

1 Action No. CV 98-0018, filed in district court.

2 On April 13, 1998, a *Judgment and Commitment Order* (“Order”) issued by the Superior
3 Court incorporated the terms of the plea agreement by stating: “[t]he Defendant will agree to an
4 entry of a civil judgment against her in the amount of \$186,093.00 plus interest at the prevailing rate.
5 If the defendant fails to do so, defendant shall owe the same amount as restitution in the above-
6 entitled criminal case.”

7 The record reflects that Pangelinan did indeed enter into a civil judgment. On May 22, 1998,
8 a *Stipulation and Judgment* order (“Civil Order”) was signed by all parties involved in the federal
9 civil action. The Civil Order, which gave judgement in favor of the plaintiff, National Union Fire
10 Insurance Co, set forth the total amount due in the civil matter and set up a payment schedule for
11 Pangelinan to follow. The federal Civil Order also explicitly stated that the federal district court
12 “shall retain jurisdiction for purposes of enforcing this Stipulation and Judgment.” *See Stipulation*
13 *and Judgment*, Civil Action No. 98-0018 (May 22, 1998).

14 The Commonwealth is now alleging that Pangelinan has not been making payments toward
15 the resolution of the federal civil judgment. They move this Court to find that because of
16 Pangelinan’s failure to comply with her civil obligation in federal court, she should be held
17 accountable criminally and have her probation revoked. Under the facts presented in this case, the
18 Court cannot agree.

19 DISCUSSION

20 Probation conditions are intended to “serve the purpose of giving notice of proscribed
21 activities, which may result in revocation of probation, and guide the defendant in his conduct while
22 on probation.” *Commonwealth v. Santos*, 4 N.M.I. 348, 351 (1996) (internal quotations, citations
23 and emphasis omitted); *see also United States v. Felix*, 994 F.2d 550, 551 (8th Cir. 1993) (noting
24 that “the ultimate goal is notice and guidance for the defendant”). In cases such as this involving
25 deprivation of property, ordering restitution is an acceptable condition to probation. This Court is
26 mindful that “[b]ecause criminal proceedings focus on the State’s interest in rehabilitation and
27 punishment, rather than the victim’s desire for compensation, . . . restitution orders imposed in such
28 proceedings operate for the benefit of the State.” *California v. Moser*, 57 Cal. Rptr. 2d 647, 650

1 (Cal. Ct. App. 1996). A “sentence following a criminal conviction necessarily considers the penal
2 and rehabilitative interests of the State, [and thus,] [t]hose interests are sufficient to place restitution
3 orders” as a condition of probation. *Id.*

4 That did not happen here. Instead, the Commonwealth entered into a plea agreement which
5 set forth the terms and the court accepted the bargained for terms. A plea agreement is contractual
6 in nature. *United States v. Escamilla*, 975 F.2d 568, 571 (9th Cir. 1992) (contract law applies to
7 interpreting plea agreements and determining a remedy for breach) Both the plea agreement and the
8 subsequent Order stated in very plain terms that compliance for probation required Pangelinan to
9 *enter into a civil judgment* (emphasis added). The agreement did not include any terms which stated
10 that Pangelinan must comply with the civil judgment and the Court refuses to imply such terms.

11 There is recourse available for any violation of a civil judgment. Indeed the stipulation
12 signed in district court informs the parties that the district court shall retain jurisdiction for purposes
13 of enforcing that judgement. This Court will not allow the Commonwealth to try and take two bites
14 at the apple. The terms of plea agreement and order of probation leave much to be desired in the
15 sense that the Commonwealth did not fulfill its obligations to this community to assure that a strong
16 deterrent message has been sent. Nor, in the opinion of this Court, was there adequate retribution.
17 Nevertheless, this was the bargain the Commonwealth made, and which the court accepted, and that
18 must now be followed.

19 **CONCLUSION**

20 For the reasons stated above the Commonwealth’s *Motion to Revoke Probation* is **DENIED**.

21
22 **SO ORDERED** this 6th day of April 2004.

23
24 /s/
25 **David A. Wiseman**, Associate Judge