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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:  
**Luis Galicia**

**Notice of Decision**

On February 18, 2016, the California Victim Compensation and Government Claims Board voted 3-0 to reject the claim.

Attached are the original proposed decision and a written summary of the arguments and Board decision from the Board meeting held on February 18, 2016.

Dated: March 11, 2016

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Tisha Heard  
Board Liaison  
California Victim Compensation and  
Government Claims Board

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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

**Luis Galicia**

**Proposed Decision  
(Penal Code § 4900 et seq.)**

**Introduction**

A hearing on this claim for compensation as an erroneously convicted person was conducted on May 26, 2015, by Jasmine Turner-Bond, the Hearing Officer assigned to hear this matter by the Executive Officer of the Victim Compensation and Government Claims Board. Luis Galicia (Claimant), requests payment of \$106,800.00 as compensation for the 1,068 days he served in prison from the day of his conviction on December 14, 2008, until his release from prison on November 22, 2011. The Claimant appeared and testified at the hearing, represented by attorney John T. Richards. Deputy Attorney General (AG) Heather Gimle represented the California Department of Justice, Office of the Attorney General.

After considering all the evidence, it is determined that the Claimant has proven by a preponderance of the evidence that he is factually innocent of the crime of lewd and lascivious acts on a child under the age of 14.<sup>1</sup> Therefore it is recommended that the Claimant’s claim for compensation pursuant to Penal Code section 4900 et seq. be approved.

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<sup>1</sup> Pen. Code, § 288 (a). All statutory references are to the California Penal Code unless otherwise noted.

1 **Procedural Background<sup>2</sup>**

2 Claimant was arrested February 28, 2008, and arraigned March 3, 2008, on a felony complaint  
3 and charged with five counts of sexual assault of a child under the age of 14 years, with the intent of  
4 arousing, appealing to and gratifying the lust, passions, and desires of the defendant, in violation of  
5 section 288, subdivision (a). On May 1, 2008, the state filed an amended complaint adding three  
6 additional counts of violating section 288, subdivision (a).

7 On December 12, 2008, the state filed an amended information charging two counts of sexual  
8 assault pursuant to section 288, subdivision (a) which included additional allegations of substantial  
9 sexual conduct with a minor pursuant to section 1203.055, subdivision (a)(8) and a multiple victim  
10 allegation pursuant to section 667.61, subdivisions (b),(c), and (e).

11 On December 17, 2008, the jury returned a verdict of guilty on both counts and found true both  
12 additional allegations.

13 On September 18, 2009, the court sentenced the Claimant to 15 years-to-life for each count and  
14 ran the sentences concurrently.

15 On September 27, 2011, the Claimant filed state habeas petitions alleging he was entitled to  
16 relief based on new and recently discovered medical evidence that demonstrated his innocence.

17 The Claimant's petition was summarily granted. On February 22, 2012, the San Diego Superior  
18 Court released claimant.

19 On July 3, 2012, the Claimant filed his claim pursuant to section 4900.

20 On October 28, 2015, the Proposed Decision was mailed to all parties. At that time, the  
21 parties were advised that pursuant to California Code of Regulations, title 2, section 619 et seq., they  
22 may submit written argument concerning whether or not the Board should adopt the Proposed  
23 Decision.

24 On or about November 24, 2015, and November 30, 2015, respectively, the Board received  
25 the Attorney General's and Claimant's written arguments pursuant California Code of Regulations,  
26 title 2, section 619 et seq.

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29 <sup>2</sup> The procedural background and summary of evidence is comprised on an unpublished appellate  
opinion, the crime reports, trial testimony, court transcripts, and other claim-related documents.

## Summary of Evidence

### A. Background

On December 21, 2007, Araceli Galicia walked to school with two backpacks full of clothes, intending to run away from home with her boyfriend. Araceli gave a letter to her younger brother, Victor, with explicit instructions not to give the letter to their mother until after school. Araceli explained in the letter she was running away and that the family should not look for her. Araceli wrote:

Dear Family,

Do not look for me because you are not going to fine [sic] me, but I will come back. I don't know how long, I will be far, but I'm sure I will be back.

Javier, convince them not to look for me, because you remember the dream I had and if it happens like that, please do not look for me because I could die and if they find me they will find me dead. Please convince them not to look for me. Today one of my friends is going to my house to pick up my clothes and books because she already knows what to do with that. Do not ask her anything about me.

Mom, sign me up for next year in school in the 8th grade, because I'm continuing my studies.

And if I pass the 8th grade, sign me up to attend Vista High School please from 9th to 12th grade. Please mom, and if someone asks for me don't tell them where I am, invent something, because if you tell them where I am at I can die. Do not call the police.

Take care and tell my aunts and grandparents that I love them a lot and I'm going to miss them.

Good bye and Merry Christmas and happy New Year. Good bye.

Sincerely,

[A.G.]

Araceli's brother, Victor, delivered the note prematurely to Araceli's mother, Mrs. Mendez. Mrs. Mendez and Araceli's older brother, Javier, went to Araceli's school and spoke with the school counselor regarding the letter. The school counselor interviewed Araceli and shortly after contacted law enforcement. Araceli told law enforcement that she no longer wanted to live with her family because she had been raped and molested by her older brother, the Claimant, since age six. Araceli claimed to have told her mom about the abuse in late November 2007. According to Araceli, Mrs.

1 Mendez took her to Tijuana for a pregnancy test upon learning about the molestation. The test was  
2 negative.

3 Araceli and her younger siblings, Victor and Iris, were taken into protective custody on  
4 December 21, 2007.

5 **B. Medical Examinations and Forensic Interview**

6 • **Medical Examination by Lorrie York, Certified Family Nurse Practitioner**

7 On December 21, 2007, Araceli told York that she planned to run away because of the  
8 molestation. Araceli denied being sexually active outside of the molestation. York opined Araceli had  
9 been “cutting”<sup>3</sup> herself and noted Araceli’s self-inflicted tattoo of the letter “B” which stood for “bad life.”

10 • **Medical Examination by Dr. Mary Spencer, Medical Director of the Child Abuse  
11 and Sexual Assault Response Team (SART) Program at Palomar Pomerado  
12 Health.**

13 On December 26, 2007, Dr. Spencer performed a physical examination of Araceli and found  
14 what she believed to be tears of the hymen consistent with the alleged abuse. Specifically, Dr. Spencer  
15 found that at the five and eight o’clock positions there were hymenal tears all the way to the vaginal  
16 wall. Dr. Spencer took photographs of the hymen that were later used in the prosecution’s case in  
17 chief.

18 • **Forensic Interview of Araceli Conducted by Christina Shultz, Medical Social  
19 Worker and Forensic Interviewer, at Palomar Pomerado Health.**

20 On December 26, 2007, Christina Shultz, conducted a forensic interview of Araceli. Araceli  
21 reported the following in summary.

22 The Claimant began molesting Araceli when she was six-years-old. The first time occurred  
23 when Mrs. Mendez went grocery shopping and left Araceli in the Claimant’s care. According to Araceli,  
24 the Claimant touched her vagina with his hands and forced her to touch his penis with her hands and  
25 mouth. The Claimant then “put his part inside of her part” and she cried because it was painful. Araceli  
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28 <sup>3</sup> Davis, *Cutting and Self Harm: Warning Signs and Treatment* (2005) <<http://www.webmd.com/mental-health/features/cutting-self-harm-signs-treatment>>[as of September 2, 2015].  
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1 reported that the Claimant ejaculated inside of her. Her vagina was sore more than two hours after the  
2 incident and it was difficult for her to urinate or sit.

3 Araceli recalls also being molested at 12 years old. She was home alone with the Claimant, her  
4 mother left home early that morning. The Claimant snuck into Araceli's bedroom, climbed in her bed,  
5 and had intercourse with her.

6 Araceli stated that on two separate occasions she was molested by the Claimant while visiting  
7 her grandmother in Mexico. On one of these occasions, she was orally copulated and rectally  
8 penetrated by the Claimant. He told her not to tell the family because if she did something bad could  
9 happen to them.

