

**IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA**

Jane L. Doe,

Plaintiff,

v.

John S. Doe,

Defendant.

**DOCKET NO. 12345-CV
ACTION IN DIVORCE**

QUALIFIED DOMESTIC RELATIONS ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Effect of This Order as a Qualified Domestic Relations Order:** This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer-sponsored defined contribution pension plan that is qualified under Section 401 of the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). It is intended to constitute a Qualified Domestic Relations Order ("QDRO") under Section 414 (p) of the Code, Section 206(d)(3) of ERISA and the Retirement Equity Act of 1984, P.L. 98-397.
2. **Parties:** The parties hereto were husband and wife, and a divorce action is in this Court at the above number, and this Court has personal jurisdiction over the parties. The parties were married on June 23, 1999.
3. **Participant Information:** The name, last known address, social security number, and date of birth of the plan "Participant" are:
Name: John S. Doe ("Participant")
Address: 777 West Street, Apt. 1, New York, New York 10024
Social Security Number: 123-45-6789
Birth Date: April 14, 1970
4. **Alternate Payee Information:** The name, last known address, social security number, and date of birth of the "Alternate Payee" are:
Name: Jane L. Doe ("Alternate Payee")
Address: 242 Main Street, East Stroudsburg, Pennsylvania 18301
Social Security Number: 987-65-4321
Birth Date: May 9, 1980
Relationship to Participant: Spouse

The Alternate Payee shall have the duty to notify the plan administrator in writing of any changes in her mailing address subsequent to the entry of this Order.

5. **Plan Name:** The name of the Plan to which this Order applies is the ABC Inc. 401(k) Plan (hereinafter referred to as "Plan"). Further, any successor plan to the Plan or any other plan(s), to which liability for provision of the Participant's benefits described below is incurred, shall also be subject to the terms of this Order. Also, any benefits accrued by the Participant under a

predecessor plan of the employer or any other defined contribution plan sponsored by the Participant's employer, whereby liability for benefits accrued under such predecessor plan or other defined contribution plan has been transferred to the Plan, shall also be subject to the terms of this Order.

Any changes in Plan Administrator, Plan Sponsor, or name of the Plan shall not affect Alternate Payee's rights as stipulated under this Order.

6. **Pursuant to State Domestic Relations Law:** This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the State of Pennsylvania.
7. **For Provisions of Marital Property Rights:** This Order relates to the provision of marital property rights to the Alternate Payee as a result of the Marital or Property Settlement Agreement between the Participant and the Alternate Payee.
8. **Amount of Assignment:** This Order assigns to the Alternate Payee an amount equal to Ten Thousand Dollars (\$10,000) of the Participant's Total Account Balance accumulated under the Plan as of March 7, 2008 (or the closest valuation date thereto).

Alternate Payee's Share Determined From All Account(s): When determining the Alternate Payee's assigned share of the benefits, the Participant's applicable Total Account Balances shall include all amounts maintained under all of the various accounts, subaccounts and investment funds established on behalf of the Participant under the Plan.

Investment Earnings: The Alternate Payee's assigned share of the benefits as set forth above SHALL ALSO bear any interest and investment earnings or losses attributable thereon from March 7, 2008 (or the closest Plan valuation date thereto), until the Date of Segregation (The date the Plan actually establishes a separate account(s) for the Alternate Payee).

Allocation of Benefits: The Alternate Payee's assigned share of the benefits shall be allocated on a "pro-rata" basis among all of the Participant's accounts/investment funds maintained on his behalf under the Plan.

Insufficient Assets: On the date that the Plan Administrator segregates the Alternate Payee's assigned share of the benefits as set forth above, to the extent there are not sufficient assets in the Participant's accounts to satisfy the award of benefits to the Alternate Payee, then this Order shall be interpreted as an award of One Hundred Percent (100%) of the Participant's Total Account Balance under the Plan as of such segregation date.

