

\*E-Filed 3/28/11\*

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24 Attorneys for Plaintiff MICHAEL TAYLOR DESIGNS, INC.

25 UNITED STATES DISTRICT COURT  
 26 NORTHERN DISTRICT OF CALIFORNIA

27 MICHAEL TAYLOR DESIGNS, INC., a  
 28 California corporation,  
 Plaintiff,

v.

TRAVELERS PROPERTY CASUALTY  
 COMPANY OF AMERICA, a Connecticut  
 corporation,  
 Defendant.

CASE NO. C10-02432-RS

**STIPULATION AND [PROPOSED]  
ORDER FOR ENTRY OF JUDGMENT**

Judge: Hon. Richard Seeborg  
 Court: Courtroom 3, 17th Floor

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1 Plaintiff Michael Taylor Designs, Inc. (“MTD”) and defendant Travelers Property Casualty  
2 Company of America (“Travelers”) (collectively, “the Parties”), by and through their attorneys of  
3 record, jointly stipulate as follows:

4 WHEREAS, on January 20, 2011, the Court entered an order granting in part MTD’s  
5 motion for partial summary judgment and denying Travelers’ cross-motion for partial summary  
6 judgment, finding that Travelers had a duty to defend MTD in the matter *Rosequist v. Michael*  
7 *Taylor Designs, Inc.*, U.S.D.C. (N.D. Cal.) Case No. C 08-1588 SBA (“the *Rosequist* action”) that  
8 arose upon MTD’s tender of the original *Rosequist* complaint to Travelers (ECF No. 38) (“the Duty  
9 to Defend Order,” a true and correct copy of which is attached as Exhibit A and incorporated herein  
10 by reference);

11 WHEREAS, the Duty to Defend Order did not resolve all of the issues pending in this  
12 action, as the issue of the amount of damages, if any, MTD is entitled to recover from Travelers  
13 remains unadjudicated, and hence it is premature for the Court to enter a judgment from which an  
14 appeal to the United States Court of Appeals for the Ninth Circuit may be taken;

15 WHEREAS, a final appealable judgment may be entered only after the issue of damages  
16 has been adjudicated;

17 WHEREAS, absent a stipulation, the amount of damages, if any, MTD is entitled to recover  
18 from Travelers must be decided on motion or, if genuine issues of material fact remain, by trial;

19 WHEREAS, in order to avoid the costs and inconvenience to the Parties and to the Court of  
20 a motion and/or trial on the issue of damages, the Parties have agreed that the amount of damages  
21 (inclusive of any and all claims of right to recover prejudgment interest) recoverable by MTD  
22 against Travelers shall be the amount of Two Hundred Ten Thousand and 00/100 Dollars  
23 (\$210,000.00), with interest accruing thereon at a rate of Fifty and 00/100 Dollars (\$50.00) per day  
24 from the date final judgment is entered by the Court until the date Travelers satisfies the entire  
25 stipulated judgment;

26 WHEREAS, the Parties agree that judgment should be entered pursuant to Rule 58 of the  
27 Federal Rules of Civil Procedure in favor of MTD and against Travelers in the amount of Two  
28 Hundred Ten Thousand and 00/100 Dollars (\$210,000.00), with interest accruing thereon at a rate

1 of Fifty and 00/100 Dollars (\$50.00) per day from the date final judgment is entered by the Court  
2 until the date Travelers satisfies the entire stipulated judgment, with the express recognition that  
3 each of the Parties is expressly and explicitly reserving any and all of its rights to appeal the  
4 judgment, as well as any and all portions of the Duty to Defend Order;

5 WHEREAS, consistent with *U.A. Local 342 Apprenticeship & Training Trust v. Babcock &*  
6 *Wilcox Constr. Co., Inc.*, 396 F.3d 1056 at 1058 (9<sup>th</sup> Cir. 1986), and *Continental Ins. Co. v. Federal*  
7 *Express Corp.*, 454 F.3d 951 at 954 (9<sup>th</sup> Cir. 2006) (in which the Ninth Circuit exercised  
8 jurisdiction over the appeals of stipulated judgments which explicitly reserved the parties' rights of  
9 appeal), the Parties intend that the stipulated judgment be deemed appealable in all respects within  
10 the meaning of Rule 58 of the Federal Rules of Civil Procedure;

