Docket #0006 Date Filed: 5/17/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WEST MARINE, INC., *et al.*,[1]	)	Case No. 26-10794 (___)
Debtors.	)	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AND POSTPETITION TAXES AND FEES; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") state as follows in support of this motion (this "Motion"):[2]

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and the "Final Order"): (a) authorizing, but not directing, the Debtors to negotiate, remit, and pay (or use tax credits to offset) or otherwise satisfy Taxes and Fees (as defined herein) arising or accrued in the ordinary course of business that are payable or become payable during these chapter 11 cases, including any obligations subsequently determined upon audit or otherwise to be owed for periods

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: West Marine, Inc. (5502); Marine One Holdco, LLC (2231); Marine One Parent, Inc. (0402); Rising Tide Holdings Inc. (2628); Rising Tide Parent Inc. (6153); Seascapes, Inc. (3739); W Marine Management Company, Inc. (4151); and West Marine Products, Inc. (4523). For purposes of these chapter 11 cases, the Debtors' service address is West Marine Headquarters, 1 East Broward Blvd., Suite 200, Fort Lauderdale, FL 33301.

[2] A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Paulee Day, Chief Executive Officer of West Marine, Inc., in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

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prior to the Petition Date, without regard to whether such obligations accrued or arose before or after the Petition Date; and (b) granting related relief. In addition, the Debtors request that the Court (as defined below) schedule a final hearing within approximately twenty-one days after the Petition Date (as defined below) to consider entry of the Final Order.

Jurisdiction and Venue

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2002, 6003(a), and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1 and 9013-1.

Background

5. West Marine is the leading integrated, omni channel provider of aftermarket products to the boating, fishing, sailing, and watersports markets in the United States. For more than fifty years, West Marine has been recognized as a principal resource for cruisers, sailors, anglers, fishers, and other boating enthusiasts. Founded in 1968 in Sunnyvale, California, West

Marine employs approximately 2,600 crew members and operates a retail footprint of more than 200 stores across thirty-four states and Puerto Rico, as well as a digital footprint through its eCommerce websites that reach domestic, international, and professional customers.

6. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Taxes and Fees

7. In the ordinary course of business, the Debtors collect, withhold, and incur taxes and fees related to, among other things: (a) sales and use taxes; (b) property taxes; (c) income and franchise taxes; (d) customs duties and fees; (e) environmental and waste taxes; (f) business and regulatory fees, including licensing, permitting, annual reporting, and limited liability company fees; (g) assessments, interest, penalties, and other fees as a result of audits; and (h) fees owed to any third-party tax service providers to facilitate payment of certain taxes (collectively, the "Taxes and Fees").[3] The Debtors pay or remit, as applicable, the Taxes and Fees to various governmental authorities (collectively, the "Taxing Authorities"). From time to time, the Debtors may also

[3] Other than with respect to any potential unknown Audits or Assessments (each as defined herein), by this Motion, the Debtors do not seek the authority to collect and remit state and federal employee-related taxes and withholdings. Such relief is instead requested in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, (B) Continue Employee Benefits Programs, and (C) Pay and Honor Workers' Compensation Obligations; (II) Authorizing Banks to Honor And Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief* (the "Wages Motion"), filed contemporaneously herewith.

receive tax credits for overpayments or refunds with respect to Taxes and Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes and Fees or cause the amount of such credits to be refunded to the Debtors.

