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In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

Marriage of _____) Case No. _____

)

Petitioner: _____) AGREEMENT AND ORDER FOR
DIVISION OF RETIREMENT BENEFITS
And _____) (SEPARATE ACCOUNTS)

)

Respondent: _____)

)

Claimant: Alameda County Employees')

Retirement Association)

)

1. Introduction. Through employment with Alameda County, ("Member") has earned retirement benefits administered by the Alameda County Employees' Retirement Association (ACERA) that are the community property of Member and ("Nonmember"). Member and Nonmember intend by this agreement and order to divide those retirement benefits between them.

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2. Identification of Member. Member's name, current mailing address, and date of birth are:

Name: _____

Current mailing address: _____

Date of birth: _____

3. Identification of Nonmember. Nonmember's name, current mailing address, and date of birth are:

Name: _____

Current mailing address: _____

Date of birth: _____

4. Notice of Change of Address. Notice of change of address shall be made in writing to ACERA, addressed as follows, or as ACERA may specify in a written notice to Member and Nonmember:

Alameda County Employees' Retirement Association

475 14th Street, Suite 1000

Oakland, CA 94612

5. Dates of Marriage and Separation. For purposes of this order, the parties' date of marriage will be, and their date of separation will be.

6. Division of Community Interest. Fifty Percent (50%) of the community interest (defined in Paragraph 7) of Member and Nonmember in the overall ACERA benefits earned through Member's employment with Alameda County is awarded to Nonmember.

7. Community Defined Interest. The community interest will be the accumulated retirement contributions (including all earnings attributable to those contributions, regardless of when the earnings were credited) and service credit attributable to Member's service between the date of marriage and the date of separation.

- 1 8. Purchases or Redeposits. When there have been purchases or redeposits, the
2 community interest will include the corresponding retirement contributions,
3 earnings, and service credit to the extent that the underlying service was
4 attributable to Member's service between the date of marriage and the date of
5 separation, regardless of when the purchase or redeposit payments were made.
- 6 9. Member's Interest. All accumulated retirement contributions, earnings, and
7 service credit attributable to Member's service that are not awarded to
8 Nonmember under this order are awarded to Member.
- 9 10. Division of Interest. As soon as practicable after determining that this order is
10 acceptable under the County Employees Retirement Law of 1937 (Government
11 Code sections 31450-31899.10) and ACERA regulations, ACERA will divide
12 Member's accumulated retirement contributions, earnings, and service credit,
13 establishing a separate account for Nonmember's share, and notify Nonmember
14 of all Nonmember's rights, elections to be made by Nonmember, and procedures
15 for filing applications for retirement and for a refund of contributions.
- 16 11. Release of Information. Member hereby authorizes ACERA to release to
17 Nonmember any information concerning Member's benefits until Nonmember's
18 separate account is established.
- 19 12. Refund of Accumulated Retirement Contributions. Notwithstanding any other
20 provision of this agreement and order, if Member does not have five years of
21 accumulated service credit as of the date the parties' marriage is terminated (or
22 the date of a judgment of legal separation), Nonmember will receive a refund of
23 the accumulated retirement contributions that have been transferred to
24 Nonmember's account, along with any earnings attributable to those
25 contributions, as soon as administratively practicable following the establishment
26 of the account.

