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**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,

v.

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.

Case No. 17-cv-01995  
CLASS ACTION

**STIPULATION AND AGREEMENT  
OF SETTLEMENT, COMPROMISE,  
AND RELEASE**

Date Action Filed: July 27, 2017

STIPULATION AND AGREEMENT OF SETTLEMENT, COMPROMISE, AND RELEASE  
CASE NO. 17-CV-01995

1 This Stipulation and Agreement of Settlement, Compromise, and Release, dated January 3 3,  
2 2020 (the “**Stipulation**”), is entered into by and among Plaintiff George Patterson (“**Plaintiff**”), on  
3 behalf of himself and the Class (defined below) and Defendants Randolph K. Repass, Matthew L.  
4 Hyde, Barbara L. Rambo, Dennis F. Madsen, Robert D. Olsen, James F. Nordstrom, Jr., Alice M.  
5 Richter, and Christiana Shi (collectively, “**Defendants**”). Plaintiff and Defendants may be  
6 collectively referred to herein as the “**Settling Parties**.” This Stipulation is submitted pursuant to  
7 California Code of Civil Procedure § 382 and California Rule of Court 3.769.

8 Subject to the terms and conditions set forth herein and the approval of the Superior Court of  
9 California, the Settlement (as defined below) embodied in this Stipulation is intended: (i) to be a full  
10 and final disposition of the above-captioned action (“**Action**”); (ii) to state all of the terms of the  
11 Settlement and the resolution of the action; (iii) to fully and finally compromise, resolve, dismiss,  
12 discharge and settle each and every one of the Released Plaintiff’s Claims (as defined below) against  
13 each and every one of the Released Defendant Parties (as defined below); and (iv) to fully and  
14 finally compromise, resolve, dismiss, discharge and settle each and every one of the Released  
15 Defendants’ Claims (as defined below) against each and every one of the Released Plaintiff Parties  
16 (as defined below).

17 **WHEREAS:**

18 A. On July 27, 2017, this action was filed in the Santa Cruz County Superior Court of  
19 the State of California (the “**Court**”), by Plaintiff, a stockholder of West Marine, Inc. (“**West**  
20 **Marine**” or the “**Company**”) alleging, among other things, that the Defendants had breached  
21 fiduciary duties to the Company’s stockholders in connection with the acquisition of West Marine by  
22 an affiliate of Monomoy Capital Partners III, L.P. (“**Monomoy**”).

23 B. On October 30, 2017, Plaintiff filed an Amended Class Action Complaint for Breach  
24 of Fiduciary Duty and Violations of State Law (the “**Amended Complaint**”).

25 C. On January 12, 2018, Defendants filed a demurrer to the Amended Complaint. On  
26 May 11, 2018, following full briefing by the parties and following oral argument, the Court found in  
27 favor of the Plaintiff, overruling the Demurrer, holding that Plaintiff had stated at least two claims  
28 for breach of fiduciary duty.

1 D. Plaintiff filed a motion for class certification on September 21, 2018. On November  
2 29, 2018 Defendants filed a statement of non-opposition to class certification. On December 12,  
3 2018, this Court entered an Order certifying the Class and appointing Plaintiff as Class  
4 Representative and Brodsky & Smith LLC and Monteverde & Associates LLP (collectively  
5 referred to as "Plaintiff's Counsel") as co-lead counsel in the Action.

6 E. On February 4, 2019, Plaintiff's Counsel, Defendants' Counsel, as well as counsel  
7 for Monomoy, participated in a full-day mediation session before Jed Melnick of JAMS in an  
8 effort to resolve the Action. Before the Mediation, the parties exchanged mediation statements and  
9 exhibits, which addressed both liability and damages. The Mediation did not lead to resolution of  
10 the Action. However, since that time, the Settling Parties have continued to engage in arms-length  
11 negotiations about the potential resolution of the Action. After extensive, arm's-length  
12 negotiations, the Settling Parties reached an agreement in principle on December 17, 2019 to settle  
13 the Action for \$2,500,000 in cash, subject to approval by the Court.

14 F. On December 23, 2019, the parties held a meet and confer regarding compliance  
15 with Code of Civil Procedure Sec 348, which requires that "unpaid residue or unclaimed or  
16 abandoned class member funds, plus any interest that has accrued thereon," be paid "to nonprofit  
17 organizations or foundations to support projects that will benefit the class or similarly situated  
18 persons, or that promote the law consistent with the objectives and purposes of the underlying  
19 cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal  
20 services to the indigent." Code Civ. Proc., § 384, subd. (b). The parties agree that any unclaimed  
21 funds should be allocated to Senior Citizens' Legal Services, 501 Soquel Ave # F, Santa Cruz, CA  
22 95062.

23 G. This Stipulation (together with the exhibits hereto) has been duly executed by the  
24 undersigned signatories on behalf of their respective clients and reflects the final and binding  
25 agreement between the Settling Parties.

26 H. Plaintiff, through Plaintiff's Counsel, has conducted a thorough investigation and  
27 pursued discovery relating to the claims and the underlying events and transactions alleged in the  
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1 Action. Plaintiff's Counsel has analyzed the evidence adduced during its investigation and through  
2 the discovery described above, and has also researched the applicable law with respect to the  
3 claims asserted in the Action and the potential defenses thereto. Additionally, the mediation  
4 statement prepared and exchanged between the Settling Parties, as well as Plaintiff's and  
5 Defendants' respective presentations concerning potential damages should any liability be proven,  
6 have provided Plaintiff with a detailed basis upon which to assess the relative strengths and  
7 weaknesses of his and Defendants' respective positions in the Action.

8 I. Based upon their investigation and prosecution of the Action, Plaintiff and  
9 Plaintiff's Counsel have concluded that the terms and conditions of the Settlement and this  
10 Stipulation are fair, reasonable, and adequate to, and in the best interests of, Plaintiff and the other  
11 members of the Class. Based on their direct oversight of the prosecution of this litigation, along  
12 with the input of Plaintiff's Counsel, and the participation and assistance of an experienced  
13 mediator, Plaintiff has decided and agreed to settle the claims raised in the action pursuant to the  
14 terms and provisions of this Stipulation, after considering: (i) the substantial benefits that Plaintiff  
15 and the other members of the Class will receive from the resolution of the Action; (ii) the  
16 attendant risks of litigation; and (iii) the desirability of permitting the Settlement to be  
17 consummated as provided by the terms of this Stipulation. The Settlement and this Stipulation  
18 shall in no event be construed as, or deemed to be, evidence of a concession by Plaintiff of any  
19 infirmity in the claims asserted in the action.

20 J. Defendants deny all allegations of wrongdoing, fault, liability, or damage to Plaintiff  
21 and as well as each and every other member of the Class, and further deny that Plaintiff has  
22 asserted a valid claim as to any of them. Defendants further deny that they engaged in any  
23 wrongdoing or committed, or aided or abetted, any violation of law or breach of duty and believe  
24 that they acted properly, in good faith, and in a manner consistent with their legal duties, to the  
25 extent any such duties existed, and are entering into this Settlement and Stipulation solely to avoid  
26 the substantial burden, expense, inconvenience, and distraction of continued litigation and to  
27 resolve each of the Released Plaintiff's Claims (as defined below) as against the Released  
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1 Defendant Parties (as defined below). The Settlement and this Stipulation shall in no event be  
2 construed as, or deemed to be, evidence of or an admission or concession on the part of any of the  
3 Defendants with respect to any claim or factual allegation or of any fault or liability or  
4 wrongdoing or damage whatsoever or any infirmity in the defenses that any of the Defendants  
5 have or could have asserted.

6 K. The Settling Parties recognize that the litigation has been filed and prosecuted by  
7 Plaintiff in good faith and defended by Defendants in good faith and further that the Settlement  
8 Payment (as defined below) paid, and the other terms of the Settlement as set forth herein, were  
9 negotiated at arm's-length, in good faith, and reflect an agreement that was reached voluntarily  
10 after consultation with experienced legal counsel.

11 **NOW THEREFORE**, it is **STIPULATED AND AGREED**, by and among Plaintiff  
12 (individually and on behalf of the Class), and Defendants that, subject to the approval of the Court  
13 and the other conditions set forth in Article V, for good and valuable consideration set forth herein  
14 and conferred on Plaintiff and the Class, the sufficiency of which is acknowledged, the action  
15 shall be finally and fully settled, compromised, and dismissed, on the merits and with prejudice,  
16 and that the Released Plaintiff's Claims (as defined below) shall be finally and fully compromised,  
17 settled, released, discharged, and dismissed with prejudice against the Released Defendant Parties  
18 (as defined below), and that the Released Defendants' Claims (as defined below) shall be finally  
19 and fully compromised, settled, released, discharged, and dismissed with prejudice against the  
20 Released Plaintiff Parties (as defined below), in the manner set forth herein.

21 **I. DEFINITIONS**

22 1. In addition to the terms defined elsewhere in this Stipulation, the following  
23 capitalized terms, used in this Stipulation and any exhibits attached hereto and made a part hereof,  
24 shall have the meanings given to them below:

25 (a) **"Account"** means the escrow account that is maintained by Plaintiff's Counsel and  
26 into which the Settlement Payment shall be deposited. The funds deposited into the Account shall  
27 be invested in instruments backed by the full faith and credit of the U.S. Government or agency  
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thereof, or if the yield on such instruments is negative, in an account fully insured by the U.S. Government or an agency thereof.

(b) **“Administrative Costs”** means all costs, expenses, and fees associated with administering or carrying out the terms of the Settlement. Administrative Costs are not part of the Fee and Expense Award.

(c) **“Cede”** means Cede & Co., Inc.

(d) **“Claims”** means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, Action, potential Action, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, for damages, equitable relief, or any other remedy, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including known claims and unknown claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or any other law, rule, or authority (including, without limitation, all claims within the exclusive jurisdiction of the federal courts, or any claims that could be asserted derivatively on behalf of the Company).

(e) **“Class”** shall mean the Class of West Marine Stockholders certified by the Court on December 12, 2018.

(f) **“Class Member”** means a member of the Class.

(g) **“Closing”** means the consummation of the Merger on September 14, 2017.

(h) **“Closing Beneficial Ownership Position”** means, for each Eligible Beneficial Owner, the number of shares of West Marine common stock beneficially owned by such Eligible Beneficial Owner as of Closing, for which the Eligible Beneficial Owner received payment of the Merger Consideration; provided, however, no Excluded Shares may comprise any part of any Closing Beneficial Ownership Position.

1 (i) **“Closing Security Position”** means, for each DTC Participant, the number of shares  
2 of West Marine common stock reflected on the DTC allocation report used by DTC to distribute  
3 the Merger Consideration.

4 (j) **“Defendants’ Counsel”** means the law firm of Sidley Austin LLP.

5 (k) **“DTC”** mean Depository Trust Company.

6 (l) **“DTC Participants”** means the DTC participants to which DTC distributed the  
7 Merger Consideration.

8 (m) **“DTC Records”** mean the information to be obtained from DTC necessary to  
9 facilitate DTC’s distribution of the Net Settlement Fund to Eligible Beneficial Owners.

