

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF [_____]

In re Marriage of	)	Case No. [_____]
	)	
Petitioner: [_____]	)	STIPULATED QUALIFIED
	)	DOMESTIC RELATIONS ORDER
and	)	
	)	
Respondent: [_____]	)	
	)	
Claimant: U. A. LOCAL NO. 159	)	
PENSION TRUST FUND	)	
_____	)	

It is hereby stipulated by and between the parties herein that the following shall be entered as the Order of this Court with regard to the community property interest in the plan participant's retirement benefits under the U. A. Local No. 159 Pension Trust Fund. This Order is entered pursuant to the California Family Code and is intended to satisfy the requirements of federal law concerning Qualified Domestic Relations Orders, including the Internal Revenue Code [26 U.S.C. § 414(p)] and the Employee Retirement Income Security Act [29 U.S.C. § 1056(d)]. This Order supersedes any prior Order entered herein with respect to the community property interest in the plan participant's retirement

benefits under the U. A. Local No. 159 Pension Trust Fund.

NOW, therefore, the parties stipulate as follows:

1. As used herein, the following terms shall apply:

(a) The term **Alternate Payee** shall mean [_____
_____] , whose date of birth is
[_____, 19__], and whose last known mailing address is
[_____
_____];

(b) The term **Participant** shall mean [_____
_____] , whose date of birth is
[_____, 19__], and whose last known mailing address is
[_____
_____];

(c) The term **Claimant** shall mean the U. A. Local No. 159 Pension Trust Fund, which maintains the Pension Plan and the Defined Contribution Plan defined below;

(d) The term **Pension Plan** shall mean the U. A. Local No. 159 Defined Benefit Plan;

(e) The term **Defined Contribution Plan** shall mean the U. A. Local No. 159 Defined Contribution Plan;

(f) The term **Plan Contract Manager** shall mean HSBA, the address of which is 160 Airway Boulevard, Livermore, CA 94550-2330, and the telephone number of which is (866) 295-6402;

(g) The term **Annuity Starting Date** shall mean the effective date on which payment of benefits by the Pension Plan or the Defined Contribution Plan to the Participant begins, and on which payment of benefits by the Pension Plan or the Defined

Contribution Plan to the Alternate Payee begins;

(h) All other terms not specifically defined herein shall have the meanings defined in the Pension Plan or the Defined Contribution Plan.

2. Participant and Alternate Payee were married on [_____, 19__], and separated on [_____, 19__].

{CHOOSE THE PARAGRAPH 3 WHICH APPLIES}

3. Judgment of Dissolution of Marriage was entered herein on [_____, 19__], which provided that the Court shall retain jurisdiction over the retirement benefits of Participant.

[or]

3. Judgment of Dissolution of Marriage was entered herein on [_____, 19__], which awarded Alternate Payee a one-half community property interest in Participant's retirement benefits.

[or]

3. Judgment of Dissolution of Marriage shall be entered concurrently herewith.

4. Participant and Alternate Payee intend to make an equal division of the community property interest in the retirement benefits of Participant.

DEFINED CONTRIBUTION PLAN

5. Participant has a vested interest in an account held in Participant's name under the Defined Contribution Plan. As of the date of separation herein, the community property portion of Participant's Defined Contribution Plan account was \$[_____].

6. Alternate Payee's share of the community property portion

of Participant's Defined Contribution Plan account is equal to \$[____], as of the date of separation herein. Alternate Payee's share shall be increased or decreased by all income, expenses, gains and losses attributable to her share between the date of separation and the date of distribution to Alternate Payee.

7. Unless Alternate Payee elects a lump sum distribution prior to Participant's Annuity Starting Date, Defined Contribution Plan shall pay directly to Alternate Payee the share of Participant's account, as calculated in the preceding paragraph, commencing with the Annuity Starting Date elected by Participant at the time of retirement. The remainder of the account shall be paid directly to Participant.