8. The Debtors pay the Taxes and Fees to the Taxing Authorities on a periodic basis, remitting them monthly, quarterly, semi-annually, or annually, depending on the nature and incurrence of the category of Taxes and Fees. The Debtors seek authority, but not direction, to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees, including where: (a) Taxes and Fees accrue or are incurred postpetition; (b) Taxes and Fees accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; (c) Taxes and Fees paid prepetition by the Debtors were lost or otherwise not received in full by any of the Taxing Authorities; or (d) Taxes and Fees incurred prepetition may become due and payable after the commencement of these chapter 11 cases, including as a result of Audits (as defined below). In addition, for the avoidance of doubt, the Debtors seek authority, but not direction, to pay Taxes and Fees for so-called "straddle" periods (*i.e.*, periods that include the Petition Date).[4]

9. Additionally, the Debtors may become subject to routine audit investigations on account of tax returns and/or tax obligations ("Audits") during these chapter 11 cases, including as a result of any voluntary disclosure agreements or similar procedural mechanisms (if applicable). As of the Petition Date, Audits are currently pending against the Debtors. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors (such

[4] The Debtors reserve their rights with respect to the proper characterization of any "straddle" Taxes and Fees and to seek reimbursement of any portion of any payment made that ultimately is not entitled to administrative or priority treatment.

additional Taxes and Fees, "Assessments").[5] Critically, in certain of the jurisdictions where the Debtors operate, the Debtors must be able to accept a proposed resolution of an Audit and make a payment with respect to such resolution in a timely manner. Accordingly, the Debtors seek authority, but not direction, to pay or remit tax obligations on account of the Assessments as they arise in the ordinary course of the Debtors' business, including as a result of any resolutions of issues addressed in an Audit, and including with respect to the kinds of Taxes and Fees otherwise addressed in the Wages Motion.

10. Finally, subject to entry of the Final Order, the Debtors seek authority, but not direction, to undertake typical activities related to tax planning, including: (a) converting Debtor entities from one form to another (*e.g.*, converting an entity from a corporation to a limited liability company) via conversion, merger, or otherwise ("Entity Conversions"); (b) making certain tax elections (including with respect to the tax classification of Debtor entities) ("Entity Classification Elections"); (c) changing the position of Debtor entities within the Debtors' corporate structure ("Entity Movements"); and (d) modifying or resolving intercompany claims and moving assets or liabilities among Debtor entities ("Asset and Liability Movements" and, together with the Entity Conversions, Entity Classification Elections, and Entity Movements, the "Tax Planning Activities"), in each case, if doing so will not alter the substantive rights of the Debtors' stakeholders in these chapter 11 cases.[6]

11. The Debtors estimate that approximately $6,248,000.00 in Taxes and Fees (inclusive of fees owed to Tax Service Providers (as defined below)) are outstanding as of the

[5] Nothing in this Motion or any related order constitutes, or should be construed, as an admission of liability by the Debtors with respect to any Audit or Assessment. The Debtors expressly reserve all rights with respect to any Audit and the right to contest any Assessments claimed to be due as a result of any Audit.

[6] As of the Petition Date, the Debtors do not intend to undertake in any Tax Planning Activities but seek authority, but not direction, to do so pursuant to this Motion out of an abundance of caution should any such Tax Planning Activities become necessary during these chapter 11 cases.

Petition Date, of which approximately $5,748,000.00 is currently payable or will become due and owing to the Taxing Authorities between entry of the Interim and Final Orders (the "Interim Period") in the ordinary course, as outlined below:[7]

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due During Interim Period
Sales and Use Taxes	Taxes on goods and services sold or used, assessed based on the value of such goods and services.	$3,500,000.00	$3,500,000.00
Income and Franchise	Federal and state taxes imposed on the Debtors' income and state taxes imposed for the privilege of the Debtors operating their businesses pursuant to state laws. The Debtors also incur gross receipts taxes in certain jurisdictions.	$10,000.00	$10,000.00
Property Taxes	Taxes and obligations related to real and personal property holdings.	$1,400,000.00	$900,000.00
Customs and Import Duties and Fees	Customs duties, import and export-related taxes, and other incidental import and export expenses, including broker, tariff classification, and audit fees.	$1,218,000.00	$1,218,000.00
Environmental and Waste Taxes	Taxes related to compliance with environmental regulatory fees and fees paid in hazardous and solid waste taxes as set by state governments.	$50,000.00	$50,000.00
Business License and Other Taxes and Fees	Fees related to compliance with regulatory requirements, including periodic licensing, permitting, reporting, and similar requirements.	$50,000.00	$50,000.00
Tax Service Providers	Fees related to the Debtors' utilization of third-party Tax Services in the ordinary course of business, including calculating and facilitating payment of Taxes and Fees.	$20,000.00	$20,000.00
Total		$6,248,000.00	$5,748,000.00

