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LEGAL PROCESS #4

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25 SUPERIOR COURT OF CALIFORNIA

26 COUNTY OF SACRAMENTO

27 SACRAMENTO COUNTY PROBATION) CASE NO. 34-2010-80000550
28 ASSOCIATION; WAYNE FONG, a resident)
29 and taxpayer of Sacramento County; ALAN) **MEMORANDUM OF POINTS AND**
30 MATEER, a resident and taxpayer of) **AUTHORITIES IN SUPPORT OF**
31 Sacramento County; JENNIFER YOSHIDA, a) **MOTION FOR LEAVE TO FILE FIRST**
32 resident and taxpayer of Sacramento County;) **AMENDED COMPLAINT**
33 and CRIME VICTIMS UNITED OF)
34 CALIFORNIA,)

35 Plaintiffs,)

36 vs.)

37 COUNTY OF SACRAMENTO;)
38 SACRAMENTO COUNTY BOARD OF)
39 SUPERVISORS; and DOES 1 through 100,)
40 inclusive.)

41 Defendants.)

42 Date: December 3, 2010
43 Time: 9:00 a.m.
44 Department: 19
45 Hearing judge: Hon. Patrick Marlette
46 Action filed: May 20, 2010

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STATEMENT OF FACTS

This action arose out of a decision by the County of Sacramento to reduce funding to the Sacramento County Probation Department so drastically that the Department is prevented from performing its constitutional, statutory, and court-ordered obligations. On May 20, 2010, Plaintiffs filed this action to require the County to comply with its non-discretionary duty to enforce those constitutional, statutory and court-ordered mandates concerning probation. Plaintiffs now seek leave to file a First Amended Complaint to reflect factual changes since this action was filed, include a verification in compliance with Code of Civil Procedure Section 1086 and make minor changes. This complaint both amends the complaint pursuant to Code of Civil Procedure Section 473 and supplements the complaint pursuant to Code of Civil Procedure Section 464. The proposed First Amended Complaint is attached hereto as Exhibit 1.

II

JUDICIAL POLICY FAVORS ALLOWING AMENDMENT AND SUPPLEMENT OF PLEADINGS


Code of Civil Procedure Section 473 allows a party to amend any pleading on notice to the adverse party, at the discretion of the court. Section 473 is remedial in nature and entitled to liberal construction. The public policy of California is to allow great liberality in amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where an amendment does not prejudice the substantial rights of others. (*Dunzweiler v. Superior Court of Alameda County* (1968) 267 Cal.App.2d 569.) Likewise, the filing of supplemental pleadings under Code of Civil Procedure Section 464 is generally permitted. (*Louie Queriolo Trucking, Inc. v. Superior Court of Kern County* (1967) 252 Cal.App.2d 194.)

Permitting plaintiffs here to file the First Amended Complaint is appropriate. Granting Plaintiffs' motion does not prejudice any parties to the action because the First Amended Complaint clarifies Plaintiffs' position to the benefit of opposing parties and is being filed very early in this action. Furthermore, it is an abuse of discretion for a trial court to sustain a demurrer or to grant a judgment on the pleadings without leave to amend if there is a reasonable possibility that defects can

1 be cured by amendment. (*Beck v. American Health Group Internat., Inc.*, (1989) 211 Cal.App.3d
2 1555.) While neither a demurrer nor motion for judgment on the pleadings has been filed by
3 defendants in this case, the First Amended Complaint seeks to make changes to the complaint to
4 address possible concerns, in the interest of judicial economy. The changes to the complaint are
5 minor, reflecting date changes to factual allegations and including a verification in compliance with
6 Code of Civil Procedure Section 1086. (Declaration of Jeffrey R. A. Edwards in Support of
7 Memorandum of Points and Authorities In Support of Motion for Leave to File First Amended
8 Complaint, ¶3.) The changes in the amended complaint do not add a new cause of action or proceed
9 off of separate facts. Instead, they seek to clarify and expand notice with regard to plaintiffs' claims.
10 Crime Victims United of California consents to filing this First Amended Complaint. (Decl. of
11 Edwards, ¶8.)

