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**THE RESTITUTION ORDER PURSUANT TO
PENAL CODE SECTION 1202.4(f)
KERN COUNTY FORMAT.**

**TO ASSIST YOU IN UNDERSTANDING THE ENCLOSED RESTITUTION ORDER,
THIS LETTER COVERS THE FOLLOWING TOPICS:**

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instructions and what the fees are. Fees are generally required in the enforcement of any civil judgment including the enforcement of the enclosed restitution order.

The **ABSTRACT OF JUDGMENT** is required for recording the restitution order in the county recorder's office where real property may be situated in which a defendant named in a restitution order may have an ownership interest. In this way, the restitution order can be used to create a lien against real property if the defendant has an ownership interest in real property and you can find it.

Only the defendant's name as it appears on the restitution order should be used to identify the defendant in these forms, without reference to the defendant's DOB (Date of Birth), CDL (California Driver's License No.), CII (California Identification No.) or SSN (Social Security No.), except where these numbers are specifically called for in the civil form.

The above forms are primarily used for civil enforcement of the restitution order against a defendant not incarcerated in state prison. If the defendant is incarcerated in state prison, you are advised to contact the California Department of Corrections Office of Victim Services described under **TOPIC C**.

B. SOME IMPORTANT ASPECTS OF THE RESTITUTION ORDER

1. What is direct restitution?

The enclosed restitution order is an order for direct restitution because it effectively orders the defendant to pay restitution *directly to the payee, not monitored by probation*.

In general, the defendant named in a direct restitution order has been sentenced to state prison and accordingly is not paying restitution as a term of probation. On the other hand, those defendants paying restitution as a term of probation are in a situation where restitution is enforced by the probation department, not by means of a direct restitution order enforceable as a civil judgment. However, in some cases when the victim is a public entity, a defendant may be given a grant of probation and be ordered to pay restitution directly to the victim as a term of probation rather than paying the victim indirectly through probation. In such cases, the public entity is given a direct restitution order to enforce. The public entity rather than the probation department collects and monitors the defendant's payments of restitution.

Accordingly, in Kern County in appropriate cases, a direct restitution order, enforceable as a civil judgment, is made against a defendant:

- (a) Who is initially denied a grant of probation and is sentenced to state prison;
- (b) Who is sentenced to state prison after revocation of probation, or who is no longer on probation for whatever reason, and the defendant still owes restitution; or,

- (c) Who, while on probation, is ordered to pay restitution directly to a public entity payee and not through the probation department.

Penal Code section 1203.1(a)(3) pertaining to restitution ordered as a term of probation was amended in 1999 to add that such restitution is fully enforceable as a civil judgment forthwith and in accordance with section 1202.4(f) of the Penal Code. This means that a direct restitution order can be prepared and given to the victim for civil enforcement even in those cases where the defendant is also ordered as a term of probation to pay restitution indirectly to the victim through probation. Providing the victim with a direct restitution order enforceable as a civil judgment in such cases should be done only when it is essentially needed by the victim. This is due to the fact that the probation department needs to accurately monitor defendant's payments of restitution and to seek revocation of defendant's probation when he or she willfully fails to pay restitution through the probation department as ordered.

The Court can order direct restitution for the unpaid balance owed the victim at the time the defendant's probation is revoked and terminated, or simply terminated.

2. A restitution order is not identical to a civil judgment.

Basically, the enclosed restitution order merely saves the payee the time and expense of bringing a lawsuit and obtaining a money judgment against the defendant to the extent of the amount on the face of the enclosed order. The payee is not prevented by this order from filing a civil complaint within the appropriate statute of limitations and obtaining a civil judgment against the defendant in any cause of action allowed the payee under the law.

However, the enclosed restitution order does not expire in ten years as does the civil money judgment, nor is it dischargeable in bankruptcy. In the event the defendant files a petition for bankruptcy and for a hearing, and you receive from the Federal Bankruptcy Referee or Court, notice of bankruptcy proceedings regarding this restitution order as a listed debt and notice of an automatic stay, do not contact the defendant. You, or your attorney, should respond only to the bankruptcy court or referee, and seek and obtain relief from the bankruptcy proceedings and automatic stay before attempting to make any contact with the defendant or otherwise attempting to enforce this restitution order during the bankruptcy proceedings.

It may be helpful to cite a United States Supreme Court case for guidance of the Bankruptcy Court or Referee

Kelly v. Robinson, (on certiorari, 1986) 479 US 36, 93 L Ed 2d 216, 107 S Ct 353.

A restitution order does not limit whatever recourse against the defendant the named payee may otherwise have under the law.

3. "Indemnified" and "not indemnified" losses.