10 (n) **“Effective Date”** means the first date by which all of the events and conditions  
11 specified in Paragraph 12 of this Stipulation have been met and have occurred or have been  
12 waived.

13 (o) **“Eligible Beneficial Owner”** means the ultimate beneficial owner of any shares of  
14 West Marine common stock at the Closing, provided, however, that no Excluded Stockholder may  
15 be an Eligible Beneficial Owner.

16 (p) **“Eligible Class Members”** means Class Members who held shares of West Marine  
17 common stock at the Closing and therefore received or were entitled to receive the Merger  
18 Consideration for their Eligible Shares. For the avoidance of doubt, Eligible Class Members  
19 exclude all Excluded Stockholders.

20 (q) **“Eligible Registered Owners”** means the registered owners of West Marine  
21 common stock who or which received or were entitled to receive the Merger Consideration.

22 (r) **“Eligible Shares”** means shares of West Marine common stock held by Eligible  
23 Class Members at the Closing and for which Eligible Class Members received or were entitled to  
24 receive the Merger Consideration, except for the Excluded Shares.

25 (s) **“Excluded Shares”** means the shares of West Marine common stock owned by the  
26 Excluded Stockholders.

1 (t) **“Excluded Stockholders”** means (i) Defendants, their Immediate Family, and any  
2 trust or other entity affiliated with or controlled by any Defendant, other than employees of such  
3 entities who were not directors or officers of such entities as of the Closing; (ii) any and all record  
4 and beneficial owners and holders of West Marine common stock who exercised their appraisal  
5 rights under Section 262 of the General Corporation Law of the State of Delaware; and (iii) any  
6 and all record and beneficial owners and holders of West Marine common stock who timely and  
7 validly opted out of the Class and Settlement pursuant to Section IX of this Stipulation.

8 (u) **“Fee and Expense Award”** means an award to Plaintiff’s Counsel of fees and  
9 expenses to be paid from the Settlement Fund, approved by the Court and in full satisfaction of all  
10 claims for attorneys’ fees and expenses that have been, could be, or could have been asserted by  
11 Plaintiff’s Counsel or any other counsel or any Class Member with respect to the Settlement Fund  
12 or against Defendants. For the avoidance of doubt, the Fee and Expense Award does not include  
13 Administrative Costs, which are to be paid separately from the Settlement Fund.

14 (v) **“Final,”** when referring to a dismissal with prejudice, Judgment or any other court  
15 order, means (i) if no appeal is filed, the expiration date of the time provided for filing or noticing  
16 any appeal; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal  
17 of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the  
18 date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a  
19 petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other  
20 form of review, and, if certiorari or other form of review is granted, the date of final affirmance  
21 following review pursuant to that grant; provided, however, that any disputes or appeals relating  
22 solely to the amount, payment or allocation of attorneys’ fees and expenses shall have no effect on  
23 finality for purposes of determining the date on which the Judgment becomes Final and shall not  
24 otherwise prevent, limit or otherwise affect the Judgment, or prevent, limit, delay or hinder entry  
25 of the Judgment.

26 (w) **“Immediate Family”** means children, stepchildren and spouses (a “spouse” shall  
27 mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union).



(x) **“Judgment”** means the Order and Final Judgment to be entered by the Court in all material respects in the form attached as Exhibit D hereto.

(y) **“Long-Form Notice”** means the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B, which is to be made available to Class Members via internet distribution and by first-class mail.

(z) **“Merger Consideration”** means the cash consideration of \$12.97 per share that West Marine stockholders were entitled to receive under the terms of the Merger.

(aa) **“Net Settlement Fund”** means the Settlement Fund less (i) any and all Administrative Costs; (ii) any and all Taxes; (iii) any Fee and Expense Award; and (iv) any other fees, costs or expenses approved by the Court.

(bb) **“Notice Costs”** means Initial Notice Costs and Excess Notice Costs combined.

(cc) **“Per-Share Recovery”** means the per-share recovery under the Settlement, which will be calculated by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares held by all Eligible Class Members.

(dd) **“Publication Notice”** means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in in the Investor’s Business Daily, via PR Newswire or other suitable online newswire.

(ee) **“Released Defendant Parties”** means Defendants, West Marine, Inc., Rising Tide Parent Inc. (“Parent”), and Rising Tide Merger Sub, Inc. (“Merger Sub”), Monomoy, affiliates of Monomoy, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers,

1 predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or  
2 investment advisors, advisors, consultants, investment bankers, entities providing any fairness  
3 opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal  
4 representatives, accountants, insurers, co-insurers, reinsurers, and associates.

5 (ff) **“Released Defendants’ Claims”** means any and all Claims, including  
6 Unknown Claims, that have been or could have been asserted in the action, or in any court,  
7 tribunal, forum or proceeding, by the Released Defendant Parties or any of their respective  
8 successors and assigns against any of the Released Plaintiff Parties, which arise out of or relate in  
9 any way to the institution, prosecution, settlement, or dismissal of either of the Action; provided,  
10 however, that as used herein the term “Released Defendants’ Claims” shall not include the right to  
11 enforce this Stipulation or any part of it, and shall not include Claims based on the conduct of any  
12 of the Settling Parties which occurs after the Effective Date.

13 (gg) **“Released Plaintiff Parties”** means (i) Plaintiff and all other Class Members; (ii)  
14 members of each individual Class Member’s Immediate Family; (iii) all Class Members’ past or  
15 present, current or former, direct or indirect, affiliates, associates, members, partners, limited  
16 partners, general partners, partnerships, limited partnerships, general partnerships, investment  
17 funds, investment advisors, investment managers, investors, shareholders, joint venturers,  
18 subsidiaries, parents, divisions, subdivisions, predecessors, successors, officers, directors,  
19 employees, agents, principals, owners, representatives, advisors, insurers and attorneys (including  
20 Plaintiff’s Counsel) of Plaintiff and the Class Members and their respective affiliates; and (iv) the  
21 past or present, current or former, direct or indirect legal representatives, heirs, executors, trustees,  
22 beneficiaries, administrators, trusts, trustees, predecessors, successors, predecessors-in-interest,  
23 successors-in-interest and assigns of any of the foregoing.

24 (hh) **“Released Plaintiff’s Claims”** means any and all Claims that were asserted or could  
25 have been asserted by Plaintiff in the Action on behalf of himself and/or the Class, and any and all  
26 Claims, including Unknown Claims, that are based on, arise out of, relate in anyway, or involve  
27 the same set of operative facts as the claims asserted by Plaintiff against Released Defendant  
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Parties in the Action and which relate to the ownership of West Marine common stock. The Released Plaintiff's Claims shall not include claims to enforce the Stipulation or any part of it, and shall not include claims based on the conduct of any of the Settling Parties which occurs after the Effective Date.

(ii) "**Releases**" means the releases set forth in Paragraphs 3-4 of this Stipulation.

(jj) "**Settlement**" means the settlement between the Settling Parties on the terms and conditions set forth in this Stipulation.

(kk) "**Settlement Administrator**" means the settlement administrator selected by Plaintiff to administer the settlement.

(ll) "**Settlement Fund**" means the Settlement Payment plus any and all interest earned thereon.

(mm) "**Final Approval Hearing**" means the hearing to be set by the Court to consider, among other things, final approval of the Settlement.

(nn) "**Settlement Payment**" means the \$2,500,000 payment in accordance with Paragraph 2(a) below.

(oo) "**Taxes**" means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Plaintiff's Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(pp) "**Unknown Claims**" means any Released Plaintiff's Claims that the Released Plaintiff Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff's Claims, and any Released Defendants' Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants' Claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. The Settling Parties acknowledge, and the other Class Members by operation of law are deemed to acknowledge, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiff's

1 Claims and the Released Defendants' Claims, but that it is the intention of the Settling Parties, and  
2 by operation of law the other Class Members, to completely, fully, finally and forever extinguish  
3 any and all Released Plaintiff's Claims and Released Defendants' Claims, known or unknown,  
4 suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and  
5 without regard to the subsequent discovery of additional or different facts. The Settling Parties  
6 also acknowledge, and the other Class Members by operation of law are deemed to acknowledge,  
7 that the inclusion of "Unknown Claims" in the definition of the Released Plaintiff's Claims and  
8 the Released Defendants' Claims is separately bargained for and is a key element of the  
9 Settlement.

## 10 **II. SETTLEMENT CONSIDERATION**

11 2. In consideration for the full and final release, settlement, and discharge of all  
12 Released Plaintiff's Claims against the Released Defendant Parties, the Settling Parties have  
13 agreed to the following consideration:

14 (a) **Settlement Payment:**

15 i. The Settlement Fund shall be used (a) to pay all Administrative Costs; (b) to pay all  
16 Taxes; (c) to pay any Fee and Expense award; (d) to pay any other fees, costs or expenses  
17 approved by the Court; and following the payment of (a) - (d) herein, (e) for subsequent  
18 disbursement of the Net Settlement Fund to the Eligible Class Members as provided in Paragraph  
19 2(b) herein. Under no circumstances shall any Defendant Released Party be liable or responsible  
20 for funding, contributing to, guaranteeing, or indemnifying any part of the Settlement Payment.

21 ii. Within fifteen business days following preliminary approval of the Settlement by the  
22 Court, Defendants shall cause the insurers for the Defendants to deposit \$2,250,000.00, and for  
23 Monomoy to deposit \$250,000.00, respectively into the Account, provided that Plaintiff's Counsel  
24 has provided complete wire transfer information and instructions (including a bank account  
25 number, swift code/routing number, W-9, telephone and e-mail contact information, and a  
26 physical address for the designated recipient of the settlement payment), to Defendants' Counsel  
27 and the insurers for the Defendants within fifteen business days prior to such date.

1           iii.    The Settlement Fund—less all Notice Costs and Administrative Costs paid, incurred,  
2 or due consistent with this Stipulation—shall be returned to the person(s) that paid the Settlement  
3 Payment within five business days of the termination of the Settlement in accordance with the  
4 terms of this Stipulation.

5           (b)    **Distribution of the Settlement Fund:**

6           i.     Within ten (10) business days of the date of execution of this Stipulation,  
7 Defendant's Counsel shall take reasonable steps to provide to or to cause to be provided to the  
8 Settlement Administrator and Plaintiff's Counsel the following information: (a) the stockholder  
9 register from West Marine's transfer agent, which listing shall include the names and mailing  
10 addresses for all Eligible Registered Owners, the number of Eligible Shares held by such Eligible  
11 Registered Owners, and the account information (including financial institution and account  
12 numbers where the Eligible Shares were held) for such Eligible Registered Owners; and (b) the  
13 names and mailing addresses for each of the Excluded Stockholders set forth on Schedule 1  
14 hereto, the number of Excluded Shares held by such Excluded Stockholders, and the account  
15 information (including financial institution and account numbers where the Excluded Shares were  
16 held) for such Excluded Stockholders. The information to be provided to the Settlement  
17 Administrator and Plaintiff's Counsel pursuant to this Paragraph 2(b)(i) is referred to herein as the  
18 **"Merger Records."**

19          ii.    Following the Effective Date, the Net Settlement Fund will be disbursed to Eligible  
20 Class Members, each of which will receive a pro rata distribution from the Net Settlement Fund  
21 equal to the product of (a) the number of Eligible Shares held by the Eligible Class Member and  
22 (b) the Per-Share Recovery under the Settlement.

