NORTH CAROLINA                                                IN THE GENERAL COURT OF JUSTICE

\_\_\_\_\_ COUNTY                                                               DISTRICT COURT DIVISION

                                                                                                           \_\_\_\_\_\_ - CVD - \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_,                                  )

Plaintiff,                          )

                                         )                  STIPULATED

                        vs.                                            )           QUALIFIED DOMESTIC

                                                                         )            RELATIONS ORDER

\_\_\_\_\_\_\_\_,                                    )

 Defendant                     )

THIS CAUSE coming on to be heard and being heard by the undersigned judge presiding upon the parties' claims for a distribution of the pension and retirement benefits held in the name of Defendant, \_\_\_\_\_\_\_\_, with the IBM Personal Pension Plan , both Core Benefit and PRP Prior Plans and the parties, having resolved this matter by settlement agreement, hereby agree to the entry of the following domestic relations order to address the assignment to \_\_\_\_\_\_\_\_, of her share of those benefits, the Court makes the following:

FINDINGS OF FACT

1.         Defendant is a resident of \_\_\_\_\_ County, North Carolina. His current address is\_\_\_\_\_\_\_\_, North Carolina \_\_\_\_\_.

2.         Plaintiff is a resident of \_\_\_\_\_\_\_ County, North Carolina. Her current local address is \_\_\_\_\_\_\_\_, North Carolina \_\_\_\_\_\_\_\_.

3.         The parties married on\_\_\_\_\_\_, and separated on \_\_\_\_\_\_\_\_. On \_\_\_\_\_\_\_, the parties entered into a final and binding Separation and Property Settlement Agreement providing, *inter alia*, for the distribution of their marital property including the pension benefits addressed herein.

4.         The Court has both personal and subject matter jurisdiction to enter a Qualified Domestic Relations Order ("QDRO") in this matter pursuant to North Carolina General Statutes 50-21(a) *et seq*.

5.         The Defendant became employed by \_\_\_\_\_ in\_\_\_\_\_\_\_. Defendant has earned vested pension and retirement benefits with the IBM Corporation by virtue of his IBM employment.   His employee serial number is \_\_\_\_\_\_\_. The local contact for the Plan is Office of the Plan Administrator, IBM Employee Services Center, \_\_\_\_\_\_, NC, 27609.

6.         Pursuant to North Carolina domestic relations laws and the terms of the parties' Property Settlement Agreement, Plaintiff is entitled to a share of Defendant's pension and retirement benefits with the IBM Personal Pension Plan \_\_\_“ Prior Plan (hereinafter also "Plan"), including Core benefits and Personal Retirement Provision (hereinafter also "PRP") benefits, which share is described hereinafter.   The parties have agreed to the entry of a Qualified Domestic Relations Order relative to the division of Defendant's IBM pension and retirement benefits in the Plan. This Order shall not be construed as applicable to an Alternate Payee other than Plaintiff herein, Susan L. Greiner.

7.         Defendant is a Plan Participant in the Plan. Defendant\_\_\_\_s social security number is \_\_\_\_\_\_.  Defendant\_\_\_\_\_s last known mailing address is given above. Defendant\_\_\_\_\_s date of birth is \_\_\_\_\_\_\_\_\_.

8.         Plaintiff is the Alternate Payee, as defined in section 414(p) of the Internal Revenue Code, of the Plan. Plaintiff\_\_\_\_\_\_s social security number is\_\_\_\_\_\_\_.   Plaintiff\_\_\_\_\_\_s last known mailing address at the time of the entry of this order is given above. In the event Plaintiff shall move from the above address, she shall notify the Administrator of the Plan in writing of her new mailing address. Plaintiff\_\_\_\_\_\_s date of birth is \_\_\_\_\_\_\_.

9.         As of the date of the parties' separation, Defendant-Participant had a vested right in the Plan, which is a tax-qualified defined benefit plan in its \_\_\_\_\_œprior\_\_\_\_ form.

10.       To satisfy a portion of the marital property settlement of the parties, the parties have agreed that Plaintiff is entitled to a portion of Defendant's monthly Plan benefits as follows:

(a)        The Plaintiff-Alternate Payee is awarded under the dividing method as the Alternate Payee's separate property an amount equal to fifty percent (50%) of the Marital Portion of the Participant's accrued Core Benefits and PRP benefits as of the date on which the Defendant commences his benefits, which shall be the same date on which Alternate Payee commences her benefits. The Marital Portion is determined as follows: The Participant's total months of benefit service earned between the date of marriage, \_\_\_\_\_\_\_\_, and the date of separation, \_\_\_\_\_\_\_\_(330 months), divided by the total number of months of benefit service earned under the Plan as of the date the Participant commences benefits, which shall be the same date on which the Alternate Payee commences her benefits.

