

Model Order # 1 — Separate Interest Method

IN THE COURT OF THE STATE OF _____

FOR THE COUNTY OF _____

In re the Marriage of:

Case No. _____

Petitioner,

and

Respondent.

STIPULATED FOR DIVISION OF
RETIREMENT BENEFITS UNDER SCREEN
ACTORS GUILD-PRODUCERS PENSION
PLAN AND QUALIFIED DOMESTIC
RELATIONS ORDER

1. IDENTIFICATION OF PARTIES. This order is based on an agreement between Respondent, _____, hereafter referred to as “Participant,” and Petitioner, _____, hereafter referred to as “Alternate Payee.”

2. INTENT OF ORDER. This order is intended to be a Qualified Domestic Relations Order (“QDRO”) under § 414(p) of the Internal Revenue Code of 1986 (“IRC”), as amended, and under § 206(d)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended. This order creates or recognizes the existence of an alternate payee’s right to receive all or a portion of the benefits payable with respect to a participant under a pension plan. This order is granted under the applicable domestic relations laws of the State of _____, including Section _____ of the _____ Code, and relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child or other dependent of a participant.

3. PLAN NAME. The name of the Plan to which this order applies is the Screen Actors Guild-Producers Pension Fund for Motion Picture Actors (the “Plan”). Any successor or

transferee plan to the Plan will be similarly subject to the terms of this order. Any benefits accrued by the Participant under a predecessor plan whereby liability for benefits accrued under such predecessor plan has been transferred to the Plan shall be subject to this order.

4. PARTICIPANT AND ALTERNATE PAYEE INFORMATION FOR PURPOSES OF NOTIFICATION. Participant's name, and last-known mailing address are as follows:

Participant's Name:

Last Known Mailing Address:

Social Security Number:

Participant's Social Security number will be provided by separate correspondence.

Date of Birth:

Participant's date of birth will be provided by separate correspondence.

Participant's Counsel:

Counsel's Address:

Participant is not currently receiving a benefit from the Plan.

Alternate Payee's name, and last-known mailing address are as follows:

Alternate Payee's Name:

Last Known Mailing Address:

Social Security Number:

Alternate Payee's Social Security number will be provided by separate correspondence.

Date of Birth:

Participant's date of birth will be provided by separate correspondence.

Alternate Payee's Counsel:

Counsel's Address:

[OPTION: Provide above information for any Contingent Alternate Payee(s), with statement explaining relationship to Participant.]

5. DATE OF MARRIAGE AND DISSOLUTION. Participant and Alternate Payee were married on_____. The date of separation was_____. The Judgment of Dissolution was entered by the Court on_____.

6. SEPARATE INTEREST AWARD OF ALTERNATE PAYEE'S INTEREST.

The benefit assigned to Alternate Payee as his or her separate interest is 50% [*OPTION: specify another percentage*] of Participant's actuarially adjusted accrued benefit as of the date either party commences his or her benefit [*OPTION: specify another date, e.g., at divorce or separation*], multiplied by a ratio, the numerator of which shall be the number of years of Pension Credit (as defined in the Plan) earned by the Participant between the date of marriage and date of divorce [*OPTION: separation*], and the denominator of which shall be the total number of years of Pension Credit earned by Participant under the Plan as of the date either party commences receiving benefits. In computing the numerator of the fraction, the Pension Credit for the year of marriage and the year of divorce [*OPTION: separation*] shall be prorated on a daily basis.

7. BENEFIT START. Payments to the Alternate Payee pursuant to this order shall start on any date elected by the Alternate Payee (and such election shall be made in accordance with the terms of the Plan after this order is deemed by the plan to be a QDRO), but not earlier than Participant's earliest retirement date as that term is defined in § 414(p)(4)(B) of the IRC (or such earlier date as allowed under terms of the Plan), and not later than (a) the date Participant would be required to start benefits under the terms of the Plan or (b) the latest date permitted by § 401(a)(9) of the IRC. Alternate Payee shall give advance written notice of such election to the Plan and shall complete any applications or other documents required by the Plan. Alternate Payee's portion of Participant's Plan benefits shall be determined as if Participant were to retire

on the date on which the benefit payments to Alternate Payee are to begin. Such payments shall be determined by taking into account only benefits actually accrued and not taking into account any subsidy for early retirement. Alternate Payee's life shall be used as the measuring life for the calculation of Alternate Payee's separate interest.