23          iii.   With respect to West Marine common stock held of record by Cede, the Settlement  
24 Administrator will cause that portion of the Net Settlement Fund to be allocated to Eligible  
25 Beneficial Owners who held their shares through DTC Participants to be paid to DTC. DTC shall  
26 then distribute that portion of the Net Settlement Fund among the DTC Participants by paying  
27 each the Per-Share Recovery times its respective Closing Security Position, using the same  
28

1 mechanism that DTC used to distribute the Merger Consideration and subject to payment  
2 suppression instructions with respect to Excluded Shares. The DTC Participants and their  
3 respective customers, including any intermediaries, shall then ensure pro rata payment to each  
4 Eligible Beneficial Owner in accordance with each Eligible Beneficial Owner's Closing  
5 Beneficial Ownership Position.

6 iv. With respect to West Marine common stock held of record as of the Closing other  
7 than by Cede, as nominee for DTC (a "**Closing Non-Cede Record Position**"), the payment with  
8 respect to each such Closing Non-Cede Record Position shall be made by the Settlement  
9 Administrator from the Net Settlement Fund directly to the record owner of each Closing Non-  
10 Cede Record Position in an amount equal to the Per-Share Recovery times the number of shares of  
11 West Marine common stock comprising such Closing Non-Cede Record Position.

12 v. For the avoidance of doubt, to the extent that any record owner, any DTC  
13 Participants, or their respective customers, including any intermediaries, took or permitted action  
14 that had the effect of increasing the number of shares of West Marine common stock entitled to  
15 payment of the Merger Consideration, whether through permitting naked short-selling or the cash  
16 settlement of short positions or through any other means ("**Increased Merger Consideration**  
17 **Entitlements**"), such record owner, DTC Participants, or their respective customer (including  
18 intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased  
19 Merger Consideration Entitlements an amount equal to the Per-Share Recovery times the number  
20 of the Increased Merger Consideration Entitlements.

21 vi. For the avoidance of doubt, a person or entity who acquired shares of West Marine  
22 common stock on or before September 14, 2017 but had not settled those shares at the Merger's  
23 Closing ("**Non-Settled Shares**") shall be treated as an Eligible Beneficial Owner with respect to  
24 those Non-Settled Shares (except for the Excluded Shares), and a person who sold those Non-  
25 Settled Shares on or before September 14, 2017 shall not be treated as an Eligible Beneficial  
26 Owner with respect to those Non-Settled Shares.

vii. Payment from the Net Settlement Fund made pursuant to and in the manner set forth above shall be deemed conclusive of compliance with this Stipulation.

viii. Defendants and any other Excluded Stockholder shall not have any right to receive any part of the Settlement Fund for his, her, or its own account(s) (i.e., accounts in which he, she or it holds a proprietary interest), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

ix. In the event that any payment from the Net Settlement Fund is undeliverable or in the event a check is not cashed by the stale date (i.e., more than six months from the check's issue date), the DTC Participants or the holder of a Closing Non-Cede Record Position shall follow their respective policies with respect to further attempted distribution or escheatment.

x. Plaintiff's Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. Plaintiff's Counsel believe that this proposed administration and distribution represents a fair and efficient means of applying the settlement consideration towards the resolution of all the claims and damages alleged in the Action.

xi. The Net Settlement Fund shall be distributed to Eligible Class Members only after the Effective Date of the Settlement and after: (a) all Administrative Costs, including Notice Costs, and Taxes, and any Fee and Expense Award, have been paid from the Settlement Fund or reserved; and (b) the Court has entered an order authorizing the specific distribution of the Net Settlement Fund (the "**Class Distribution Order**"). Plaintiff's Counsel will apply to the Court, on notice to Defendants' Counsel, for the Class Distribution Order.

xii. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members. Plaintiff, Defendants, as well as their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any payment from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding shares on behalf

of an Eligible Class Member, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

xiii. All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

(c) **Costs of Distribution:**

Plaintiff's Counsel shall pay out of the Account all Administrative Costs associated with the allocation and distribution of the Net Settlement Fund (including the costs, if any, associated with escheat).

(d) **Investment and Disbursement of the Settlement Fund:**

i. The Settlement Fund deposited in accordance to Paragraph 2(a) above shall be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof, and the proceeds of these instruments shall be reinvested as they mature in similar instruments at then-current market rates. The Settlement Fund shall bear all risks related to investment of the Settlement Fund and any proceeds thereof.

ii. The Settlement Fund shall not be disbursed except as provided in the Stipulation or by an order of the Court.

iii. The Settlement Fund shall be deemed and considered to be in *custodial legis* of the Court, and shall remain subject to the exclusive jurisdiction of that Court, until such time as such funds shall be distributed in accordance to the Stipulation and/or further order(s) of the Court.

**III. SCOPE OF THE SETTLEMENT**

3. Upon the Effective Date, the Released Plaintiff Parties, Plaintiff and all Class Members, on behalf of themselves and their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, and any person or entity acting for or on behalf of, or claiming under, any of them, shall thereupon be deemed to have fully, finally and forever, released, settled and discharged the Released Defendant



1 Parties from and with respect to every one of the Released Plaintiff's Claims, and shall thereupon  
2 be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to  
3 prosecute or pursuing in any fashion any Released Plaintiff's Claims against any of the Released  
4 Defendant Parties.

5 4. Upon the Effective Date, each of Released Defendant Parties, on behalf of  
6 themselves and their legal representatives, heirs, executors, administrators, estates, predecessors,  
7 successors, predecessors-in-interest, successors-in-interest, and assigns, and any person or entity  
8 acting for or on behalf of, or claiming under, any of them, shall thereupon be deemed to have  
9 fully, finally and forever, released, settled and discharged the Released Plaintiff Parties from and  
10 with respect to every one of the Released Defendants' Claims, and shall thereupon be forever  
11 barred and enjoined from commencing, instituting or prosecuting or pursuing in any fashion any  
12 of the Released Defendants' Claims against any of the Released Plaintiff Parties.

13 5. The contemplated releases given by the Settling Parties in this Stipulation extend to  
14 Released Plaintiff's Claims and Released Defendants' Claims (collectively, "Released Claims")  
15 that the Settling Parties did not know or suspect to exist at the time of the release, which if known,  
16 might have affected the decision to enter into this Stipulation.

17 6. Regarding the Released Claims, the Settling Parties shall be deemed to have waived  
18 all provisions, rights, and benefits conferred by any law of the United States, any law of any state,  
19 or principle of common law which governs or limits a person's release of Unknown Claims to the  
20 fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the  
21 provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

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

7. For the avoidance of doubt, upon the occurrence of the Effective Date, Defendants shall be dismissed with prejudice from the Action regarding all Class Members (including Plaintiff) without the award of any damages, costs, or fees or the grant of further relief except for the payments provided in Paragraph 2(a).

#### IV. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL

8. As soon as practicable after execution of this Stipulation, Plaintiff shall (i) apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the “**Preliminary Approval Order**”), providing for, among other things: (a) the preliminary approval of the Settlement; (b) dissemination by mail of the Notice of Pendency and Proposed Settlement of Class Action (the “**Long-Form Notice**”), substantially in the form attached hereto as **Exhibit B**; (c) the publication of the Summary Notice of Pendency and Proposed Settlement of Class Action with Defendants (the “**Publication Notice**”), substantially in the form attached hereto as **Exhibit C**<sup>1</sup>; and (d) the scheduling of the Final Approval Hearing to consider: (1) the proposed Settlement, (2) the request that the Judgment be entered in all material respects in the form attached hereto as **Exhibit D**, (3) Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses, and (4) any objections to any of the foregoing; and(ii) take all reasonable and appropriate steps to seek and obtain entry of the Preliminary Approval Order.

9. Plaintiff shall request at the Final Approval Hearing that the Court approve the Settlement and enter the Judgment.

10. The Settling Parties shall take all reasonable and appropriate steps to obtain Final entry of the Judgment in all material respects in the form attached hereto as Exhibit D.

#### V. CONDITIONS OF SETTLEMENT

11. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events, which the Settling Parties shall use their best efforts to achieve:

---

<sup>1</sup> Collectively, the Long-Form Notice and Publication Notice shall be referred to as the “Notice.”

(a) the Court's entry of the Preliminary Approval Order in all material respects in the form attached hereto as **Exhibit A**;

(b) the Court's entry of the Judgment in all material respect in the form attached hereto as **Exhibit D**;

(c) the Judgment becoming Final;

(e) the full amount of the \$2,500,000 Settlement Payment having been paid into the Account in accordance with Paragraph 2(a) above.

12. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

#### **VI. ATTORNEYS' FEES AND EXPENSES; INCENTIVE AWARDS**

13. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees plus expenses and costs, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned in the Settlement Fund (the "**Fee and Expense Award**") plus (b) an Incentive Award to the Class Representative for his time and expenses in representing the Class. Plaintiff's Counsel's Fee and Expense Award and/or Incentive Award is and will not be the subject of any agreement between Defendants and Plaintiff or their respective counsel.

14. An amount equal to the Fee and Expense Award shall be payable to Plaintiff's Counsel from the Settlement Fund immediately upon the occurrence of the Effective Date. Similarly, Payment of the Incentive Award shall be made from the Settlement Fund.

15. The disposition of the Fee and Expense Award and/or Incentive Award is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee and Expense Award and/or Incentive Award may be considered separately from the proposed Stipulation. Any disapproval or modification of the and Expense Award and/or Incentive Award by the Court or on appeal shall not affect or delay the enforceability of this Stipulation, provide any of the Settling Parties with the right to terminate the Settlement, or affect

1 or delay the binding effect or finality of the Judgment and the release of the Released Plaintiff's  
2 Claims. Final resolution of the and Expense Award and/or Incentive Award shall not be a  
3 condition to the dismissal, with prejudice, of the Action as to Defendants or effectiveness of the  
4 releases of the Released Plaintiff's Claims.

5 16. Plaintiff's Counsel shall allocate the attorneys' fees awarded amongst themselves in  
6 a manner which they, in good faith and in their sole discretion, determine and believe is fair and  
7 equitable. Defendants and their counsel shall have no responsibility, authority, or liability with  
8 respect to the allocation of any fee and expense award among Plaintiff's counsel in the Action.

#### 9 **VII. STAY PENDING COURT APPROVAL**

10 17. The Settling Parties agree not to initiate any proceedings related to the Action or  
11 prosecution of the Action against Defendants other than those incident to the Settlement itself  
12 pending the occurrence of the Effective Date. The Settling Parties also agree to use their  
13 reasonable best efforts to seek the stay and dismissal of, and to oppose entry of any interim or  
14 final relief in favor of any Class Member in any other proceedings which challenge the Settlement  
15 or the Merger or otherwise assert or involve the commencement or prosecution of any Released  
16 Plaintiff's Claim, either directly, representatively, derivatively, or in any other capacity, against  
17 any Released Defendant Party.