10 Araceli told Schultz that around Thanksgiving Day 2007, the Claimant called her into the  
11 bedroom and closed the door. The Claimant pushed her onto the bed and raped her for approximately  
12 15 minutes. Araceli told him to stop, but he refused. After dinner, the Claimant gave Araceli 15 dollars  
13 for "behaving well."

14 Several days later, the Claimant asked if she was pregnant. She said no. He asked if she told  
15 anyone about the incident; she responded "no" because she was afraid something would happen to her  
16 family.

17 According to Araceli, she told her mother about the molestation two weeks prior to December  
18 21, 2007. To broach the subject, Araceli asked her mother what she would do if she found out that her  
19 daughter was being raped. Mrs. Mendez asked Araceli if she was being raped; Araceli said yes. Mrs.  
20 Mendez took Araceli to Tijuana for a physical examination and pregnancy test after learning about the  
21 molestation. The results were negative. Araceli also reported that on the same day she told her  
22 mother about the molestation, she was caught walking home with a boy. Mrs. Mendez emotionally  
23 ostracized Araceli after she disclosed the molestation.

24 • **Forensic Interviews of Iris Galicia (Araceli's younger sister) Conducted by**  
25 **Christina Shultz at Palomar Hospital on April 14, 2008, and April 21, 2008.**

26 On April 14, 2008, Iris Galicia (who was seven-year-old at the time) was interviewed by Schultz.  
27 In this interview, Iris repeatedly denied being touched inappropriately by the Claimant.  
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1 During the second forensic interview, Iris alleged the Claimant touched her breasts when she  
2 was six years old. On a separate day, she and the Claimant were watching a movie under a blanket.  
3 The Claimant used his hand to touch her vagina over her underwear. When Schultz asked why she did  
4 not tell her about this during the first interview, Iris expressed that she was afraid to tell the truth.

### 5 **C. Claimant's Interview with Law Enforcement**

6 On February 28, 2008, the Claimant was arrested by the San Diego County Sheriff's  
7 Department. He was subsequently interviewed in Spanish by Detectives Reden and Baca.

8 The interview began with the Claimant discussing his responsibilities within the Galicia  
9 household, where he and Javier are the primary breadwinners. A few weeks before December 2007,  
10 the Claimant was surprised to see Araceli walking home with a boy, who was later identified as Miguel.  
11 When the Claimant approached Araceli and Miguel, they both seemed nervous. Miguel asked the  
12 Claimant if he could be Araceli's boyfriend. The Claimant told Miguel and Araceli to get in the car so  
13 they could discuss their relationship. Claimant drove Araceli and Miguel to the apartment. The  
14 Claimant called a family meeting where he explained to Araceli that having independence is a huge  
15 responsibility, and that if she wants to be in a relationship, she needs to help with the household  
16 chores. Araceli became very upset. The Claimant believes that this confrontation led to Araceli's  
17 attempt to run away.

18 The Claimant repeatedly denied raping or molesting Araceli. Detectives Reden and Baca told  
19 the Claimant he would receive counseling so that "this doesn't happen again." The Claimant said that  
20 he was there to "clear things up." Detective Baca retorted, "I understand and things are going to get  
21 cleared up it's just that you need to take responsibility for it, okay. Because this, this already is out in  
22 the open." The Claimant reiterated that he was willing to accept help. The Claimant told the detectives  
23 he would say anything to bring his family together. Detective Baca told the Claimant that the only way  
24 he and his siblings could return home someday is if he disclosed the frequency of the molestation. The  
25 Claimant asked Detective Baca to clarify "someday." Detective Baca said, "Someday, day after  
26 tomorrow that depends on what the social worker decides that you can return to the house."  
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1           When the Claimant asked whether there was a lawsuit against him, Detective Baca said, “No,  
2 no. It’s an investigation [...] An investigation that we are doing with the social worker to help your  
3 sister.”

4           The Claimant disclosed that he too was molested at six years old. He then stated he did not  
5 force Araceli to have sex with him. The Claimant said he and Araceli play fought. The Claimant  
6 admitted to having intercourse with Araceli twice in the past two years. It was not rape because Araceli  
7 approached in a sexual posture. He stated that she rubbed her genitals against him and placed his  
8 hand under her pants.

9           The Claimant adamantly denied penetrating Araceli; he only put his penis on the outside of her  
10 vagina. He denied ejaculating inside of her. He denied asking if she was pregnant. He denied touching  
11 her breasts or kissing her mouth.

12           The Claimant reiterated that he would say anything to law enforcement to have his siblings  
13 returned home to their mother.

#### 14           **D. Foster Care**

15           In January 2008, Araceli, Iris, and Victor were placed in the care of Lucila Leduc (Leduc) and  
16 her husband. The Leduc household consisted of Leduc and her husband, their two adult sons, and six  
17 foster children. After two weeks in foster care, Araceli told Leduc that she felt guilty for having revealed  
18 the molestation because doing so she caused her younger siblings to be placed in custody.

#### 19           **E. Trial Court Testimony**

##### 20           • **Iris**

21           At trial, Iris denied that the Claimant touched her private parts. She testified that she told people  
22 the Claimant touched her private parts because she wanted to run away with Araceli. Iris admitted that  
23 Araceli told her to say she was molested by the Claimant. Iris further claimed that her social worker,  
24 Consuelo Soto, said she would go home sooner if she claimed she was molested by the Claimant.

##### 25           • **Araceli**

26           At trial, Araceli completely recanted and admitted to lying about being molested by the Claimant.  
27 She lied because she was upset with the Claimant for catching her with a boy and telling her mother  
28 about it. By lying about being raped, she hoped to divert attention away from her boyfriend. Araceli  
29

1 testified that her boyfriend's name was Miguel and that because she was not allowed to have a  
2 boyfriend, she only saw him after school.

3 She chose the age six because it was the first age that came to mind. Araceli admitted to lying  
4 about the rape of Thanksgiving Day 2007, the molestations in Mexico, and about the Claimant asking if  
5 she was pregnant. Araceli claimed she learned about sex from television shows. At the time, she did  
6 not know that her allegations against the Claimant amounted to a crime. Araceli testified that she  
7 coerced Iris into making allegations against the Claimant after being told by her social worker that she  
8 could go home sooner if Iris also said she was molested.

### 9 **F. Writ of Habeas Corpus and Court Findings, 2011**

10 After the Claimant's conviction, defense counsel discovered information that called Dr.  
11 Spencer's credibility into question and raised a possible Brady violation. Dr. Spencer, whose report  
12 established probable cause that Araceli was sexually molested, was found to have provided false  
13 testimony in a 1991 case involving the alleged sexual abuse of two minors.<sup>4</sup>

14 In *Wallis*, police officers seized two siblings and placed them in a county facility based on the  
15 mistaken belief that a court had ordered that the children be removed from the home.<sup>5</sup> Law  
16 enforcement seized the children after their mentally ill and delusional aunt told a therapist that the  
17 father was planning to sacrifice his two-year-old son to Satan on the date of the autumnal equinox.<sup>6</sup>  
18 Without judicial authorization or notice to the parents, and specifically, without any allegations of sexual  
19 abuse, a police officer took the children to Palomar Hospital where Dr. Spencer performed a highly  
20 intrusive and traumatic anal and vaginal physical examinations on the children to determine whether  
21 they had been sexually abused.<sup>7</sup> Dr. Spencer concluded that there was sufficient evidence of sexual  
22 abuse to detain the children.<sup>8</sup> At trial, Dr. Spencer testified that her examination and report regarding  
23 the sexual abuse of the Wallis minor was peer reviewed by her colleague, who also came to the same  
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25 <sup>4</sup> *Wallis ex rel Wallis v. Spencer* (1999) 202 F.3d 1126 (*Wallis*).

26 <sup>5</sup> *Ibid.*

27 <sup>6</sup> *Id.* at pp. 1131-1132.