In a practical sense, when an insured victim suffers a financial loss as a result of a defendant's commission of a crime, part of that loss may be covered in the payee's or victim's contract of insurance, and part of it may be excluded. In Kern County, in those cases where a

victim has a claim submitted to his or her insurance carrier, an attempt is made to distinguish the insured and non-insured losses in the restitution orders. This often results in the victim or payee named in the restitution order receiving two orders from the court, each describing parts of a loss from the same criminal act as being "indemnified" or "not indemnified." This nomenclature anticipates that the insurance company will or already has paid to the insured victim or payee named in the restitution order his or her covered loss as described in the claim against the insurance carrier. The insured loss is termed "indemnified" in the direct restitution order even though the claim is pending.

In Kern County, the defendant represented by counsel can agree with the consent of the victim, that the "indemnified" financial loss described in the restitution order may simply be ordered payable directly to the victim's or payee's insurance company and that the "not indemnified" financial loss be ordered payable to the victim or payee named in a separate restitution order. This eliminates the need for the victim or payee named in the restitution order, limited to the insured part of the victim's or payee's loss, from having to endorse and assign the restitution order to his or her insurance company.

The restitution order which describes the victim's or payee's financial loss as being "not indemnified" is always ordered payable to that victim or payee to account for his or her loss not covered in the contract of insurance. This nomenclature in the restitution order is intended to prevent the insurance company from seeking reimbursement from the victim or payee who has recovered payments under that order from the defendant who caused a financial loss which was not fully covered in the victim's or payee's contract of insurance.

**4. In Kern County, the restitution order may be payable to payee's
"order or assigns."**

When the enclosed restitution order is payable to the payee's "order or assigns," it is a "negotiable instrument" on its face. The victim or payee named in such a restitution order may endorse and assign it to his or her insurance company when the loss described in the restitution order is covered in the insurance contract.

Insurance contracts generally give the insurance company subrogation rights to any cause of action a victim may have against a defendant whose criminal act caused a loss to the victim covered by his contract of insurance. Also, the insurance company may have a right of reimbursement against any assets received by the insured victim from a defendant in part or full satisfaction of the insured loss, which has been indemnified.

When the victim or payee named in such a restitution order, by his or her endorsement, assigns it to his or her insurance company, the latter in a sense is "stepping into the shoes" of the victim or payee named in the order and can enforce it against the defendant. Because the insurance company by virtue of the assignment of the restitution order to it can now collect the indemnified loss by civil means from the defendant, the insurance company's right to reimbursement from the victim may never arise. In such an assignment, the victim's or payee's endorsement should obviously include the insurance claim number and date of loss.

Insured or partially insured financial losses resulting from a criminal act is one example giving utility to a restitution order in the form of a negotiable instrument. Other examples may include financial losses that are covered by a bonding company or any other private or governmental indemnifier.

A restitution order in the form of a negotiable instrument may generally be specially endorsed payable to any party who consents to accept its assignment. The defendant named in the restitution order must be notified of any assignment.

5. In Kern County, the restitution order may involve two or more defendants having joint and several liability.

When two or more defendants acting together commit a crime, and are convicted of that crime, *they each may have an individual and also a shared obligation under the law* to compensate the victim or victims of that crime for the resulting loss the victim or victims may have suffered. When that loss has been identified, given a certain monetary value and included in restitution specifically ordered by the court, the court may in its order impose *joint and several liability* upon each defendant *having an individual and also a shared obligation under the law* to pay that certain monetary amount to the victim or victims of that crime.

When two or more defendant's *having joint and several liability* are ordered to pay a certain monetary amount directly or through probation to the victim or victims covering the same economic loss or obligation suffered by them as a result of the crime, that certain monetary amount is satisfied in full when paid one time regardless of whether one or more of the defendants actually paid it.

The singular object of two or more restitution orders imposed upon defendants *having joint and several liability* is to satisfy that certain monetary loss or obligation by payment in full and no more than that. All defendants *having joint and several liability* share in this obligation which ends as to all of them when the certain monetary loss or obligation is satisfied. At that time, the victim or victims named as payees in the direct restitution orders related by two or more defendants *having joint and several liability* should file **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT** civil forms in the Superior Court Civil Division under the civil number of restitution order as noted under **TOPIC E**, as well as notifying the California State Prison for each defendant *having joint and several liability* currently incarcerated in prison and from whom restitution is being collected in the manner described under **TOPIC C**.

6. Anticipated losses not known at the sentence hearing.

Anticipated losses of the victim are not always ascertainable at the time of the defendant's sentence hearing in Superior Court. In particular, the victim's losses cannot be ascertained when the victim at the time of the sentence hearing is undergoing a continuing course of out of pocket expenses which cannot be fixed due to continuing disability, medical, psychological or other reasons beyond the victim's control which extend past the date of the sentence hearing.

