NORTH CAROLINA        IN THE GENERAL COURT OF JUSTICE

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

                                                                    \_\_\_\_\_ CVD \_\_\_\_

QING YANG,                             )

PLAINTIFF,               )           AMENDED **DOMESTIC RELATIONS ORDER**

                                                     )           **CONCERNING BENEFITS UNDER**

VS.                               )           **TEACHERS INSURANCE AND ANNUITY**

                                                     )           **ASSOCIATION - COLLEGE RETIREMENT**

YUE XIONG,                              )                       **EQUITIES FUND**

DEFENDANT.            )

THIS CAUSE coming on to be heard and being heard by the undersigned judge presiding upon the parties claim for a distribution of certain pension and retirement benefits held in the name of \_\_\_\_\_\_\_\_\_ with the Teachers Insurance and Annuity Association -- College Retirement Equities Fund (hereinafter also "TIAA-CREF"), through the Optional Retirement Program of the University of North Carolina, and the parties, having resolved this matter, agree to the entry of the following domestic relations order to address the assignment to Qing Yang of a portion of those benefits, the Court makes the following

FINDINGS OF FACT

1.         Plaintiff is a resident of \_\_\_\_\_ County, North Carolina.

2.         Defendant is a resident of \_\_\_\_\_\_\_\_\_ County, North Carolina.

3.         The parties married on\_\_\_\_\_, \_\_\_, and are now separated. They have entered into a binding and final settlement with regard to their marital property, which marital property includes the pension and retirement benefits referenced and divided in this Order. The TIAA-CREF benefits referenced in this Order are held in Defendants name with the Optional Retirement Program of the University of North Carolina (also known as the ORP). The ORP is the Plan addressed in this Order.

4.         The Court has both personal and subject matter jurisdiction to enter a qualified domestic relations order (hereinafter "QDRO") in this matter pursuant to G.S. 50-20(d) and the applicable sections of the Internal Revenue Code of 1986, as amended, and the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended.

5.         Defendant, an annuitant-participant in the TIAA-CREF benefits with the Optional Retirement Program of the University of North Carolina (hereinafter also "the Plan"), has earned vested retirement benefits in the Plan. The administrator of the Plan is \_\_\_\_\_\_\_\_\_\_\_, Associate Vice President for Human Resources and University Benefits Officer, The University of \_\_\_\_\_\_\_\_\_\_\_, General Administration, P. O. Box \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, North Carolina 27515-2688. Further contact information for TIAA-CREF is the Teachers Insurance and Annuity Association -- College Retirement Equities Fund, 730 Third Avenue, New York, New York 10017.

6.         Plaintiff, the non-participant and annuity partner, is entitled to an assignment of a part of Defendant's Plan benefits, which share is described hereafter.

            7.        Plaintiff's social security number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_.   Plaintiff's last known mailing address at the time of the entry of this order is \_\_\_\_\_\_\_\_\_\_\_\_\_\_, NC 27\_\_\_. Plaintiff was born on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Plaintiff is the only alternate payee of the Plan recognized by this Order.

8.         Defendant's social security number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Defendant's last known mailing address at the time of the entry of this Order is\_\_\_\_\_\_\_, NC 27516. Defendant was born\_\_\_\_\_\_.

9.         TIAA-CREF accumulations in the Optional Retirement Plan [ORP] of the University of North Carolina are valued on a quarterly basis. To satisfy a portion of the final marital property settlement of the parties and subject to the execution of all documents required by ORP, TIAA-CREF and the terms of said annuities, Plaintiff is entitled to a portion of Defendant's ORP Plan TIAA-CREF benefits based on premiums paid through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, plus any earnings thereon as follows:

Fifty percent (50 %) of the accumulations as of\_\_\_\_, 20\_\_\_\_\_, or the closest possible valuation date thereto under the provisions of the Plan, under Defendant's Retirement Annuity Contracts (i.e., TIAA Certificate No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CREF Certificate No. \_\_\_\_\_\_\_\_\_\_\_\_\_ and TIAA Certificate No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CREF Certificate No. \_\_\_\_\_\_\_\_\_\_\_\_\_, said percentage representing an allocation to Defendant of the accumulation values in each such contract derived from premiums remitted during the duration of the parties' marriage, plus all growth, interest and dividends thereon from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, through the date of the establishment of Defendants TIAA/CREF contract(s) and certificate(s).