8. Under the current terms of the Defined Contribution Plan, Alternate Payee may elect to receive a lump sum distribution of the share of Participant's account awarded to her in a Qualified Domestic Relations Order, at any time before Participant's Annuity Starting Date, even though prior to Participant's earliest date of eligibility for distribution. If Alternate Payee elects an early lump sum distribution, Alternate Payee shall notify the Plan Contract Manager in writing of this election. Upon receipt of Alternate Payee's written notice of election, the Plan Contract Manager shall process the notice in accordance with the Defined Contribution Plan's procedures concerning applications for distribution of defined contribution benefits.

9. After payment in full by the Defined Contribution Plan to Alternate Payee, Defined Contribution Plan shall have no other obligation to Alternate Payee under this Order. The balance of

Participant's Defined Contribution Plan account shall be deemed his sole and separate property.

10. Alternate Payee elects to be a surviving spouse under 29 U.S.C. § 1056(d)(3)(F) for purposes of receiving the share of Participant's Defined Contribution Plan account specified in this Order, in the event that Participant predeceases Alternate Payee prior to distribution of her share of Participant's Defined Contribution Plan account. If Alternate Payee predeceases Participant prior to payment in full of her share of Participant's Defined Contribution Plan account, as specified in this Order, Alternate Payee's share shall revert to Participant.

{CHOOSE THE PARAGRAPHS 11-14 WHICH APPLY}

PENSION PLAN

Community Property Determination. {TIME RULE METHOD}

11. The community property portion of Participant's interest in the Pension Plan shall be calculated by first determining a community property fraction the numerator of which is the number of Participant's years of credited service accumulated under the Pension Plan from the date of marriage to the date of separation, and the denominator of which is the total number of Participant's years of credited service accumulated under the Pension Plan. The community property fraction may be converted to a percentage.

12. Participant has accumulated [_____] years of credited service under the Plan from the date of marriage to the date of separation. Therefore, the numerator which shall be used in the community property fraction in Paragraph 11 above shall be [_____].

13. The denominator which shall be used in the community

property fraction in Paragraph 11 above shall be determined at the time Participant applies for retirement benefits.

14. Unless Participant receives a disability retirement under the Pension Plan, Alternate Payee's one-half community property share of Participant's interest in the Pension Plan shall be calculated by multiplying the monthly benefit payable to Participant on Participant's Annuity Starting Date by the community property fraction defined in Paragraphs 11 through 13 above, and dividing the result in half.

[or]

{CHOOSE THESE PARAGRAPHS 11-14 IF THEY APPLY}

PENSION PLAN

Community Property Determination. {ALTERNATE METHOD}

11. The interests of Participants in the Pension Plan are determined by multiplying service credits earned during each Plan Year by variable monetary factors assigned annually by the Board of Trustees to each Plan Year's credited service.

12. The community property portion of Participant's interest in the Pension Plan shall be calculated by adding the benefit amounts assigned to the years of credited service accumulated by Participant under the Pension Plan from the date of marriage to the date of separation.

13. Participant accumulated [_____] years of credited service under the Pension Plan from the date of marriage to the date of separation. The sum of the benefit amounts assigned to each of Participant's [_____] years of credited service accumulated during the marriage is equal to a monthly benefit of \$[_____] at Participant's normal retirement age 65.

14. The community property portion of Participant's monthly benefit is therefore equal to \$[_____] at Participant's normal retirement age 65, and Alternate Payee's one-half community property share is equal to \$[_____] at Participant's normal retirement age 65. These amounts shall be subject to any reduction applicable under the provisions of the Pension Plan to Participant's benefit if Participant retires prior to his normal retirement age 65.

15. If Participant should receive a disability retirement prior to the earliest non-disability retirement date permitted under the Pension Plan, the monthly benefit payable to Participant shall be his sole and separate property until the month following the month in which he attains the earliest non-disability retirement age permitted under the Pension Plan. If Participant receives a disability retirement at any time after the earliest retirement date permitted under the Pension but prior to the normal retirement age under the Pension Plan, Participant and Alternate Payee agree that the difference between the benefit payable to Participant under a disability retirement and the benefit which would otherwise be payable to Participant under a non-disability retirement on that Annuity Starting Date shall be Participant's sole and separate property. Participant and Alternate Payee further agree that a portion, as defined in Paragraphs 11 through 14 above, of the benefit which would otherwise be payable to Participant under a non-disability retirement on that Annuity Starting Date shall be community property, and that Alternate Payee's one-half community property share shall be paid to her

beginning on that Annuity Starting Date.