[7] The Debtors cannot predict the amounts of any potential Assessments that may result from Audits, if any. Accordingly, the Debtors' estimate of outstanding Taxes and Fees as of the Petition Date does not include any amounts relating to potential Assessments.

I. Sales and Use Taxes.

12. As a retailer, the Debtors incur, collect, and remit sales and use taxes to the Taxing Authorities in connection with the sale and purchase of goods and services (collectively, the "Sales and Use Taxes"). Sales and Use Taxes are general consumption taxes that the Debtors incur either when purchasing goods and services from vendors or when selling goods and services to customers. Sales and Use Taxes are usually set by the relevant Taxing Authorities as a percentage of the retail prices of goods and services purchased. In some jurisdictions, the Debtors remit to relevant Taxing Authorities estimated amounts with respect to Sales and Use Taxes, resulting in tax credits or overpayments that may be refunded to the Debtors in certain circumstances. Additionally, when the Debtors incur Sales and Use Taxes at the point of purchase, vendors often include the applicable Sales and Use Taxes on the invoices payable by the Debtors, and the Debtors do not separately remit such amounts to the Taxing Authorities. The Debtors generally accrue and remit Sales and Use Taxes monthly.

13. In the fiscal year ended December 31, 2025 ("FY25"), the Debtors paid approximately $35,000,000.00 in the aggregate in Sales and Use Taxes to the Taxing Authorities. As of the Petition Date, the Debtors estimate that they have incurred, collected, or will owe approximately $3,500,000.00 in Sales and Use Taxes that have not been remitted to the relevant Taxing Authorities, all of which is currently payable or will become payable during the Interim Period. The Debtors request authority to satisfy any amounts owed on account of such Sales and Use Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

II. Income and Franchise Taxes.[8]

14. Historically, in the ordinary course of operating their business, the Debtors have incurred various federal, state, and local income, franchise, and gross receipts taxes, as applicable (collectively, the "Income and Franchise Taxes"). The Debtors generally remit Income and Franchise Taxes directly to the relevant Taxing Authorities in accordance with the statutory requirements of each applicable jurisdiction. In some jurisdictions, the Debtors remit to the relevant Taxing Authorities estimated amounts with respect to Income and Franchise Taxes, resulting in tax credits or overpayments, which may be set off against future Income and Franchise Taxes.

15. In FY25, the Debtors paid approximately $100,000.00 in Income and Franchise Taxes to the applicable Taxing Authorities. As of the Petition Date, the Debtors estimate that they owe approximately $10,000.00 to the relevant Taxing Authorities on account of prepetition Income and Franchise Taxes, all of which is currently payable or will become payable during the Interim Period. The Debtors request authority to satisfy any amounts owed on account of such Income and Franchise Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business and consistent with prepetition practice during these chapter 11 cases.

III. Property Taxes.

16. State and local laws in the jurisdictions where the Debtors operate generally grant Taxing Authorities the power to levy property taxes against the Debtors' real and personal property, and the Debtors pay property taxes in such jurisdictions on account of the Debtors' leased

[8] The Debtors reserve the right to make deferred payments on account of the Income and Franchise Taxes at the end of these chapter 11 cases pursuant to 11 U.S.C. § 1129(a)(9)(C).

real property (the "Real Property Taxes")[9] and personal property, including the Debtors' inventory (together with the Real Property Taxes, the "Property Taxes") located in such jurisdictions. To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay Property Taxes in the ordinary course of business on an annual or semi-annual basis, with installments paid during intervening periods as required.