12
13 DATED: August 12, 2010

**MASTAGNI, HOLSTEDT, AMICK,
MILLER & JOHNSEN**

14
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16 By: 
CHRISTOPHER W. MILLER
Attorney for Plaintiffs
17 Sacramento County Probation Association, Wayne
18 Fong, Alan Mateer and Jennifer Yoshida

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EXHIBIT

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 Crime Victims United of California
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16 SUPERIOR COURT OF CALIFORNIA
 17 COUNTY OF SACRAMENTO

18 SACRAMENTO COUNTY PROBATION) ASSOCIATION; WAYNE FONG, a resident) 19 and taxpayer of Sacramento County; ALAN) MATEER, a resident and taxpayer of) 20 Sacramento County; JENNIFER YOSHIDA, a) resident and taxpayer of Sacramento County;) 21 and CRIME VICTIMS UNITED OF) CALIFORNIA,) 22) Plaintiffs,) 23) vs.) 24) COUNTY OF SACRAMENTO;) 25 SACRAMENTO COUNTY BOARD OF) SUPERVISORS; and DOES 1 through 100,) 26 inclusive.) 27) Defendants.) 28 _____)	CASE NO. 2010-80000550 FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR WRIT OF MANDAMUS
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Plaintiffs allege as follows:

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NATURE OF THE ACTION

1. This is a complaint for declaratory and injunctive relief and for a writ of mandamus to compel the County of Sacramento and the Sacramento County Board of Supervisors to provide adequate funding to the Sacramento County Probation Department ("Department") to allow the Department to meet its court- and state-mandated obligations to supervise the county's more than 30,000 adult and juvenile offenders, and for the protection of the public from sexual predators, convicted felons, recidivist juvenile offenders, and violent spouses.

2. On March 12, 2010, pursuant to Penal Code section 1203.74, Sacramento County Chief Probation Officer Don Meyer informed Interim County Executive Officer Steven C. Szalay, Chief Operations Officer Navdeep Gil, County Budget Officer Tom Burkart, and Countywide Services Agency Acting Administrator Bruce Wagstaff the staff and financial resources available to him are insufficient to meet his statutory and court-ordered responsibilities, and proposed cuts to the Sacramento County Probation Department would prevent him from meeting those obligations in the future.

3. On March 25, 2010, Chief Meyer informed the Sacramento County Board of Supervisors the continued inability of his department to supervise high-risk criminal offenders posed a dire threat to public safety.

4. On June 17, 2010, the COUNTY enacted Resolution No. 2010-0504. The Resolution adopted a recommended budget which "shall constitute authorization for county expenditure until adoption of a budget for said fiscal year." This operating budget made sweeping new cuts to the Sacramento County Probation Department's budget. These cuts render a department already in crisis wholly unable to comply with dozens of constitutional, statutory and regulatory mandates.

5. As a result of the Sacramento County Probation Department's present inability to comply with constitutional, statutory and court-ordered mandates, the people of Sacramento County are at a heightened risk from serious and violent criminal offenders.

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II
PARTIES

6. Plaintiff, SACRAMENTO COUNTY PROBATION ASSOCIATION (“SCPA”), is the exclusive bargaining representative for the Probation Non-Supervisory Unit, representing sworn deputy probation officers and probation assistants employed by the Sacramento County Probation Department. The organization’s purposes include protecting the public safety and fostering improved services to the community for the suppression of crime and the rehabilitation of offenders. Any judicial declaration on the issues set forth herein will vindicate the rights of all SPCA members.

7. Plaintiff, WAYNE FONG, is a resident of Sacramento County and has been assessed and is liable to pay taxes in Sacramento County or has paid such taxes in the past year.

8. Plaintiff, AL MATEER, is a resident of Sacramento County and has been assessed and is liable to pay taxes in Sacramento County or has paid such taxes in the past year.

9. Plaintiff, JENNIFER YOSHIDA, is a resident of Sacramento County and has been assessed and is liable to pay taxes in Sacramento County or has paid such taxes in the past year.

