

1 **Model Domestic Relations Order**

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**Mendocino County Employees Retirement Association**

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Model Domestic Relations Order – Article 8.4

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Applicable to Dissolutions of Marriage PRIOR to Retirement

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**CAUTION:**

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**THE DISPOSITION OF RETIREMENT BENEFITS IN DOMESTIC RELATIONS PROCEEDINGS INVOLVES COMPLEX MARITAL RIGHTS AND TAX ISSUES. THE FOLLOWING IS A MODEL ORDER WHICH DEMONSTRATES SEVERAL METHODS OF SPLITTING RETIREMENT BENEFITS PROVIDED TO MEMBERS OF THE MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION. OTHER METHODS OF SPLITTING SUCH BENEFITS ARE AVAILABLE AND THIS MODEL ORDER MAY BE INAPPROPRIATE FOR YOU.**

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**THIS MODEL IS PROVIDED AS A COURTESY ONLY, AS NEITHER MCERA, NOR ITS AGENTS OR CONSULTANTS ARE AUTHORIZED TO GIVE LEGAL ADVICE TO THE PARTIES, AND THEY MAKE NO REPRESENTATION AS TO ITS SUFFICIENCY UNDER APPLICABLE FEDERAL OR STATE LAW OR AS TO ITS LEGAL CONSEQUENCES.**

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**THIS MODEL REFLECTS CURRENT CALIFORNIA COMMUNITY PROPERTY LAW AND MAY NEED TO BE REVISED TO ACCOMMODATE ANOTHER STATE'S DOMESTIC RELATIONS LAWS.**

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In re Marriage of \_\_\_\_\_ No. \_\_\_\_\_

1 Attorney  
Address  
2 Telephone

3 Attorneys for  
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5 **SUPERIOR COURT OF CALIFORNIA**  
6 **COUNTY OF MENDOCINO**

7	In Re Marriage of	)	No.
8	Petitioner:	)	[Model Order – Article 8.4]
9	and	)	<b>STIPULATED DOMESTIC RELATIONS</b>
10	Respondent:	)	<b>ORDER RE DIVISION OF FUTURE</b>
11		)	<b>BENEFITS FROM MENDOCINO</b>
12		)	<b>COUNTY EMPLOYEES RETIREMENT</b>
13	Claimant: MENDOCINO COUNTY	)	<b>ASSOCIATION</b>
14	EMPLOYEES RETIREMENT	)	
	ASSOCIATION	)	

15 Petitioner, \_\_\_\_\_ ("Member") ("Nonmember Former Spouse"),  
16 Respondent, \_\_\_\_\_ ("Member") ("Nonmember Former  
17 Spouse"), and Claimant MENDOCINO County Employees Retirement Association  
18 ("MCERA" or "Claimant") stipulate as follows:

19 **RECITALS**

20 A. Member and Nonmember Former Spouse were married to each other on  
21 \_\_\_\_\_ and separated on \_\_\_\_\_. This court  
22 entered a Judgment of Dissolution of Marriage in this action on \_\_\_\_\_.

23 B. This court has personal jurisdiction over both Member and Nonmember  
24 Former Spouse, and jurisdiction over the subject matter of this Order and this  
25 dissolution of marriage action.

1 C. MCERA was properly joined as a party to this dissolution of marriage  
2 action pursuant to section 2060 et seq. of the California Family Code.

3 D. This Order is acceptable under the County Employees Retirement Law of  
4 1937, which is set forth at section 31450 et seq. of the California Government Code, as  
5 adopted by the County of MENDOCINO (hereafter "1937 Act as adopted" or "CERL").  
6 This Order is entered into pursuant to the California Family Code.

7 **STIPULATION**

8 **1. Determination that Benefits Have Community Property Element**

9 Member and Nonmember Former Spouse have determined that they have  
10 acquired a community interest in Member's retirement benefits attributable to periods of  
11 service with the County of MENDOCINO [or district.] from the date of marriage [INSERT  
12 DATE OF MARRIAGE] to the date of separation [INSERT DATE OF SEPARATION].

13 **2. Nonmember Former Spouse's Interest**

14 Pursuant to section 31685 of the Government Code, the court allocates and  
15 awards to the nonmember \_\_\_\_\_% of the accumulated retirement contributions and  
16 service credit attributable to the Member's service in MCERA during the period from the  
17 Date of the Marriage up to the Date of separation ("MCERA Interest") as the  
18 Nonmember's sole and separate property. All accumulated retirement contributions and  
19 service credit attributable to the Member's service in MCERA that are not awarded to  
20 the Nonmember pursuant to this Order shall be the Member's sole and separate  
21 property.

22 **3. Separate Accounts**

23 Pursuant to section 31685 of the Government Code, the Executive Director of  
24 MCERA shall divide the Member's accumulated retirement contributions and service  
25 credit in accordance with Paragraph 2 of this Order and establish a separate and

1 distinct account for the MCERA interest awarded to the Nonmember as soon as  
2 administratively practicable after the Executive Director determines that this Order is  
3 acceptable under the CERL and Regulations of MCERA.

