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SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Marriage of,

Petitioner: _____

And

Respondent: _____

Claimant: Alameda County Employees'
Retirement Association

Case No.: _____

AGREEMENT AND ORDER FOR
DIVISION OF RETIREMENT BENEFITS
(SEPARATE RECORDS)

1. Introduction. The Court entered a final Judgment in this proceeding on _____.
Through employment with _____, _____ (“Member”)
earned retirement benefits administered by the Alameda County Employees’ Retirement
Association (ACERA) that are community property of Member and _____
 (“Nonmember”). Member and Nonmember intend by this agreement and order (“Order”)
to divide those retirement benefits between them. ACERA has been joined to this
proceeding.

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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 _____ is awarded to Nonmember.

7. Community 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.

8. Purchases or Redeposits. When there have been purchases or redeposits, the community interest will include the corresponding retirement contributions, earnings, and service

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credit to the extent that the underlying service was attributable to Member's service between the date of marriage and the date of separation.

- 9. Member's Interest. All accumulated retirement contributions, earnings and service credit attributable to Member's service that are not awarded to Nonmember under this order are awarded to Member.
- 10. Division of Interest. As soon as practicable after determining that this order is acceptable under the County Employees Retirement Law of 1937 (Gov't Code §§31450–31899.9) and ACERA regulations, ACERA will divide Member's accumulated retirement contributions, earnings and service credit, establish a separate account for Nonmember's share and notify Nonmember of all Nonmember's rights, elections to be made by Nonmember, and procedures for filing applications for retirement and for a refund of contributions.
- 11. Release of Information. Member hereby authorizes ACERA to release to Nonmember any information concerning Member's benefits until Nonmember's separate account is established
- 12. Refund of Accumulated Retirement Contributions. Notwithstanding any other provision of this Order, if at the time of the marriage dissolution or legal separation the Member does not have the necessary minimum credited service to elect deferred retirement, the Nonmember shall receive a refund of the accumulated contributions and credited interest placed in the Nonmember's account, as soon as administratively practicable following the establishment of the account.
- 13. Nonmember's Rights. From the date of establishment of Nonmember's account, Nonmember may be entitled to the following as described in Gov't Code, §31685(c), including:
 - (1) The right to a retirement allowance;
 - (2) The right to a refund of accumulated retirement contributions;
 - (3) The right to redeposit accumulated contributions that are eligible for redeposit by the member;

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- (4) The right to purchase service credit that is eligible for purchase by the member;
- (5) The right to designate a beneficiary to receive Nonmember's accumulated contributions payable when death occurs before retirement; and
- (6) The right to designate a beneficiary for any unpaid allowance payable at the time of Nonmember's death.

14. Cost-of-Living Increases. Nonmember's account will be increased by all applicable earnings and cost-of-living increases to the extent permitted under applicable law and regulations.

15. Disability Retirement Allowance. If Member receives a disability retirement allowance, the amount otherwise payable to Member or any of Member's continuance beneficiaries will be reduced, as may be necessary, so that the total benefit payments to all payees under this Order do not exceed the amount that would have been payable to Member and Member's beneficiaries in the absence of this Order. Member's and any of Member's continuance beneficiaries' monthly allowances will be reduced, up to the amount necessary to prevent excess total benefit payments, as follows:

- (a) if Nonmember has retired, by the amount payable to Nonmember each month;
- (b) if Nonmember has taken a refund of accumulated contributions, by the actuarially determined monthly value of Nonmember's refund throughout the expected lifetimes of Member and any survivor continuance beneficiaries of Member; or
- (c) if Nonmember has neither retired nor taken a refund, by the actuarial valuation of the present monthly value of Nonmember's account at the time Member retires throughout the expected lifetimes of Member and any survivor continuance beneficiaries of Member.

16. Nonmember's Entitlement to Disability Retirement Allowance. Nonmember will not be entitled to any disability retirement allowance.

17. Joinder of County. To provide for the possibility that part of the benefits payable will be paid by Alameda County (County) because the amount payable exceeds the maximum amount that ACERA is permitted to pay under Internal Revenue Code, section 415(b),

1 this Order will, to the extent that benefits will be paid by County, apply to County as well
2 as ACERA. The parties understand that for this Order to be enforceable against County,
3 however, County will have to be joined as a party to this action, served with a copy of
4 this Order, and given 30 days after service in which to object to the Order.

5 18. Purchases by Member After Nonmember Withdrawal/Refund. If Nonmember receives a
6 refund based on sections 12 or 13 of this Order, Member may elect to redeposit
7 accumulated contributions and interest refunded to Nonmember and to receive credit for
8 the service time that had been forfeited by Nonmember. The election by Member must be
9 made within five years of receipt of notice from ACERA of eligibility to redeposit the
10 contributions and interest and before Member retires or takes a refund of Member's
11 accumulated contributions and interest.

12 19. Cooperation of Parties. Member and Nonmember will cooperate in performing all acts
13 reasonably necessary to effectuate the terms and intent of this Order.

14 20. Payment of Taxes Applicable to Share. Member and Nonmember will each be solely
15 responsible for payment of any tax due on any distributions that he or she receives from
16 ACERA. If either party is required for any reason to pay a tax on all or any portion of any
17 distribution or payment received by the other, the receiving party will reimburse the
18 paying party and indemnify the paying party against liability for any taxes due with
19 respect to amounts received by the receiving party.

20 21. Attorney Fees. As between Member and Nonmember, the prevailing party in any action
21 or proceeding to enforce any provision of this agreement will be awarded reasonable
22 attorney fees and costs.

23 22. Savings Clause. Nothing contained in this Order may be construed to require ACERA to
24 provide any benefit or option not otherwise available under applicable law or to require
25 ACERA to make payments in any manner that will result in an increase in the amount of
26 benefits provided by ACERA. Any ambiguities in this Order will be resolved to be
27 consistent with Article 8.4 of the County Employees' Retirement Law of 1937 (Gov't
28 Code § 31685, et seq.).

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23. Reservation of Jurisdiction. The court will reserve jurisdiction to make further orders to implement the division of retirement benefits provided under this order.

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

1 A notary public or other officer completing this certificate verifies only the identity of the individual who signed the
2 document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

3 **ACKNOWLEDGEMENTS**

4 STATE OF CALIFORNIA)

5 County of _____)

6 On _____, before me, _____,

7 Notary Public, personally appeared _____,

8 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
9 subscribed to the within instrument and acknowledged to me that he/she/they executed the
10 same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
11 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
12 instrument.

13 I certify under PENALTY OF PERJURY under the laws of the State of California that the
14 foregoing paragraph is true and correct.

15 WITNESS my hand and official seal.

16 _____
Notary Public

17 STATE OF CALIFORNIA)

18 County of _____)

19 On _____, before me, _____,

20 Notary Public, personally appeared _____, who proved

21 to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
22 to the within instrument and acknowledged to me that he/she/they executed the same in
23 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
24 the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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26 foregoing paragraph is true and correct.

27 WITNESS my hand and official seal.

28 _____
Notary Public