11 WHEREAS, the Parties agree that each Party shall bear its own costs and attorneys' fees  
12 incurred in this action;

13 NOW, THEREFORE, THE PARTIES STIPULATE, AND REQUEST THE COURT TO  
14 ENTER JUDGMENT, AS FOLLOWS:

15 1. Judgment shall be entered forthwith in favor of plaintiff Michael Taylor Designs,  
16 Inc., and against defendant Travelers Property Casualty Company of America ("Travelers") in the  
17 amount of Two Hundred Ten Thousand and 00/100 Dollars (\$210,000.00), plus interest accruing  
18 thereon at a rate of Fifty and 00/100 Dollars (\$50.00) per day from the date judgment is entered by  
19 the Court, until Travelers satisfies the judgment;

20 2. Judgment shall be entered pursuant to Rule 58 of the Federal Rules of Civil  
21 Procedure, with the recognition that each of the Parties is expressly and explicitly reserving any  
22 and all of its rights to appeal the judgment, as well as any and all portions of the Court's January  
23 20, 2011 Order regarding the Parties' Cross-Motions for Summary Judgment (ECF No. 38);

24 3. Consistent with *U.A. Local 342 Apprenticeship & Training Trust v. Babcock &*  
25 *Wilcox Constr. Co., Inc.*, 396 F.3d 1056 at 1058 (9<sup>th</sup> Cir. 1986), and *Continental Ins. Co. v. Federal*  
26 *Express Corp.*, 454 F.3d 951 at 954 (9<sup>th</sup> Cir. 2006), the judgment shall constitute an appealable  
27 judgment in all respects within the meaning of Rule 58 of the Federal Rules of Civil Procedure;

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4. Each Party shall bear its own costs and attorneys' fees incurred in the action.  
IT IS SO STIPULATED.

DATED: March 25, 2011 SEDGWICK, DETERT, MORAN & ARNOLD LLP

By:                   /s/ Matthew C. Lovell                    
Bruce D. Celebrezze  
Matthew C. Lovell  
Attorneys for defendant Travelers Property  
Casualty Company of America

DATED: March 25, 2011 GAUNTLETT & ASSOCIATES

By:                   /s/ Andrew M. Sussman                    
Andrew M. Sussman  
Attorneys for plaintiff Michael Taylor Designs, Inc.

**ATTESTATION OF FILING**

Pursuant to General Order 45.X.B, I attest that I have obtained concurrence in the filing of  
this document from the parties listed above.

                  /s/ Matthew C. Lovell                    
Matthew C. Lovell

1 **PROPOSED ORDER**

2 IT IS ORDERED THAT JUDGMENT IN ACCORDANCE WITH THE FOREGOING  
3 STIPULATION SHALL BE ENTERED FORTHWITH.

4 PURSUANT TO SUCH STIPULATION, IT IS ORDERED THAT:

5 1. Judgment shall be entered forthwith in favor of plaintiff Michael Taylor Designs,  
6 Inc., and against defendant Travelers Property Casualty Company of America (“Travelers”) in the  
7 amount of Two Hundred Ten Thousand and 00/100 Dollars (\$210,000.00) (each party to bear its  
8 own costs and attorneys’ fees), plus interest accruing thereon at a rate of Fifty and 00/100 Dollars  
9 (\$50.00) per day from the date judgment is entered by the Court, until Travelers satisfies the  
10 judgment;

11 2. Judgment shall be entered pursuant to Rule 58 of the Federal Rules of Civil  
12 Procedure, with the recognition that each of the Parties is expressly and explicitly reserving any  
13 and all of its rights to appeal the judgment, as well as any and all portions of the Court’s January  
14 20, 2011 Order regarding the Parties’ Cross-Motions for Summary Judgment (ECF No. 38);

15 3. Consistent with *U.A. Local 342 Apprenticeship & Training Trust v. Babcock &*  
16 *Wilcox Constr. Co., Inc.*, 396 F.3d 1056 at 1058 (9<sup>th</sup> Cir. 1986), and *Continental Ins. Co. v. Federal*  
17 *Express Corp.*, 454 F.3d 951 at 954 (9<sup>th</sup> Cir. 2006), the judgment shall constitute an appealable  
18 judgment in all respects within the meaning of Rule 58 of the Federal Rules of Civil Procedure;

19 4. Each Party shall bear its own costs and attorneys’ fees incurred in the action.  
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21 DATED: 3/28/11, 2011



22 HON. RICHARD G. SEEBORG  
23 UNITED STATES DISTRICT JUDGE  
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