

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CRUZ**

George Patterson, Individually And on Behalf of  
All Others Similarly Situated,  
Plaintiff,

Case No. 17-cv-01995

v.

CLASS ACTION

Randolph K. Repass, Matthew L. Hyde, Barbara  
L. Rambo, Dennis F. Madsen, Robert D. Olsen,  
James F. Nordstrom, Jr., Alice M. Richter, and  
Christiana Shi,  
Defendants.

**~~PROPOSED~~ ORDER AND FINAL  
JUDGMENT**

Date Action Filed: July 27, 2017

1 This matter having come before the Superior Court of the State of California for the County  
2 of Santa Cruz (the “Court”) for hearing (the “Settlement Hearing”) on a motion for final approval  
3 of the terms of the Stipulation and Agreement of Settlement, Compromise and Release dated  
4 January 3, 2020 (the “Stipulation”)<sup>1</sup>; and due and adequate notice of the Settlement Hearing having  
5 been given to the Class as ordered in the Court’s February 19, 2020 Order Granting Preliminary  
6 Approval of Class Action Settlement and Providing for Notice (the “Order”); and the Court having  
7 considered the papers filed and proceedings herein and otherwise being fully informed, and good  
8 cause appearing therefore, it is now ORDERED, ADJUDGED AND DECREED THAT:

9 1. This Court has jurisdiction over the subject matter of this Action and over all of the  
10 parties to the Action, including all members of the Class.

11 2. This Order and Final Judgment (the “Judgment”) incorporates and makes part hereof  
12 to the Stipulation and (i) the Court-approved Long-Form Notice and (ii) Publication Notice  
13 (collectively, the “Notice”), which were filed with the Court as Exhibits B and C to the Stipulation.

14 3. The Notice given to the Class was the best practicable under the circumstances,  
15 including individual notice to all members of the Class who could be identified through reasonable  
16 effort along with the Publication Notice. The Notice provided due and adequate notice of the Action  
17 and of the matters set forth in the Stipulation, including the Settlement, and the Notice fully satisfied  
18 the requirements of state law and due process, and any other applicable law, statute or rule. A full  
19 opportunity to be heard has been afforded to all Parties and the Class.

20 4. Pursuant to §382 of the California Code of Civil Procedure and consistent with the  
21 preliminary certification granted in the Order, the Court hereby finally certifies a Class, for purposes  
22 of settlement only, of all record and beneficial holders and owners of West Marine common stock,  
23 as of September 14, 2017 (the date of the consummation of the Merger), including any and all of  
24 their respective successors-in-interest, successors, predecessors-in-interest, predecessors,  
25 representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate  
26 and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and

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28 <sup>1</sup> Except as otherwise expressly provided herein, all capitalized terms shall have the same meanings and/or definitions as set forth in the Stipulation.

1 each of them, together with their predecessors-in-interest, predecessors, successors-in-interest,  
2 successors, and assigns, but excluding: (i) Defendants, their Immediate Family, and any trust or  
3 other entity affiliated with or controlled by any Defendant, other than employees of such entities  
4 who were not directors or officers of such entities as of the Closing; (ii) any and all record and  
5 beneficial owners and holders of West Marine common stock who exercised their appraisal rights  
6 under Section 262 of the General Corporation Law of the State of Delaware; and (iii) any and all  
7 record and beneficial owners and holders of West Marine common stock who timely and validly  
8 opt out of the Class and Settlement pursuant to the procedures set forth in the Court's Order.

9         5. The Court hereby finds that the Settlement as set forth in the Stipulation should be  
10 approved in that the Settlement is, in all respects, fair, reasonable, and adequate to the Class.  
11 Accordingly, the Stipulation and the terms of the Settlement, as described in the Stipulation, are  
12 hereby approved in their entirety, pursuant to the requirements of §382 of the California Code of  
13 Civil Procedure and Rule 3.769 of the California Rules of Court. The Parties are hereby directed to  
14 effectuate the Settlement according to the terms of the Stipulation. The Parties and all Class  
15 Members are hereby bound by this Judgment and by the terms of the Settlement as set forth in the  
16 Stipulation.

17         6. The Parties are to bear their own costs and fees, except as otherwise provided in the  
18 Stipulation.

19         7. Upon the Effective Date, Plaintiffs, each and every Class Member, and all other  
20 Released Plaintiff Parties shall be deemed to have, and by operation of this Judgment shall have,  
21 fully, finally, and forever waived, released, relinquished, any and all Released Plaintiffs' Claims,  
22 which, as defined in the Stipulation, means any and all Claims that were asserted or could have been  
23 asserted by Plaintiffs in the Actions on behalf of themselves and/or the Class, and any and all  
24 Claims, including Unknown Claims, that are based on, arise out of, relate in any way, or involve the  
25 same set of operative facts as the claims asserted by Plaintiffs against Released Defendant Parties  
26 in the Actions and which relate to the ownership of West Marine common stock; *provided, however,*  
27 that the term Released Plaintiffs' Claims shall not include claims to enforce the Stipulation or any  
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1 part of it, and shall not include claims based on the conduct of any of the Settling Parties which  
2 occurs after the Effective Date.

3 8. Upon the Effective Date, Plaintiff, each and every Class Member, and all other  
4 Released Plaintiff Parties shall be deemed to have fully, finally, and forever, released, settled, and  
5 discharged the Released Defendant Parties from and with respect to every one of the Released  
6 Plaintiff's Claims, and shall thereupon be forever barred and enjoined from commencing,  
7 instituting, prosecuting, or continuing to prosecute any Released Plaintiff's Claims against any of  
8 the Released Defendant Parties.

9 9. Upon the Effective Date, each of the Released Defendant Parties shall be deemed to  
10 have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished,  
11 and discharged Released Plaintiff Parties from the Released Defendants' Claims.

12 10. Upon the Effective Date, with respect to any and all Released Plaintiffs' Claims and  
13 Released Defendants' Claims, Plaintiffs and Defendants shall expressly waive, and each of the Class  
14 Members shall be deemed to have, and by operation of this Judgment shall have expressly, waived  
15 all provisions, rights, and benefits conferred by any law of the United States, any law of any state,  
16 or principle of common law which governs or limits a person's release of Unknown Claims to the  
17 fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the  
18 provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
22 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
OR RELEASED PARTY.

23 11. Neither this Judgment, the Stipulation nor the Settlement, nor any act performed or  
24 document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may  
25 be deemed to be, or may be used as, a presumption, concession, or admission of, or evidence of, the  
26 validity of any Released Plaintiff's Claim or of any wrongdoing or liability of the Released  
27 Defendant Parties; or (b) is or may be deemed to be, or may be used as, a presumption, concession,  
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1 or admission of, or evidence of, any fault or omission of any of the Released Defendant Parties in  
2 any civil, criminal, or administrative proceeding in any court, administrative agency, or other  
3 tribunal; or (c) is or may be deemed to be an admission or evidence that any claims asserted by  
4 Plaintiff or his counsel were not valid in any civil, criminal, or administrative proceeding. The  
5 Released Defendant Parties may file the Stipulation and/or this Judgment in any action that may be  
6 brought against them in order to support a defense or counterclaim based on principles of res  
7 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other  
8 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9 12. The Action is hereby concluded, provided however, and without affecting the finality  
10 of this Judgment in any way, this Court hereby retains jurisdiction over: (a) interpretation,  
11 implementation and enforcement of the Stipulation; and (b) all parties hereto for the purpose of  
12 enforcement and administration of the Settlement. This Judgment shall not discharge or release any  
13 claim to enforce, or any claim arising out of or relating to, any breach of the Stipulation.

14 13. In the event that the Settlement does not become effective in accordance with the  
15 terms of the Stipulation, or the Effective Date does not occur, then this Judgment shall be rendered  
16 null and void to the extent provided by and in accordance with the Stipulation and shall be vacated  
17 and, in such event, all orders entered and releases delivered in connection herewith shall be null and  
18 void to the extent provided by and in accordance with the Stipulation.

19 14. Plaintiff's Counsel are awarded attorneys' fees in the total sum of \$833,333.33 in  
20 connection with those actions, which sum the Court finds to be fair and reasonable, and  
21 reimbursement of expenses in the amount of \$74,668.06 (the "Fee and Expense Award"). Such  
22 sums shall be paid solely from the Settlement Fund, pursuant to the provisions of the Stipulation.  
23 No counsel representing any Plaintiff shall make any further or additional application for fees and  
24 expenses to the Court or any other court, nor shall counsel for any other Class Member make any  
25 further or additional application for fees and expenses to the Court pursuant to the Settlement.

26 15. Plaintiff George Patterson is awarded a plaintiff incentive award in the sum of  
27 \$5,000.00 in connection with the Action, which sum the Court finds to be fair and reasonable to  
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1 compensate him for his lost business and/or wages, time and out-of-pocket expenses, in connection  
2 with the prosecution of the Action on behalf of the Class. Such sum shall not preclude Plaintiff  
3 from seeking payment of his *pro rata* shares of the Settlement Fund pursuant to the procedures and  
4 plan for allocating the Settlement Fund, and shall be paid solely from the Fee and Expense Award  
5 pursuant to the provisions of the Stipulation.

6 16. Any plan of distribution submitted by Class Counsel or any order entered regarding  
7 any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall  
8 be considered separate from this Judgment.

9 17. The Court finds that during the course of the Action, the Parties and their respective  
10 counsel at all times acted professionally and in compliance with California Code of Civil Procedure  
11 §128.7, and all other similar statutes or court rules with respect to any claims or defenses in the  
12 Action.

13 18. Without further order of the Court, the Parties may agree to reasonable extensions of  
14 time to carry out any of the provisions of the Stipulation.

15 19. Plaintiff shall submit a final accounting and, if applicable, a Final Distribution of  
16 Residual Funds by November 25, 2020.

17 20. The following members of the Class have requested to be excluded from the  
18 Settlement and are not bound by the judgment: **NONE**

19 21. There being no just reason for delay, the Court hereby directs that this Judgment be  
20 entered by the Clerk of the Court.

21 22. Plaintiff shall give notice of this Judgment to all Parties.

22 **IT IS SO ORDERED.**

23  
24 Dated: \_\_\_\_\_ Signed: 5/27/2020 10:34 AM

25   
26 HONORABLE JOHN GALLAGHER  
27 JUDGE OF THE SUPERIOR COURT  
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Submitted by:

**BRODSKY & SMITH LLC**  
Evan J. Smith (SBN 242352)  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90212  
Tel: (877) 534-2590  
Fax: (310) 247-0160  
Email: [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)

**MONTEVERDE & ASSOCIATES PC**  
Juan E. Monteverde  
The Empire State Building  
350 Fifth Avenue, Suite 4405  
New York, NY 10118  
Tel: (212) 971-1341  
Fax: (212) 601-2610  
Email: [jmonteverde@monteverdelaw.com](mailto:jmonteverde@monteverdelaw.com)

*Attorneys for Plaintiffs and the Class*