10. Plaintiff, CRIME VICTIMS UNITED OF CALIFORNIA (“CVUC”), is an organization whose membership includes victims of crimes committed by adult and juvenile offenders who are now under the supervision of the Sacramento County Probation Department. The organization’s purpose is protect, promote, and advocate for victim’s rights. Any judicial declaration on the issues set forth herein will vindicate the rights of all CVUC members.

11. Defendant, COUNTY OF SACRAMENTO (“COUNTY”), is, and at all times herein mentioned was, a political subdivision organized and existing under the laws of the State of California and the Charter of the County of Sacramento. COUNTY has, and at all relevant times had, authority over the Sacramento County Probation Department through its employees, agents, assigns and designees, including but not limited to the Sacramento County Countywide Services Agency. COUNTY has, and all relevant times had, responsibility for providing adequate funding for the Sacramento County Probation Department to meet its constitutional, statutory, and court-ordered obligations.

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A. THE SACRAMENTO COUNTY PROBATION DEPARTMENT MUST COMPLY WITH SPECIFIC CONSTITUTIONAL, STATUTORY, REGULATORY, AND COURT-ORDERED MANDATES.

1. The Sacramento County Probation Department Must Facilitate Victims' Exercise of their State Constitutional Rights.

17. Crime victims have constitutional rights pursuant to Article I, section 28 of the California Constitution.

18. The Sacramento County Probation Department is responsible for ensuring that crime victims can exercise their state constitutional rights.

19. Probation officers must give all crime victims adequate notice of all sentencing proceedings concerning the person who committed the crime. (Pen. Code § 1191.1.)

20. During their pre-sentence investigation, probation officers must accept information from victims concerning the impact of the offense on the victim and the victim's family and any sentencing recommendation. (Cal. Const. art. I, § 28(b)(10).)

21. Crime victims are entitled to reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings. (Cal. Const. art. I, § 28(b)(7).)

22. Crime victims have the right to receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law. (Cal. Const. art. I, § 28(b)(11).)

23. Crime victims have the right to be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody. (Cal. Const. art. I, § 28(b)(12).)

24. Crime victims have a right to restitution in every case in which a crime victim suffers a loss. (Cal. Const. art. I, § 28(b)(13).)

25. Probation officers must inform all crime victims for whom they have a mailing address of their right to civil recovery against the defendant, the requirement that the court order restitution for

1 the victim, the victim's right to receive a copy of the restitution order from the court and to enforce the
2 restitution order as a civil judgment, the victim's responsibility to furnish the probation department,
3 district attorney, and court with information relevant to his or her losses, and the victim's opportunity
4 to be compensated from the Restitution Fund. (Pen. Code § 1191.2.)

5 26. If a minor's victim requests it, a probation officer must help mediate a service contract
6 between the victim and the minor. (Welf. & Inst. Code § 729.7.)

7 27. Probation officers must notify victims of numerous rights concerning juvenile court
8 hearings. (Welf. & Inst. Code § 676.5.)

9 28. Even if a defendant is not eligible for probation, a court must refer the defendant to
10 probation to determine his amount of restitution owed. (Pen. Code § 1203(g).)

11 29. Probation officers must liaison with minors' victims to inform them of them of various
12 rights, obtain information from them as required, and share calendaring information. (Welf. & Inst.
13 Code § 656.2.)

14 **2. The Sacramento County Probation Department Must Monitor and**
15 **Evaluate Sex Offenders.**

16 30. The Probation Department must inform sex offenders of their duty to register. (Pen.
17 Code § 290.85(c).)

18 31. Probation officers must collect DNA samples from sex offenders. (Pen. Code § 296.1.)

19 32. The Probation Department must assess potential sex offenders and administer the State
20 Authorized Risk Assessment Tool for Sex Offenders (SARATSO). (Pen. Code § 290.06.)

21 33. Approximately 66 of the 850 probationers presently supervised are sex offenders
22 supervised pursuant to funding from the Recovery Act with federal pass-through dollars from Cal
23 EMA. This funding source expires on September 30, 2010. When this funding source expires, these
24 sex offenders will not be supervised.