18 18. The Settling Parties will request the Court to order (in the Preliminary Approval  
19 Order) that, pending final determination of whether the Settlement should be approved, Plaintiff  
20 and all Class Members are barred and enjoined from commencing, prosecuting, instigating, or in  
21 any way participating in the commencement or prosecution of any Released Plaintiff's Claim,  
22 either directly, representatively, derivatively, or in any other capacity, against any Released  
23 Defendant Party.

#### 24 **VIII. TAXES**

25 19. The Settling Parties agree that the Settlement Fund together with all interest earned  
26 on the Settlement Fund is intended to be a "qualified settlement fund" within the meaning of  
27 Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as  
28

1 necessary or advisable to carry out the provisions of this Article VIII, including, if necessary, the  
2 “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted  
3 date. Such elections shall be made in compliance with the procedures and requirements contained  
4 in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986.  
5 It shall be the responsibility of the Settlement Administrator to timely and properly prepare and  
6 deliver the necessary documentation for signature by all necessary parties, and thereafter to cause  
7 the appropriate filing to occur, and send copies of such filings to all counsel for the parties in the  
8 Action.

9         20. The Settlement Administrator shall timely and properly file all informational and  
10 other tax returns necessary or advisable with respect to the Settlement Fund (including, without  
11 limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the  
12 election described in Paragraph 21 above) shall be consistent with this Article VIII and in all  
13 events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the  
14 income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in  
15 Paragraph 23 below.

16         21. All taxes shall be paid timely out of the Settlement Fund, as directed and  
17 administered by Plaintiff’s Counsel, without further order of the Court. Any tax returns prepared  
18 for the Settlement Fund (as well as the election set forth herein) shall be consistent with this  
19 Article VIII and in all events shall reflect that all taxes on the income earned by the Settlement  
20 Fund shall be paid out of the Settlement Fund, as provided herein, and shall be timely filed by the  
21 Settlement Administrator, who shall send copies of such filings to counsel for all parties in the  
22 Action. Any costs for the preparation of applicable tax returns shall be paid from the Settlement  
23 Fund. Defendants and Released Defendant Parties shall not bear any tax liability in connection  
24 with the Settlement Fund, including any liability for income taxes owed by any Class Member by  
25 virtue of their receipt of payment from the Settlement Fund.

26         22. Defendants and their counsel agree to cooperate with Plaintiff’s Counsel as  
27 responsible for overseeing the administration of the Settlement Fund, and their tax attorneys,

1 accountants and/or the Settlement Administrator, to the extent reasonably necessary to carry out  
2 and accomplish the provisions of this Section and of this Stipulation.

3 **IX. OPT-OUT RIGHTS**

4 23. Prospective members of the Class shall have the right to opt out of, and request  
5 exclusion from, the Class and Settlement. Any prospective member of the Class who does not  
6 timely and validly request exclusion from the Class and Settlement shall be a Class Member and  
7 shall be bound by the terms of this Stipulation, the Settlement and Judgment. Any prospective  
8 member of the Class who timely and validly requests exclusion from the Class and Settlement  
9 shall be excluded from the Class and the Settlement.

10 24. The Notice shall describe the procedure whereby prospective members of the Class  
11 may exclude themselves from the Class and Settlement, which shall, at a minimum, provide that  
12 any such requests must be made in writing, no later than twenty-one (21) days prior to the Final  
13 Approval Hearing, and mailed by First-Class Mail postmarked to the address designated in the  
14 Notice.

15 **X. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION; EFFECT OF**  
16 **PARTIAL APPROVAL OF SETTLEMENT**

17 25. Subject to Paragraph 27 below, if either (i) the Court finally refuses to enter the  
18 Judgment in any material respect or alters the Judgment in any material respect prior to entry, or  
19 (ii) the Court enters the Judgment but on or following appellate review, the Judgment is modified  
20 or reversed in any material respect, the Settlement and this Stipulation shall be canceled and  
21 terminated unless each of the Settling Parties to this Stipulation, within ten business days from  
22 receipt of such ruling, agrees in writing with the other Settling Parties hereto to proceed with this  
23 Stipulation and Settlement, including only with such modifications, if any, as to which all other  
24 Settling Parties in their sole judgment and discretion may agree. In addition to the foregoing,  
25 Plaintiff shall have the right to cancel and terminate the Settlement and this Stipulation in the  
26 event that the Settlement Payment is not timely paid in accordance with Paragraph 2(b) above. For  
27 purposes of this paragraph, an intent to proceed shall not be valid unless it is expressed in a signed  
28

1 writing. Neither a modification nor a reversal on appeal of the amount of fees, costs and expenses  
2 awarded by the Court to Plaintiff's Counsel shall be deemed a material modification of the  
3 Judgment or this Stipulation.

4         26. In addition to the foregoing, and subject to Paragraph 27 below, Defendants shall  
5 also have the option (which must be exercised unanimously by all Defendants with capacity to do  
6 so), but not the obligation, to terminate the Settlement and render this Stipulation null and void in  
7 the event that the aggregate number of shares of West Marine common stock held by persons or  
8 entities who would otherwise be Eligible Class Members, but who timely and validly opt out of  
9 the Class and Settlement pursuant to Paragraphs 23-24 above, exceeds the level (the "Opt-Out  
10 Threshold") as set forth in a separate agreement (the "Supplemental Side Agreement") executed  
11 between Plaintiff's Counsel and Defendants' Counsel on behalf of their respective clients. The  
12 Opt-Out Threshold may be disclosed to the Court for purposes of approval of the Settlement set  
13 forth in this Stipulation, as may be required by the Court, but such disclosure shall be carried out  
14 to the fullest extent possible in accordance with the practices of the Court so as to maintain the  
15 confidentiality of the Supplemental Side Agreement.

16         27. If this Stipulation is disapproved, canceled, or terminated pursuant to its terms or the  
17 Effective Date of the Settlement otherwise fails to occur, (i) Plaintiff and Defendants shall be  
18 deemed to have reverted to their respective litigation status immediately before the execution of  
19 the Stipulation, they shall negotiate a new case schedule for the Action in good faith, and they  
20 shall proceed as if the Stipulation had not been executed and the related orders had not been  
21 entered; (ii) all of their respective claims and defenses as to any issue in the Action shall be  
22 preserved without prejudice in any way; and (iii) the statements made in connection with the  
23 negotiations of this Stipulation shall not be deemed to prejudice in any way the positions of any of  
24 the Settling Parties with respect to the Action, or to constitute an admission of fact of wrongdoing  
25 by any Settling Party, shall not be used or entitle any Settling Party to recover any fees, costs, or  
26 expenses incurred in connection with the Action, and neither the existence of this Stipulation nor  
27 its contents nor any statements made in connection with its negotiation or any settlement

1 communications shall be admissible in evidence or shall be referred to for any purpose in the  
2 Action, or in any other litigation or judicial proceeding.

3 **XI. MISCELLANEOUS PROVISIONS**

4 28. All of the exhibits attached hereto are incorporated by reference as though fully set  
5 forth herein. Notwithstanding the foregoing, if a conflict or inconsistency exists between the terms  
6 of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall  
7 prevail.

8 29. Defendants warrant that, as to the payments made or to be made on behalf of them,  
9 at the time of entering into this Stipulation and at the time of such payment they, or to the best of  
10 their knowledge any persons or entities contributing to the payment of the Settlement Payment,  
11 were not insolvent, nor will the payment required to be made by or on behalf of them render them  
12 insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code,  
13 including §§ 101 and 547 thereof.

14 30. The Settling Parties intend this Stipulation and the Settlement to be a final and  
15 complete resolution of all disputes asserted or which could be asserted by Plaintiff and any other  
16 Class Members against the Released Defendant Parties with respect to the Released Plaintiff's  
17 Claims. Accordingly, Plaintiff and their counsel and Defendants and their counsel agree not to  
18 assert in any forum that the Action were brought by Plaintiff or defended by Defendants, as well  
19 as their respective counsel, in bad faith or without a reasonable basis. The Settling Parties agree  
20 that the amounts paid and the other terms of the Settlement were negotiated at arm's-length and in  
21 good faith by the Settling Parties, including through a mediation process supervised and conducted  
22 by Jed Melnick of JAMS, and reflect the Settlement that was reached voluntarily after extensive  
23 negotiations and consultation with experienced legal counsel, who were fully competent to assess  
24 the strengths and weaknesses of their respective clients' claims or defenses.

25 31. The Settling Parties and their counsel shall not make any accusations of wrongful or  
26 actionable conduct by any Settling Party concerning the prosecution, defense, and resolution of  
27



1 the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any  
2 claim or defense alleged in the Action.

3 32. The terms of the Settlement, as reflected in this Stipulation, may not be modified or  
4 amended, nor may any of its provisions be waived except by a writing signed on behalf of all  
5 Settling Parties (or their successors-in-interest).

6 33. The headings herein are used for the purpose of convenience only and are not  
7 intended by the Settling Parties to, and shall not, have legal effect.

8 34. The administration and consummation of the Settlement as embodied in this  
9 Stipulation shall be under the authority of the Court, and that Court shall retain exclusive  
10 jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and  
11 expenses to Plaintiff's Counsel, and enforcing the terms of this Stipulation, including the  
12 distribution of the Net Settlement Fund to Class Members.

13 35. The waiver by one Party of any breach of this Stipulation by any other Party shall  
14 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

15 36. This Stipulation and its exhibits constitute the entire agreement among the Settling  
16 Parties concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge  
17 that no other agreements, representations, warranties, or inducements have been made by any  
18 Party hereto concerning this Stipulation or its exhibits other than those contained and  
19 memorialized in such documents.

20 37. This Stipulation may be executed in one or more counterparts, including by  
21 signature transmitted via facsimile, or by a .pdf/.tiff image of the signature transmitted via email.  
22 All executed counterparts and each of them shall be deemed to be one and the same instrument.

23 38. This Stipulation shall be binding upon and inure to the benefit of the successors and  
24 assigns of the Settling Parties, as well as the Released Plaintiff Parties and Released Defendant  
25 Parties, and any corporation, partnership, or other entity into or with which any such party hereto  
26 may merge, consolidate or reorganize.

1           39. The construction, interpretation, operation, effect and validity of this Stipulation and  
2 all documents necessary to effectuate it shall be governed by the laws of the State of California  
3 without regard to conflicts of laws.

4           40. Any action arising under or to enforce this Stipulation or any portion thereof shall be  
5 commenced and maintained only in the Court.

6           41. This Stipulation shall not be construed more strictly against one Settling Party than  
7 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel  
8 for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations  
9 between the Settling Parties and that all Settling Parties have contributed substantially and  
10 materially to the preparation of this Stipulation.

11           42. All counsel and all other persons executing this Stipulation and any of the exhibits  
12 hereto, or any related Settlement documents, warrant and represent that they have the full  
13 authority to do so and that they have the authority to take appropriate action required or permitted  
14 to be taken pursuant to the Stipulation to effectuate its terms.

15           43. Plaintiff's Counsel and Defendants' Counsel agree to cooperate fully with one  
16 another in seeking from the Court the Preliminary Approval Order, as embodied in this  
17 Stipulation, and to use best efforts to promptly agree upon and execute all such other  
18 documentation as may be reasonably required to obtain final approval by the Court of the  
19 Settlement.

20           44. If any Settling Party is required to give notice to another Settling Party under this  
21 Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon  
22 receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice  
23 shall be provided as follows:

24           If to Plaintiff, Plaintiff's Counsel:

**MONTEVERDE & ASSOCIATES PC**  
Attn: 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)

**BRODSKY & SMITH, LLC**

Evan J. Smith  
Marc Ackerman  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
Telephone: (610) 667-6200  
Facsimile: (610) 667-9029  
Email: [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)  
[mackerman@brodskysmith.com](mailto:mackerman@brodskysmith.com)

If to Defendants:

**SIDLEY AUSTIN LLP**

Attn: Matthew J. Dolan  
1001 Page Mill Road  
Building 1  
Palo Alto, California 94304  
Telephone: (650) 565-7000  
Facsimile: (650) 565-7100  
Email: [mdolan@sidley.com](mailto:mdolan@sidley.com)

James W. Ducayet  
One South Dearborn Street  
Chicago, IL 60603  
Telephone: (312) 853-7000  
Facsimile: (312) 853-7036  
Email: [jducayet@sidley.com](mailto:jducayet@sidley.com)

45. Except as otherwise provided herein, each Settling Party shall bear its own costs.

46. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

47. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Settlement and be continuing, as limited only by the requirements of applicable California law.

1           48. No opinion or advice concerning the tax consequences of the proposed Settlement to  
2 individual Class Members is being given or will be given by the Settling Parties or their counsel;  
3 nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class  
4 Member's tax obligations, and the determination thereof, are the sole responsibility of the Class  
5 Member, and it is understood that the tax consequences may vary depending on the particular  
6 circumstances of each individual Class Member.

7  
8 Date: January 3, 2020

SIDLEY AUSTIN LLP

9  
10  
11 

By: \_\_\_\_\_

12 Matthew J. Dolan  
13 1001 Page Mill Road  
14 Building 1  
15 Palo Alto, California 94304  
16 Telephone: (650) 565-7000  
17 Facsimile: (650) 565-7100

18 James W. Ducayet (admitted *pro hac vice*)  
19 One South Dearborn Street  
20 Chicago, IL 60603  
21 Telephone: (312) 853-7000  
22 Facsimile: (312) 853-7036

23 Attorneys for Defendants  
24 Randolph K. Repass, Matthew L. Hyde, Barbara  
25 L. Rambo, Dennis F. Madsen, Robert D. Olsen,  
26 James F. Nordstrom, Jr., Alice M. Richter, and  
27 Christiana Shi

28 Date: January 3, 2020

BRODSKY & SMITH LLC

By: \_\_\_\_\_

Evan J. Smith (SBN 242352)  
9595 Wilshire Boulevard, Suite 900

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Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

MONTEVERDE & ASSOCIATES PC

Juan E. Monteverde (admitted *pro hac vice*)  
The Empire State Building  
350 Fifth Ave., Suite 4405  
New York, NY 10118  
Telephone: (212) 971-1341  
Facsimile: (212) 202-7880

Attorneys for Plaintiff and the Class

**EXHIBIT “A”**

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**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,

v.

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.

Case No. 17-cv-01995  
CLASS ACTION

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND PROVIDING FOR NOTICE**

Date Action Filed: July 27, 2017

1 WHEREAS, the plaintiff (“Plaintiff”) and the defendants (“Defendants”) in the above-entitled  
2 action (the “Action”) entered into a Stipulation and Agreement of Settlement, Compromise, and  
3 Release dated January 3, 2020, (the “Stipulation” or “Settlement”),<sup>2</sup> which is subject to review by this  
4 Court and which, together with the Exhibits thereto, sets forth the terms and conditions for the  
5 Settlement of the claims in the Action; and the Court having read and considered the Stipulation and  
6 the accompanying documents; and the Parties having consented to the entry of this Order;

7 IT IS HEREBY ORDERED that:

8 1. The Court preliminarily finds and concludes that the Settlement as set forth in the  
9 Stipulation results from arm’s-length settlement negotiations, including mediation under the direction  
10 of an experienced mediator, Jed Melnick of JAMS, and is sufficiently fair, reasonable, and adequate  
11 to warrant providing notice of the Settlement to the Class. As a result, the Court preliminarily approves  
12 the Settlement and adopts the terms of the Stipulation for the purpose of this Order Granting  
13 Preliminary Approval of Class Action Settlement and Providing for Notice (the “Order”).

14 2. A hearing (the “Settlement Hearing”) shall be held before the Court on DATE,  
15 at : .m., in Department 10 of the Superior Court of the State of California, County of Santa Cruz,  
16 located at 701 Ocean Street, Santa Cruz, California 95060 to determine:

17 (a) whether the Settlement should be finally approved by the Court as fair,  
18 reasonable, and adequate;

19 (b) whether the Order and Judgment attached as Exhibit D to the Stipulation should  
20 be entered in all material respects;

21 (c) whether the proposed plan of distribution should be approved; and

22 (d) whether the Court should approve the award of Plaintiff’s Counsel’s attorneys’  
23 fees and expenses (the “Fee and Expenses Award”) and Plaintiff’s Incentive Award.

24 3. Any moving papers filed in support of the final approval of the Settlement, the plan of  
25 distribution, the Fee and Expenses Award and/or Incentive Awards, shall be filed at least twenty-eight  
26 (28) calendar days prior to the deadline for objections reflected herein. All reply papers shall be filed

27 \_\_\_\_\_  
28 <sup>2</sup> All capitalized terms herein have the same meanings as defined in the Stipulation, unless otherwise  
stated.



1 at least seven (7) calendar days prior to the Settlement Hearing.

2 4. The Court may adjourn or continue the Settlement Hearing or any part thereof,  
3 without further notice of any kind to the Class.

4 5. The Court may approve the Settlement at or after the Settlement Hearing with such  
5 modification as may be consented to by the Parties to the Stipulation and without further notice to  
6 the Class.

7 6. Plaintiff's Counsel are hereby authorized to retain the firm of FIRM ("Claims  
8 Administrator") to supervise and administer the notice procedure as well as the processing of claims  
9 as more fully set forth below:

10 (a) Within fourteen (14) calendar days of the date of this Order (the "Notice  
11 Date"), the Claims Administrator shall cause a copy of the Long-Form Notice, substantially  
12 in the form annexed as Exhibit B to the Stipulation, to be mailed, by First-Class Mail, postage  
13 prepaid, to all members of the Class who can be identified with reasonable effort;

14 (b) Within seven (7) calendar days of the Notice Date, the Claims Administrator  
15 shall cause the Publication Notice, substantially in the form annexed as Exhibit C hereto, to  
16 be published once over the Business Wire;

17 (c) Within fourteen (14) calendar days of the Notice Date, the Claims  
18 Administrator shall post on WEBSITE, the Stipulation and Notice;

19 (d) Within two (2) business days of filing, the Claims Administrator shall post on  
20 WEBSITE Plaintiff's motion for final approval of the Settlement, plan of distribution; and  
21 request for a Fee and Expense Award and/or Incentive Award; and

22 (e) At least seven (7) days prior to the Settlement Hearing, Plaintiffs' Counsel  
23 shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration,  
24 of such mailing and publication.

25 7. The Court approves, in form and content, the Long-Form Notice, and the Publication  
26 Notice, substantially in the forms annexed as Exhibits B and C to the Stipulation, and finds that the  
27 giving of notice as specified herein meets the requirements of the California Code of Civil Procedure  
28 and due process, is the best notice practicable under the circumstances, including individual notice

1 to all Class Members who can be identified through reasonable efforts, and shall constitute due and  
2 sufficient notice to all persons and entities entitled to receive notice.

3 8. All Class Members shall be bound by all determinations, releases and judgments in  
4 this Action, whether favorable or unfavorable, and regardless of whether such Persons seek or obtain  
5 by any means, any distribution from the Settlement Fund, unless they request exclusion from the  
6 Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to make  
7 such request shall, no later than twenty-one (21) calendar days prior to the Settlement Hearing, mail  
8 a request for exclusion in written form by First-Class Mail postmarked to the address designated in  
9 the Notice. Such request for exclusion shall indicate the name, address and telephone number of  
10 the Person seeking exclusion, that the Person requests to be excluded from the Class, and must be  
11 signed by such Person. Such Persons requesting exclusion must also state the number of shares of  
12 West Marine common stock they held or owned as of September 14, 2017, the date of the  
13 consummation of the Merger. The request for exclusion shall not be effective unless it is made in  
14 writing within the time stated above, and the exclusion is accepted by the Court. Class Members  
15 requesting exclusion from the Class shall not be entitled to receive any payment out of the Net  
16 Settlement Fund as described in the Stipulation and Notice. Upon receiving any request for  
17 exclusion, Plaintiffs' Counsel or the Claims Administrator shall promptly, and in no case later than  
18 fifteen (15) calendar days prior to the Settlement Hearing, notify Defendants' Counsel of such  
19 request for exclusion and provide copies of such request for exclusion and any documentation  
20 accompanying it by email.

21 9. The Court will consider objections to the Settlement, the plan of distribution, the  
22 request for an Incentive Award to Plaintiff for his representation of the Class, and/or the Fee and  
23 Expense Award. Any person wanting to object may do so in writing. Such objections and any  
24 supporting papers, accompanied by proof of Class membership, shall be filed with the Clerk of the  
25 Court, Superior Court of the State of California, County of Santa Cruz, 701 Ocean Street, Santa  
26 Cruz, California 95060, and copies of all such papers served such that they are received no later  
27 than twenty-one (21) calendar days prior to the Settlement Hearing, upon the following: Evan J.  
28 Smith, Brodsky & Smith, LLC, Two Bala Plaza, Suite 510, Bala Cynwyd, PA 19004, on behalf of

1 the Plaintiff and the Class. Persons who object in writing to the Settlement, the plan of distribution,  
2 and/or the Fee and Expense Award and/or Incentive Award and desire to present evidence at the  
3 Settlement Hearing must include in their written objections copies of any exhibits they intend to  
4 introduce into evidence at the Settlement Hearing. If an objector hires an attorney to represent him,  
5 her, or it for the purposes of making an objection, the attorney must both effect service of a notice  
6 of appearance on counsel listed above and file it with the Court by no later than twenty-one  
7 (21) calendar days prior to the Settlement Hearing. A Class Member who files a written objection  
8 does not have to appear at the Settlement Hearing for the Court to consider his, her or its objection.  
9 Any member of the Class who does not make his, her, or its objection in the manner provided shall  
10 be deemed to have waived such objection and shall be foreclosed from making any objection to the  
11 fairness or adequacy of the Settlement set forth in the Stipulation, to the plan of distribution, and to  
12 the award of attorneys' fees and expenses to Plaintiff's Counsel unless the Court orders otherwise.

13 10. No Person that is not a Class Member or counsel to the Plaintiff shall have any right  
14 to any portion of, or in the distribution of, the Settlement Fund unless otherwise ordered by the  
15 Court or otherwise provided in the Stipulation.

16 11. All funds held in the account maintained by Plaintiff's Counsel and into which the  
17 Settlement Payment shall be deposited (the "Account") shall be deemed and considered to be in  
18 *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds  
19 shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

20 12. Neither the Released Defendant Parties nor their counsel shall have any responsibility  
21 for the plan of distribution or any application for attorneys' fees and expenses submitted by  
22 Plaintiff's Counsel and such matters will be considered separately from the fairness, reasonableness,  
23 and adequacy of the Settlement

24 13. If the Settlement, including any amendment made in accordance with the Stipulation,  
25 is not approved by the Court, is terminated in accordance with the Stipulation, or shall not become  
26 effective for any reason whatsoever, the Settlement and Stipulation (including any modification  
27 thereof), and any action taken or to be taken in connection therewith (including this Order and any  
28 judgment entered herein) shall be terminated and shall become null and void and of no further force

1 and effect except that neither Plaintiff nor any of his counsel shall have any obligation to repay any  
2 Administrative Costs.

3 14. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations,  
4 discussions, or proceedings connected with it, nor any act performed or document executed pursuant  
5 to or in furtherance of the Stipulation or the Settlement, may be construed as an admission or  
6 concession by the Released Defendant Parties or Released Plaintiff Parties of the truth of any of the  
7 allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

8 15. The Court retains jurisdiction over all proceedings arising out of or related to the  
9 Stipulation and/or the Settlement.

10 16. All proceedings in the Action, other than proceedings as may be necessary to carry  
11 out the terms and conditions of the Settlement, are hereby stayed and suspended until further order  
12 of this Court.

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

15 18. If the Settlement provided for in the Stipulation shall be approved by the Court  
16 following the Settlement Hearing, a Judgment shall be entered as described in the Stipulation.

17 19. Pending final determination of whether the Settlement should be finally approved,  
18 neither the Plaintiff, nor any Class Member, directly or indirectly, representatively, or in any other  
19 capacity, shall commence, prosecute, or participate in the commencement or prosecution of any  
20 Released Plaintiff's Claim against any Released Defendant Party.

1 **IT IS SO ORDERED.**

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

HONORABLE JOHN GALLAGHER  
JUDGE OF THE SUPERIOR COURT

3  
4  
5 Submitted by:

6 **BRODSKY & SMITH LLC**

7 Evan J. Smith (SBN 242352)

8 9595 Wilshire Boulevard, Suite 900  
9 Beverly Hills, CA 90212  
Tel: (877) 534-2590  
Fax: (310) 247-0160

10 **MONTEVERDE & ASSOCIATES PC**

11 Juan E. Monteverde  
12 The Empire State Building  
13 350 Fifth Avenue, Suite 4405  
New York, NY 10118  
Tel: (212) 971-1341  
Fax: (212) 601-2610

14  
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16 *Attorneys for Plaintiff and the Class*  
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**EXHIBIT “B”**

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**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,

v.

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.

Case No. 17-cv-01995  
CLASS ACTION

**NOTICE OF PENDENCY OF CLASS  
ACTION, PROPOSED  
SETTLEMENT,  
SETTLEMENT HEARING AND  
RIGHT  
TO APPEAR**

Date Action Filed: July 27, 2017

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,  
SETTLEMENT HEARING AND RIGHT TO APPEAR**

TO: RECORD AND BENEFICIAL HOLDERS OF WEST MARINE, INC. ("WEST MARINE MEDICAL") COMMON STOCK AS OF SEPTEMBER 14, 2017, THE DATE OF THE CONSUMMATION OF WEST MARINE'S MERGER WITH AFFILIATES OF MONOMOY (THE "MERGER"), INCLUDING ANY AND ALL OF THEIR RESPECTIVE SUCCESSORS-IN-INTEREST, SUCCESSORS, PREDECESSORS-IN-INTEREST, PREDECESSORS, REPRESENTATIVES, TRUSTEES, EXECUTORS, ADMINISTRATORS, ESTATES, HEIRS, ASSIGNS AND TRANSFEREES, IMMEDIATE AND REMOTE, AND ANY PERSON OR ENTITY ACTING FOR OR ON BEHALF OF, OR CLAIMING UNDER, ANY OF THEM, AND EACH OF THEM, TOGETHER WITH THEIR PREDECESSORS-IN-INTEREST, PREDECESSORS, SUCCESSORS-IN-INTEREST, SUCCESSORS, AND ASSIGNS (THE "CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THE PARTIES TO A SHAREHOLDER CLASS ACTION SUIT CONCERNING THE MERGER HAVE AGREED TO A PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO COMPENSATION. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION AND THE PROPOSED SETTLEMENT. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS AND ADEQUACY OF THE PROPOSED SETTLEMENT AND FROM PURSUING THE SETTLED CLAIMS (DEFINED HEREIN).

1 IF YOU HELD WEST MARINE MEDICAL COMMON STOCK FOR THE BENEFIT OF  
2 ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL  
3 OWNER.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
4 <b>Do Nothing</b>	You will get a payment.
5 <b>Exclude Yourself</b>	Get no payment. This is the only option that 6 allows you to ever bring a lawsuit against Defendants concerning the legal claims at issue in this case.
7 <b>Object to the Settlement and/or Attorneys' Fees and Expenses</b>	Write to the Court about why you don't like the Settlement, Plan of Allocation, or the requested attorneys' fees and expenses or incentive award.
8 <b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement.

10 **I. PURPOSE OF NOTICE**

11 Pursuant to an Order of the Superior Court of California for Santa Cruz County (the "Court")  
12 dated \_\_\_\_\_, 2020, and further pursuant to California Code of Civil Procedure  
13 ("CCP") Section 382, this Notice is to inform you of (i) the Court's determination to provisionally  
14 certify the above-captioned action ("Action") pursuant to CCP § 382, (ii) the proposed settlement  
15 of the Action (the "Settlement") as provided for in a Stipulation and Agreement of Settlement,  
16 Compromise, and Release (the "Stipulation") dated as of January 3, 2020, and (iii) your right to  
17 participate in a hearing to be held on \_\_\_\_\_, 2020 at \_\_.m., before the Court  
at Department 1 of the Superior Court of the State of California, County of Santa Cruz, located at  
191 North First Street San Jose, CA 95113 (the "Settlement Hearing") to determine whether the  
Court should finally certify the Action pursuant to CCP § 382, approve the Settlement as fair,  
reasonable, adequate and in the best interests of the Class, including the releases provided therein,  
and consider the attorneys' fees and expenses to be paid to Plaintiff's Counsel.

18 This Notice describes the rights you may have in the Action and pursuant to the Stipulation  
and what steps you may take, but are not required to take, in relation to the Settlement.

19 If the Court approves the Settlement, the parties will ask the Court at the Settlement Hearing  
20 to enter an Order and Final Judgment dismissing the Action with prejudice in accordance with the  
terms of the Stipulation.

21 **THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE**  
22 **COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE**  
23 **UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE**  
24 **MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.**

25 **II. BACKGROUND**

26 West Marine, Inc. ("West Marine" or the "Company") was a Delaware corporation,  
headquartered in California, that was a specialty retailer of waterlife-related products. On April 19,  
2016, West Marine Medical entered into a definitive merger agreement to be acquired for \$12.97  
per share in cash (the "Merger Price") by affiliates of Monomoy (the "Merger").

27 This litigation challenged the fairness of the 2017 sale of West Marine alleging that the  
28 Merger was the product of a conflicted and flawed sales process and that resulted in West Marine's



1 minority shareholders receiving an inadequate price for their West Marine stock.

2 On July 27, 2017, this action was filed in the Santa Cruz County Superior Court of the State  
3 of California (the “**Court**”), by Plaintiff, a stockholder of West Marine, Inc. (“**West Marine**” or the  
4 “**Company**”) alleging, among other things, that the Defendants had breached fiduciary duties to the  
Company’s stockholders in connection with the acquisition of West Marine by an affiliate of  
Monomoy Capital Partners III, L.P. (“**Monomoy**”).

5 On October 30, 2017, the Plaintiff filed an Amended Complaint for Breach of Fiduciary  
6 Duty and Violations of State Law in the Action.

7 On January 12, 2018, Defendants filed a demurrer to the Consolidated Amended Complaint.  
8 On May 11, 2018, following full briefing by the parties and following oral argument, the Court  
found in favor of the Plaintiff, overruling the Demurrer, holding that Plaintiff had stated at least two  
claims for breach of fiduciary duty.

9 Plaintiff filed a motion for class certification on September 21, 2018. On November 29,  
10 2018 Defendants filed a statement of non-opposition to class certification. On December 12, 2018,  
this Court entered an Order certifying the Class and appointing Plaintiff as Class Representative and  
11 Brodsky & Smith LLC and Monteverde & Associates LLP (collectively referred to as “Plaintiff’s  
Counsel”) as co-lead counsel in the Action.

12 On February 4, 2019, Plaintiff’s Counsel, Defendants’ Counsel, as well as counsel for  
13 Monomoy, participated in a full-day mediation session before Jed Melnick of JAMS in an effort to  
resolve both Action. Before the Mediation, the parties exchanged mediation statements and exhibits,  
14 which addressed both liability and damages. The Mediation did not lead to resolution of the action.  
However, since that time, the parties have continued to engage in arms-length negotiations about  
the potential resolution of the action. After extensive, arm’s-length negotiations, the Settling Parties  
15 reached an agreement in principle on December 17, 2019 to settle the Action for \$2,500,000 in cash,  
subject to approval by the Court.

### 16 **III. REASONS FOR THE SETTLEMENT**

17 Plaintiff believes that he brought the claims in good faith and continues to believe that such  
18 claims have legal merit, but believes that the Settlement allows the Company’s minority  
shareholders to receive additional compensation for their West Marine shares while eliminating  
19 further litigation and delay of payment. Plaintiff also believes that his efforts in prosecuting the  
Action have resulted in a significant benefit for West Marine and its stockholders which, under the  
20 circumstances, is fair, reasonable, and adequate.

21 Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability,  
or damage to Plaintiff or the Class, deny that they engaged in any wrongdoing, deny that they acted  
22 improperly in any way, believe that they acted properly at all times, and maintain that they have  
committed no disclosure violations or any other breach of duty whatsoever in connection with the  
23 Merger or any public disclosures, but wish to settle solely because it will eliminate the uncertainty,  
distraction, burden, and expense of further litigation.

### 24 **IV. CLASS ACTION DETERMINATION**

25 On September 21, 2018, the Court ordered that the Action shall be maintained as a class  
26 action pursuant to CCP § 382 on behalf of an opt-out class consisting of any and all record and  
beneficial holders of West Marine common stock, as of September 14, 2017 (the date of the  
27 consummation of the Merger), including any and all of their respective successors-in-interest,  
successors, predecessors-in-interest, predecessors, representatives, trustees, executors,  
28 administrators, estates, heirs, assigns and transferees, immediate and remote, and any person or

entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, but excluding: (i) Defendants, their Immediate Family (as defined in the Stipulation), and any trust or other entity affiliated with or controlled by any Defendant, other than employees of such entities who were not directors or officers of such entities as of September 14, 2017; (ii) any and all record and beneficial owners of West Marine common stock who exercised their appraisal rights under Section 262 of the General Corporation Law of the State of Delaware; and (iii) any and all record and beneficial owners of West Marine common stock who timely and validly opt out of the Class and Settlement pursuant to the opt-out procedures described below and in the Stipulation (the "Class").

## **V. THE SETTLEMENT**

In consideration for the Settlement and dismissal with prejudice of the Action, and the releases provided herein, Defendants agree to provide the Class additional compensation of \$2,500,000 (the "Settlement Amount"). Any attorneys' fees, incentive awards, costs, expenses (including notice and administrative expenses) or other Court-approved deductions shall be paid out of — and shall not be in addition to — the Settlement Amount.

The Settlement Amount minus Court-approved deductions (the "Net Settlement Amount") will be distributed to all members of the Class who owned West Marine common stock as of September 14, 2017, the date of the consummation of the Merger ("Eligible Class Members") on a pro rata basis, based on the number of outstanding West Marine Medical shares owned by each such Eligible Class Member at that time. There were approximately [·] outstanding shares owned by Eligible Class Members at the time of the Merger. Accordingly, the expected payment, assuming the Court approves Plaintiff's Counsel's request for attorneys' fees in the amount not to exceed one third of the Settlement Amount, will be approximately [·] per share, but may vary based upon the amount of other Court-approved deductions and costs.

Inquiries or comments about the Settlement may be directed to the attention of Counsel for Plaintiff as follows:

BRODSKY & SMITH, LLC  
Evan J. Smith  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
610.667.6200

## **VI. SETTLEMENT HEARING**

The Court has scheduled a Settlement Hearing which will be held on \_\_\_\_\_, 2020 at Department 1 of the Superior Court of the State of California, County of Santa Cruz, located at 701 Ocean Street, Santa Cruz, California 95060 at \_\_\_\_ .m., in the Court at to:

(a) whether the Settlement should be approved by the Court as fair, reasonable, and adequate;

(b) whether the Judgment attached as Exhibit D to the Stipulation should be entered in all material respects;

(c) whether the proposed plan of distribution should be approved; and

(d) whether the Court should approve the award of Plaintiff's Counsel's attorneys' fees and expenses (i.e., the "Fee and Expense Award").

1 The Court has reserved the right to adjourn the Settlement Hearing or any adjournment  
2 thereof, including the consideration an award of attorneys' fees, without further notice of any kind  
other than oral announcement at the Settlement Hearing or any adjournment thereof.

3 The Court has also reserved the right to approve the Settlement at or after the Settlement  
4 Hearing with such modification(s) as may be consented to by the Parties to the Stipulation and  
without further notice to the Class.

## 5 **VII. RIGHT TO APPEAR AND OBJECT**

6 If you are a member of the Class, you may object to the terms of the Settlement. Whether  
7 or not you object to the terms of the Settlement, you may also object to the requested attorneys' fees  
and expenses, the awards to Plaintiff and/or the plan of distribution. In order for any objection to  
8 be considered, you must file a written statement, accompanied by proof of Class membership, with  
the Court, and send a copy to Plaintiff's Counsel **such that it is received by \_\_\_\_\_, 2020.**  
9 The Court's address is Clerk of the Court, Superior Court of the State of California, County of Santa  
Cruz, 701 Ocean Street, Santa Cruz, California 95060, and copies of all such papers served upon  
10 the following: Juan E. Monteverde, Esquire, 350 Fifth Avenue, Suite 4405, New York, NY 10118,  
and Evan Smith, Esquire Brodsky & Smith, LLC, Two Bala Plaza, Suite 510, Bala Cynwyd, PA  
11 19004 and James Ducayet, Sidley Austin, 1 S. Dearborn, Chicago, IL 60603. Persons who object  
in writing to the Settlement, the plan of distribution, the Fee and Expense Application and desire to  
12 present evidence at the Settlement Hearing must include in their written objections copies of any  
exhibits they intend to introduce into evidence at the Settlement Hearing. If an objector hires an  
13 attorney to represent him, her, or it for the purposes of making an objection, the attorney must both  
effect service of a notice of appearance on counsel listed above and file it with the Court by no later  
14 than twenty-one calendar days prior to the Settlement Hearing. A member of the Class who files a  
written objection does not have to appear at the Settlement Hearing for the Court to consider his,  
15 her or its objection. Any objector may attend the Settlement hearing and make an objection whether  
he or she files a written objection or not. Any member of the Class who does not make his, her, or  
16 its objection in writing in the manner provided above, or appear in person to make an objection,  
shall be deemed to have waived such objection and shall be foreclosed from making any objection  
17 to the fairness or adequacy of the Settlement set forth in the Stipulation, to the plan of distribution,  
and to the award of attorneys' fees and expenses to Plaintiff's Counsel and Plaintiff for their  
18 representation of the Class, unless the Court orders otherwise.

## 19 **VIII. RIGHT TO EXCLUDE YOURSELF FROM THE CLASS AND SETTLEMENT**

20 If you want to keep the right to sue or continue to sue Defendants on your own about the  
legal issues in this case, then you must take steps to get out of the Class and Settlement. This is  
21 called excluding yourself from, or "opting out" of, the Class and Settlement.

22 To exclude yourself from the Class and Settlement, you must write and send a letter to the  
Claims Administrator by First-Class Mail stating that you want to be excluded from the Class and  
23 Settlement in this Action. Your letter must include your name, address, telephone number, and must  
also be signed by you. Your letter must also include the number of shares of West Marine common  
24 stock you held or owned as of September 14, 2017, the date of the consummation of the Merger.

25 Your exclusion request must be **postmarked no later than twenty-one (21) calendar days  
prior to the Settlement Hearing, or by \_\_\_\_\_, 2020, and sent to the Claims Administrator at:**

26 You cannot exclude yourself by phone or by e-mail. If you make a proper request for exclusion,  
you will not receive your share of the Settlement Payment, you cannot object to the Settlement and  
27 you will not be legally bound by anything that happens in this lawsuit. However, if you do not  
timely and validly request exclusion from the Class and Settlement, you shall be deemed a member  
28

of the Class and be legally bound by the terms of the Settlement, Stipulation and Order and Final Judgment in this Action.

## **IX. ORDER AND FINAL JUDGMENT OF THE COURT**

If the Court determines that the Settlement, as provided for in the Stipulation is fair, reasonable, and adequate and in the best interests of the Class, the Parties shall jointly request that the Court enter an Order and Final Judgment. The Order and Final Judgment shall, among other things:

- (a) make final the Court's previous determination to certify provisionally the Action as a class action pursuant to CCP § 382;
  - (b) determine that the requirements of the Court Rules and due process have been satisfied in connection with the Notice;
  - (c) approve the Settlement as fair, reasonable, and adequate and in the best interests of the Class, including the releases contained therein;
  - (d) authorize and direct the performance of the Settlement in accordance with its terms and conditions and reserve jurisdiction to supervise the consummation of the Settlement;
  - (e) dismiss the Action with prejudice, on the merits, without costs except as provided in the Order and Final Judgment, as against any and all Defendants, and release the Released Defendant Parties and Released Plaintiff parties (defined below) from the Released Claims (defined below);
- and
- (f) subject to Court approval, award attorneys' fees and expenses to Plaintiff's Counsel from the Settlement Amount.

## **X. RELEASES**

Upon the Effective Date of the Settlement (as defined in the Stipulation), the Released Plaintiff Parties (as defined in the Stipulation), Plaintiff and all Class Members, on behalf of themselves and their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, and any person or entity acting for or on behalf of, or claiming under, any of them, shall thereupon be deemed to have fully, finally and forever, released, settled and discharged the Released Defendant Parties (as defined in the Stipulation) from and with respect to every one of the Released Plaintiff's Claims (as defined in the Stipulation), and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute or pursuing in any fashion any Released Plaintiff's Claims against any of the Released Defendant Parties.

In addition, upon the Effective Date, each of Released Defendant Parties, on behalf of themselves and their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, and any person or entity acting for or on behalf of, or claiming under, any of them, shall thereupon be deemed to have fully, finally and forever, released, settled and discharged the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims (as defined in the Stipulation), and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting or pursuing in any fashion any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

1 The foregoing releases extend to Released Plaintiff's Claims and Released Defendants'  
2 Claims that the Settling Parties did not know or suspect to exist at the time of the release. Under  
the terms of the Stipulation and Settlement, the following definitions apply:

3 **1. "Released Plaintiff Parties"** means (i) Plaintiff and all other Class Members; (ii)  
4 members of each individual Class Member's Immediate Family; (iii) all Class Members' past or  
5 present, current or former, direct or indirect, affiliates, associates, members, partners, limited  
6 partners, general partners, partnerships, limited partnerships, general partnerships, investment  
7 funds, investment advisors, investment managers, investors, shareholders, joint venturers,  
8 subsidiaries, parents, divisions, subdivisions, predecessors, successors, officers, directors,  
employees, agents, principals, owners, representatives, advisors, insurers and attorneys(including  
Plaintiff's Counsel) of Plaintiff and the Class Members and their respective affiliates; and (iv) the  
past or present, current or former, direct or indirect legal representatives, heirs, executors, trustees,  
beneficiaries, administrators, trusts, trustees, predecessors, successors, predecessors-in-interest,  
successors-in-interest and assigns of any of the foregoing.

9 **2. "Released Plaintiff's Claims"** means any and all Claims that were asserted or could  
10 have been asserted by Plaintiff in the Action on behalf of himself and/or the Class, and any and all  
11 Claims, including Unknown Claims, that are based on, arise out of, relate in anyway, or involve the  
12 same set of operative facts as the claims asserted by Plaintiff against Released Defendant Parties in  
the Action and which relate to the ownership of West Marine common stock. The Released  
Plaintiff's Claims shall not include claims to enforce the Stipulation or any part of it, and shall not  
include claims based on the conduct of any of the Settling Parties which occurs after the Effective  
Date.

13 **3. "Released Defendant Parties"** means Defendants, West Marine, Inc., Rising Tide  
14 Parent Inc. ("Parent"), and Rising Tide Merger Sub, Inc. ("Merger Sub"), Monomoy, affiliates of  
15 Monomoy, as well as each of their respective past or present family members, spouses, heirs, trusts,  
16 trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents,  
17 employees, fiduciaries, partners, control persons, partnerships, general or limited partners or  
18 partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates,  
19 parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers,  
directors, managing directors, members, managing members, managing agents, insurers,  
predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or  
investment advisors, advisors, consultants, investment bankers, entities providing any fairness  
opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal  
representatives, accountants, insurers, co-insurers, reinsurers, and associates.

