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Attorney for Defendant

_____ COURT OF CALIFORNIA, COUNTY OF _____

THE PEOPLE OF THE STATE)	Case No.
OF CALIFORNIA,)	
)	
Plaintiff,	)	REQUEST FOR CHANGE OF PLEA
vs	)	AND DISMISSAL OF CHARGES
	)	[Penal Code § 1203.4]
,	)	Mandatory Granting
	)	Discretionary Granting
Defendant.)	
_____)	

TO ALL PARTIES AND TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE, that, _____, Defendant in the above-entitled action, by and through his undersigned attorney, does move this court for an order granting his request for change of plea, a dismissal of the charge and Order releasing him from all penalties and disabilities of his conviction.

This motion is made on the grounds that:

GROUND FOR GRANTING RELIEF:

The defendant requests this court to grant the relief requested on the grounds that it is mandated by law. Defendant successfully completed his probation, has suffered no arrests or

convictions since the current offense, and is not currently on probation.

In the alternative, the defendant requests this court to exercise its discretion and in the interests of justice, determines that a defendant should be granted the relief available under this section whether or not the Defendant has fulfilled all conditions of probation ordered by this court.

Defendant has not suffered any arrests or conviction since the instant offense and is not currently on probation on any case.

WHEREFORE, the petitioner requests the court for an order:

1. Pursuant to Penal Code § 1203.4, allowing him to withdraw his "nolo contendere" or guilty plea and to enter a substitute plea of "not guilty." It is further requested that the complaint against the defendant be dismissed and that he be released from all penalties and disabilities resulting from the offense as permitted under Penal Code § 1203.4.

This motion is based on this Notice of Motion and the declaration of Defendant and the Points and Authorities filed with this Motion.

Date: _____

Respectfully submitted,

Attorney for Defendant

Attorneys for DEFENDANT

_____ COURT OF CALIFORNIA, COUNTY OF _____

THE PEOPLE OF THE STATE	)	CASE NO.
OF CALIFORNIA,)	
)	
Plaintiff,	)	DECLARATION IN SUPPORT OF
	)	REQUEST FOR CHANGE OF PLEA
vs	)	AND DISMISSAL OF CHARGES
	)	[Penal Code § 1203.4]
)	
	)	Discretionary Grounds for Relief
)	
Defendant.)	
_____)	

I, _____, Defendant in the above-entitled action, declare as follows:

I am the defendant in the above entitled action. On _____ a complaint was filed alleging that in _____ the I did annoy or molest in violation of Penal Code § 647.6. On _____ I entered a plea of no contest/ guilty to _____ count(s) of Penal Code § 647.6. On March 3, 1994 my probation was summarily revoked by the Municipal Court based on failing to keep the Probation Officer Advised of my current address. I was never found in violation of probation during the term of my probation. Further, I successfully completed each and every other condition of my probation in the above entitled action. I am not currently charged with the commission of any offense, I am

not on probation for any offense and I am not currently serving a sentence for any offense. I requests this court to exercise its discretion and in the interests of justice, and determine that I should be granted the relief available under this section whether or not the I have fulfilled all conditions of probation ordered by this court based upon the following additional information. ____ (__) years have passed since the alleged offense and I have lead a law abiding life for that entire period. I was not put on notice of any unsatisfactory completion of any term or conditions of my probation during the period of probation. I am therefore requesting that relief under Penal Code § 1203.4 be granted at this time.I declare under penalty of perjury that the above is true and correct. Executed in _____, California.

Date: December __, 20__.

Defendant

Attorneys for DEFENDANT

_____ COURT OF CALIFORNIA, COUNTY OF _____

THE PEOPLE OF THE STATE	)	Case No.
OF CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs)	
)	
)	
Defendant.)	
_____)	

**POINTS AND AUTHORITIES
IN SUPPORT OF REQUEST FOR RELIEF**

MANDATORY GRANTING OF RELIEF

Penal Code § 1203.4 provides, inter alia:

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation...the defendant **shall**, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, **be permitted** by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty...the court shall set aside the verdict of guilty...the court shall thereupon dismiss the accusations or information against the defendant...he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted....