4 **4. Vesting Status Requirement**

5 In light of section 31685.5(b) of the Government Code and notwithstanding any  
6 other provision of this Order, if the Member does not have five years of accumulated  
7 service credit as of the date of dissolution or legal separation, the Nonmember shall  
8 receive a refund of the accumulated retirement contributions and any interest that has  
9 been credited to such contributions which have been transferred to the Nonmember's  
10 account as soon as administratively practicable following the date an account was  
11 established for the Nonmember pursuant to Paragraph 3 of this Order.

12 **5. Nonmember applicable rights**

13 From and after the date that the Executive Director has divided the Member's  
14 accumulated retirement contributions and service credit pursuant to Paragraph 2 of this  
15 Order, the Nonmember shall be entitled to all applicable rights permitted under section  
16 31685(c) of the Government Code, including:

- 17 (a) The right to a retirement allowance calculated under CERL and/or the Public  
18 Employees' Pension Reform Act of 2013 ("PEPRA), as applicable; subject to, among  
19 others, the provision of 31685(d), 31685.01, 31685.5, 31685.6, 31685.7, 31685.8,  
20 31685.9, 31685.95 and 31685.96 of the Government Code.
- 21 (b) The right to a refund of accumulated retirement contributions, subject to the  
22 provisions of section 31685.2 of the Government Code.
- 23 (c) The right to redeposit accumulated contributions that are eligible for redeposit by the  
24 Member, subject to the provisions of section 31685.3 of the Government Code.

1 (d) The right to purchase service credit that is eligible for purchase by the Member,  
2 subject to the provisions of section 31685.4 of the Government Code.

3 (e) The right to designate a beneficiary to receive his or her accumulated contributions  
4 and any interest that has been credited to such contributions where death occurs  
5 prior to retirement.

6 (f) The right to designate a beneficiary for any portion of the Nonmember's MCERA  
7 Interest which is payable at the time of his or her death.

8 **6. Beneficiary**

9 The Member and Nonmember shall be responsible for filing a Designation of  
10 Beneficiary form with the Executive Director. If the Nonmember fails to designate a  
11 beneficiary pursuant to Paragraph 5 (e) or 5(f) of this Order or the designated  
12 beneficiary does not survive the Nonmember, any portion of the Nonmember's MCERA  
13 Interest which is payable at the time of his or her death shall be paid in accordance with  
14 section 31458.2 of the Government Code, and other applicable law.

15 **7. Interest and Cost-of-Living Increases**

16 The Nonmember's MCERA Interest will be increased by all applicable interest,  
17 cost-of-living or other similar increases, but only to the extent permitted under the CERL  
18 and the Regulations, Policies and Resolutions of the MCERA Board of Retirement  
19 ("Board").

20 **8. Tax Information and Current Mailing Addresses**

21 a. The parties' tax information shall be set forth in the Statement of Confidential  
22 Information in the Attachment to this Order, and the copy of this Order served on  
23 MCERA shall not be enforceable against MCERA unless the Statement is  
24 completed to the satisfaction of MCERA.

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- 1 b. Both Member and Nonmember Former Spouse shall keep MCERA advised at all
- 2 times of their current mailing addresses.
- 3 c. Notices of changes of address shall be deemed given to MCERA only if the
- 4 notice is sent to the then current address of MCERA.
- 5 d. The Member and Nonmember shall sign all forms, letters and other documents
- 6 as required to effect the distribution(s) described herein and the intent of this
- 7 Order.
- 8 e. The Nonmember and the Nonmember's agents or attorneys are authorized to
- 9 receive any and all information concerning the Member's benefit until such time
- 10 as the Nonmember has received the Nonmember's MCERA Interest.

11 **9. Payment by Each Party of Respective Tax Obligation**

12 Both Member and Nonmember Former Spouse shall pay, and shall indemnify  
13 and hold the other party free and harmless from, any and all federal and state income  
14 taxes, penalties, interest, and/or any other charges, if any, related to his or her receipt of  
15 benefits. In addition, Member and Nonmember Former Spouse shall execute and  
16 deliver to MCERA, on request of MCERA, any and all documents necessary, including  
17 appropriate withholding documents, as may be required by MCERA.

18 **10. Limitations**

19 Notwithstanding any other provision of this Order, the Order shall not be  
20 construed as to require MCERA:

- 21 (a) To provide any form of benefit or any option not otherwise provided under the CERL,
- 22 PEPR, and the Regulations and related Policies and Resolutions of the MCERA
- 23 Board, and other applicable law;

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1 (b) To provide increased benefits (as determined based on actuarial value) not available  
2 to the Member.

3 (c) To provide benefits to the Nonmember which are required to be paid to another  
4 Nonmember under another Order previously entered by a Court of competent  
5 jurisdiction and acceptable under the CERL;

6 (d) To provide payment to the Nonmember of benefits forfeited by the Member; or

7 (e) To change the benefit election of the Member once the Member has retired.