Survivor Benefits for Alternate Payee.

16. The normal retirement benefit provided by the Pension Plan is a life annuity for the Participant's life with a guaranteed payment period specified in the Pension Plan, and is therefore subject to any reduction applied by the Pension Plan for a joint and survivor annuity, or any other annuities which extend beyond the Participant's lifetime. All joint and survivor annuities and contingent beneficiary options provided to Participants and Beneficiaries under the Pension Plan are the actuarial equivalent of a single annuity payable to the Participant during his lifetime alone.

17. Alternate Payee elects to be a surviving spouse under 29 U.S.C. § 1056(d)(3)(F). If Participant predeceases Alternate Payee, Alternate Payee shall therefore be considered a surviving spouse with regard to both pre-retirement and post-retirement death benefits and survivor annuities provided by the Pension Plan, to the extent provided in this Order.

18. If Participant predeceases Alternate Payee before retirement, Alternate Payee shall receive the portion of Participant's pre-retirement death benefit under the Pension Plan which is attributable to the one-half community property share defined in Paragraphs 11 through 14 above. Alternate Payee may elect to receive her share in any payment option available to beneficiaries of Participant's pre-retirement death benefit under the Pension Plan.

Payments to Alternate Payee After Participant's Annuity Starting Date.

19. Alternate Payee may elect to receive the post-retirement annuity in any payment option available to beneficiaries of Participant's benefit, according to the provisions of the Pension Plan, other than a joint and survivor annuity for Alternate Payee and Alternate Payee's subsequent spouse. Alternate Payee shall elect her benefit option in writing at the time Participant applies for retirement benefits. Alternate Payee's benefit shall be calculated on the one-half community property share defined in Paragraphs 11 through 14 above.

20. Pension Plan shall pay directly to Alternate Payee her share of Participant's monthly benefit, commencing with the Annuity Starting Date elected by Participant at the time of retirement.

21. Payment of benefits by the Pension Plan to Alternate Payee shall be subject to all future increases in the monthly benefit which are attributable to work performed and credits earned during the period of the marriage. All other increases to the monthly benefit will be paid to Participant as his sole and separate property.

Payments to Alternate Payee Under Normal Retirement Benefit, If So Elected by Alternate Payee.

22. If Alternate Payee elects to receive her share in the form of the normal life annuity for the Participant's life under the terms of the Pension Plan, her share of the community property portion of Participant's monthly benefit shall be equal to the one-half the community property share of the Participant's monthly benefit, as defined in Paragraphs 11 through 14 above.

23. Payment of all post-retirement benefits by the Pension Plan to Alternate Payee under the normal life annuity for the

Participant's life shall terminate with the monthly payment preceding the death of Participant, or upon expiration of the guaranteed payment period specified in the Pension Plan, whichever is later.

24. If Alternate Payee predeceases Participant after Participant's retirement, Alternate Payee's share of the community property portion of Participant's monthly benefit shall revert to Participant.

Payments to Alternate Payee Under Survivor Annuity Benefit, If So Elected by Alternate Payee.

25. If Alternate Payee elects to receive her share in the form of a joint and survivor annuity based upon Participant's and Alternate Payee's life under the terms of the Pension Plan, then during Participant's lifetime, Alternate Payee's share of the community property portion of Participant's monthly benefit shall be calculated by subtracting the survivor annuity reduction which is applicable to the survivor annuity elected by Alternate Payee from Alternate Payee's one-half community property share of the Participant's monthly benefit, as defined in Paragraphs 11 through 14 above.

26. If Participant predeceases Alternate Payee after Participant's retirement, Alternate Payee's benefit after Participant's death shall be equal to 50%, 75% or 100% of the monthly benefit received by Alternate Payee during Participant's lifetime, depending upon the joint and survivor annuity option elected by Alternate Payee.

