In one of the burglaries, the resident came home and interrupted that burglary. She stated that Mr. Holmes was homeless, unemployed, and addicted to methamphetamine at the time that he pled guilty to failing to register as a sex offender in San Diego County. His underlying sex offense concerned Mr. Holmes digitally penetrating a seven-year-old girl when he was 27-years-old. She explained that under the former version of Penal Code section 4903, Mr. Holmes would not be entitled to compensation because he contributed to his conviction by pleading guilty after receiving

advice from counsel and accepting a nine-year prison sentence; however, SB 618 amended Penal Code section 4903 to remove that contribution component. The Legislature chose to make exceptions in various areas of the law for criminals who commit serious or violent felonies and sex offenses including, among others, felony sentencing and sentencing under former Penal Code section 4019. Despite those exceptions that have been made, SB 618 did not include any exceptions or prohibitions on payment for claims filed pursuant to Penal Code section 4900 by those same "three-strike" defendants or sex offenders. Accordingly, now the Board is compelled to make a recommendation to the Legislature to make payment to Mr. Holmes, a "three-striker" and sex offender with a long criminal history who pleaded guilty to his underlying offense after receiving advice from counsel and who has continued to commit crimes after being released from his nine-year prison sentence that he accepted.

Ms. Delaini stated that although the Penal Code states that claimants shall receive \$100 a day, there are also regulations that suggest that claimants have to establish pecuniary injury. Based on Mr. Holmes' criminal history, the number of times that he has been in and out of custody, and the fact that he has continued to commit felony offenses for which he was incarcerated after his release for the offense that he is claiming compensation, it was very clear that Mr. Holmes had not suffered any pecuniary injury. In the police report, Mr. Holmes admitted that he had not worked for nearly three years; rather, he was collecting cans and recycling them. Lastly, Ms. Delaini stated that with her comments mentioned, the Attorney General's would otherwise submit on the recommendation by the Hearing Officer.

Christine Ward, Executive Director, Crime Victims Action Alliance, stated that she was displeased and disturbed that Mr. Holmes' claim was before the Board for compensation. She stated that her organization was actively in the process of opposing SB 618. She explained that before the law was modified, a person could not contribute or confess to the crime. The person had to go through the criminal justice system and let a jury of their peers make that determination for them. She stated that a victim cannot contribute to their arrest or conviction and then be compensated for their injuries; therefore, it was a slap in the face for victims. Under the new law, individuals can come forward after committing perjury, file Penal Code 4900 claims, and collect from the State. She commented that members of her organization may come before the Board at future meetings to voice their unhappiness at the unjust system.

Chairperson Batjer thanked Ms. Ward for her comments.

Board member Ramos thanked Ms. Ward for her comments. He stated that he was also very concerned about the new legislation and that changes needed to be made. He stated that he distinguished Mr. Holmes' case from the other Penal Code 4900 cases on the Board's agenda because factual innocence was established in those cases. However, in Mr. Holmes' procedural case, the Board was being asked to give compensation to a career criminal who committed serious and violent felonies, including a serious crime of molestation of a child. Board member Ramos stated that, regarding Mr. Holmes' case, he had an option because he believed that Mr. Holmes' claim of collecting cans was merely a set up to receive compensation because Mr. Holmes has not worked. He stated that Mr. Holmes was using methamphetamine and was homeless and he will continue to be a menace to society. Lastly, Board member Ramos stated that with 31 years of criminal conduct, Mr. Holmes is considered a career criminal according to the Penal Code.

Board member Chivaro asked Chief Counsel Strumpfer whether the Board had an option or if they were required to accept the hearing officer's recommendation.

Chief Counsel Strumpfer stated that the statute requires the claimant to show a pecuniary loss.

Mr. Schlein explained that if a person pled guilty to a charge, whether it was the result of bad legal advice or because they were poor and they were threatened with a much longer sentence, is hypothetical. He quoted from page 6, Senate Committee on Public Safety "Fortunately, California

law offers a remedy for the men and women that prove their innocence and thereby secure their freedom by providing compensation in the amount of \$100 for each day he or she spent illegally behind bars away from society, employment, and their loved ones.” He stated that the Board’s dislike for Mr. Holmes was wrong. Mr. Holmes was not required to register. He was given bad advice and was made to register when he did not have to and his redress is to receive compensation. In 1991, Mr. Holmes had one offense that involved a sexual assault. After that, most of his problems were related to drugs. He admitted that Mr. Holmes did not have a perfect life, but he should not have served nearly eight years in prison. Lastly, he commented that the Board should not try to find a way not to compensate Mr. Holmes.

Chairperson Batjer clarified that the Board was merely seeking clarification.

Board member Ramos asked Mr. Schlein whether Mr. Holmes was employed.

Mr. Schlein explained that if a person is a convicted felon and forced to register, they do not have many options in terms of employment. He stated that Mr. Holmes had been recycling cans for several months and had a job cooking, but was laid off. All these years in his forties, he worked. He stated that Mr. Holmes cooked almost every day while in prison. Lastly, he stated that SB 618 is the law. Mr. Holmes was wrongly made to serve the eight years and could not live freely.

Chairperson Batjer stated that Mr. Holmes’ claim was very difficult for many reasons, as noted by Board member Ramos. She stated that it appeared that Mr. Holmes had a very difficult life with many bad choices made along the way; however, her decision was guided by the Hearing Officer’s recommendation to the Board. She quoted the following excerpt from the hearing officer’s recommendation: “Although the elements of second degree child molestation in Rhode Island appear to be the same as the elements of a lewd and lascivious act on a child under the age of 14 in violation of California Penal Code section 288, subdivision (a), there is a critical difference: the Rhode Island statute can be violated if the defendant committed the act for the purpose of ‘sexual assault.’ In California, on the other hand, a sexual act accomplished for assaultive or sadistic purposes does not satisfy the ‘intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself’ element of Penal Code section 288. Because Claimant did not make any admissions regarding his intent to law enforcement at his arrest or at the time he entered a plea, pursuant to California case law and statute, it is determined that there is not a preponderance of the evidence that Claimant committed the crime of second degree child molestation in Rhode Island with the intent required for a lewd and lascivious act in violation of Penal Code section 288. Therefore, he was not required to register as a sex offender at the time that he was convicted and served time in prison. He thus was erroneously convicted.”

Chief Counsel Strumpfer read the following excerpt from Penal Code section 4904: “If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant has sustained pecuniary injury through his or her erroneous conviction and imprisonment, the California Victim Compensation and Government Claims Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury.”

Chairperson Batjer made a motion to adopt the Hearing Officer’s recommendation to approve the claim; it was not seconded. Board member Ramos made a motion to reject the Hearing Officer’s proposed decision and recommendation. Board member Chivaro seconded the motion. The Board voted 2-1 (Chairperson Batjer dissenting) to reject Mr. Holmes’ claim pursuant to Penal Code section 4900.

The Board meeting adjourned at 11:50 a.m.