28 <sup>7</sup> *Id.* at p. 1135.

29 <sup>8</sup> *Ibid.*

1 conclusion.<sup>9</sup> In fact, Dr. Spencer's colleague had not reviewed her report.<sup>10</sup> After reviewing the report,  
2 Dr. Spencer's colleague disagreed with her findings, and instead concluded that there was no evidence  
3 of sexual abuse and that there were "alternative, normal, physiological explanations" for what Dr.  
4 Spencer perceived as signs of abuse.<sup>11</sup> The children were immediately released.<sup>12</sup> The case against  
5 Dr. Mary Spencer was dismissed on immunity grounds.<sup>13</sup>

6 As a result of Dr. Spencer's past false testimony, in this case, three additional doctors examined  
7 Araceli for evidence of sexual abuse or intercourse. Araceli's family requested two of the examinations  
8 and the San Diego District Attorney's Office requested the third.

9 Dr. Carlos Oliva of the Vista Family Health Center performed an exam on July 5, 2010. Dr.  
10 Olivia found:

11 "[Araceli's] external genitalia and perineum were free of echymosis, scars or marks. No external  
12 vaginal or urethral discharge noted[...] The labia majora, clitoris, and urethra were all free of  
13 marks, inflammation or any lesions. Remnants of the hymenal tissue are present in the inferior  
14 wall. No signs of hymenal tears or trauma were noted."

15 Dr. Neysa Whiteman, MD, examined Araceli on June 29, 2010. Araceli told Dr. Whiteman that  
16 she needed an exam "to prove [her] virginity." Araceli told Dr. Whiteman that she had this procedure  
17 done twice in the past and has never used tampons. Dr. Whiteman reported "at rest the hymen  
18 appears closed. The tissue is healthy with no suggestion of recent trauma," however, "I cannot say that  
19 it is conclusive."

20 Dr. Premi Suresh, MD, examined Araceli on September 2, 2011, at the request of the District  
21 Attorney's Office. Dr. Suresh is employed by Rady Hospital in the Child Abuse unit, and assists  
22 prosecutorial entities. Before conducting his own examination of Araceli, he reviewed the photographs  
23 taken from Araceli's non-acute sexual abuse exam of December 26, 2007. He was unable to confirm  
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25 <sup>9</sup> *Id.* at p. 1135.

26 <sup>10</sup> *Ibid.*

27 <sup>11</sup> *Ibid.*

28 <sup>12</sup> *Ibid.*

29 <sup>13</sup> *Id.* at p. 1145.

1 Dr. Spencer's findings, stating, "I would be happy to examine Araceli myself, to determine whether she  
2 has any abnormalities of her hymen. I would still expect to see the transection on exam now had they  
3 been present on her prior exam." As to his own exam of Araceli, he reported:

4 "Araceli's exam appears to be normal. I do not appreciate any transections of the hymen. It  
5 should be stated that even if Araceli does not have a complete transection of her hymen, she  
6 still could have been abused. Lack of findings on a medical exam does not negate prior history  
7 she provided. The majority of children who have been sexually abused have a normal genital  
8 exam when seen non-acutely. A normal examination neither confirms nor refutes abuse."

9 The Claimant filed a petition for writ of habeas corpus in the Court of Appeal of the State of  
10 California, in the Fourth Appellate District and for the County of San Diego, alleging in light of the newly  
11 discovered evidence, sufficient evidence no longer supported the Claimant's conviction. Specifically,  
12 the Claimant argued in the absence of medical evidence to support the prosecution's theory that Araceli  
13 was recanting out of guilt, there was little to no evidence supporting a conviction and a reasonable jury  
14 would not have been able to convict.

15 On November 22, 2011, the petition of writ of habeas corpus was granted. On September 29,  
16 2011, and October 3, 2011, respectively, the Attorney's Office and the State Attorney General's Office  
17 both filed letters of non-opposition to Claimant's petition for writ of habeas corpus. The court order  
18 made no factual findings.

19 At the status hearing of February 22, 2012, the District Attorney decided not to pursue any new  
20 charges in the case because they no longer believed that they could prove the charges by a reasonable  
21 doubt.

## 22 **PC 4900 Hearing Evidence**

### 23 **A. Depositions**

24 The following depositions were taken in anticipation of the section PC 4900 hearing and  
25 various civil suits filed on behalf of the Araceli Galicia and Luis Galicia:

- 26 • **Deposition of Leslie Peterson, Therapist**

27 In 2008, Leslie Peterson, LCSW at Rady Children's Hospital, began seeing Iris for child sexual  
28 abuse therapy. Iris never stated that the Claimant inappropriately touched her.

1 According to Peterson's notes, Iris did not view the Claimant as an unsafe person. Iris was told  
2 by her social worker that if she said the Claimant abused her she could return home sooner. Iris further  
3 disclosed that her foster mother isolated the foster children. If any of the foster children threw  
4 unfinished food in the garbage, Leduc would force them to eat the food directly from the garbage bin.  
5 Iris cried when she recounted living with the Leduc's.

6 • **Deposition of Araceli**

7 Araceli testified to the following in summary. During the first two weeks of foster care, Leduc  
8 treated Araceli and her siblings well. Eventually, Leduc developed an extensive cleaning schedule for  
9 the children. Often, Araceli had to race home afterschool in order to complete her chores before  
10 dinner. The foster children were treated differently than the other children. For instance, the foster  
11 children were prohibited from entering the home through the front door; they had to enter through the  
12 garage. Leduc fed the foster children frozen meals at dinner. On the weekends the foster children  
13 were only allowed two meals; if they ate a snack between breakfast and dinner they could not have  
14 dinner. While other family members could sit in the living room, the foster children could not. Leduc  
15 routinely took her children to Disneyland and other amusement parks, leaving her foster children in the  
16 care of a babysitter.

17 In February 2008, Araceli recanted her allegations against the Claimant to Leduc. Araceli told  
18 Leduc that she did not want to be in foster care and that she lied about the Claimant molesting her.  
19 Araceli also told her social worker, Consuelo Soto, that the allegations were false. Soto told Araceli  
20 that it was good that she continue to claim the Claimant molested her because the faster the Claimant  
21 is convicted, the sooner she and Iris would be able to return home. Soto also encouraged Araceli to  
22 coerce Iris into accusing the Claimant of molestation. Araceli continued to lie about the molestations to  
23 her therapist, Abigail Gonzalez (Gonzalez), because she did not trust her.

24 Araceli testified that she began cutting herself at age 13, before she told anyone about the  
25 molestation. Araceli told Gonzalez that she started cutting because of the molestation and because her  
26 family was very strict and would not allow her to have a boyfriend. Araceli testified that she had  
27 thoughts of suicide prior to the Claimant's arrest. Her suicidal thoughts stemmed from her parents  
28 forbidding her relationship with Miguel.

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1 At trial, Araceli testified that her boyfriend's name was Miguel Fernando Morales, not Gonzalez.  
2 During her deposition, she insisted his last name was Gonzalez. Miguel was two years older than  
3 Araceli and they began dating in September 2007. She also stated he attended Vista High School at  
4 the time, however, he was not found in the yearbook under either name. He was addicted to drugs  
5 (cocaine). On the day the Claimant saw Araceli and Miguel, she decided to present Miguel to her  
6 family and ask permission to date him. In December 2007, Miguel and Araceli planned to runaway to  
7 Mexico. Araceli chose this time to run away because she would not see Miguel during the Christmas  
8 break. Araceli was in love with Miguel.

9 Initially, Araceli planned to run away and live with her classmate, Gabriela.<sup>14</sup> Gabriela told  
10 Araceli that she could not live with her. Araceli denied that she told Gabriela that she was being  
11 molested.

12 Araceli testified that her entire story about the molestation was a lie. She lied about Mrs.  
13 Mendez taking her to Tijuana for a pregnancy test. Instead, Araceli was taken for her annual checkup.  
14 Araceli lied about the details of the molestation and claimed to get the details from soap operas and sex  
15 education classes. She forced herself to cry during the interviews; however, she was no longer able to  
16 make herself cry.

