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7 \_\_\_\_\_ COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_

8 THE PEOPLE OF THE STATE	)	Case No.
OF CALIFORNIA,	)	
9	)	
Plaintiff,	)	REQUEST FOR CHANGE OF PLEA
10 vs	)	AND DISMISSAL OF CHARGES
	)	[Penal Code § 1203.4]
11 ,	)	Mandatory Granting
	)	Discretionary Granting
12 Defendant.	)	
_____	)	

13 TO ALL PARTIES AND TO THE CLERK OF THE ABOVE ENTITLED COURT:  
14

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

20 This motion is made on the grounds that:

21 **GROUND FOR GRANTING RELIEF:**

22 The defendant requests this court to grant the relief  
23 requested on the grounds that it is mandated by law. Defendant  
24 successfully completed his probation, has suffered no arrests or  
25 convictions since the current offense, and is not currently on  
26 probation.

27 In the alternative, the defendant requests this court to  
28 exercise its discretion and in the interests of justice, determines

1 that a defendant should be granted the relief available under this

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1 section whether or not the Defendant has fulfilled all conditions  
2 of probation ordered by this court.

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

5 **WHEREFORE**, the petitioner requests the court for an order:

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

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

15 Date: \_\_\_\_\_

16 Respectfully submitted,

17 \_\_\_\_\_  
18 Attorney for Defendant  
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5 Attorneys for DEFENDANT

6 \_\_\_\_\_ COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_

7 THE PEOPLE OF THE STATE )  
8 OF CALIFORNIA, )

CASE NO.

9 Plaintiff, )

DECLARATION IN SUPPORT OF  
REQUEST FOR CHANGE OF PLEA  
AND DISMISSAL OF CHARGES  
[Penal Code § 1203.4]

10 vs )

Discretionary Grounds for Relief

11 )  
12 )  
13 Defendant. )  
\_\_\_\_\_ )

14 I, \_\_\_\_\_, Defendant in the above-entitled  
15 action, declare as follows:

16 I am the defendant in the above entitled action. On  
17 \_\_\_\_\_ a complaint was filed alleging that in \_\_\_\_\_  
18 the I did annoy or molest in violation of Penal Code § 647.6. On  
19 \_\_\_\_\_ I entered a plea of no contest/ guilty to \_\_\_\_\_  
20 count(s) of Penal Code § 647.6. On March 3, 1994 my probation  
21 was summarily revoked by the Municipal Court based on failing to  
22 keep the Probation Officer Advised of my current address. I was  
23 never found in violation of probation during the term of my  
24 probation. Further, I successfully completed each and every  
25 other condition of my probation in the above entitled action. I  
26 am not currently charged with the commission of any offense, I am  
27 not on probation for any offense and I am not currently serving a  
28 sentence for any offense. I requests this court to exercise its

1 discretion and in the interests of justice, and determine that I  
2 should be granted the relief available under this section whether  
3 or not the I have fulfilled all conditions of probation ordered by  
4 this court based upon the following additional information. \_\_\_\_  
5 (\_\_) years have passed since the alleged offense and I have lead a  
6 law abiding life for that entire period. I was not put on  
7 notice of any unsatisfactory completion of any term or conditions  
8 of my probation during the period of probation. I am therefore  
9 requesting that relief under Penal Code § 1203.4 be granted at this  
10 time.I declare under penalty of perjury that the above is true and  
11 correct. Executed in \_\_\_\_\_, California.

12 Date: December \_\_, 20\_\_.

13 \_\_\_\_\_  
14 Defendant  
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5 Attorneys for DEFENDANT

6 \_\_\_\_\_ COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_

7 THE PEOPLE OF THE STATE ) Case No.  
8 OF CALIFORNIA, )  
9 Plaintiff, )  
10 vs )  
11 )  
12 Defendant. )  
13 \_\_\_\_\_ )

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

15 **MANDATORY GRANTING OF RELIEF**

16 Penal Code § 1203.4 provides, inter alia:

17 (a) In any case in which a defendant has fulfilled  
18 the conditions of probation for the entire period of  
19 probation, or has been discharged prior to the  
20 termination of the period of probation...the defendant  
21 **shall**, at any time after the termination of the period of  
22 probation, if he or she is not then serving a sentence  
23 for any offense, on probation for any offense, or charged  
24 with the commission of any offense, **be permitted** by the  
25 court to withdraw his or her plea of guilty or plea of  
26 nolo contendere and enter a plea of not guilty...the  
27 court shall set aside the verdict of guilty...the court  
28 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

1 State Lottery.

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

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

8 A recent case, People v. Hawley (1991) 228 CA3d 247, 249-250,  
9 278 CR 389, states the intent of this statute quite clearly:

10 " Section 1203.4 provides that a defendant who "has fulfilled  
11 the conditions of probation for the entire period of  
12 probation, or has been discharged prior to the termination  
of the period of probation" (emphasis added) is entitled as a  
13 matter of right to have the plea or verdict changed to not  
guilty, to have the proceedings expunged from the record, and  
14 to have the accusations dismissed. (People v. Chandler,  
supra, 203 Cal.App.3d at p. 782, 250 Cal.Rptr. 730.) If the  
15 petitioner establishes either of the necessary factual  
predicates, the trial court is required to grant the  
16 requested relief. (FN3) (People v. Butler, supra, 105  
Cal.App.3d at p. 587, 164 Cal.Rptr. 475; People v. Johnson  
17 (1955) 134 Cal.App.2d 140, 144, 285 P.2d 74.)"

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

#### 25 **DISCRETIONARY GRANTING OF RELIEF**

26 Penal Code § 1203.4 provides, inter alia:

27 (a) ...or in any other case in which a court, **in its**  
28 **discretion and the interests of justice**, determines that  
a defendant should be granted the relief available under

1 this section, the defendant shall, at any time after the  
2 termination of the period of probation, if he or she is  
3 not then serving a sentence for any offense, on probation  
4 for any offense, or charged with the commission of any  
5 offense, be permitted by the court to withdraw his or her  
6 plea of guilty or plea of nolo contendere and enter a  
7 plea of not guilty...the court shall set aside the  
8 verdict of guilty...the court shall thereupon dismiss the  
9 accusations or information against the defendant...he or  
10 she shall thereafter be released from all penalties and  
11 disabilities resulting from the offense of which he or  
12 she has been convicted....

13 The order shall state, and the probationer shall be  
14 informed, that the order does not relieve him or her of  
15 the obligation to disclose the conviction in response to  
16 any direct question contained in any questionnaire or  
17 application for public office, for licensure by any state  
18 or local agency, or for contracting with the California  
19 State Lottery.

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

25 (e) If, after receiving notice pursuant to  
26 subdivision (d), the prosecuting attorney fails to appear  
27 and object to a petition for dismissal, the prosecuting  
28 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**

1 Penal Code section 13151 states that when the Court orders any  
2 action subsequent to the initial disposition of a case, the Court  
3 shall report this to the California Department of Justice. The  
4 report is necessary to ensure that defendant obtains the full  
5 benefit of the Court's order granting this application.

6 Date: November 30, 1999

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Respectfully submitted,

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Attorney for Defendant

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5 Attorneys for

6 \_\_\_\_\_ COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_

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

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

17 IT IS ORDERED THAT;

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

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

24 The probationer is informed, that the order does not relieve  
25 him of the obligation to disclose the conviction in response to any  
26 direct question contained in any questionnaire or application for  
27 public office, for licensure by any state or local agency, or for  
28 contracting with the California State Lottery.

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

4 Dated:

5 \_\_\_\_\_  
6 JUDGE OF THE SUPERIOR COURT  
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