8. BENEFIT FORM. Alternate Payee may elect to receive payment from the Plan of the benefits assigned to the Alternate Payee in any form in which benefits may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to Alternate Payee and his or her subsequent spouse and subject to the Plan requirement of benefits of \$5,000 or less be paid in a lump sum) but only if the form elected complies with the minimum distribution requirements of §401(a)(9) of the IRC.

9. PARTICIPANT'S EARLY RETIREMENT. If Alternate Payee begins to receive benefits and Participant subsequently retires and becomes entitled to and receives an early retirement subsidy, Alternate Payee's benefit will not be recalculated to include the early retirement subsidy. If Alternate Payee commences benefits at the same time or after Participant, Alternate Payee will receive a proportional share of any early retirement subsidy paid to Participant, as determined in Paragraph 6, above.

10. PARTICIPANT'S DISABILITY RETIREMENT. If Participant should receive disability retirement benefits prior to the earliest non-disability retirement date permitted under the Plan, the monthly benefit payable to Participant shall be his or her sole and separate property until the month following the month in which he or she attains the earliest non-disability retirement age permitted under the Plan. If Participant receives disability retirement benefits at any time after the earliest retirement date permitted under the Plan, Participant and Alternate Payee agree that the excess of the benefit payable to Participant under a disability retirement (if

any) over the benefit which would otherwise be payable to Participant under a non-disability retirement shall be Participant's sole and separate property. Participant and Alternate Payee further agree that Alternate Payee shall be entitled to receive his or her proportional share of the benefit, as determined in Paragraph 6, above, which would otherwise be payable to Participant under a non-disability retirement after said earliest retirement date. [OPTION: May provide that Alternate Payee receives a portion of disability benefit, in which case QDRO must state that in the event the Plan, in its sole and absolute discretion, determines that Participant is no longer eligible for disability benefits, Alternate Payee shall also no longer be entitled to any portion of disability benefits.]

11. ALTERNATE PAYEE'S RIGHTS AND PRIVILEGES. Between the date on which this order is deemed to be a QDRO and the date on which Alternate Payee receives distribution of Alternate Payee's benefit, Alternate Payee will be entitled to all of the rights and election privileges (other than a joint and survivor annuity with respect to the Alternate Payee and a subsequent spouse) that are afforded to active participants and beneficiaries under the Plan, to the extent consistent with this order and the Plan. Should the Plan award a post-retirement cost of living adjustment, ad hoc increase or any other post-retirement increase generally to its participants, Alternate Payee shall receive the same percentage Participant receives, or would have received. Alternate Payee shall also be subject to any benefit decreases that affect, or would have affected, Participant, including decreases as may be caused by the termination of the Plan, adoption of a Rehabilitation Plan or correction of Participant's benefit statement.

12. ALTERNATE PAYEE'S DEATH. If Alternate Payee dies after Alternate Payee's benefit commences, any survivor benefit will be paid, to the extent payable, in accordance with the form of benefit elected by the Alternate Payee under the terms of the Plan. If

Alternate Payee dies before Alternate Payee's benefit commences, the Contingent Alternate Payee will succeed to the election and distribution rights of the Alternate Payee, provided that the Contingent Alternate Payee qualifies as an alternate payee with respect to the Participant. *[OPTION: delete prior sentence if no Contingent Alternate Payee named.]* In all events, if Alternate Payee should die under circumstances in which the unpaid amount of Alternate Payee's interest is not payable to Alternate Payee's Contingent Alternate Payee or beneficiary, then such amount shall revert to Participant and the Court will reserve jurisdiction to make such additional order(s) as may be required to effectuate the division of benefits intended by this order.

13. PARTICIPANT'S DEATH. Alternate Payee's interest or distribution will not be affected by Participant's death prior to or after the commencement of Alternate Payee's benefit, and Alternate Payee will not be treated as Participant's surviving spouse for any death or survivor benefits payable under the Plan. *[OPTION: May provide instead to award pre- or post-retirement survivor benefits to Alternate Payee, e.g., "If Participant predeceases Alternate Payee after the date Alternate Payee's benefit commences, Participant's death will not affect Alternate Payee's interest or its distribution. If Participant dies prior to the commencement of Alternate Payee's benefit, Alternate Payee will be treated as Participant's surviving spouse for any death or survivor benefits payable under the Plan, but only to the extent of the full amount of Alternate Payee's proportional share of the benefit as called for under Paragraph 6, above.]*

14. PARTICIPANT'S RIGHT TO REMAINING BENEFITS CONFIRMED. All benefits payable now or in the future under the Plan that are not expressly awarded to Alternate Payee under this order are hereby confirmed to Participant as Participant's separate property;

provided, however, that the Alternate Payee does not waive any interest under a beneficiary designation signed by Participant on or after the date of this order.

15. CERTIFICATION OF NECESSARY INFORMATION. All payments made pursuant to this order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan of such information that the Plan may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

16. COOPERATION BETWEEN PARTIES. Participant and Alternate Payee will cooperate in performing all acts reasonably necessary to effectuate the terms and intent of this order.

17. NOTICE. Alternate Payee will notify the Plan in writing of any changes in Alternate Payee's mailing address.

18. CONFLICT WITH PLAN OR ERISA. To the extent that this order conflicts with any provision of the Plan or ERISA, the provisions of the Plan or ERISA shall control.

19. NO RETROACTIVE EFFECT. This order shall apply only to future benefit payments by the Plan and not to any distributions made prior to the entry of this order. Nothing in this order shall require the Plan to make retroactive payments.

20. CONSTRUCTIVE RECEIPT. In the event that the Plan inadvertently pays to Participant any benefits that are assigned to Alternate Payee pursuant to the terms of the order, Participant shall immediately reimburse Alternate Payee to the extent that Participant has received such benefit payments, and shall forthwith pay such amounts so received directly to Alternate Payee within ten (10) days of receipt. In the event that the Plan inadvertently pays to Alternate Payee any benefits that are assigned to Participant pursuant to the terms of the order, Alternate Payee shall immediately reimburse Participant to the extent that Alternate Payee has

received such benefit payments, and shall forthwith pay such amounts so received directly to Participant within ten (10) days of receipt. If either party receives a payment in error that is not due the other party, the erroneous payment shall be returned to the Plan within ten (10) days of receipt or notice.

21. INTENT TO COMPLY WITH FEDERAL LAW. This order is intended to comply with applicable provisions of ERISA and the IRC. Any changes in Plan administrator, Plan sponsor, or Plan name will not affect Alternate Payee's rights under this Order. Nothing in this order may be interpreted to require the Plan to do any of the following:

(a) Provide any type or form of benefit or any option not otherwise provided under the Plan, ERISA, or the IRC;

(b) Increase the amount of any benefits the Plan provides or to call for a payment in excess of the value of the benefits that Participant would otherwise receive under the Plan (determined on the basis of actuarial value); or

(c) Pay benefits to Alternate Payee under this order that are required to be paid to another alternate payee under another QDRO in effect before entry of this order.

22. TAX CONSEQUENCES. It is the intent of this order that, under §§ 72 and 402(e)(1)(A) of the IRC, Alternate Payee be regarded as the distributee of any distribution made to Alternate Payee under this order and that Alternate Payee or Alternate Payee's beneficiaries be responsible for any federal and state income tax liability arising out of that distribution. Participant and Alternate Payee will each be solely responsible for payment of any tax due on any distributions that he or she receives from the Plan. *[OPTION: if for child support or Alternate payee is the child or dependent of Participant, Participant is generally responsible for taxes.]*

23. CONTINUED QUALIFIED STATUS OF ORDER. It is the intention of the parties that this order continue to qualify as a QDRO under § 414(p) of the IRC, as it may be amended from time to time, and that the Plan shall reserve the right to reconfirm the qualified status of the order at the time benefits become payable hereunder.

24. CONTINUED JURISDICTION. The Court will retain jurisdiction to amend this order to the extent required to establish or maintain its qualified status under § 414(p) of the IRC and to implement its intended division of benefits.

25. INDEMNIFICATION OF PLAN. The Plan is entitled to rely on any and all representations made in this order, and Participant and Alternate Payee agree to waive any and all claims against the Plan, its Trustees, their agents, representatives, employees and anyone else acting on their behalf, for any action taken in compliance with this order. Participant and Alternate Payee shall hold the Plan, its Trustees, their agents, representatives, employees and anyone else acting on their behalf harmless from any liabilities that arise from following this order, including all attorney's fees that are incurred in connection with any claims that are asserted because the Plan honors this order.

The foregoing is agreed to by:

Date: _____, 20

Participant

Date: _____, 20

Alternate Payee

Approved as conforming to the agreement of the parties:

Date: _____, 20

Attorney for Participant

Date: _____, 20

Attorney for Alternate Payee

The foregoing stipulation is approved and made the order of the Court:

Date: _____, 20

Judge of the _____ Court