17 Araceli stated that Consuelo Soto told her to coerce Iris into accusing the Claimant of  
18 molestation. Araceli complied with Soto's request.

19 According to Araceli, her social worker, Betty Saavedra, told Araceli that she would remain in  
20 foster care if she did not continue lying. Sometime after trial, Saavedra took Araceli to meet Keith  
21 Watanabe, the prosecutor in the Claimant's case. Araceli told Mr. Watanabe that she lied about the  
22 molestation and that she has been trying to tell people the truth but no one would listen.

23 It appears from the transcript that Araceli was unaware of the contents of the Claimant's  
24 confession. When asked whether she knew that the Claimant alleged that she initiated sex with him,  
25 she responded that she did not know. Araceli was upset by this line of questioning.

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28 <sup>14</sup> Gabriela is Araceli's classmate who testified at the Claimant's trial and was deposed for these  
29 proceedings.

1                   • **Deposition of Gabriela**

2                   Gabriela was Araceli's classmate in December 2007. In late 2007, Araceli disclosed to Gabriela  
3 and two other girls that she was being "touched" by the Claimant. Araceli was crying when she made  
4 the disclosure. Another friend who was also present when Araceli disclosed the molestation to  
5 Gabriela recommended that she talk to her mom or speak with a school counselor. According to  
6 Gabriela, Araceli did not think her mother would believe her. Araceli never told Gabriela about her  
7 boyfriend, Miguel.

8                   • **Deposition of Iris**

9                   Iris was unable to recall most of the facts related to the case due to her young age at the time of the  
10 trial and detention.

11                   • **Deposition of Betty Saavedra, LCSW**

12                   Beatrice Saavedra, senior protective child services worker with the San Diego County Health  
13 and Human Services Agency Child Welfare Services, became Araceli, Iris, and Victor's social worker in  
14 March 2008. During her deposition, Saavedra disclosed that she contacted Detective Reden when she  
15 became aware that Araceli recanted on June 16, 2008. Detective Reden stated that she would speak  
16 with Araceli and Mrs. Mendez and possibly "just throw mom in jail."

17                   • **Deposition of Consuelo Soto**

18                   Soto was a protective social worker at the County of San Diego Children's Services ("Agency")  
19 and the first social worker to make contact with Araceli and Iris. Soto left the Agency in March 2008.  
20 As of March 2008, Iris had continuously denied being the victim of sexual abuse and Araceli never  
21 recanted her statement.

22                   In her Assessment Evaluation of March, 2008, Soto wrote:

23                   "[Claimant is] detained at [] but he is eligible for bail. The mother has shown her inability to  
24 protect her daughter and appears to continue to doubt her son [Claimant's] guilt. The risk that  
25 brought the minors into custody of the agency has not been ameliorated, and returning the  
26 minors to their home at this time would not be in the best interests of their physical and mental  
27 health. In addition, there is a likelihood that the parents would attempt to influence any  
28 additional information or testimony that may be needed for the criminal case."

1 Soto testified that one reason she recommended placement outside of the home was the threat of  
2 recantation; however, even if there was no criminal case, her recommendation to place the children  
3 outside of the home would have remained the same.

4 Soto further testified that she asked Araceli each time she saw her whether the allegations were  
5 true because she wanted to ensure that Araceli had the opportunity to tell the truth.

6 • **Deposition of Eric Buckenmeyer**

7 Buckenmeyer was Mrs. Mendez's therapist. In his deposition, Buckenmeyer testified to the  
8 following in pertinent part. Araceli told Mrs. Mendez that a 40 year-old man named Amador was  
9 "bothering" her and Iris. According to Mrs. Mendez, as she and Araceli were walking to confront  
10 Amador, Araceli asked, "What would she feel if one of her daughters had been raped?"

11 Buckenmeyer's deposition reveals that Mrs. Mendez was conflicted between Luis's denial of the  
12 molestation and Araceli's disclosure of the molestation. Mrs. Mendez was looking for proof of abuse.  
13 After receiving the results from Dr. Spencer's SART exam, Mrs. Mendez began to accept that Araceli  
14 had been abused. Mrs. Mendez was angry with herself and could not understand how she did not  
15 detect that abuse was occurring and why the children did not tell her.

16 Mrs. Mendez disclosed that she believed the Claimant was tricked into making a confession.

17 • **Deposition of Christina Schultz**

18 Schultz testified to the following in relevant part. Schultz conducted Iris' forensic interviews.  
19 During a break in Iris' first videotaped forensic interview, while Schultz was not in the room, Iris  
20 whispered, "It's not my fault. He made me do it."

21 **B. Hearing testimony**

22 • **Testimony of Claimant**

23 The Claimant immigrated to the United States in 2003. The Claimant, along with his mother,  
24 father, three brothers, and two sisters, lived in a two bedroom apartment. According to the  
25 Claimant, Araceli started getting home late from school in December 2007. Mrs. Mendez sent  
26 the Claimant out to look for Araceli. The Claimant found Araceli sitting on the sidewalk with a  
27 boy. The Claimant, being upset, told both Miguel and Araceli to get in the car. The Claimant  
28 drove the two to the Galicia home. They sat in the parking lot while the Claimant decided what  
29

1 to do. Mrs. Mendez came outside of the home and saw them sitting in the car. All three went  
2 into the home and an argument ensued. The Claimant told Araceli that she was too young to  
3 have a boyfriend. Mrs. Mendez and Javier agreed. Araceli retorted that it was her life and that  
4 she could do what she wanted with her life. Araceli attempted to run away two to three weeks  
5 later.

6 On cross-examination, Ms. Gimle elicited the following information in summary. In 2007, the  
7 Claimant had a girlfriend who lived in Mexico. He communicated with her via telephone. The Claimant  
8 told detectives he was sexually active with his girlfriend. At trial, the Claimant's girlfriend testified that  
9 he suffered from erectile dysfunction.

10 His younger siblings call him "daddy" and he was a father-figure to the children. He helped to  
11 pay the rent, along with Javier. He never bathed the children. The youngest girls slept with their  
12 mother. Mrs. Mendez sold tamales out of the home; she never left the home.

13 The Claimant testified that in December 2007, Mrs. Mendez, Araceli, Iris, and Victor, went to  
14 Tijuana for a routine physical examination, not for a pregnancy test. The Claimant denied asking  
15 Araceli if she was pregnant.

16 The Claimant fabricated the story about being molested in Mexico. He was motivated to lie to  
17 gain credibility with law enforcement. He asked the detectives how much jail time he was facing. He  
18 admitted to telling law enforcement that he had sex with Araceli twice in two years. He further admitted  
19 telling law enforcement that intercourse was consensual. He admitted to telling law enforcement that  
20 he only entered Araceli's vagina a small amount.

21 The Claimant could not recall the answer to the following cross-examination questions, in  
22 summary:

- 23 • Whether he admitted to having sex with Araceli at his aunt's home.
- 24 • Whether he denied that it was rape.
- 25 • Whether he told detectives he did not ejaculate.
- 26 • Whether he told detectives that he suffered from erectile dysfunction.
- 27 • Whether he told detectives that the second molestation occurred three months after the first.
- 28 • Whether he told detectives that the second time there was full penetration.

- 1 • Whether he denied kissing or touching Araceli's breast.
- 2 • Whether he told detectives that he told Araceli that this was not right.
- 3 • Whether he told detectives he was play wrestling with Araceli, and she brushed her genitals
- 4 against his thigh.
- 5 • Whether he told detectives that Araceli took his hands and placed them on her genitals.

6 The hearing officer asked the Claimant to tell her what he could remember from the interview  
7 with law enforcement. He testified that the interview was rough, and that one of the detectives was "too  
8 close to him." He recalls the detectives stating that his DNA was found on Araceli. He recalls  
9 fabricating the history so law enforcement would find his story credible and allow his siblings to return  
10 home.