17. In FY25, the Debtors paid approximately $7,300,000.00 in Property Taxes to the applicable Taxing Authorities. As of the Petition Date, the Debtors estimate that they have accrued approximately $1,400,000.00 in Property Taxes, of which $900,000.00 is currently payable or will become payable during the Interim Period. The Debtors request authority to satisfy any amounts owed on account of such Property Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business and during these chapter 11 cases.

IV. Customs and Import Duties.

18. The Debtors are required to pay certain duties related to the importation or transportation of goods from foreign jurisdictions (collectively, the "Customs and Import Duties"). Specifically, the Debtors incur Customs and Import Duties through the importation of goods from foreign countries to the United States. The Debtors utilize Expeditors International of Washington, Inc. ("Expeditors") as their customs broker for the import and export of goods. In the ordinary course, Expeditors logs an intake of goods the Debtors have received from a foreign counterparty and shares that intake with the applicable Taxing Authority and the United States Customs and Border Protection ("CBP"). The Debtors subsequently pay the Customs and Import Duties owed on such intake directly to CBP, with such payments made monthly in arrears. The Debtors pay

[9] With respect to certain of their leased real properties, the Debtors' remit property tax payments indirectly, via their obligations to landlords, pursuant to the terms of the applicable leases. This Motion does not request relief with respect to such Real Property Taxes.

Expeditors a fee for its services, calculated per intake, which totaled approximately $20,000.00 in FY25 (the "Broker Fees"). The Debtors separately utilize Intelligent Audit to audit freight invoices. In FY25, the Company paid approximately $70,000.00 for these ancillary services (such fees, the "Ancillary Import Fees," and together with the Broker Fees, the "Customs and Import Fees"). Finally, the Debtors maintain certain surety bonds in favor of CBP as required under customs regulations to operate in the import and export sector.[10]

19. If the Debtors do not timely pay the Customs and Import Duties, CBP may demand liquidated damages, assess interest, impose other sanctions, or attempt to assert liens against such imported goods. Contesting these measures would require substantial time, effort, and expense and would needlessly distract the Debtors from these chapter 11 cases. In addition, absent payment of the Broker Fees, Expeditors may, in some instances, assert shippers' and warehousemens' liens against the imported goods. Further, absent payment of the Ancillary Import Fees, the Debtors risk a cessation of services critical to their assessment of owed duties, as well as audits of related invoices. Any such actions would impair the Debtors' ability to conduct business cross-border, resulting in immediate and irreparable harm to the Debtors' estates.

20. In FY25, the Debtors paid approximately $5,300,000.00 in Customs and Import Duties to the applicable Taxing Authorities.[11] As of the Petition Date, the Debtors estimate they have incurred or accrued approximately $1,200,000.00 of Customs and Import Duties, all of which is currently payable or will become payable during the Interim Period. The Debtors request

[10] The Debtors seek relief in connection with such surety bonds pursuant to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance, Surety Coverage, and Letters of Credit Entered Into Prepetition and Pay Related Prepetition Obligations, and (B) Renew, Supplement, Modify, or Purchase Insurance, Surety Coverage, and Letters of Credit; (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief*, filed contemporaneously herewith.

[11] The Debtors' postpetition Customs and Import Duties may vary materially from Customs and Import Duties paid in FY25, as a result of higher duty rates. *See* First Day Declaration.

authority to satisfy any amounts owed on account of such Customs and Import Duties that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

21. As of the Petition Date, the Debtors believe they have accrued approximately $3,000.00 in Broker Fees, all of which will become payable during the Interim Period. Additionally, the Debtors believe that they have accrued approximately $15,000.00 on account of Ancillary Import Fees, all of which will become payable during the Interim Period. The Debtors request authority to satisfy any amounts owed on account of such Customs and Import Fees that are due and owing as of the Petition Date or that may become due and owing in the ordinary course of business during these chapter 11 cases.