The defendant and the victim can agree to a liquidated amount of compensation if it reasonably can compensate the victim for future out of pocket expenses.

When the victim's future out of pocket expenses cannot be agreed upon, then restitution cannot be ascertained at the time of the sentence hearing. Nevertheless, the court can order, to enable compensation for the victim's future out of pocket expenses, that **the amount of restitution shall be determined by probation at the direction of the court.** When the restitution order provides for the future determination of any part of the ordered restitution, **the victim is required to contact the probation department immediately at the time restitution becomes ascertainable so that the restitution order can be made to provide for a specific amount of compensation payable to the victim.**

After the probation department has received notification from the victim and has made its determination of restitution, the probation department will file that determination with the court and obtain a status date on the criminal calendar. From the status date, a hearing date is set at which time the defendant's appearance is scheduled and proceedings to judicially order the defendant to pay restitution directly to the victim are initiated. If there is no restitution agreement, a formal hearing is set.

The due process rights of the responding victim and the defendant are observed by providing a timely opportunity for a formal restitution hearing with the defendant appearing with counsel to test the probation department's restitution determination, which is based upon victim's initial response to probation. The victim may also be present at that hearing.

The above proceedings may not be available to any victim who has the ability to assist in the determination of restitution but who has failed to do so. An obvious example is the victim who does not have future out of pocket expenses due to circumstances beyond victim's control, such as the victim who, having the ability to do so, fails to obtain in a reasonably timely manner estimates to repair damaged property prior to or even after the time of the sentence hearing, or the victim who fails to respond in a reasonably timely manner to the Kern County Probation Department's request for financial impact information prior to or even after the sentence hearing. The probation department will determine the restitution to be "zero" if the victim does not respond to the probation department in a reasonably timely manner.

C. COLLECTION WITH THE ASSISTANCE OF THE CALIFORNIA STATE PRISON

The California Department of Corrections (CDC) will assist in the collection of restitution order monies on behalf of all victims or payees named in the restitution order during the time the defendant named in the order is incarcerated within CDC institutions and before the defendant's release on parole.

This assistance is administrative in nature and cannot be done if the defendant is not incarcerated in prison. The victim or payee named in the restitution order may always enforce it in the manner of a civil judgment against a defendant's real property if it exists and can be found; and against the defendant's wages, monies and other personal property outside prison. However, the payee or victim named in the restitution order must wait until the defendant is outside prison and has employment before attempting a writ to attach wages.

To qualify for this assistance, a victim or payee should have received, or the court record reflect, a court-imposed restitution order, payable in a specified dollar amount to a victim or payee named in the restitution order, and the defendant named in the order must currently be incarcerated within the CDC system.

The victim should also apply for this assistance on a:

"VICTIM SERVICES AND RESTITUTION COLLECTION REQUEST FORM" [CDC 1707 (Rev 11/99)] and return it to:

CDC, Office of Victim Services and Restitution
P. O. Box 942883
Sacramento, CA 94283-0001

A copy of the above application may be obtained by calling the Restitution Branch at 1 (888) 562-5874 or 1 (916) 358-2035. You may also check their web site at www.corr.ca.gov/VictimServices.

D. FOR VICTIMS OF VIOLENT CRIME OR THEIR SURVIVING NEXT OF KIN WHO HAVE APPLIED FOR ASSISTANCE THROUGH THE VICTIM/WITNESS PROGRAM

If you are the victim of a crime of violence, or the next of kin of a person who did not survive, and did qualify for financial assistance for a non-reimbursed loss resulting from a crime of violence, and did in fact receive such assistance from the victim/witness program, you are required to notify the Victim Compensation and Government Claims Board of any money that you received from any source, including a defendant paying as ordered in the enclosed restitution order, that compensates you for the same loss covered by the victim/witness program. This notification should include a copy of the enclosed order, your victim/witness claim number and notification of the amount of money you received.

The Board can be contacted at:

Victim Compensation and Government Claims Board
Revenue Recovery and Appeals Division
630 K Street
Sacramento, CA 95814
TELEPHONE: (916) 324-8987, FAX: (916) 327-3897
www.boc.cahwnet.gov

In this regard, victims of violent crime or their surviving next of kin may contact the victim/witness program toll free at 1 (800) 777-9229. The Kern County Victim/Witness program can be contacted at 1 (661) 868-4535.

Basically, the defendant has the ultimate obligation to pay restitution to his or her victims of crime. The Victim Compensation and Government Claims Board (referred to as Board)

manages a limited fund for qualifying victims of violent crime or their surviving next of kin for certain covered losses suffered by the victim or victim's surviving next of kin that are not reimbursed from any source, such as the enclosed restitution order.

Accordingly, the Board Victim/Witness program that has paid funds for *specific qualifying losses* to a victim of violent crime, or to a surviving next of kin, may have reimbursement or subrogation rights against funds received by the victim of violent crime or surviving next of kin, from a defendant paying under a restitution order for the *same qualifying specific losses* also described in the restitution order.

When the amount of compensation being paid to the Board Victim/Witness Program is certain, either because a liquidated restitution amount has been agreed upon or restitution has been determined as noted in **TOPIC B. 6**, and the claim has been paid to you in full by the Board, the restitution order can be made payable directly to the Board. This restitution order must include the Victim/Witness Program claim number.

E. NOTIFICATION OF SATISFACTION TO THE SUPERIOR COURT

Please remember that the enclosed restitution order has been placed in a civil file by the Superior Court, given a civil number and by statute does not expire in ten years as does a civil money judgment. You are requested to file an **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT** form in the Civil Division of the Superior Court after the enclosed restitution order has been paid in full by the defendant.

In the event you have two or more restitution orders payable by two or more defendants *having joint and several liability* for a certain monetary amount covering the same loss or obligation described in the restitution orders, you are requested to file an **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT** form in the Civil Division of the Superior Court under each civil case number as soon as one or more of the defendants *having joint and several liability* satisfy that certain monetary amount. In other words, you cannot collect

that certain monetary amount more than one time. As soon as that certain monetary amount is satisfied one time, the obligation of all defendants *having joint and several liability* is ended and the Civil Division of the Superior Court should be accordingly notified.

If one or more of these defendants having joint and several liability are paying restitution with the assistance of the California State Prison as noted under **TOPIC C** or through Adult Probation as a term of probation as noted under **TOPIC B.1** and the certain monetary amount becomes satisfied, you are requested to notify the respective agencies in addition to filing an **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT** under each civil case number in which you have a restitution order payable by a defendant *having joint and several liability*.

The requirement for you to file an **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT** does not apply if your loss described in the enclosed restitution order is compensated by another source having rights of subrogation such as the victim witness program or an insurance

company, or by any source of payment *and you have assigned the enclosed restitution order to that source or entity*. The civil file in the Superior Court remains open until after the defendant has paid as ordered and the party owning the restitution order *at that time* files in the Superior Court an **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT**. Once the restitution order is assigned to another party, it becomes the latter's duty to file an **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT** in the Civil Division of the Superior Court when the obligation on the restitution order is paid.

The obligation of the defendant to pay restitution as ordered by the court for a specific financial loss *may also be satisfied in whole or in part by other means*, for example:

1. Another party making payments to the victim or payee on the *defendant's behalf*; this payor might be the defendant's family or insurance company if the defendant is insured.
2. The victim or payee in a restitution order for the monetary value of stolen property *having some or all of his or her property in substantially the same condition recovered and returned*.

The above examples can give rise to the need to file either a full or partial **ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT**.

F. SOME ADDITIONAL PHONE NUMBERS.

The defendant's location within the California Department of Corrections prison system may be obtained by calling (916) 445-6713. After the defendant is released on parole you may want to contact Parole and Community Services at (661) 634-9620 (Regions 1, 2, 3 & 4) or (661) 633-5100 (Units 6 & 7), both in Bakersfield. The defendant's probable date of release on parole ("outdate") can be obtained by contacting the California Department of Corrections at the above phone number while the defendant is still incarcerated in prison.

The Civil Division of the Kern County Sheriff can be contacted at (661) 868-5500.

The Kern County Probation Department Supervision Unit can be contacted at (661) 868-4500 for the name of a defendant's supervising probation officer regarding restitution being paid as a term of probation by that defendant and restitution for the same loss being received by you from another source.

As noted above, the probation department may need to be contacted and updated when another defendant incarcerated in state prison *has joint and several liability* for the same monetary loss and is also paying restitution with the assistance of the California Department of Corrections as noted in **TOPIC C**, or when you are collecting restitution by your civil enforcement of a restitution order against another defendant having *joint and several liability* covering the same monetary amount as noted in **TOPIC A**.

The Clerk of the Civil Division of the Superior Court in Kern County can be contacted at (661) 868-4882.

If you have any questions you are welcome to telephone the Deputy District Attorney whose name and phone number appears at the top left of the enclosed restitution order or you may telephone our office at (661) 868-2340.

Respectfully yours,

Edward R. Jagels
District Attorney