- 1 13. Nonmember's Rights. From the date of establishment of Nonmember's account,
2 Nonmember will be entitled to all applicable rights provided under Government
3 Code section 31685(c), including:
- 4 (a) The right to a retirement allowance;
 - 5 (b) The right to a refund of accumulated retirement contributions;
 - 6 (c) The right to redeposit accumulated contributions that are eligible for
7 redeposit by the member;
 - 8 (d) The right to purchase service credit that is eligible for purchase by the
9 member;
 - 10 (e) The right to designate a beneficiary to receive Nonmember's accumulated
11 contributions payable when death occurs before retirement; and
 - 12 (f) The right to designate a beneficiary for any unpaid allowance payable at
13 the time of Nonmember's death.
- 14 14. Cost-of-Living Increases. Nonmember's account will be increased by all
15 applicable earnings and cost-of-living increases to the extent permitted under
16 applicable law and regulations.
- 17 15. Disability Retirement Allowance. If Member receives a disability retirement
18 allowance pursuant to Government Code §§ 31727 or 31727.4 and Member's
19 credited service is not a factor in determining the amount of such allowance, the
20 amount otherwise payable to Member or any survivor continuance beneficiaries
21 each month will be reduced so that benefit payments to the Member and
22 Nonmember combined do not exceed the amount that would otherwise be
23 payable to the Member alone. Member's and any surviving continuance
24 beneficiaries' monthly disability retirement allowance will be reduced as follows:
- 25 (a) if Nonmember has retired, by the amount payable to Nonmember or any
26 survivor continuance beneficiaries of Nonmember each month;
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- 1 (b) if Nonmember has taken a refund of accumulated contributions, by the
2 actuarial valuation of the monthly value of Nonmember's refund
3 throughout the expected lifetimes of Member and any survivor continuance
4 beneficiaries of Member; or
- 5 (c) if Nonmember has neither retired nor taken a refund, by the actuarial
6 valuation of the present monthly value of Nonmember's account at the time
7 Member retires throughout the expected lifetimes of Member and any
8 survivor continuance beneficiaries of Member.
- 9 16. Nonmember's Entitlement to Disability Retirement Allowance. Nonmember will
10 not be entitled to any disability retirement allowance.
- 11 17. Joinder of County. To provide for the possibility that part of the benefits payable
12 will be paid by Alameda County (County) because the amount payable exceeds
13 the maximum amount that ACERA is permitted to pay under Internal Revenue
14 Code §415(b), this agreement and order will, to the extent (if any) that benefits
15 will be paid by County, apply to County as well as ACERA. The parties
16 understand that for this agreement and order to be enforceable against County,
17 however, County will have to be joined as a party to this action, served with a
18 copy of this agreement and order, and given 30 days after service in which to
19 object to the agreement and order.
- 20 18. Death of Member Before Retirement. If Member dies before retirement and an
21 amount based on Member's compensation is payable, under California
22 Government Code §§ 31781(b) or 31781.3(a), to Member's beneficiary(ies) or
23 estate, a portion of that amount will be payable to Nonmember if Nonmember
24 survives Member and, if not, to Nonmember's designated beneficiary or, if none,
25 to Nonmember's estate. That portion will be one half of that fraction of the
26 amount payable whose numerator is Member's credited service under ACERA
27 from the date of marriage through the date of separation and whose denominator
28 is Member's total credited service under ACERA.

- 1 19. Death of Member After Retirement. If Member dies after retirement, a portion of
2 the lump-sum death benefit provided under California Government Code § 31789
3 (currently \$750) will be payable to Nonmember if Nonmember survives Member
4 and, if not, to Nonmember's designated beneficiary or, if none, to Nonmember's
5 estate. That portion will be one half of that fraction of the death benefit whose
6 numerator is Member's credited service under ACERA from the date of marriage
7 through the date of separation and whose denominator is Member's total credited
8 service under ACERA.
- 9 20. Cooperation of Parties. Member and Nonmember will cooperate in performing
10 all acts reasonably necessary to effectuate the terms and intent of this agreement
11 and order.
- 12 21. Payment of Taxes Applicable to Share. Member and Nonmember will each be
13 solely responsible for payment of any tax due on any distributions that he or she
14 receives from ACERA. If either party is required for any reason to pay a tax on
15 all or any portion of any distribution or payment received by the other, the
16 receiving party will reimburse the paying party and indemnify the paying party
17 against liability for any taxes due with respect to amounts received by the
18 receiving party.
- 19 22. Attorney Fees. As between Member and Nonmember, the prevailing party in any
20 action or proceeding to enforce any provision of this agreement will be awarded
21 reasonable attorney fees and costs.
- 22 23. Savings Clause. Nothing contained in this agreement and order may be construed
23 to require ACERA to provide any benefit or option not otherwise available under
24 ACERA and applicable law or to require ACERA to make payments in any
25 manner that will result in an increase in the amount of benefits provided by
26 ACERA.
- 27 24. Reservation of Jurisdiction. The court will reserve jurisdiction to make further
28 orders to implement the division of retirement benefits provided under this order.

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The foregoing is agreed to by:

Date: _____

Member

Date: _____

Nonmember

The foregoing agreement is hereby approved and made the order of this Court.

Date: _____

Judge of the Superior Court

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ACKNOWLEDGEMENTS

STATE OF CALIFORNIA)

County of _____)

On _____, before me, _____,

Notary Public, personally appeared _____, personally

known to me (or proved to me on the basis of satisfactory evidence) to be the person

whose name is subscribed to the within instrument and acknowledged to me that

he/she executed the same in his/her authorized capacity, and that by his/her signature

on the instrument the person executed the instrument.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)

County of _____)

On _____, before me, _____,

Notary Public, personally appeared _____, personally

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