(b)        The percentage set forth within paragraph (a) shall be applied to Defendant's total retirement benefit from the Plan before any reduction for any purpose. The only reductions from Plaintiff's pre-tax share of the retirement benefit shall be:

(i)         Administrative fees associated with Plaintiff's receipt of benefits; and

(ii)        Plaintiff's proportionate share of administrative fees charged to the Plan as a whole.

11.      Plaintiff shall begin to receive her share of the retirement benefit based upon the percentage set forth in paragraph 10(a) above, using the dividing method, on a recurring monthly basis as of the date of Defendant\_\_\_\_s retirement from IBM and his commencement of retirement benefits from the Plan.

12.       Should Plaintiff predecease Defendant prior to her commencement of benefits under this Order, her share of benefits under the Plan shall revert to Defendant.

13.       In order to secure Alternate Payee's ownership right in the assigned portion of Defendant-Participant\_\_\_\_\_\_s retirement benefits under the Plan, in the event that Defendant predeceases Plaintiff and neither Plaintiff nor Defendant has commenced her or his benefits under the Plan, Alternate Payee shall be deemed to be the surviving spouse of Defendant for purposes of establishing Alternate Payee's entitlement to receipt of the Plan\_\_\_\_\_s pre-retirement surviving spouse annuity, but only to the extent of her assigned interest in Defendant's Core Benefits and PRP hereunder.

14.       In addition to the foregoing pre-retirement surviving spouse annuity, Alternate Payee shall receive a pro rata share of any post-retirement cost\_\_\_\_‘of\_\_‘living adjustments or other economic improvements made to Defendant's benefits on or after the date of his retirement.

15.       Alternate Payee shall also be entitled to a pro rata share of any employer\_\_\_\_‘provided early retirement subsidy provided to Defendant-Participant on the date of his retirement.

16.       There is no other existing Qualified Domestic Relations Order affecting the parties' interest in Defendant's IBM Personal Pension Plan benefits.

Based upon the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW

1.         This Court has jurisdiction over the subject matter and the parties in this action.

2.         Plaintiff is entitled to an assignment of Defendant's Plan benefits in a manner described in paragraphs 8-15 above provided, however, that:

(a)        Payment of said sum does not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.

(b)        This Order does not require the Plan to pay out more benefits to Alternate Payee than Participant is entitled to.

(c)        This Order does not require the Plan to pay any benefits already required to be paid to another alternate payee under a previous QDRO.

3.         This Order is a Domestic Relations Order appropriate for qualification by the IBM Plan Administrator.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1.         To satisfy a portion of the marital property settlement of the parties, the parties have agreed that Plaintiff is entitled to a portion of Defendant\_\_\_\_\_s monthly Plan benefits as follows:

(a)        The Plaintiff-Alternate Payee is awarded under the dividing method as the Alternate Payee's separate property an amount equal to fifty percent (50%) of the Marital Portion of the Participant's accrued Core Benefits and PRP benefits as of the date on which the Defendant commences his benefits, which shall be the same date on which Alternate Payee commences her benefits. The Marital Portion is determined as follows: The Participant's total months of benefit service earned between the date of marriage, \_\_\_\_\_\_\_\_, and the date of separation, \_\_\_\_\_\_\_\_ (330 months), divided by the total number of months of benefit service earned under the Plan as of the date the Participant commences benefits, which shall be the same date on which the Alternate Payee commences her benefits.

(b)        The percentage set forth within paragraph (a) shall be applied to Defendant's total retirement benefits from the Plan before any reduction for any purpose. The only reductions from Plaintiff's pre-tax share of the retirement benefit shall be:

            (i)         Administrative fees associated with Plaintiff's receipt of benefits; and

            (ii)        Plaintiff's proportionate share of administrative fees charged to the Plan as a whole.

            (c)        The Plan is ordered to pay directly to the Alternate Payee, in full satisfaction of the Alternate Payee's interest in the Plan as awarded herein, a monthly benefit commencing at the same time at which the Participant commences benefits and continuing for the life of the Alternate Payee. The Alternate Payee shall have the option to elect one of the forms of payment offered by the Plan (with the exception of a joint and survivor annuity for a subsequent spouse) at the time of the Alternate Payee's commencement.

2.         Plaintiff shall receive her share of the retirement benefit based upon the percentage set forth in decretal paragraph 1(a) above, using the dividing method, when Participant commences receipt of his IBM benefit payments.

3.         Should Plaintiff predecease Defendant prior to her commencement of benefits under this Order, her share of benefits under the Plan shall revert to Defendant.