20 **4. "Released Defendants' Claims"** means any and all Claims, including Unknown  
21 Claims, that have been or could have been asserted in the action, or in any court, tribunal, forum or  
22 proceeding, by the Released Defendant Parties or any of their respective successors and assigns  
23 against any of the Released Plaintiff Parties, which arise out of or relate in any way to the institution,  
prosecution, settlement, or dismissal of either of the Action; provided, however, that as used herein  
the term "Released Defendants' Claims" shall not include the right to enforce this Stipulation or any  
part of it, and shall not include Claims based on the conduct of any of the Settling Parties which  
occurs after the Effective Date.

## 24 **XI. PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND EXPENSES**

25 Plaintiffs' Counsel intend to petition the Court for an award of attorneys' fees and expenses  
26 incurred in connection with the Action not to exceed one third of the Settlement Fund plus  
27 reimbursement of expenses (the "Fee and Expense Application"), which shall be paid out of— and  
shall not be in addition to — the Settlement Amount. Defendants have agreed not to oppose such  
Fee and Expense Application.

1 **XII. NOTICE TO PERSONS OR ENTITIES HOLDING OWNERSHIP ON BEHALF OF**  
2 **OTHERS**

3 Brokerage firms, banks and/or other persons or entities who held shares of the common stock  
4 of West Marine as of September 14, 2017, the date of the consummation of the Merger, for the  
5 benefit of others are directed promptly to send this Notice to all of their respective beneficial owners.  
6 If additional copies of the Notice are needed for forwarding to such beneficial owners, any requests  
7 for such copies may be made to:

8 **XIII. SCOPE OF THIS NOTICE**

9 This Notice is not all-inclusive. The references in this Notice to the pleadings in the Action,  
10 the Stipulation and other papers and proceedings are only summaries and do not purport to be  
11 comprehensive. A copy of the Stipulation is available at website. For the further details of the  
12 Action, including the claims and defenses that have been asserted by the parties, members of the  
13 Class are referred to the Court files in the Action. You or your attorney may examine the Court  
14 files during regular business hours of each business day at the office of the Clerk of the Court,  
15 Superior Court of the State of California, County of Santa Cruz, 701 Ocean Street, Santa Cruz, CA  
16 95060.

17 **DO NOT CALL THE COURT.**

18 BY ORDER OF THE SUPERIOR COURT OF  
19 CALIFORNIA FOR SANTA CRUZ COUNTY  
20 FOR THE STATE OF CALIFORNIA

21 \_\_\_\_\_  
22 Register in the Superior Court of California for  
23 Santa Cruz County

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Dated:

HONORABLE JOHN GALLAGHER JUDGE OF  
THE SUPERIOR COURT

NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT, SETTLEMENT HEARING AND  
RIGHT TO APPEAR

**EXHIBIT “C”**

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

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

Case No. 17-cv-01995

11 v.

CLASS ACTION

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

**SUMMARY NOTICE OF PENDENCY  
OF CLASS ACTION, PROPOSED  
SETTLEMENT, SETTLEMENT  
HEARING, AND RIGHT TO APPEAR**

15 Date Action Filed: July 27, 2017  
16  
17

18 **SUMMARY NOTICE OF PENDENCY OF CLASS**  
19 **ACTION, PROPOSED SETTLEMENT, SETTLEMENT HEARING, AND RIGHT TO**  
**APPEAR**

20 TO: RECORD AND BENEFICIAL HOLDERS OF WEST MARINE, INC.'S ("WEST MARINE  
21 MEDICAL") COMMON STOCK AS OF SEPTEMBER 14, 2017, THE DATE OF THE  
22 CONSUMMATION OF WEST MARINE'S MERGER (THE "MERGER"), INCLUDING  
23 ANY AND ALL OF THEIR RESPECTIVE SUCCESSORS-IN-INTEREST, SUCCESSORS,  
24 PREDECESSORS-IN-INTEREST, PREDECESSORS, REPRESENTATIVES, TRUSTEES,  
25 EXECUTORS, ADMINISTRATORS, ESTATES, HEIRS, ASSIGNS AND TRANSFEREES,  
26 IMMEDIATE AND REMOTE, AND ANY PERSON OR ENTITY ACTING FOR OR ON  
27 BEHALF OF, OR CLAIMING UNDER, ANY OF THEM, AND EACH OF THEM,  
28 TOGETHER WITH THEIR PREDECESSORS-IN-INTEREST, PREDECESSORS,  
SUCCESSORS-IN-INTEREST, SUCCESSORS, AND ASSIGNS (THE "CLASS").

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT, SETTLEMENT  
HEARING, AND RIGHT TO APPEAR

1 THE PARTIES TO A SHAREHOLDER CLASS ACTION SUIT CONCERNING THE  
2 MERGER HAVE AGREED TO A PROPOSED SETTLEMENT. YOU MAY BE  
3 ENTITLED TO COMPENSATION AS A RESULT OF THE PROPOSED SETTLEMENT  
4 IN THE ACTION CAPTIONED:

*PATTERSON v. REPASS et al., Case No. 17-CV-01995*

5 YOU ARE HEREBY NOTIFIED, pursuant to California Code of Civil Procedure Section 382 and an  
6 Order of the Court, that the above-captioned action has been provisionally certified as a class action  
7 and that a settlement for \$2,500,000 has been proposed (the "Settlement"). Under the Settlement, the  
8 settlement amount, minus any Court-approved attorneys' fees, incentive awards, expenses, and  
9 administrative costs, will be distributed on a per share basis to Class members who owned shares of  
10 West Marine Medical common stock as of September 14, 2017, the date of the consummation of the  
11 Merger. A hearing will be held before the Honorable John Gallagher in the Santa Cruz County  
12 Superior Court, Department 1, located at 701 Ocean Street, Santa Cruz, California 95060, at \_\_\_ on  
13 , 2020 to determine whether the Settlement should be approved by the Court as fair,  
14 reasonable, and adequate, and to consider the application of Plaintiffs' Counsel for attorneys' fees and  
15 reimbursement of expenses and incentive awards for the named Plaintiff (the "Settlement Hearing").

11 IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE  
12 AFFECTED BY THIS SETTLEMENT. IF THE COURT APPROVES THE SETTLEMENT, YOU  
13 WILL BE FOREVER BARRED FROM PURSUING THE RELEASED CLAIMS. You may obtain  
14 copies of the Stipulation of the Agreement of Settlement, Compromise, and Release,, a detailed Notice  
15 of Pendency of Class Action, Proposed Settlement, Settlement Hearing, and Right to Appear (the  
16 "Notice"), and instructions concerning your right to appear and object to the Settlement or award of  
17 attorneys' fees by visiting the website or contacting Plaintiffs' Counsel:

16 BRODSKY & SMITH, LLC  
17 Evan J. Smith  
18 Brodsky & Smith, LLC  
19 Two Bala Plaza, Suite 510  
20 Bala Cynwyd, PA 19004

19 As described more fully in the Notice, you need not file a written objection in order to object and may  
20 appear at the Settlement Hearing personally to make an oral objection. In the event there is a written  
21 objection it shall be filed with the Court and served upon Plaintiff's counsel above such that they are  
22 received **no later than twenty-one (21) calendar days prior to the Settlement Hearing, or no later  
than \_\_\_\_\_, 2020.**

23 If you want to be excluded from the Class and Settlement, you must make a request in writing **no later  
24 than twenty-one (21) calendar days prior to the Settlement Hearing, or no later than \_\_\_\_\_,  
2020.**

25 Further information may be obtained by contacting the Plaintiffs' Counsel listed above.

26 PLEASE DO NOT CALL THE COURT.

27 By Order of The Court

**EXHIBIT “D”**

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**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,

v.

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.

Case No. 17-cv-01995

CLASS ACTION

**[PROPOSED] ORDER AND FINAL  
JUDGMENT**

Date Action Filed: July 27, 2017

[PROPOSED] ORDER AND FINAL JUDGMENT

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>3</sup>; and due and adequate notice of the Settlement Hearing having  
5 been given to the Class as ordered in the Court’s \_\_\_, 2020 Order Granting Preliminary Approval of  
6 Class Action Settlement and Providing for Notice (the “Order”); and the Court having considered  
7 the papers filed and proceedings herein and otherwise being fully informed, and good cause  
8 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

27 \_\_\_\_\_  
28 <sup>3</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  
28 part of it, and shall not include claims based on the conduct of any of the Settling Parties which

occurs after the Effective Date.

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

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

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

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

11. Neither this Judgment, the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be, or may be used as, a presumption, concession, or admission of, or evidence of, the validity of any Released Plaintiff's Claim or of any wrongdoing or liability of the Released Defendant Parties; or (b) is or may be deemed to be, or may be used as, a presumption, concession, or admission of, or evidence of, any fault or omission of any of the Released Defendant Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other

1 tribunal; or (c) is or may be deemed to be an admission or evidence that any claims asserted by  
2 Plaintiff or his counsel were not valid in any civil, criminal, or administrative proceeding. The  
3 Released Defendant Parties may file the Stipulation and/or this Judgment in any action that may be  
4 brought against them in order to support a defense or counterclaim based on principles of res  
5 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other  
6 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

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

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

25 15. Plaintiff George Patterson is awarded a plaintiff incentive award in the sum of  
26 \$\_\_\_\_\_ in connection with the Action, which sum the Court finds to be fair and reasonable to  
27 compensate him for his lost business and/or wages, time and out-of-pocket expenses, in connection  
28 with the prosecution of the Action on behalf of the Class. Such sum shall not preclude Plaintiff



1 from seeking payment of his *pro rata* shares of the Settlement Fund pursuant to the procedures and  
2 plan for allocating the Settlement Fund, and shall be paid solely from the Fee and Expense Award  
3 pursuant to the provisions of the Stipulation.

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

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

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

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

15 20. Plaintiff shall give notice of this Judgment to all Parties.

16 **IT IS SO ORDERED.**

17  
18 Dated: \_\_\_\_\_

HONORABLE JOHN GALLAGHER  
JUDGE OF THE SUPERIOR COURT

19  
20  
21 Submitted by:

22  
23  
24 **BRODSKY & SMITH LLC**  
25 Evan J. Smith (SBN 242352)  
26 9595 Wilshire Boulevard, Suite 900  
27 Beverly Hills, CA 90212  
28 Tel: (877) 534-2590  
Fax: (310) 247-0160  
Email: esmith@brodskysmith.com

1 **MONTEVERDE & ASSOCIATES PC**  
2 Juan E. Monteverde  
3 The Empire State Building  
4 350 Fifth Avenue, Suite 4405  
5 New York, NY 10118  
6 Tel: (212) 971-1341  
7 Fax: (212) 601-2610  
8 Email: [jmonteverde@monteverdelaw.com](mailto:jmonteverde@monteverdelaw.com)

*Attorneys for Plaintiffs and the Class*