25 **3. The Sacramento County Probation Department Must Oversee and**
26 **Monitor Domestic Violence Perpetrators.**

27 34. Probation officers must conduct a detailed assessment of defendants sentenced to
28 probation related to domestic violence charges. (Pen. Code § 1203.097.)

1 35. Probation officers must evaluate batterers' social, economic, and family background,
2 education, vocational achievements, criminal, medical and substance abuse history and must include
3 a consultation with the probation officer, verbal communication with the victim if desired, and an
4 assessment of the future probability the defendant will commit murder. Probation officers must report
5 the findings of this investigation to the Court. (Pen. Code §1203.097 (b)(1).)

6 36. Probation officers must document batterers' participation in programming and any
7 treatment for chemical dependency. (Pen Code §1203.097(a)(10)(C).)

8 37. Probation officers must attempt to contact the victim of a domestic violence perpetrator
9 and inform him or her of resources and that their batterer's participation in programming does not
10 mean their batterer will not be violent. (Pen. Code § 1203.097(b)(4).)

11 38. The probation department must monitor batterer programs and implement a renewal
12 approval process. (Pen. Code § 1203.097(c).)

13 **4. The Sacramento County Probation Department Must Evaluate, Monitor**
14 **and Supervise All Adult Felons Released into the Community on Probation.**

15 39. Probation officers must determine a probationer's level and type of supervision
16 consistent with a court's sentencing orders. (Pen. Code § 1202.8.) Probation officers must conduct
17 an investigation and prepare a pre-sentence report. (Pen. Code §§ 1191, 1203(b).)

18 40. Probation officers must collect DNA samples from several classes of criminals. (Pen.
19 Code § 296.1.)

20 41. Before a ward can be transferred to community care facility in another county, the
21 probation officer must send notice to the probation officer of the receiving facility's county in detail
22 as specified by statute. (Health & Saf. Code § 1567.3.)

23 42. Probation officers must prepare general estimates of the conduct and work-time credit
24 earned by defendants pre-sentence. (Pen. Code § 1191.3.)

25 43. In most cases, a person convicted of a felony must be investigated and reported on by
26 a probation officer. (Pen. Code 1203(b)(1).)

27 44. Probation officers must discuss the contents of their reports with defendants or their
28 attorneys. (Pen. Code § 1203(c).)

1 45. When directed so by the Court, a probation officer must prepare a pre-sentence report
2 addressing “the antecedents, character, history, family environment and offense of [the defendant].”
3 (Pen. Code § 1203.7.)

4 46. Whenever a person is sent to prison, probation officers must conduct an investigation
5 and provide a report to the Department of Corrections and Rehabilitation concerning the circumstances
6 of the offense and the prior record of the defendant. (Pen. Code § 1203(c).)

7 47. Probation officers must be involved in the process required before probationers may
8 leave the State. (Pen. Code § 1203(i).)

9 48. When a probationer is ordered to report his earning to pay fines and other expenses, a
10 probation officer must receive those funds. (Pen. Code § 1201(d).)

11 49. When a probation officer learns of a new offense by a probationer, he or she must report
12 the new offense to the committing court within a certain time frame. (Pen. Code § 1202.2a.)

13 50. Probation officers must “keep a complete and accurate record of the history of the case
14 in court and of the name of the probation officer, and his or her acts in connection with the case. This
15 information shall include the age, sex, nativity, residence, education, habits of temperance, marital
16 status, and the conduct, employment, occupation, parents' occupation, and the condition of the person
17 committed to his or her care during the term of probation, and the result of probation.” (Pen. Code
18 § 1203.7(b).)

19 51. Probation officers must report to the court “any violation or breach of the terms and
20 conditions [of probation] imposed by the court.” (Pen. Code § 1203.12.)

21 52. Probation officers must inform probationers, in writing, of the terms and conditions of
22 their probation. (Pen. Code § 1207(d).)