4.         In order to secure Alternate Payee's ownership right in the assigned portion of Defendant-Participant\_\_\_\_\_s retirement benefits under the Plan, in the event that Defendant predeceases Plaintiff and neither Plaintiff nor Defendant has commenced her or his benefits under the Plan, Alternate Payee shall be deemed to be the surviving spouse of Defendant for purposes of establishing Alternate Payee's entitlement to receipt of the IBM Plan\_\_\_\_\_s pre-retirement surviving spouse annuity, but only to the extent of her assigned interest in Defendant's Core Benefits and PRP hereunder.

5.         In addition to the foregoing pre-retirement surviving spouse annuity, Alternate Payee shall receive a pro rata share of any post-retirement cost\_\_\_‘of\_\_\_‘living adjustments or other economic improvements made to Defendant's benefits on or after the date of his retirement.

6.         Alternate Payee shall also be entitled to a pro rata share of any employer\_\_\_\_‘provided early retirement subsidy provided to Defendant-Participant on the date of his retirement.

7.         The name of the plan to which this Order applies is: IBM Personal Pension Plan \_\_\_\_“ Prior Plan.

8.         Plaintiff as Alternate Payee and not Defendant as Participant shall be treated for purposes of Sections 72 and 402(a) (9) of the Internal Revenue Code as the distributee of any distribution or payment made to her from the Plan. The Plan shall provide to Participant and Alternate Payee, in accordance with its customary procedures, such information as is normally provided to participants in the Plan with respect to the taxation of distributions from the Plan.

9.         Plaintiff is entitled to a portion of Defendant's Plan benefits in the manner described above provided that:

(a)        Payment of said sum does not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.

(b)        This Order does not require the Plan to pay out more benefits to the Alternate Payee than Participant is entitled to.

(c)        This Order does not require the Plan to pay any benefits already required to be paid to another alternate payee under a previous QDRO.

10.       When the administrator of the IBM Retirement Plan has determined that the Order meets the requirements of the Plan and is a QDRO, then the administrator shall carry out the provisions of this Order. The administrator is to give written notice to Plaintiff at her address contained in this Order and to her counsel, \_\_\_\_\_\_\_, The Rosen Law Firm, 4101 Lake Boone Trail, Suite 500, Raleigh, North Carolina 27607 that such Order does meet the requirements of the plan and is a QDRO. Notice to Defendant's counsel should be sent to \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, Raleigh, North Carolina 27605.

11.       No provision of the QDRO shall be construed to require the Plan, the Plan Administrator, or any trustee or other fiduciary with respect to the Plan to take any action which is inconsistent with any provision of the Plan as now in effect or hereafter amended.

12.       The undertakings and obligations of the Plan as set forth in the QDRO are solely those of the Plan. Neither IBM Corporation, any of its subsidiaries or affiliated corporations, nor any officer, employee or agent of any of the corporations (other than the Plan Administrator) shall be deemed to have made any undertakings or incurred any obligations as a result of the QDRO.

13.       Notwithstanding any other provision of this Order, in the event that Participant, Alternate Payee or any other party claiming rights under the QDRO shall make any claim which the Plan Administrator shall determine to be inconsistent with the provisions of this Order or with any provision of the Retirement Equity Act of 1984, as amended, the Plan may forthwith cease making any further payments to any person whose rights under the Plan, in the sole judgment of the Plan Administrator, may be affected by such claim pending resolution of such claim or further order of the Court; and the Plan may also take such further action or actions as may be permitted by law with respect to such claim and/or this QDRO.

14.       Defendant shall not take any actions, affirmative or otherwise, that can circumvent the terms and provisions of this Qualified Domestic Relations Order (QDRO), or that could diminish or extinguish the rights and entitlements of Plaintiff-Alternate Payee as set forth herein or under the terms of this QDRO. Should Defendant take any action or inaction to the detriment of Plaintiff with respect to her benefits under the Plan, Defendant shall be required to make sufficient payments directly to Alternate Payee to the extent necessary to neutralize the effects of his actions or inactions and to the extent of Alternate Payee\_\_\_\_s full entitlements hereunder.

15.       In the event Plaintiff moves from her current address, she shall notify in writing the IBM Plan Administrator of her new address.

16.       This Court retains jurisdiction over this matter to amend this order to cause it to meet the definition of a QDRO pursuant to section 414(p)(1)(A) of the Internal Revenue Code, without in any way reducing the benefit to which Plaintiff is entitled.

17.       The Court retains jurisdiction to amend this order to fulfill the purposes set forth herein or as may be required by law. More particularly, this Court reserves jurisdiction over the parties and the Plan until such time as all obligation of the Plan to the Alternate Payee under the Qualified Domestic Relations Order ("QDRO") have been fully paid and discharged.

This the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

District Court Judge Presiding                                                                                                   10th Judicial District

Consented to by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_              \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_, Plaintiff                                  \_\_\_\_\_\_\_, Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_              \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_                                              \_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiff                                          Attorney for Defendant