11 Claimant's attorney reiterated that the confession was suppressed in trial because it was  
12 induced by law enforcement. Law enforcement told the Claimant that if he confessed, his siblings  
13 would be released. The Claimant wanted law enforcement to believe him, so he fabricated a story  
14 about being molested to gain credibility.

15 • **Testimony of Cathy Boyle, PRN**

16 Cathy Boyle is Pediatric Nurse Practitioner, SART coordinator. Her expertise is child abuse and  
17 maltreatment. She has conducted over 10,000 SART exams during her career and has testified as an  
18 expert in approximately 460 cases.

19 Based on her independent review of the photographs taken of Araceli's hymen by Dr. Spencer,  
20 Ms. Boyle saw a deep cleft in the hymen at the five o'clock and eight o'clock positions. Ms. Boyle  
21 testified that she had not reviewed Dr. Spencer's reports, nor had she discussed the photographs or  
22 previous findings prior to her own examination of the photographs. It was Ms. Boyle's opinion that  
23 Araceli's hymen showed injuries consistent with penetrating trauma. Araceli's hymen healed but left a  
24 deep cleft where the initial injury was located.

25 Ms. Boyle explained the difference between acute and non-acute examinations: non-acute  
26 examinations are conducted well after the incident. During these examinations, health care  
27 professionals check the overall health of the victim, including a head-to-toe checkup and an  
28  
29

1 examination of the genitalia and the perianal areas. An acute examination occurs 72 hours to two  
2 weeks of the alleged abuse. Most examinations are non-acute.

3 In 2007, Ms. Boyle participated in a research project that measured the healing times of genital  
4 and hymenal injuries.<sup>15</sup> The children in the control group had to have acute injuries (a bleeding tear or  
5 bruising) in the genital or hymenal areas and at least one follow up exam that also documented that  
6 specific area.

7 Research showed that tears involving broken blood vessels healed within 48 hours for pre-  
8 pubertal children and in 72 hours for adolescents. Injuries with blood blisters took up to 34 days to  
9 heal.

10 Ms. Boyle categorized tears to the hymen into five classes: superficial, intermediate, deep,  
11 transections, and transections with extensions. When the injury is superficial or intermediate, the injury  
12 healed to have a normal examination. Deep injuries healed to normal, while transections and  
13 transections with extensions healed to have some visible injury but healed. It takes about 3-4 weeks  
14 for hymenal tears that are significant to heal. These tears don't heal with any scarring; however, they  
15 heal into a different configuration than the initial intact hymen. In Ms. Boyle's opinion, a transection or  
16 deep cleft signifies abuse.

17 Ms. Boyle was asked her opinion of the findings of Dr. Whiteman, Dr. Oliva, and Dr. Suresh.  
18 Regarding Dr. Whiteman's findings, Ms. Boyle stated as a gynecologist Dr. Whiteman's job is to  
19 determine whether the vagina seems healthy. However, Dr. Whiteman did not manipulate Araceli's  
20 vagina to look at the hymen. In Ms. Boyle's opinion, nothing was done by Dr. Whiteman to view the  
21 hymen in the way it was photographed.

22 Ms. Boyle found Dr. Oliva's findings contradictory. First, Dr. Oliva found Araceli's vagina free of  
23 scars, bruising, or marks. Dr. Oliva then found that "remnants of hymenal tissue are present in the  
24 inferior wall." Ms. Boyle interpreted this to mean there is left over hymen in the three o'clock to nine  
25 o'clock areas of the hymen. Dr. Oliva went on to state there were no signs of hymenal tears noted. In  
26  
27

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28 <sup>15</sup> McCann, J., Miyamoto, S., Boyle, C., and Rogers, K. (2007). Healing of hymenal injuries in  
29 prepubertal and adolescent girls: A descriptive study. *Pediatrics*.

1 her opinion, these findings are contradictory. The term “hymenal remnants” means that there are  
2 pieces of the hymen left, which would represent healed trauma.

3 Dr. Suresh reviewed the photos taken by Dr. Spencer and did not find any hymenal tears. Ms.  
4 Boyle stated that Dr. Suresh’s report indicates that there is hymen at the base. However, deep tears  
5 did heal with hymen at the base. Ms. Boyle opined it would be difficult to determine the state of the  
6 hymen by solely looking at the photographs.

7 According to the research conducted by Ms. Boyle and colleagues, by the time Araceli was  
8 seen by Dr. Spencer, and the other doctors who provided their opinions two or three years later,  
9 Araceli’s hymen would have healed to the point where it could not be dated. However, trained medical  
10 personnel could identify a hymenal tear because they would recognize that a hymen does not heal  
11 back together again in a perfect configuration.

12 On cross-examination, Ms. Boyle stated that she has only testified on behalf of a defendant in  
13 approximately 10 cases, but has been subpoenaed multiple times.

14 Ms. Boyle testified that Dr. Spencer never identified Araceli’s hymen as a healed hymen, she  
15 only classified the injury as a “transection” with “full tears at 5 and 8 o’clock all the way to the vaginal  
16 wall.” Ms. Boyle testified that if Dr. Spencer believed that it was an unhealed hymen, she most likely  
17 would have characterized it as an acute injury.

18 During cross-examination, Ms. Boyle also testified that Dr. Suresh works for Children’s Rady  
19 Hospital. Dr. Suresh works for the child abuse unit and works on behalf of prosecutorial entities and  
20 was hired by the District Attorney in this case.

21 **• Testimony of Anthony Urquiza, PhD**

22 Dr. Urquiza is a clinical psychologist with a specialization in child maltreatment at the Child and  
23 Adolescent Abuse Resource and Evaluation Center, University of California Davis Medical Center.  
24 After discussing his over 30 years of experience in child development and child abuse, Dr. Urquiza  
25 testified about his knowledge of an article written by Roland Summit called “Child Sexual Abuse  
26 Accommodation Syndrome.”<sup>16</sup> The article was written to therapists who would be treating abused  
27

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28 <sup>16</sup> Summit, R. C. (1983) The Child Abuse Accommodation Syndrome. *Child Abuse and Neglect*, 7, 111-  
29 193.

1 children. The author's purpose was to provide therapists with the context in which abuse happens and  
2 to give therapists an understanding of common characteristics of child sexual abuse, as well as dispel  
3 myths associated with sexual abuse. Since 1983, Dr. Summit's research has garnered large support  
4 within the psychology community.

5 Dr. Urquiza opined that the closer the relationship between the abused child and the  
6 perpetrator, the longer it would take for the child to disclose the abuse. Child victims feel lost when  
7 they lose familial support. Sexual abuse from the perspective of the victim is an embarrassing  
8 humiliating occurrence—they don't get to tell anyone, process, or develop feelings about the abuse.

9 There are five categories of Child Abuse Accommodation Syndrome: (1) secrecy; (2)  
10 helplessness; (3) entrapment and accommodation; (4) delayed and unconvincing disclosure; and (5)  
11 retraction.

12 *Secrecy.* An abused child believes that they must keep the abuse secret. Victims believe no  
13 one would understand or believe them if they disclose the abuse.

14 *Helplessness.* An abused child is helpless within authoritarian relationships. While children  
15 may be given permission to avoid the attentions of strangers, they are required to be obedient and  
16 affectionate with any adult entrusted with their care.

17 *Entrapment and Accommodation.* Abused children cannot tell anyone about the abuse and  
18 cannot prevent it from happening. Victims are typically abused repeatedly, leaving them with no option  
19 but to learn to accept the abuse and to survive. In a case of repeated abuse, victims learn to  
20 accommodate or cope with that experience by disconnecting from reality.

21 In the classic role reversal of child abuse, the child is given the power to destroy the family and  
22 the responsibility to keep it together. The child, not the parent, must mobilize the altruism and self-  
23 control to insure the survival of others. The child, in short, must secretly assume many of the role-  
24 functions ordinarily assigned to the mother.

