

A Matrimonial Part _____ of the Supreme Court of the State of New York, held in and for the County of _____, at the _____ County Courthouse, (address here), on this _____ day of _____, 200__.

Present: Honorable _____

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Index No.: _____

Jane Doe

Plaintiff,

****THIS IS INTENDED AS A**

-against-

MODEL ONLY

John Doe

Defendant,

-----x

This Order is directed to the New York City Police Pension Fund, Article II.

Wherein this court retains jurisdiction over the case and the parties above-named having now stipulated to the entry of such an order upon the terms hereinafter provided, and due deliberation having been given thereto;

NOW, on a motion of _____ of the law firm of _____, attorney for the _____, it is hereby;

ORDERED, that the following facts are hereby found to be established for the purpose of this order:

1. The parties were married on _____
2. This action for divorce was commenced on _____
3. The name of the Plan to which this order applies is New York City Police Pension Fund, Article II, [hereinafter referred to as “the Fund”].
4. The name of the employee spouse who is a Participant in the Fund is _____ [hereinafter referred to as the “Participant”]
5. The name of the non-employee spouse who is afforded a share of the Participants interest in the Fund by this order is _____ [hereinafter referred to as the “Former spouse” or “Alternate payee”]
6. The current and last known mailing address of the Participant is _____ and his Social Security number is _____ and his date of birth is _____.
7. The current and last known mailing address of the Former Spouse is _____ and his Social Security number is _____ and his date of birth is _____.
8. This Order pertains to that portion of the Participant’s retirement benefits which shall be subject to equitable distribution under Section 236(B)(5) of the Domestic Relations Law of the State of New York.
9. The benefits allocable to the Participant by reason of his participation in the Fund are, to the extent they have accrued during the parties’ marriage, marital property within the meaning of the Domestic Relations Law Section 236(B)(1)(c); and it is further

ORDERED, that the Participant’s retirement benefits with the New York City Police Department, to the extent which it has accrued during the marriage is marital property. (*This shall include any amounts payable under the Variable Supplement Fund*)¹; and it is further

ORDERED, that the term “Retirement Allowance” means the total amount payable to the Participant by the Fund pursuant to the terms of the Fund, and shall be deemed to include any annuity (based on the Participant’s contributions) (*as well as any Cost of Living Adjustments*

¹ This is optional language depending upon the terms of the divorce or stipulation of settlement. The VSF is a separate Fund and must be named and addressed individually in the DRO.

(COLA) or Variable Supplement Fund payments)² which is now, or may hereafter be, available or offered to the Participant; and it is further

ORDERED, that the Participant may take pension loans or any other action which might reduce the total pension amount payable, *but when calculating for the purposes of this Order, the Alternate Payee's portion of the pension, these reductions shall be excluded*³; and it is further

ORDERED, that should the Participant retire on a disability pension, the Former Spouse shall receive a share of the disability pension attributable to the Participant's earnings and years of credited service only. Said share shall be calculated in the same manner as a normal service pension would be calculated without any reduction for early termination of employment. This calculation shall be performed even if the Participant had not yet attained vested status at the time of such disability retirement⁴; and it is further

ORDERED, that the term "Coverture Fraction" shall be defined to mean a fraction which represents that portion of the Participants retirement benefit acquired during the parties' marriage. The numerator of said fraction is the total credited service with the Fund from the Participant's membership date, or equated membership date, or from the parties date of marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator of which is the total credited service from the Participant's membership date, or equated membership date, up to the date of retirement, termination of employment, or death; and it is further

ORDERED, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Fund, the said Fund, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1987), is hereby directed to pay to the Former Spouse that portion of the Participant's monthly Retirement Allowance which is equal to fifty percent (50%) of the product obtained by multiplying the total amount of the monthly

² Again, the VSF is optional and so is COLA. This language should only appear in the DRO if the parties have agreed to these terms.

³ If applicable; parties may determine something else regarding loans.

⁴ This section typically refers to accident disability retirement and counsel should consult the relevant case law regarding ADR v. ODR (ordinary disability).

Retirement Allowance due to the Participant, by the Coverture Fraction. (*The Former Spouse shall be entitled to receive the same percentage of the annual Variable Supplement Fund benefit if it becomes payable to the Participant*)⁵; and it is further

ORDERED, that the Fund Administrator issue separate checks to the Participant and Former Spouse for their respective interests in the Fund and the Variable Supplement Fund⁶ at the time the benefits become payable; and it is further