Participant's Vesting Status: In the event the Participant is not 100% vested in his Total Account Balance as of March 7, 2008, the Alternate Payee's rights to the assigned share of such Total Account Balance shall not be diminished by this fact. Rather, the Alternate Payee's vesting status shall be considered identical to the Participant's vesting status as of March 7, 2008, and her vesting status shall continue to "mirror" the vesting status of the Participant as it increases over time, until both have attained 100% vesting in their respective shares of the Total Account Balance set forth herein. Further, in the event the Participant terminates his employment prior to becoming 100% vested in such Total Account Balance, the Alternate Payee's "final" vesting status shall be the same as the Participant's "final" vesting status as of his date of termination of employment. The intent of this paragraph is to treat each party's respective share of the Total Account Balance in the same manner with respect to vesting under the terms of the Plan. It is understood by the Court that as a result of this paragraph, the Alternate Payee may have to wait to receive her full distribution under the Plan until such time as it becomes fully vested.

Establishment of New Account(s): In the event the Alternate Payee does not elect an immediate distribution, her share of the benefits described above shall be segregated and separately maintained in Account(s) established on her behalf and shall additionally be credited

with any interest and investment income or losses attributable thereon from the date of segregation until the date of total distribution to the Alternate Payee.

9. **Commencement Date and Form of Payment to Alternate Payee:** If the Alternate Payee so elects, she shall be paid her benefits as soon as administratively feasible following the date this Order is approved as a QDRO by the Plan Administrator, or at the earliest date permitted under the Plan or Section 414(P) of the internal Revenue Code, if later. Benefits will be payable to the Alternate Payee in any form or permissible option otherwise available to participants and alternate payees under the terms of the Plan, including, but not limited to, a single lump-sum distribution. Notwithstanding the above, the Alternate Payee shall receive her distribution no later than the date that the Participant receives his distribution. In the event the Alternate Payee does not make an affirmative election to commence benefits by the time such benefits are required to be distributed by the Plan or the terms of this Order, the Alternate Payee's benefits shall be paid in the form of a single lump-sum distribution.
10. **Alternate Payee's Rights and Privileges:** On and after the date that this Order is deemed to be a Qualified Domestic Relations Order, but before the Alternate Payee receives her total distribution under the Plan, the Alternate Payee shall be entitled to all of the rights and election privileges that are afforded to Plan beneficiaries, including, but not limited to, the rules regarding the right to designate a beneficiary for death benefit purposes and the right to direct Plan investments, only to the extent permitted under the provisions of the Plan.
11. **Death of Alternate Payee:** In the event of Alternate Payee's death prior to Alternate Payee receiving the full amount of benefits called for under this Order and under the benefit option chosen by Alternate Payee, such Alternate Payee's beneficiary(ies), as designated on the appropriate form provided by the Plan Administrator, shall receive the remainder of any unpaid benefits under the terms of this Order. In the event the Alternate Payee has not completed a beneficiary designation form with the Plan Administrator, the Alternate Payee's assigned share of the benefits shall devolve in accordance with the terms of the Plan.
12. **Death of Participant:** In the event that the Participant dies before the Alternate Payee receives her distribution in accordance with the terms of this QDRO, or before the establishment of separate account(s) in the name of the Alternate Payee, such Alternate Payee shall be treated as the surviving spouse of the Participant for any death benefits payable under the Plan to the extent of the full amount of her benefits as called for under Paragraph 8 of this Order. Should the Participant predecease the Alternate Payee after the new account(s) have been established on her behalf, such Participant's death shall not affect Alternate Payee's right to the portion of her benefits as stipulated herein.
13. **Order Review Fees:** In the event the Plan Administrator charges a QDRO processing fee for the administration of their defined contribution plan QDROs, the Plan Administrator is hereby directed to equally divide such fee between the Participant and the Alternate Payee. In other words, one-half of the QDRO processing fee shall be deducted from the amount to be segregated from the Participant's account for the benefit of the Alternate Payee, and the other half shall be deducted from the Participant's remaining account balance.
14. **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 require the Plan to provide increased benefits determined on the basis of actuarial value; or
 - (c) to require the payment of any benefits to the Alternate Payee which are required to be paid to another alternate payee under another order that was previously deemed to be

a QDRO; or

(d) to make any payment or take any action which is inconsistent with any federal or state law, rule, regulation or applicable judicial decision.