25 *Delayed and Unconvincing Disclosure.* The victim of incestuous abuse tends to remain silent until  
26 she enters adolescence when she becomes capable of demanding a more separate life for herself and  
27 challenging the authority of her parents. For example, *after an especially punishing family fight and a*  
28 *belittling showdown of authority by his or her father, the victim is driven by anger to disclose the secret.*

1 Once a victim decides to disclose, they generally disclose to someone whom they share a close  
2 relationship. (Emphasis added.) If the response is not positive, the child will either retreat or remain  
3 quiet.

4 *Retraction Recantation.* In the past, many practitioners believed if a victim recanted he or she was  
5 never abused. When the abuse is perpetrated by a family figure, the child is more likely to recant.  
6 Typically, the family begins to exert pressure on the child, either direct or indirect pressure. The victim  
7 starts believing his or her family is struggling because of the disclosure. Pressures to recant build over  
8 time. Victims rarely disclose and immediately recant. Generally, as time progresses and the victim  
9 realizes the effects of the disclosure, he or she is more likely to recant in order to fix the problems.  
10 Unless there is a special support for the child and immediate intervention to force responsibility in the  
11 abuser, the child will follow the normal course and retract his or her complaint.

12 On cross-examination, Dr. Urquiza testified he had no knowledge of the facts of the case and  
13 reviewed no documents in preparation for the hearing. Dr. Urquiza is aware that false allegations do  
14 occur, however, it is difficult to do research on this topic. During his career, Dr. Urquiza has had  
15 several cases in which he believed the allegations were false, however, this is very uncommon or rare.

16 There are approximately 12 research studies on false allegations of sexual abuse. According to Dr.  
17 Urquiza, one to six percent of all sexual abuse cases are the product of a false allegation. Researchers  
18 found that about four percent of cases in which it was determined that the allegations of abuse were  
19 false, the disclosure came from someone other than the child.

### 20 **C. Additional Evidence**

21 On or about November 24, 2015, and November 30, 2015, respectively, the Board received  
22 the Attorney General's and Claimant's written arguments with additional information to consider. The  
23 administrative record now contains three additional pieces of evidence.

- 24 • **Deposition of Dr. Premi Suresh**

25 The first piece of additional evidence is the deposition of Dr. Premi Suresh, dated July 14,  
26 2015. Dr. Suresh testified to the following in summary. She is a child abuse physician at Rady  
27 Children's Hospital and is one of the physicians responsible for evaluating children with suspected  
28 abuse or neglect, including giving examinations for sexual assault. (Deposition of Dr. Suresh, pp. 7-  
29

1 8.) As a child abuse pediatrician, Dr. Suresh has completed approximately one thousand sexual  
2 assault examinations. (Deposition of Dr. Suresh, p. 8.) All children living in San Bernardino County  
3 requiring SART examinations are now evaluated by doctors at Rady Children's Hospital, and not at  
4 Palomar Pomerado Health center, which previously employed Dr. Spencer. (Deposition of Dr.  
5 Suresh, p. 19.)

6         Regarding Araceli, Dr. Suresh found that no portion of Araceli's examination substantiated any  
7 finding of sexual abuse. (Deposition of Dr. Suresh, p. 50.) Contrary to what was reported by Dr.  
8 Spencer, Dr. Suresh did not see a transection at 5'o clock and 8 o'clock. (Deposition of Dr. Suresh,  
9 p. 48.) Literature suggests that a transection is a definitive finding penetration trauma. (Deposition of  
10 Dr. Suresh, p. 36.) A transection is defined as no hymen all the way to the vaginal wall and "babies  
11 or little kids who are not suspected to have been abused don't have missing hymen in that location."  
12 (Deposition of Dr. Suresh, p. 37.) According to Dr. Suresh, failure to have a tear or the lack of  
13 findings does not negate any type of sexual abuse, it only means there are no positive findings.  
14 (Deposition of Dr. Suresh, p. 38.) Dr. Suresh further testified she had not "heard of any situation  
15 where someone who has a complete transection, so a tear going all the way to the vaginal wall,  
16 would then be examined later and then have it not be there anymore. Because a transection is not  
17 an acute finding, to begin with. It's a healed finding." (Deposition of Dr. Suresh, p. 39.)

18         When Dr. Suresh reviewed Dr. Spencer's findings, she thought what Dr. Spencer may have  
19 seen is what is called a "deep cleft" and not a transection, however, Dr. Suresh did not find a deep  
20 cleft or any other tears. (Deposition of Dr. Suresh, pp. 48-49.) In the past, a deep cleft was  
21 considered to be "concerning" or "indeterminate" as a possible finding of abuse. (Deposition of Dr.  
22 Suresh, p. 49.) In recent research, a deep cleft is now in a "who knows" category. (Deposition of Dr.  
23 Suresh, p. 49.)

24         A normal examination does not mean sexual abuse did not occur; a victim may have a normal  
25 examination even when sexual abuse has been substantiated. (Deposition of Dr. Suresh, pp. 42,  
26 60.) There is no way a physician can determine a person's virginity, in fact, a pregnant teenage can  
27 have a normal hymen. (Deposition of Dr. Suresh, p. 61.) Dr. Suresh further stated "it was somewhat  
28 disturbing to me in some sense because I remember feeling like they were thinking that I was saying  
29

1 the abuse didn't happen when I was just saying it was normal." (Deposition of Dr. Suresh, p. 43.) Dr.  
2 Suresh opined that disclosure is more important in a sexual abuse case than the physical  
3 examination because it has been demonstrated that a physical examination can be normal with  
4 substantiated sexual abuse. (Deposition of Dr. Suresh, pp. 68-69.) If there is a history and detailed  
5 disclosure of sexual abuse, only five or ten percent of the time will a non-acute examination support a  
6 finding of sexual abuse. (Deposition of Dr. Suresh, p. 69.)

7           • **Deposition of Dr. Neysa Whiteman**

8           The second additional piece of evidence is the deposition of Dr. Neysa Whiteman, dated June  
9 24, 2015. During the deposition, Dr. Whiteman testified to the following in summary. After completing  
10 her examination of Araceli, Dr. Whiteman determined at rest Araceli's hymen appeared normal with  
11 no transection. (Deposition of Dr. Whiteman, pp. 20, 22.) Dr. Whiteman opined that there is "really  
12 not a hundred-percent way to determine whether someone is virginal, but the fact that [Araceli's]  
13 hymen was relatively closed and did not open to gentle pressure in that area suggests that the hymen  
14 was intact and would suggest that she had not had intercourse." (Deposition of Dr. Whiteman, p. 22.)  
15 It is her opinion that Araceli's examination was consistent with her recantation that she was not  
16 molested. (Deposition of Dr. Whiteman, p. 37.) Dr. Whiteman admitted that she is not a medical-legal  
17 expert that deals with children nor does she conduct these types of examinations on a regular basis.  
18 (Dr. Whiteman, p. 38.) It was her opinion that Araceli had not had intercourse, however, because she  
19 is not an expert in child abuse pediatrics, she referred Araceli to an expert. (Deposition of Dr.  
20 Whiteman, p. 38.)

21           • **Deposition of Nataly Reyes**

22           The third additional piece of evidence is the deposition of Nataly Reyes, dated May 28, 2015.  
23 During the deposition, Nataly testified to the following in summary. She was a foster child living in the  
24 home of Lucila LeDuc (LeDuc) during the time Araceli, Iris, and Victor were fostered with LeDuc.  
25 Araceli told Nataly "she didn't know why her brother—what her brother did wrong in order for them to  
26 be taken out of their family." (Deposition of Nataly Reyes, p. 12.) Araceli told Nataly she and Luis  
27 had an intimate relationship that was forbidden by their parents. (Deposition of Reyes, p. 15.)  
28 Araceli also told Nataly that Luis did not touch her inappropriately, but he did touch Iris in an  
29

1 inappropriate manner. (Deposition of Reyes, pp. 18-19.) Iris told Nataly and other children living in  
2 the foster home that her brother had touched her. (Deposition of Nataly Reyes, pp. 19-20.)