ORDERED, that the Participant is hereby directed to designate the Former Spouse as the beneficiary of the Participant's pre-retirement survivor benefit, so that in the event the Participant dies prior to his retirement, the Former Spouse shall receive a portion of the pre-retirement death benefit, calculated pursuant to a fraction, the numerator of which is the total service credits, from the Participant's date of initial credited service, or the date of the parties' marriage, that being _____, whichever is later, up to the asset cutoff date of _____, and the denominator shall be the total service credit as the date of the Participant's death, multiplied by 50%, and then multiplied by the pre-retirement survivor benefit. Within 15 days after this Order is signed by the Court, the Participant shall complete and submit all necessary Designation of Beneficiary forms as required by the Fund to ensure that this provision is complied with. Within 15 days after said Designation of Beneficiary have been filed with the Fund, the Participant shall provide copies of the Designation of Beneficiary forms (time stamped by the Fund) to both the Former Spouse and her attorney, via Certified Mail⁷; and it is further

ORDERED, that in the event the Participant's employment is terminated prior to the time that he becomes vested in a retirement benefit, and he becomes eligible to receive a return of his accumulated annual contributions plus interest, the Former Spouse shall receive a pro rata share of said return of accumulated annual contributions plus interest accrued on the date of

⁵ Use this sentence regarding the VSF only if it has been agreed to by both parties, consistent with previous sections of the DRO. Also, the Majauskas formula may be modified if the parties agree to a different percentage.

⁶ Again, VSF only if applicable.

⁷ This paragraph is optional and is dependent upon the agreement of the parties.

termination. The Former Spouse's share shall be fifty percent (50%)⁸ of the amount determined by multiplying the total return by the Coverture Fraction; and it is further

ORDERED, that the Participant is hereby directed to designate the Former Spouse as beneficiary of the Participant's pension with the Fund. At the time of his retirement, the Participant is directed to choose *Option 4, Annuity*⁹ so that in the event the Participant dies while the pension is in pay status the Former Spouse shall receive a monthly annuity in the same amount as calculated under the Coverture Fraction formula hereinafter set forth; and it is further

ORDERED, that the Participant shall have the right to choose the "Pop-Up" Option Modification so that in the event the Former Spouse dies while the pension is in pay status, the retirement allowance reverts back to the maximum retirement allowance. The "Pop-Up" may only be applied to Option numbers 2, 3 and 4 Annuity¹⁰; and it is further

ORDERED, that should the law or regulations of the Fund or its rules and procedures regarding the acceptance and implementation of Domestic Relations Orders be modified or otherwise revised subsequent to the acceptance of this Domestic Relations Order so that the provisions herein are binding and obligating to the Participant, may also be made a binding obligation on the Fund, then this Domestic Relations Order shall automatically become a binding obligation on the Fund; and it is further

ORDERED, that the Fund is to withhold from the Participant's Retirement Allowance for equitable distributions payments to the Former Spouse the amount computed pursuant to this Order. When the Participant begins to receive a Retirement Allowance from the Fund, the Former Spouse is entitled to receive a monthly benefit payable until the death of the Participant or the death of the Former Spouse. If the Participant predeceases the Former Spouse, and at the time of the Participant's retirement, he chose a death benefit option naming the Former Spouse

⁸ Or a percentage as agreed upon by the parties.

⁹ This Option does not have to be selected, however it is the most common in DROs; the wording of this section should reflect the Option selected, if any.

¹⁰ Optional paragraph dependent upon retirement option selected and agreement of parties.

as beneficiary, the benefits shall continue to the Former Spouse under said option; and it is further

ORDERED, that in the event the Former Spouse dies prior to commencement of benefits to her, the Participant shall have the option to receive full benefits and choose any pension option available and this Domestic Relations Order shall be void; and it is further

ORDERED, that nothing contained in this Order shall be construed to require the Fund or Fund administrator to:

- (a) provide any form, type or amount of benefit, or any option, not otherwise provided for under the Fund;
- (b) provide increased benefits determined on the basis of actuarial value; and require the payment of benefits to the Former Spouse which are required to be paid to another Former Spouse under another order previously determined to be a Domestic Relations Court Order; and it is further

ORDERED, that the Fund shall have no obligation or responsibility as a consequence of this action apart from the specific directions contained in this Order; and it is further

ORDERED, that this Order is to be deemed appropriate to effectuate the division of the retirement benefits earned by the Participant, pursuant to his participation in the New York City Police Department; and it is further

ORDERED, that a Court certified copy of this Order shall be served upon the New York City Police Pension Fund, Article II, 233 Broadway, New York, New York 10279, by _____; and it is further

ORDERED, that in the event of a change of name or address of the Former Spouse, she will promptly notify, in writing, the New York City Police Pension Fund, Article II, 233 Broadway, New York, New York 10279; and it is further

ORDERED, that the service of a _____ County Clerk's certified copy of the order, by certified mail, return receipt requested, upon the New York City Police Pension Fund, Article II, 233 Broadway, New York, New York 10279, shall be deemed to be good and sufficient service hereof as if it were personally serviced in the State of New York; and it is further

ORDERED, that this Court retains jurisdiction to implement and supervise the payment of retirement benefits as provided herein should either party or the Fund Administrator make such application, and the Court determines such to be appropriate and necessary.

ENTER:

Hon. _____
Justice, Supreme Court