23 53. Probation officers have specific statutory duties concerning the inter-county transfers
24 of defendants. (Pen. Code § 1209.)

25 54. When directed to do so by the courts, probation officers must prepare detailed reports,
26 the particulars of which are laid out by statute. (Pen. Code § 1203.10.)

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5. The Sacramento County Probation Department Must Participate in the Evaluation, Adjudication, Incarceration, Monitoring, and Supervision of Juvenile Criminal Offenders.

55. Under certain circumstances when a minor is placed in foster care, a probation officer must prepare a case plan. (Welf. & Inst. Code § 706.6.)

56. When the court is considering a determination of unfitness, it must direct a probation officer “to investigate and submit a report on the behavioral patterns and social history of the minor [involved].” (Welf. & Inst. Code § 707.)

57. A probation officer must develop a school program for minors in the department’s charge. (Welf. & Inst. Code § 729(a).)

58. The Probation Department must oversee a program for juveniles granted deferred entry of judgment and must oversee the placement of juveniles in the program. (Welf. & Inst. Code § 795.)

59. Under certain circumstances, if a minor under the care of probation must change school districts, a probation officer must initiate the transfer of school records from one district to the other. (Welf. & Inst. Code § 827(b)(3).)

60. A deputy probation officer, probation aide, or community worker assigned to home supervision shall have a caseload of no more than 10 minors; however, where the county probation department employs a method of home supervision which includes electronic surveillance, the caseload shall be no more than 15 minors. (Welf. & Inst. Code § 841.)

61. Under certain circumstances, when a minor is detained, probation must see that he is kept in custody until he can be brought before a judge. (Welf. & Inst. Code § 629.1.)

62. When a minor is taken into temporary custody by probation, the Department must immediately investigate the circumstances of the minor and the facts surrounding his custody to determine whether he should be released to his parents or guardians. Several of the relevant criteria are proscribed by statute. (Welf. & Inst. Code § 628(a).)

63. Whenever a minor is taken into custody under California Welfare & Institutions Code Section 625, a probation officer must determine the least restrictive disposition consistent with that minor’s best interests and the best interests of the community. (Welf. & Inst. Code § 626.)

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1 64. Probation officers must receive minors age 14-17 that are taken into custody by peace
2 officers. (Welf. & Inst. Code § 626.6.)

3 65. When a minor is referred to probation for delinquency or dependency, the probation
4 officer must advise the minor and his parents of their *Miranda* rights. (Welf. & Inst. Code § 627.5.)

5 66. Probation officers must make a determination of whether, under certain circumstances,
6 a ward should be released to home supervision. (Welf. & Inst. Code §628.1.)

7 67. The juvenile hall shall be under the management and control of the probation officer.
8 (Pen. Code § 852.)

9 68. When a minor is released pursuant to Welfare & Institutions Code Section 628.1, a
10 probation officer must require the minor to sign a written promise to appear. (Welf. & Inst. Code §
11 629.)

12 69. A probation officer must determine if a minor should remain in custody and, if so, must
13 initiate a review process. (Welf. & Inst. Code § 630.)

14 70. A supervising probation officer must review and approve in writing the detention of
15 a minor for more than 24 hours and must make that determination "as soon as possible after it is
16 known that the minor will be detained more than 24 hours." In any event, the written decision must
17 be made within 72 hours of the minor's release and must be given to the minors parents. (Welf. &
18 Inst. Code § 630.)

19 71. Whenever a probation officer has reason to believe that a minor is at risk of entering
20 foster care, he must submit a report detailing "the reasons why the minor has been removed from the
21 parent's custody; any prior referrals for abuse or neglect of the minor or any prior filings regarding the
22 minor pursuant to Section 300; the need, if any, for continued detention; the available services that
23 could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether
24 there are any relatives who are able and willing to provide effective care and control over the minor."
25 (Welf. & Inst. Code § 635.)

26 72. Whenever a probation officer recommends that a minor be detained, he must submit
27 detailed documentation as specified by statute. (Welf. & Inst. Code § 636(c).)

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