10.        The then-current values as of the date of withdrawal by the Plan Administrator of the above-designated percentages in said TIAA contracts and said CREF certificates, reflecting interim interest and interim investment experience from \_\_\_\_\_, 20\_\_\_, through the date of division on Plaintiff's specified portion, are hereby awarded as Plaintiff's sole and exclusive property and are to be applied to TIAA-CREF annuities in Plaintiffs name, subject to the terms and limitations of said annuities.

11.        Following the completion of the annuity splitting procedure by ORP and/or TIAA-CREF as applicable -- described hereinabove, each party shall receive a Quarterly Confirmation of Transactions reflecting the dollar values transferred as of the division date and reflecting as well the interim investment experience on the transferred funds from the division date through the end of the quarter.

12.        This Order is issued pursuant to North Carolina law relating to marital property rights, as defined therein, between spouses and former spouses in actions for divorce; and Plaintiff's right to receive her benefit hereunder and pursuant to the terms of the Plan shall not be altered in any way (neither decreased, increased, amended or terminated) as a result of Defendant's death. The beneficiary designation of Plaintiff-Alternate Payees annuities will be her estate, unless a beneficiary designation is submitted by her pursuant to the provisions of the contracts, and accepted by the Plan and TIAA-CREF. Alternate Payee must also review her contracts at issuance for accuracy and inform the Plan and TIAA-CREF of any change in her address.

13.        All ownership rights in the newly issued annuities shall belong to Plaintiff; and all ownership and interest in the balance of the accumulations in any and all contracts and certificates issued by TIAA-CREF shall belong to Defendant. Defendant is not required to maintain Plaintiff as the beneficiary on the accumulation he retains under this Order.

           14.       The parties should be directed to timely submit to the Plan and/or TIAA-CREF all documents that are required by the Plan to finalize this Order.

15.       Plaintiff shall be responsible for, and shall indemnify and hold Defendant harmless with respect to, all local, state and federal taxes that are payable or shall become payable in connection with all benefits assigned to Plaintiff pursuant to this Order.

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.         TIAA Traditional Retirement Annuities (RAs) do not allow single sum withdrawals or transfers to alternate carriers. For other TIAA-CREF annuities, the Alternate Payees right to receive single-sum withdrawals and/or transfers all or a part of the accumulation to an alternate carrier may be limited in accordance with the contributing employers plan

3.         Plaintiff is entitled to an assignment of Defendant's Plan TIAA-CREF benefits in the manner described herein and the assignment specified herein is fair and equitable under the circumstances, 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 Plaintiff than Defendant is entitled to; and this Order does not require the Plan to provide increased benefits (determined of the basis of actuarial value).

(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.

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

1.         To satisfy a portion of the marital property settlement of the parties and subject to the execution of all documents required by the Plan, TIAA-CREF and the terms of said annuities, Plaintiff is entitled to a portion of Defendant's ORP Plan TIAA-CREF benefits based on premiums paid through
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, plus any earnings on Plaintiff's specified portion, as follows:

Fifty percent (50 %) of the accumulations as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or the closest possible valuation date thereto under the provisions of the Plan, under Defendant's Retirement Annuity Contracts (i.e., TIAA Certificate No. \_\_\_\_\_\_\_\_\_\_ CREF Certificate No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and TIAA Certificate No.
\_\_\_\_\_\_\_\_\_CREF Certificate No.\_\_\_\_\_\_\_\_\_\_\_\_ said percentage representing an allocation to Defendant of the accumulation values in each such contract derived from premiums remitted during the duration of the parties' marriage, plus all growth, interest and dividends thereon from\_\_\_\_\_\_, 20\_\_\_, through the date of the establishment of Defendants TIAA/CREF contract(s) and certificate(s).