8 **11. Administration and Interpretation**

9 This Order shall be administered and interpreted in conformity with the CERL,  
10 PEPRA, and the Regulations, Policies and Resolutions of the MCERA Board, and other  
11 applicable law. If the CERL, PEPRA and / or the Regulations, Policies or Resolutions of  
12 the MCERA Board are amended in a manner that impacts the benefits provided under  
13 this Order, then the Member and Nonmember shall immediately take the steps  
14 necessary to amend this Order or comply with any such amendments, changes and / or  
15 modifications; or, if permissible under any such change, amendment, or modification to  
16 the CERL, PEPRA, and the Regulations, Policies or Resolutions of the MCERA Board,  
17 the Executive Director may treat this Order as acceptable. The Member and  
18 Nonmember shall be responsible for any of the cost and / or expense associated with  
19 such amendment.

20 **12. Disability of Member**

21 The Nonmember is not entitled to file for a disability retirement allowance. If the  
22 Member is awarded a disability retirement from MCERA, Member and Nonmember's  
23 benefit must not exceed the amount that would otherwise have been paid to the  
24 Member alone had the dissolution of marriage not occurred. Nonmember's benefit will  
25 not begin earlier than the earliest day that either the Member or Nonmember is eligible

1 to service retire. Nonmember's benefit is eligible to begin on XX/XX/XX (*or Member is*  
2 *currently eligible to retire so Nonmember's benefit may begin*) and will be based on the  
3 service credit awarded to them. This amount will be deducted from the Member's  
4 benefit.

5 **13. Reservation of Jurisdiction**

6 a. The court shall, in this pending proceeding for dissolution of marriage,  
7 expressly reserve jurisdiction over the disposition of the retirement benefits earned by  
8 virtue of Member's employment with the County of MENDOCINO [or district]. This court  
9 shall reserve jurisdiction to make all necessary and appropriate orders regarding the  
10 benefits pursuant to then-existing applicable law. The Member, the Nonmember, the  
11 Executive Director, and the Court intend that this Order meet all requirements of a  
12 domestic relations order under the CERL, PEPRA, and the Regulations, Policies or  
13 Resolutions of the MCERA Board and other laws of the State of California, and the  
14 Court shall reserve jurisdiction to modify this Order and to resolve any disputes that may  
15 arise among the parties and the Executive Director concerning the benefit payments or  
16 any other aspect of this Order. If any portion is rendered invalid or otherwise  
17 unenforceable, the Court reserves jurisdiction to make the appropriate adjustment to  
18 effectuate the intent of the parties.

19 b. Member, Nonmember Former Spouse or MCERA shall have the right to  
20 petition this court for exercise of its jurisdiction at any time.

21 c. Member shall act as constructive trustee of any benefits assigned to  
22 Nonmember Former Spouse under this Order which may be paid to or received by  
23 Member. Member, as trustee, shall promptly pay or transmit any such benefits to the  
24 Nonmember Former Spouse at the Nonmember Former Spouse's last known address.  
25 Nonmember Former Spouse shall act as constructive trustee of any benefits assigned



In re Marriage of \_\_\_\_\_ No. \_\_\_\_\_

1 to Member under this Order which may be paid to or received by Nonmember Former  
2 Spouse. Nonmember Former Spouse, as trustee, shall promptly pay or transmit any  
3 such benefits to Member at Member's last known address.

4 d. Attorneys' fees will not be sought against MCERA (Civil Code section  
5 4370) and the parties hereto agree that MCERA is a governmental entity within the  
6 meaning of that section.

7 **14. Execution**

8 Each party shall execute and deliver any and all documents, papers and things  
9 as the other party may require to give full effect to this Order.

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11 Dated: \_\_\_\_\_ , Petitioner

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13 Dated: \_\_\_\_\_ , Respondent

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16 Dated: \_\_\_\_\_  
17 MENDOCINO County Employees  
18 Retirement Association  
19 By: \_\_\_\_\_

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In re Marriage of \_\_\_\_\_ No. \_\_\_\_\_

1 APPROVED AS TO FORM AND CONTENT:

2 \_\_\_\_\_

3 [type name]

4 Attorney for Petitioner

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6 \_\_\_\_\_

7 [type name]

8 Attorney for Respondent

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**ORDER**

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The foregoing having been read and considered, and for good cause shown,

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**IT IS SO ORDERED.**

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Dated: \_\_\_\_\_

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\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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Revised: April 20, 2023

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Attachment to  
**DOMESTIC RELATIONS ORDER RE MENDOCINO COUNTY  
EMPLOYEES RETIREMENT ASSOCIATION BENEFITS**

**STATEMENT OF CONFIDENTIAL INFORMATION**

***COMPLETE AFTER FILING ORIGINAL WITH COURT***

This separate Statement of Confidential Information sets forth the Social Security numbers of the member and nonmember former spouse whose community property interest in the MENDOCINO County Employees Retirement Association is being divided by this Domestic Relations Order. This information is required by MCERA for tax reporting purposes.

The copy of the Order served on MCERA must include a completed copy of this attachment or the Order will not be enforceable against MCERA.

1. Member Information:

Name:

Address, Telephone Number, and Other Contact Information:

Date of Birth:

Social Security Number:

2. Nonmember Former Spouse Information:

Name:

Address, Telephone Number, and Other Contact Information:

Date of Birth:

Social Security Number: