

THE QDRO SIDE STIPULATION

SUPPLEMENTAL ORDER RE ALTERNATE PAYEE'S GILLMORE RIGHTS UNDER ABC QDRO

Developed by Barbara A. DiFranza¹

1. This Order concerns the Plaintiff, PAUL PARKER, referred to herein as Participant and the Defendant, ALMA PARKER, referred to herein as Alternate Payee.
2. This Order is binding between the parties only and not upon the ABC Corporation Retirement Plan (hereinafter "the Plan"), which is the subject of a "Stipulation and Order for Division of ABC Pension and Savings Plan Benefits and Qualified Domestic Relations Order," which order is intended to be entered contemporaneously with this Order, and which is hereinafter referred to as "QDRO."
3. As between the parties, this Order supersedes any conflicting provisions in the QDRO.
4. In the event that Participant has not yet retired when Alternate Payee chooses to commence her benefit under the QDRO, then Alternate Payee may, on written notice, move the court to confirm the payment she should receive from the Plan, as of a date occurring 60 or more days after her election notice, such commencement date to be known as "Early Election Date."
5. At that time, the court shall determine whether Alternate Payee shall receive a benefit payable under an amended Qualified Domestic Relations Order which shall be calculated based upon plan retirement estimates so as to provide Alternate Payee with a monthly benefit which includes her proportional share of any employer subsidy for early retirement that would have been paid to her, as if Participant had actually retired on the Early

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Election Date. Alternate Payee contends that she maintains this right in accordance with the principles of the case of *In re Marriage of Gillmore* (1981) 29 Cal.3d 418, 174 Cal.Rptr. 493, 629 P.2d 1.

- 6. This Order does not foreclose Participant from arguing against the appropriateness of such further Order which relate to the early retirement subsidy. Rather, the purpose of this Order is to defer to a later time controversies which may never actually arise.**
- 7. Until Alternate Payee's benefit commencement date under the QDRO or Early Election Date hereunder, Participant shall, once per year beginning with the date on which he becomes eligible for retirement, supply Alternate Payee with an estimate of his retirement benefits and Alternate Payee shall continue to be authorized to obtain any plan or benefit information from the Plan with reference to the Participant's benefits.**
- 8. Alternate Payee understands that the early election of Pension benefits may cause there to be paid to Alternate Payee a lesser monthly benefit than would be paid if the benefits commenced at a later date.**
- 9. Alternate Payee understands that the early election of Pension benefits may provide a change of circumstances which would cause the loss or diminution of spousal or other support payments.**
- 10. It is understood that such an Amended QDRO resulting from Alternate Payee's election must itself meet the requirements of a Qualified Domestic Relations Order.**
- 11. Upon good cause shown, the court shall reserve jurisdiction to order that Participant make direct payments for any period after the Early Election Date predating the date on which such order becomes effective as against the plan.**
- 12. The court reserves jurisdiction to make a Gillmore order as to Participant in the event that such further order with reference to the plan is not qualified.**

Appropriate signatures by parties, counsel, COURT.