2.         The then-current values as of the date of withdrawal by the Plan Administrator of the above-designated percentages in said TIAA contract and said CREF certificate, reflecting interim interest and interim investment experience from\_\_\_\_\_\_, 20\_\_\_\_, through the date of division on Plaintiff's specified portion, are hereby awarded as Plaintiff's sole and exclusive property and are to be applied to TIAA-CREF annuities, subject to the terms and limitations of said annuities. Alternate Payees annuities shall be issued with the same investment allocation as Participants applied pro rata. Alternate Payee shall be permitted to change the investment allocation once her annuities are issued, in accordance with the applicable provisions of the Plan.

3.         Following the completion of the annuity splitting procedure by TIAA-CREF described hereinabove, each party shall receive a Quarterly Confirmation of Transactions reflecting the dollar values transferred as of the division date and reflecting as well the interim investment experience on the transferred funds from the division date through the end of the quarter.

4.         Plaintiff's right to receive his benefit hereunder and pursuant to the terms of the Plan shall not be altered in any way (neither decreased, increased, amended nor terminated) as a result of Defendant's death. The beneficiary designation of Plaintiff-Alternate Payees annuities will be her estate, unless a beneficiary designation is submitted by her pursuant to the provisions of the contracts, and accepted by TIAA-CREF. Alternate Payee must also review her contracts at issuance for accuracy and inform TIAA-CREF of any change in her address.

5.         All ownership rights in the newly issued annuities shall belong to Plaintiff; and all ownership and interest in the balance of the accumulations in any and all contracts and certificates issued by TIAA-CREF shall belong to Defendant. Defendant is not required to maintain Plaintiff as the beneficiary on the accumulation he retains under this Order; therefore, as of the date of TIAA-CREFs receipt of the QDRO, all TIAA-CREF benefits otherwise payable to Alternate Payee as beneficiary shall be payable to the estate of Participant. However, Participant also retains the right to change this designation, should he wish to do so at some time in the future.

6.         The parties shall timely submit to the Plan, or to TIAA-CREF as directed by the Plan, all documents that are required by the Plan to finalize this Order.

7          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 Defendant is entitled.

           8.        Plaintiff shall be responsible for, and shall indemnify and hold Defendant harmless with respect to, all local, state and federal taxes that are payable or shall become payable in connection with all benefits assigned to Plaintiff pursuant to this Order.

9.        The Court retains jurisdiction to amend this Order to fulfill the purposes set forth herein or as may be required by law.

This the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

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

Judge Presiding

Consented to by:

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

\_\_\_\_\_\_, Plaintiff/Alternate Payee-Annuity Partner            Date

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

\_\_\_\_\_\_\_, Defendant/Participant-Annuitant                         Date

DETERMINATION AS TO QUALIFICATION OF DOMESTIC RELATIONS ORDER, NOTICE TO PARTICIPANT AND ALTERNATE PAYEE, AND AGREEMENT TO COMPLY WITH ORDER

Pursuant to the requirements of the Retirement Equity Act of 1984, the TIAA-CREF as the funding vehicle for a retirement plan in which\_\_\_\_\_, Defendant, is a participant, hereby states as follows:

1.         The attached Order of the District Court, General Court of Justice, Orange County, North Carolina, dated \_\_\_\_ \_\_\_\_, 20\_\_\_, has been accepted and approved as a Qualified Domestic Relations Order by ORPs Plan Administrator; and

2.         The Participant and Alternate Payee are hereby notified as to the qualification of said Order; and

3.         The undersigned will comply with all of the applicable terms and conditions of said Order upon receipt of the proper documentation.

This the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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

       for TIAA-CREF