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 Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.
16. **Tax Treatment of Distributions Made Under this Order:** For Purposes of Sections 402(e)(1) and 72 of the Internal Revenue Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of this Order, and as such, will be required to pay the appropriate income taxes on such distribution.

Further, in the event that all or any portion of the Alternate Payee's assigned share of the benefit includes units or shares of stock, the Plan Administrator shall maintain an equivalent tax basis for the Alternate Payee when segregating the Participant's account.

17. **Inadvertent Payment(s):** In the event that the Plan Trustee inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of this Order, the Participant shall immediately return such payments to the Plan Administrator. Upon receipt of the repayment, the Plan Administrator shall issue an amended Form 1099 to the Participant so that he is not liable for any income taxes associated with the Alternate Payee's assigned share of the benefits.

Similarly, in the event that the Plan Trustee inadvertently pays to the Alternate Payee any benefits otherwise payable to the Participant, the Alternate Payee shall immediately return such payment to the Plan Administrator. Upon receipt of the repayment, the Plan Administrator shall issue an amended Form 1099 to the Alternate Payee so that she is not liable for any income taxes associated with the Participant's benefit.

18. **Continued Jurisdiction:** The court shall retain jurisdiction to establish and/or maintain the qualified status of this Order as a QDRO under ERISA, and to effectuate the original intent of the parties as stipulated herein. The court shall also retain jurisdiction to enter such further orders that are just, equitable and necessary to enforce, secure and sustain the benefits awarded to the Alternate Payee, in the event that the Participant and/or the Plan Administrator fail to comply with any or all of the provisions contained herein. Such further orders may also include, but not be limited to, nunc pro tunc orders or orders that "recharacterize" the benefits awarded under this Plan to apply to benefits earned by the Participant under another plan, as applicable, or orders that award spousal or child support, to the extent necessary to carry out the intentions and provisions of this Order.

Should any portion of this QDRO be rendered invalid, illegal, unconstitutional, or otherwise incapable of enforcement, or should any of the procedural matters herein ordered need to be adjusted to accomplish the objectives of this QDRO, the court shall reserve jurisdiction to make such adjustments as necessary in order to effectuate the intent of the parties and the court as manifested herein, including but not limited to, adjustments regarding the division of the community and non-community portions of the Participant's benefits, if applicable.

Further, the Court also retains jurisdiction to effectuate the commencement of monthly annuity or lump sum payments to the Alternate Payee as set forth under the terms and provisions of this QDRO, and as may be required by the plan administrator, including but not limited to, compelling the Participant to sign and/or execute any necessary retirement election forms in the event he

refrains from doing so in an apparent attempt to delay or postpone the commencement of the Alternate Payee's assigned share of the benefits.

19. **Plan Termination:** In the event of a Plan termination, the Alternate Payee shall be entitled to receive her portion of Participant's benefits as stipulated herein in accordance with the Plan's termination provisions for participants and beneficiaries.
20. **Actions by Participant:** The Participant shall not take any actions, affirmative or otherwise, that circumvent the terms and provisions of this Qualified Domestic Relations Order, or that diminish or extinguish the rights and entitlements of the Alternate Payee as set forth herein. Should the Participant take any action or inaction to the detriment of the Alternate Payee, he shall be required to make sufficient payments directly to the Alternate Payee to the extent necessary to neutralize the effects of his actions or inactions and to the extent of her full entitlements hereunder.
21. **Correcting, Suspending or Terminating Payments:** The Plan will retain any rights it may have under its terms to correct, suspend or terminate payments to the Alternate Payee and/or Participant provided that the affected party may contest such correction, suspension or termination through any administrative remedies available under the Plan. Payments by the Plan pursuant to the QDRO will be without prejudice to any right the Plan has under applicable law to seek recoupment or offset for overpayment.
22. **Plan Terms:** In the case of conflict between any of the terms of this Order and the terms of the Plan, the terms of the Plan shall prevail.

IT IS SO ORDERED, this _____ day of _____, 20____.

BY THE COURT:

Jane L. Doe (Plaintiff)

John S. Doe (Defendant)