27. Payment of all benefits by the Pension Plan to Alternate Payee under a joint and survivor annuity shall terminate with the

monthly payment preceding the death of Alternate Payee. If Alternate Payee predeceases Participant after Participant's retirement, Alternate Payee's share of the community property portion of Participant's monthly benefit shall revert to Participant.

Interpretation of the Language of this Order.

28. The parties confirm and agree that they have read and understood each of the provisions of this Stipulated Order, that they agree to and have voluntarily adopted each of its provisions, including the provisions for division of the community property, that they are fully aware of the contents and legal effects of each of its provisions, and that they have executed this Stipulated Order freely and voluntarily.

29. For purposes of construction, this Stipulated Order is deemed to have been drafted by all parties, and no ambiguity shall be construed against any party by virtue of its participation in drafting this Stipulated Order.

30. The parties acknowledge that this form of Order was provided, in whole or in part, by the Claimant Pension Trust Fund as a convenience to the parties, and that Claimant Pension Trust Fund has not given legal advice to the parties by making this pre-approved form of Order available. The parties acknowledge that the provisions for division of the community property and the survivor interest, if any, contained in the Order have been chosen and approved by the parties.

31. Nothing contained in this Order shall require the Pension Plan or the Defined Contribution Plan to pay any benefits to the

Alternate Payee, unless Participant has satisfied the relevant vesting requirements of that Plan.

32. Nothing contained in this Order shall be construed to abrogate the Board of Trustee's discretionary power to interpret the provisions of the Pension Plan or the Defined Contribution Plan. Nothing contained in this Order shall be construed to require the Pension Plan, the Defined Contribution Plan or the Plan Contract Manager:

(a) To provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Participant under the Pension Plan or the Defined Contribution Plan; or

(b) To provide to Alternate Payee increased benefits (determined on the basis of actuarial value) not available to the Participant; or

(c) To pay any benefits to the Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

33. Unless this Order is served upon Claimant Pension Trust Fund before the expiration of the 18-month period defined under 29 U.S.C. § 1056(d)(3)(H), Claimant shall pay any amounts which it holds in a segregated account to the person(s) entitled to such amount, notwithstanding any provision to the contrary herein. Following expiration of the 18-month period defined under 29 U.S.C. § 1056(d)(3)(H), Claimant shall pay the segregated amounts and any other amounts payable prior to the service of this Order upon Claimant, to the person(s) entitled to such benefit, as if there were no Order, pursuant to 29 U.S.C. § 1056(d)(3)(H)(iii)(II). Claimant shall, in such case, pay only those amounts payable under

this Order to Alternate Payee which fall due after service of this Order upon Claimant, pursuant to 29 U.S.C. § 1056(d)(3)(H) (iii)(IV).

Miscellaneous Provisions.

34. Alternate Payee shall have the duty to notify the Plan Contract Manager of any change of Alternate Payee's address.

35. Participant and Alternate Payee shall each assume and bear responsibility for the payment of only those income taxes which are attributable to the separate benefits received by each party. Neither party shall have any responsibility for the payment of income taxes attributable to benefits received by the other, and each party agrees to hold the other harmless from any such responsibility.

36. This Order shall continue to be effective with regard to any successor or transferee plan or plans, including any plan or plans into which Pension Plan or Defined Contribution Plan is merged.

37. The court shall retain jurisdiction over the retirement benefits for the purpose of supervising the enforcement of the provisions of this Order, and for the purpose of establishing and maintaining the status of this Order as a Qualified Domestic Relations Order.

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APPROVED AS TO FORM AND CONTENT:

Dated: _____

Signed: _____
[**TYPED NAME**]
Alternate Payee

Dated: _____

Signed: _____
[**TYPED NAME**]
Attorney for Alternate Payee

Dated: _____

Signed: _____
[**TYPED NAME**]
Participant

Dated: _____

Signed: _____
[**TYPED NAME**]
Attorney for Participant

Dated: _____

KRAW LAW GROUP, APC

By _____
LORI A. NORD
Attorney for Claimant,
U. A. Local No. 159 Pension
Trust Fund

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT