ILWU-PMA Pension Plan Model Order #1: Pre-Retirement

IN THE COURT OF THE STATE OF _____

FOR THE COUNTY OF _____

In re the Marriage of: _____ Petitioner, and _____ Respondent.	Case No.: _____ STIPULATED QUALIFIED DOMESTIC RELATIONS ORDER FOR DIVISION OF RETIREMENT BENEFITS UNDER ILWU-PMA PENSION PLAN

1. IDENTIFICATION OF PARTIES. This Order is based on an agreement between [Respondent/Petitioner], _____, a participant in the ILWU-PMA Pension Plan, hereinafter referred to as "Participant," and [Respondent/Petitioner], _____, hereinafter 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 Alternate Payee's right to receive all or a portion of the benefits payable with respect to Participant under a pension plan. This Order is granted under the applicable domestic relations laws of the State of _____, 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. This Order

was prepared in accordance with the Statement of Procedures Under ILWU-PMA Pension Plan for Compliance with State Court Domestic Relations Decrees.

3. PLAN NAME. The name of the Plan to which this Order applies is the ILWU-PMA Pension Plan ("Plan"). Any successor or transferee plan to the Plan will be similarly subject to the terms of this Order. Any benefits accrued by 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 INFORMATION FOR PURPOSE OF NOTIFICATION.

PARTICIPANT'S NAME:

MAILING ADDRESS:

PHONE NUMBER: Participant's phone number will be provided by separate correspondence.

EMAIL: Participant's email will be provided by separate correspondence.

BIRTH DATE: Participant's birth date will be provided by separate correspondence.

SOCIAL SECURITY NUMBER: Participant's Social Security Number will be provided by separate correspondence.

PARTICIPANT'S COUNSEL:

COUNSEL'S ADDRESS:

COUNSEL'S EMAIL:

Participant shall have the duty to notify the Plan Administrator in writing of any changes to Participant's mailing address subsequent to the entry of this Order.

5. ALTERNATE PAYEE INFORMATION FOR PURPOSE OF NOTIFICATION.

ALTERNATE PAYEE'S NAME:

MAILING ADDRESS:

PHONE NUMBER: Alternate Payee's phone number will be provided by separate correspondence.

EMAIL: Alternate Payee's email will be provided by separate correspondence.

BIRTH DATE: Alternate Payee's birth date will be provided by separate correspondence.

SOCIAL SECURITY NUMBER: Alternate Payee's Social Security Number will be provided by separate correspondence.

ALTERNATE PAYEE'S COUNSEL:

COUNSEL'S ADDRESS:

COUNSEL'S EMAIL:

Alternate Payee shall have the duty to notify the Plan Administrator in writing of any changes to Alternate Payee's mailing address subsequent to the entry of this Order.

6. DATE OF MARRIAGE AND DISSOLUTION. Participant and Alternate Payee were married on _____. The date of separation was _____. [*IF APPLICABLE: The Judgment/Decree/Order of Dissolution was entered by the Court with an effective date of dissolution of* _____.]

7. AWARD OF ALTERNATE PAYEE'S INTEREST. Commencing at the time specified in Paragraph 8, the Plan shall pay to Alternate Payee a monthly benefit payment equal to 50% of Participant's gross monthly benefit, multiplied by a fraction (the "Marital Fraction"), as follows:

$$50\% \times \text{Participant's Monthly Plan Benefit} \times \frac{\text{Marital Fraction: Participant's Paid Qualifying Years of Service Accrued Between [Date of Marriage] and [Date of Separation]}}{\text{Participant's Paid Qualifying Years of Service at Benefit Commencement}}$$

For purposes of this Order, "Paid Qualifying Years of Service" means the number of years of service earned by Participant as determined based on the applicable terms of the Plan, limited to the maximum number of years of service used to determine Participant's retirement benefit under the Plan. For purposes of the numerator of the Marital Fraction, the Plan will prorate any year(s) of service earned in the payroll years during which the community began and ended, based on whole months, using the rounding method described in the Statement of Procedures Under ILWU-PMA Pension Plan for Compliance with State Court Domestic Relations Decrees.

If Alternate Payee commences benefits before Participant's pension commencement date, 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 commence, and such payments shall be determined by taking into account only benefits actually accrued and not taking into account any subsidy for early retirement or early retirement supplement. If Alternate Payee commences benefits prior to Participant's attainment of normal retirement age, the early retirement reduction factors used to determine Participant's benefit at Alternate Payee's benefit commencement shall be those specified by Appendix CC of the Plan Document.

[*OPTION: Specify different percentage, flat dollar amount, or other formula consistent with Plan requirements.*]

8. BENEFIT COMMENCEMENT. Alternate Payee may choose to commence the benefits assigned in Section 7 of this Order at any time on or after the date the Participant attains the "earliest retirement age" as such term is defined in IRC § 414(p), provided that Alternate Payee submits a timely request to the Plan Administrator in accordance with the Plan Administrator's rules and procedures. Notwithstanding the above, Alternate Payee's benefit commencement date shall be no later than Participant's pension commencement date.

9. BENEFIT FORM. Alternate Payee's form of benefit is an annuity for the life of Participant.

10. BENEFIT CESSATION. Except for any survivor benefits described in Paragraph 14, payments to Alternate Payee shall cease on the earlier of Participant's or Alternate Payee's death.

[*OPTION: State maximum number of payments, date certain, or event, not to extend past Participant's death.*]

11. ADJUSTMENT FOR PARTICIPANT'S EARLY RETIREMENT SUBSIDY. If Alternate Payee commences benefits and Participant subsequently retires and becomes entitled to and receives an early retirement subsidy, Alternate Payee's benefit will [*OPTION: will not*] be increased pro rata to reflect the early retirement subsidy received by Participant.

12. OTHER ADJUSTMENTS. Alternate Payee will be entitled to a pro rata share of any ad hoc or other benefit increases made effective after Alternate Payee's benefit commencement date, but only if Alternate Payee's benefits commence on Participant's pension commencement date. [*OPTION:* "*Alternate Payee will not be entitled to a share of any ad hoc or other benefit increases made effective after Alternate Payee's benefits commence*."] Alternate Payee will 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 under IRC § 432, or correction of Participant's benefit. Any such reduction shall be made pro rata based on the amount of Participant's benefit awarded to Alternate Payee under Section 7 of this Order.

13. ALTERNATE PAYEE'S DEATH. If Alternate Payee dies before Participant, Alternate Payee's remaining interest in the Plan shall revert to Participant.

14. PARTICIPANT'S DEATH. If Participant dies before Alternate Payee, the benefits awarded to Alternate Payee under Section 7 shall cease, and

[*OPTION: "Alternate Payee will not be entitled to pre- or post-retirement survivor benefits under this Order."*]

[*OPTION*: "*Alternate Payee will be entitled to pre- or post-retirement survivor benefits in the amount of the Participant's monthly survivor benefit, multiplied by the Marital Fraction specified in Paragraph 7. Any subsequent spouse shall not be treated as Surviving Spouse with respect to these amounts.*"]

[*OPTION:* "*Alternate Payee will be entitled to pre- or post-retirement survivor benefits in the amount of __% of the Participant's monthly survivor benefit, multiplied by the Marital Fraction specified in Paragraph 7. Any subsequent spouse shall not be treated as Surviving Spouse with respect to these amounts.*"]

[*OPTION: Specify other formula or amount consistent with Plan requirements.*]

[*OPTION (ADDITIONAL PROVISION)*: *"Notwithstanding the above, Alternate Payee will be entitled to 100% of Participant's monthly survivor benefit if, at the time of Participant's death, there is no other qualifying Surviving Spouse entitled to survivor benefits under the Plan*."]

15. 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 confirmed to Participant as Participant's separate property.

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. CONFLICT WITH PLAN OR FEDERAL LAW. To the extent that this Order conflicts with any provision of the Plan, the IRC, or ERISA, the applicable provision of the Plan, the IRC, or ERISA shall control.

18. INADVERTENT PAYMENTS TO PARTICIPANT. If the Plan inadvertently pays to Participant any benefits that are assigned to Alternate Payee pursuant to the terms of this Order, Participant shall immediately return such payments to the Plan. Notwithstanding the above, rather than requiring Participant to return the inadvertent payments, the Plan Administrator may, in its sole discretion, recoup such payments on a prospective basis by reducing the Participant's benefit payments on a temporary basis until a full recovery is made.

19. INADVERTENT PAYMENTS TO ALTERNATE PAYEE. If the Plan inadvertently pays to Alternate Payee any benefits that are due to Participant or a beneficiary of Participant, Alternate Payee shall immediately return such payments to the Plan. Notwithstanding the above, rather than requiring Alternate Payee to return such inadvertent payments, the Plan Administrator may, in its sole discretion, recoup such payments on a prospective basis by reducing the Alternate Payee's benefit payments on a temporary basis until a full recovery is made.

20. SAVINGS CLAUSE. This Order is not intended, and shall not be construed in such a manner, as to require the Plan:

(a) to provide any type or form of benefit option not otherwise provided under the terms of the Plan;

(b) to provide increased benefits determined on the basis of actuarial value;

(c) to pay any benefits to Alternate Payee that are required to be paid to another alternate payee under another order that was previously deemed to be a QDRO; or

(d) to pay benefits to Alternate Payee for any time period before the Order is received by the Plan and deemed qualified.

21. TAX CONSEQUENCES. It is the intent of this Order that, under IRC §§ 72 and 402(e)(1)(A), Alternate Payee be regarded as the distributee of any distribution made to Alternate Payee under this Order and that Alternate Payee 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. *[NOTE: If Alternate Payee is a child or other dependent of Participant, Participant is generally responsible for taxes.]*

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

23. CONTINUED JURISDICTION. The Court will retain jurisdiction to amend this Order to the extent required to establish or maintain its qualified status under IRC § 414(p) and to maintain the original intent of this Order.

24. 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 attorneys' fees that are incurred in connection with any claims that are asserted because the Plan honors this Order.

The foregoing is agreed to by:

Dated:

_____
Petitioner

Dated:

_____
Respondent

Approved as conforming to the agreement of the parties:

Dated:

_____
Attorney for Petitioner

Dated:

_____
Attorney for Respondent

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

Dated:

_____

Judge/Commissioner