3 Araceli asked Nataly for advice regarding going home, whether it would be better to tell the  
4 truth and go home. (Deposition of Reyes, p. 23.) Araceli told Nataly that she loves her brother and  
5 she doesn't want him to get in trouble, but she wants to go home. (Deposition of Reyes, p. 24.)  
6 Nataly observed Araceli's mother behaving more warmly toward Iris and Victor and coldly toward  
7 Araceli. (Deposition of Reyes, p. 26.) Araceli told Nataly that because Luis had also abused Iris, she  
8 felt responsible for ensuring her safety, which is the reason she disclosed the abuse. (Deposition of  
9 Reyes, p. 27.) Araceli stated that when Luis was only abusing her, she could handle it. When he  
10 started abusing Iris, she knew something had to be done. (Deposition of Reyes, p. 33.) Nataly  
11 testified that LeDuc properly fed the foster children three meals a day and snacks were always  
12 available. (Deposition of Reyes, p. 54.)

13 After asking Nataly for advice, Araceli told Leduc she was upset at her brother and was  
14 throwing a tantrum. (Deposition of Reyes, p. 30.) Araceli's mother encouraged Araceli to drop the  
15 charges and tell the truth. (Deposition of Reyes, p. 29.) LeDuc told Nataly that visitation between  
16 Araceli and her mother was discontinued because Araceli's mother encouraged her to drop the  
17 charges against Luis. (Deposition of Reyes, p.30.) At some point in their interactions, Araceli  
18 mentioned to Nataly that she had an older boyfriend. (Deposition of Reyes, p. 36.)

### 19 **Determination of the Issues**

20 Penal Code section 4903 establishes the requirements for a successful claim for those  
21 individuals who claim to have been imprisoned as a result of an erroneous conviction. In order to be  
22 successful on such a claim, a claimant must prove, by a preponderance of the evidence, that the  
23 crime with which he was charged was either not committed at all, or, if committed, was not committed  
24 by him and that he sustained a pecuniary injury through his erroneous conviction and imprisonment.<sup>17</sup>  
25 "Preponderance of the evidence" means evidence that has more convincing force than that opposed  
26 to it.<sup>18</sup>

27 \_\_\_\_\_  
28 <sup>17</sup> Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*  
*Victim Compensation and Government Claims Board* (2006) 152 Cal. App. 4<sup>th</sup> 1164.

29 <sup>18</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

1 In reaching its determination of the merits of the claim, the Board may consider the claimant's  
2 mere denial of commission of the crime for which he was convicted, reversal of the judgment of  
3 conviction on appeal, acquittal of the claimant on retrial, or the failure of the prosecuting authority to  
4 retry claimant for the crime. However, those factors will not be deemed sufficient evidence to warrant  
5 the Board's recommendation that a claimant be indemnified in the absence of substantial  
6 independent corroborating evidence that the claimant is innocent of the crime charged.<sup>19</sup> The Board  
7 may also consider as substantive evidence testimony of witnesses the claimant had an opportunity to  
8 cross-examine, and evidence to which the claimant had an opportunity to object, admitted in prior  
9 proceedings relating to the claimant and the crime with which he was charged. Finally, the Board  
10 may also consider any information that it may deem relevant to the issue before it.<sup>20</sup>

11 Prior to the section 4900 hearing, the Claimant argued that because the District Attorney's  
12 Office did not contest the factual allegations underlying the grounds for granting his writ of habeas  
13 corpus, the facts underlying the basis for the court's ruling is binding on the California Victim  
14 Compensation and Government Claims Board. The hearing officer denied the motion.

15 A guilty verdict in a criminal proceeding requires a finding of guilt beyond a reasonable doubt.  
16 The District Attorney in this case did not believe he could prove the Claimant's guilt in light of Dr.  
17 Oliva, Dr. Whiteman, and Dr. Suresh's reports. Guilt beyond a reasonable doubt, however, is a very  
18 different standard than innocence by a preponderance of the evidence. To prevail on a section 4900  
19 claim, Claimant must prove by a preponderance of the evidence that he either did not commit the  
20 crime, or if the crime was committed, it was not committed by him.<sup>21</sup> Since this type of hearing is a  
21 "fair hearing," it is not subject to the general rules of evidence, nor is it subject to the formal provisions  
22 of the Administrative Procedures Act.<sup>22</sup> Therefore, the Board may consider any other information that  
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26 <sup>19</sup> Cal. Code Regs., tit. 2, § 641.

27 <sup>20</sup> Cal. Code Regs., tit. 2, § 641.

28 <sup>21</sup> Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*  
*Victim Compensation and Government Claims Board* (2006) 152 Cal. App. 4th 1164.

29 <sup>22</sup> Cal. Code Regs., tit. 2, § 615.1.

1 it may deem relevant to the issue before it. Objections to and arguments about evidence may be  
2 considered when determining the weight to be given to the evidence.<sup>23</sup>

3 Because the District Attorney's Office did not contest the factual findings alleged in the petition  
4 for writ of habeas corpus, the medical reports by the experts are binding and will be given their proper  
5 weight. However, because there was no finding of factual innocence in this case, the Board must  
6 consider all relevant evidence that either proves or disproves Mr. Galicia's claim by a preponderance  
7 of the evidence, including, but not limited to, the reports of Dr. Whiteman, Dr. Oliva, and Dr. Suresh.

8 After a careful review of all the evidence in this case, it is determined that the Claimant has  
9 proven by a preponderance of the evidence that he is innocent of the crime of committing a lewd act  
10 upon a child under the age of 14.

11 The Claimant presented affirmative evidence of his innocence in the form of three doctors'  
12 reports confirming that Araceli's hymen showed no signs of penetration trauma. The fact that three  
13 doctors disagree with the original examining doctor's findings that Araceli's hymen showed signs of  
14 penetration trauma only serves to prove that determining whether there has been penetration trauma to  
15 the hymen of an adolescent is not an exact science, not that Dr. Spencer fabricated her findings.  
16 However, once an examination has been peer reviewed by three other doctors who do not see  
17 penetration trauma, the preponderance of the evidence weighs in favor of there being no penetration  
18 trauma. Although Nurse Boyle's testimony carries significant weight, in view of the testimony of the  
19 three doctors who examined Araceli and saw no evidence of penetration trauma, the weight of the  
20 evidence shifts in favor of the three doctors who found no evidence of a transection.

21 The question becomes, then, in the absence of evidence of penetration trauma, is there a  
22 preponderance of the evidence that the Clamant did not molest Araceli?

23 The only remaining evidence available to aid in making this determination is the Claimant's  
24 confession and Araceli's recantation.

25 Although the statements made by the Claimant during the custodial interrogation were  
26 suppressed at trial, the Board may consider any information that it may deem relevant to the issue  
27

28 \_\_\_\_\_  
29 <sup>23</sup> Cal. Code Regs., tit. 2, § 641(e).

1 before it,<sup>24</sup> including the statements made during the interrogation because they are relevant to shed  
2 light on the question of the Claimant's innocence. During the interrogation, the Claimant initially denied  
3 any sexual contact between him and Araceli. As the interrogation wore on and after multiple promises  
4 by law enforcement that his younger siblings would return home if he confessed, the Claimant admitted  
5 that he and Araceli "play fought" and had intercourse twice, but he did not rape her. The hearing officer  
6 finds the confession unreliable, as it was elicited amidst promises made by law enforcement and after  
7 over an hour of questioning.

8 Araceli's recantation weighs in favor of granting Claimant's claim. Her statements have  
9 waived from the beginning, making it difficult to rely on her testimony or statements, including the  
10 initial disclosure. This conclusion regarding Araceli's testimony is reached in light of Nataly Reyes'  
11 testimony. It is clear that Araceli was dishonest with almost everyone she encountered during this time,  
12 including Nataly Reyes.

