Name (SBN\_\_\_\_\_\_\_\_\_\_)

Address

Phone | Fax

Email

superior court of the state of california

for the county of COUNTY NAME

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| the people of the state of california,  Plaintiff,  vs.  NAME OF DEFENDANT,  Defendant | Case No.: \_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_, 2019  Time:  Dept:  Judge: ­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  MOTION TO EARLY TERMINATE UNDER PENAL CODE SECTION 1203.3 |

TO THE DISTRICT ATTORNEY AND THE PROBATION OFFICER OF THE COUNTY OF [COUNTY NAME], AND THE CLERK OF THE COURT:

Notice is hereby given that at the above date and time or as soon thereafter as this matter may be heard in the above-entitled court, Defendant [NAME], through counsel, pursuant to Penal Code section 1203.3, Motion for Early Termination of Probation.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the pleadings and records on file in this action, and all evidence to be presented at the hearing.

**DATED: ­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Attorney for Defendant

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###### MEMORANDUM OF POINTS AND AUTHORITIES

1. **FACTS AND PROCEDURAL HISTORY**

On [DATE], [DEFENDANT] plead guilty to a misdemeanor violation of Vehicle Code § 23103(a). He received 3 years of summary probation and $1,200.00 in fines. His underlying conviction was due to a prescription medication that he was lawfully taking and had an adverse reaction to a new one in his system. [DEFENDANT] has demonstrated commitment to reforming his behavior since the proceedings against him began. He paid his fines in full on [DATE], and also completed 21.75 hours of community service by August 21, 2013. He also completed his three-month driving under the influence program on October 10, 2013. (See Exhibit A, Copies of Proof of Completion of Fines, Community Service and DUIP).

1. **ARGUMENT**
2. **The Court Should Terminate [DEFENDANT’S] Probation Pursuant to Penal Code § 1203.3**

A court may terminate a defendant’s term of probation before its scheduled time in certain circumstances. The applicable statute states:

The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. *The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held.* (Penal Code §1203.3, subdivision (a), *emphasis added*.)

Therefore, two things must be met in order for a defendant to be granted early termination of probation: First, the ends of justice must be served by an early termination, and second, the good conduct and reform of the defendant must warrant the early termination.

It is well-settled that although the prosecuting attorney must be given a two-day written notice and an opportunity to be heard regarding a defendant’s motion for early termination of probation (Penal Code §1203.3, subdivision (b)), the final decision to terminate a defendant’s probation early is a matter “for the exclusive exercise of judicial power.” (*People v. Allen* (1975) 46 Cal. App. 3d 583.) That is, the prosecutor has no “veto power” regarding a defendant’s request that his or his probation be terminated before the full term has expired. (*Id.*)

In a 1991 California Court of Appeals case, a defendant pled guilty to one count of sodomy with a person under the age of eighteen. (*People v. Hawley* (1991) 228 Cal. App. 3d 247.) Mr. Hawley was sentenced to five years of probation on the condition that he serve nine months in county jail through the work furlough program. However, officials were unable to find work for him, and he was released on his own recognizance. Within one week of his release, he was arrested for burglary; however, the alleged victim did not prosecute. A month later, Mr. Hawley was arrested for driving under the influence, but no charges were filed due to a lack of evidence. Nevertheless, Mr. Hawley’s probation officer recommended that Hawley’s probation be modified and he be required to serve his jail sentence. The trial court responded by imposing a one-year jail term on Mr. Hawley, but kept the other components of his original order of probation intact. (*Id.* At 249.)

Five months after Mr. Hawley was remanded to the county jail, he received a favorable probation progress report. Twenty months after that, Mr. Hawley received another favorable probation progress report. In fact, the probation officer recommended that Mr. Hawley’s probation be terminated at his upcoming hearing based on the fact that Hawley had remained arrest-free for more than two years, had paid his restitution fine in full, and had successfully completed his sex therapy courses. At his next hearing, the trial court terminated Mr. Hawley’s probation. At the time, Mr. Hawley had completed approximately one-half of his original five-year probation period. (*Id.*)

*In re Wessley W.* (1981) 125 Cal. App. 3d 240, the defendant’s motion for early termination of summary probation was granted only six months after he began serving his scheduled one-year probation term. Also, in *People v. Butler* (1980) 105 Cal. App. 3d 585, the defendant’s motion for early termination of probation was granted more than three months before his full probation term was set to expire.

As demonstrated in the forthcoming sections, [DEFENDANT] has similarly compelling reasons as those above to warrant early termination of probation at this time.

1. **The Ends of Justice Would be Served by a Termination of XXXXX’s Formal Probation.**

[DEFENDANT]’s probation has served its rehabilitative and punitive purposes. Requiring him to remain on probation is only preventing him from reaching his potential as a contributing member of society. He is a successful business owner. He has also been a lawful permanent resident of the United States for six years. He is eligible to apply to become a naturalized citizen of the United States. However, remaining on probation prevents him from applying.[[1]](#footnote-1) The ends of justice would be more adequately served by allowing [DEFENDANT] probation to be terminated early. He acknowledged his past transgression, and has demonstrated through his pre- and post-conviction actions that he is not a risk to recidivate. He has complied in full with the terms of his probation, and has endeavored to complete all requirements of his sentencing in an unusually swift manner. It is clear that, in this case, the ends of justice would be served by an early termination of [DEFENDANT]’s probation.

1. **The Good Conduct and Reform of [DEFENDANT] Warrant Early Termination of His Probation.**

In the case at bar, [DEFENDANT] has shown a commitment to reforming his behavior. He has had no violation of his probation. He completed the 3-month program after receiving said conviction. Additionally, he paid all fines within just fourteen days of the conviction, and completed all of his community service hours within three months. [DEFENDANT] is regretful and remorseful over his past actions, but has remained firmly committed to demonstrating that this was an aberration, and that he will not recidivate again.

[DEFENDANT]’s good conduct and reform, as explained above, warrant early termination of his probation, and thus, said early termination should be granted.

1. **CONCLUSION**

This court has the power and should exercise its power under Penal Code section 1203.3 subdivision (a) to terminate [DEFENDANT]’s probation early. He has demonstrated by his good conduct and reform that his case warrants early termination of probation, and that the interests of justice would be subserved when granting early termination. Defendant respectfully requests that the court grant an early termination of probation under PC §1203.3(a).

**DATED: Respectfully submitted,**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Attorney for Defendant

1. An application will not be approved “until after the probation, parole, or suspended sentence has been completed.” 8 C.F.R. § 316.10(c)(1). *U.S. v. Rebelo*, 646 F. Supp.2d 682, 692-96 (D.N.J. 2009) [granted denaturalization under wrongful procurement where applicant was naturalized while still on probation]. [↑](#footnote-ref-1)