The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to

any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

A recent case, People v. Hawley (1991) 228 CA3d 247, 249-250, 278 CR 389, states the intent of this statute quite clearly:

" Section 1203.4 provides that a defendant who "has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation" (emphasis added) is entitled as a matter of right to have the plea or verdict changed to not guilty, to have the proceedings expunged from the record, and to have the accusations dismissed. (People v. Chandler, supra, 203 Cal.App.3d at p. 782, 250 Cal.Rptr. 730.) If the petitioner establishes either of the necessary factual predicates, the trial court is required to grant the requested relief. (FN3) (People v. Butler, supra, 105 Cal.App.3d at p. 587, 164 Cal.Rptr. 475; People v. Johnson (1955) 134 Cal.App.2d 140, 144, 285 P.2d 74.)"

In the case of **People v. Chandler 203 Cal. App 3d 782** the court found that there did not need to be a formal finding of revocation of probation during the term of probation. The court could find post probation that there was a failure to complete all of the terms and conditions of probation and thus deny the defendant the mandatory right to relief. The defendant could still apply for the discretionary relief.

DISCRETIONARY GRANTING OF RELIEF

1 Penal Code § 1203.4 provides, inter alia:

2
3 (a) ...or in any other case in which a court, **in its**
4 **discretion and the interests of justice**, determines
5 that a defendant should be granted the relief
6 available under this section, the defendant shall, at
7 any time after the termination of the period of
8 probation, if he or she is not then serving a sentence
9 for any offense, on probation for any offense, or
10 charged with the commission of any offense, be
11 permitted by the court to withdraw his or her plea of
12 guilty or plea of nolo contendere and enter a plea of
13 not guilty...the court shall set aside the verdict of
14 guilty...the court shall thereupon dismiss the
15 accusations or information against the defendant...he
16 or she shall thereafter be released from all penalties
17 and disabilities resulting from the offense of which
18 he or she has been convicted....

19
20 The order shall state, and the probationer shall be
21 informed, that the order does not relieve him or her
22 of the obligation to disclose the conviction in
23 response to any direct question contained in any
24 questionnaire or application for public office, for
25 licensure by any state or local agency, or for
contracting with the California State Lottery.

(d) No relief shall be granted under this section
unless the prosecuting attorney has been given 15
days' notice of the petition for relief. The probation
officer shall notify the prosecuting attorney when a
petition is filed, pursuant to this section.

(e) If, after receiving notice pursuant to
subdivision (d), the prosecuting attorney fails to
appear and object to a petition for dismissal, the
prosecuting attorney may not move to set aside or
otherwise appeal the grant of that petition.

THE DEPARTMENT OF JUSTICE MUST BE NOTIFIED

IF THIS APPLICATION IS GRANTED

Penal Code section 13151 states that when the Court orders
any action subsequent to the initial disposition of a case, the
Court shall report this to the California Department of Justice.

1 The report is necessary to ensure that defendant obtains the
2 full benefit of the Court's order granting this application.

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4 Date: November 30, 1999

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6 Respectfully submitted,

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8 _____
9 Attorney for Defendant

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2 by Patrick E. Clancy

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5 Attorneys for

6 _____ COURT OF CALIFORNIA, COUNTY OF _____

7	THE PEOPLE OF THE STATE)	Case No.
	OF CALIFORNIA,)	
8)	
	Plaintiff,	)	ORDER GRANTING RELIEF
9		)	[Penal Code § 1203.4]
	vs)	
10)	
)	
11	Defendant.)	
12	_____)	

13 Application for request for relief by defendant, _____
14 _____, having been filed and the District Attorney having
15 been duly noticed and, GOOD CAUSE having been made to appear,

16 IT IS ORDERED THAT;

17 The request for relief requested by the Defendant and
18 authorized by Penal Code § 1203.4 is granted.

19 The plea of no contest/guilty or verdict of guilty entered
20 in this cause is changed to not guilty. The complaint filed in
21 this cause is dismissed. The defendant is released from
22 penalties and disabilities resulting from conviction.

23 The probationer is informed, that the order does not
24 relieve him of the obligation to disclose the conviction in
25 response to any direct question contained in any questionnaire
or application for public office, for licensure by any state or

1 local agency, or for contracting with the California State
2 Lottery.

3 The Court directs the clerk to notify the California
4 Department of Justice of this action, pursuant to Penal Code
5 section 13151.

6 Dated:

7 _____

8 JUDGE OF THE SUPERIOR COURT
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