13 Based on the totality of the evidence, Mr. Galicia has met his burden of proving that he did not  
14 commit the crime of lewd and lascivious acts on a child under the age of 14. The victim's lack of  
15 credibility nullifies both her disclosure and recantation. Since affirmative evidence has been presented  
16 that there are no hymenal injuries nor is any evidence of penetration trauma on the hymen of the  
17 alleged victim, there is a preponderance of the evidence that Mr. Galicia is innocent of the crime.

18 The same conclusion is reached in view of the three additional pieces of evidence. In  
19 November 2011, the San Diego District Attorney's Office stated they could not prove Luis' guilt beyond  
20 a reasonable doubt without medical testimony showing that Araceli had penetration trauma. In fact,  
21 they believed without medical testimony, the conviction should be overturned. In February 2012, the  
22 People decided not to pursue any charges in this case.

23 Although guilt beyond a reasonable doubt is a very different standard than innocence by a  
24 preponderance of the evidence, in this case, we are generally looking at the same evidence that was  
25 considered by the District Attorney in deciding that it was proper to overturn Luis's conviction and not  
26 pursue any charges. At that time, Araceli's initial disclosure and subsequent recantation was not given  
27 any weight. However, the subsequent reports of Dr. Suresh, Dr. Whiteman, and Dr. Oliva, which

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28 <sup>24</sup> Cal. Code Regs., tit. 2, § 641.  
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1 showed that there was no transection, was enough to overturn Luis's conviction. The Attorney  
2 General's office now asks the Board to give more weight to Araceli's initial disclosure, than her  
3 subsequent recantation and the three examinations. Unfortunately, Araceli's initial disclosure in light of  
4 her recantation weakens her credibility in all aspects of this case. It is clear that Araceli was dishonest  
5 with almost everyone she encountered during this time, including Nataly Reyes.

6 On the other hand, Luis has submitted three reports showing there was no appreciable  
7 penetration trauma to Araceli's hymen. In her subsequent deposition, Dr. Suresh opined that it is  
8 unknown whether Araceli was abused. However, the examinations did not substantiate any sexual  
9 abuse. Although Dr. Suresh recommends that one look to the history of disclosure when determining  
10 whether abuse has occurred, in this case, there is no history from which sexual abuse can be inferred.  
11 Therefore, in view of the affirmative evidence that Araceli suffered no penetration trauma, there is a  
12 preponderance of the evidence that Mr. Galicia is innocent of the crime.

### 13 **Pecuniary Injury**

14 Mr. Galicia also suffered pecuniary loss. Up until the date of incarceration, Mr. Galicia worked  
15 full time as an assistant at a beauty salon and part time at a local factory. Based on these facts, there  
16 is a preponderance of the evidence that the Claimant suffered a pecuniary loss due to his  
17 imprisonment.

### 18 **Conclusion**

19 Claimant was released from prison on November 22, 2011, after serving 1,068 days  
20 incarcerated in prison. It is recommended to the Legislature that an appropriation be made to pay the  
21 claim of Luis Galicia in the sum of \$106,800.00.

22  
23 Dated: February 1, 2016

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24 Jasmine Turner-Bond  
25 Hearing Officer  
26 California Victim Compensation and  
27 Government Claims Board  
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:  
**Luis Galicia**

**Notice of Decision**

On February 18, 2016, the California Victim Compensation and Government Claims Board opposed the attached Proposed Decision of the Hearing Officer.

The Board determined that claimant did not meet his burden of proving that he did not commit the crime of lewd and lascivious acts on a child under the age of 14.

Dated: February 26, 2016

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Tisha Heard  
Board Liaison  
California Victim Compensation and  
Government Claims Board

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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

**Luis Galicia**

**Board Decision of February 18, 2016**

At the February 18, 2016, Board meeting, final arguments were heard from Claimant’s attorney, Mr. Richards, and Ms. Gimle, on behalf of the Attorney General (AG), before the Board voted unanimously to reject the hearing officer’s recommendation.

At the Board meeting, Mr. Richards made the following closing argument. Dr. Spencer, who conducted the initial SART examination of Araceli in which she found evidence of penetration trauma, was found to have provided inaccurate information in at least 10 other cases, including Araceli’s case. Because of these inaccuracies, Dr. Spencer no longer conducts SART examinations. Post-criminal trial, three doctors reviewed Dr. Spencer’s findings and all three found her findings to be inaccurate in this case. Because of these inaccuracies, the District Attorney allowed their expert doctor, Dr. Premi Suresh, who has conducted over 1,000 SART exams, to reevaluate Araceli. After a physical examination, Dr. Premi Suresh confirmed that Dr. Spencer’s original findings were inaccurate.

Mr. Richards then turned to Araceli’s possible motivation for disclosing the alleged sexual abuse: he alleged that Araceli’s was dating an 18-year old gang member, and when her brother found out, she threatened to run away.

1 Finally, Mr. Richards argued that Araceli's initial recantation occurred two months after she was  
2 placed in foster care, much sooner than the six months alleged by the AG. At trial, Araceli testified she  
3 and the claimant never had any sexual contact.

4 Ms. Gimle made the following closing argument. Victims of child molestation are often reluctant  
5 to disclose the abuse due to divided loyalties and love for the perpetrator. According to Ms. Gimle,  
6 Araceli initially disclosed the sexual abuse to her mother, who responded by taking Araceli to Mexico  
7 for a checkup.

8 Ms. Gimle then turned to Dr. Urquiza's testimony at the Penal Code section 4900 hearing. Dr.  
9 Urquiza testified that 25 percent of all children who are brave enough to disclose abuse later recant the  
10 allegations. Dr. Urquiza further testified that false reports of molestation are extremely rare.

11 Ms. Gimle stated the hearing officer disregarded the claimant's confession. According to Ms.  
12 Gimle, the Claimant's confession had a semblance of veracity.

13 Finally, Ms. Gimle alleged the hearing officer failed to appreciate that the medical evidence in  
14 this case did not exonerate the claimant. Ms. Gimle opined that by finding the claimant innocent, the  
15 hearing officer, by extension, found that Araceli lied. Ms. Gimle reiterated that Araceli recanted after  
16 being under familial pressure for six months to recant.

17 Ms. Gimle played a video of Araceli's initial disclosure.

18 Christine Ward with Crime Victim Action Alliance and iCan, made a statement on behalf of the  
19 Attorney General. She inferred that the witness, Nurse Practitioner Cathy Boyle, who testified at the  
20 Penal Code section 4900 hearing, is greatly respected in the child sexual assault community. Ms.  
21 Ward found it troubling that the hearing officer seemingly ignored Nurse Boyle's testimony.

22 Mr. Richards responded to Ms. Ward's statement by saying although Nurse Boyle's opinion in  
23 the community is highly respected, so is the opinion of the San Diego District Attorney's expert doctor,  
24 Dr. Premi Suresh, who found that the report and the medical evidence in this case were false. Nurse  
25 Boyle never conducted a physical examination of Araceli. In Mr. Richard's opinion, Dr. Spencer, who  
26 initially examined Araceli, wrote a false report.

27 Mr. Richards stated the claimant's confession was ruled inadmissible during trial.  
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1 Mr. Ramos found it concerning Mr. Galicia did not seek a finding of factual innocence. He found  
2 cases involving family recantation very complicated, especially when there is no physical evidence of  
3 corroboration. Mr. Ramos opposed staff's recommendation in the proposed decision because "it's just  
4 difficult for me to say that (claimant) reached the level of preponderance of evidence to prove that he  
5 did not commit (the crime)."

6 Chairperson Batjer found that the evidence presented was very complicated, and had difficulty  
7 drawing any conclusions from the medical personnel's testimony. The Chairman stated, "I wanted to  
8 (come to a) conclusion to support staff recommendation. But I just couldn't find the evidence ... that led  
9 me to that."

10 The Board voted unanimously to reject staff's recommendation and deny the claimant's claim  
11 because he failed to meet his burden of proving his innocence.

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13 Dated: March 11, 2016

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15 Jasmine Turner-Bond  
16 Hearing Officer  
17 California Victim Compensation and  
18 Government Claims Board  
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