V. Environmental and Waste Taxes

22. State and local laws in the jurisdictions where the Debtors operate generally impose various taxes to dispose of hazardous waste, including fees related to certain federal environmental regulations, use of oil and natural gases, battery recycling programs, and other miscellaneous taxes and fees (collectively, the "Environmental and Waste Taxes"). In FY25, the Debtors remitted approximately $205,000.00 in Environmental and Waste Taxes to the applicable Taxing Authorities.

23. As of the Petition Date, the Debtors estimate that they owe approximately $50,000.00 to the applicable Taxing Authorities on account of prepetition Environmental and Waste Taxes, all of which will become payable during the Interim Period. The Debtors request authority to satisfy any amounts owed on account of such Environmental and Waste Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business and during these chapter 11 cases.

VI. Business License and Other Taxes and Fees.

24. State and local laws in the jurisdictions where the Debtors operate require the Debtors to obtain and pay for a wide range of business licenses, permits (including permits to sell garden seeds), annual reporting fees, stamp taxes, and regulatory fees to operate and remain in good standing with the applicable Taxing Authorities, as well as certain other miscellaneous taxes and fees required to operate their business (the "Business License and Other Taxes and Fees"). The methods for calculating Business License and Other Taxes and Fees and the deadlines for paying such amounts due thereunder vary by jurisdiction.

25. In FY25, the Debtors paid approximately $165,000.00 in Business License and Other Taxes and Fees to the applicable Taxing Authorities. The Debtors estimate that they have accrued $50,000.00 in prepetition Business License and Other Taxes and Fees as of the Petition Date, approximately all of which is expected to become due and payable during the Interim Period. The Debtors request authority to satisfy any amounts owed on account of such Business License and Other Taxes and Fees that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

VII. Audits.

26. The Debtors are currently subject to ongoing Audits and may be subject to further Audits (or voluntary disclosures of unpaid tax amounts that give rise to an agreed Assessment), which may result in additional prepetition Taxes and Fees being assessed against the Debtors during the pendency of these chapter 11 cases.[12] While the Debtors do not believe any Assessments are owed as of the Petition Date, out of an abundance of caution, the Debtors request

[12] Debtor West Marine Products, Inc. is currently subject to ongoing Audits regarding California, Louisiana, Maine, Rhode Island, and Texas Sales and Use Taxes, and Washington excise taxes.

authority to pay any outstanding Assessments and to pay or remit Assessments and other tax obligations on account of Audits as they arise in the ordinary course of the Debtors' business, including as a result of resolutions of issues addressed in any such Audits.

VIII. Tax Service Providers.

27. In the ordinary course of business, the Debtors utilize Avalara, Inc. and Anybill Financial Services, Inc. (together, the "Tax Service Providers") to facilitate the payment of certain Taxes and Fees. The Debtors either maintain accounts with the Tax Service Providers and, in the ordinary course of business, fund amounts into the accounts sufficient to satisfy certain tax liabilities, or the Tax Service Providers pay certain tax liabilities on the Debtors' behalf, and the Debtors subsequently reimburse them. The Debtors incur approximately $10,000.00 per month on account of fees owed to the Tax Service Providers. As of the Petition Date, the Debtors estimate they have accrued approximately $20,000.00 in prepetition amounts owed to the Tax Service Providers, all of which is expected to become due and payable during the Interim Period.

28. The Debtors believe that continuing the services of the Tax Service Providers is necessary to assure the Debtors' compliance with the various taxing regimes to which they are subject. In addition, the Tax Service Providers' services are critical to ensuring the Debtors are not overburdened and the Debtors' personnel are not distracted from the administration of these chapter 11 cases. Finally, the services limit the risk the Debtors are assessed reinstatement fees, penalties, or interest on missed payments. Accordingly, the Debtors request authority to satisfy any amounts owed on account of such Tax Service Providers that are due and owing as of the

Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.[13]

Basis for Relief

29. The Debtors believe that any failure to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including, but not limited to: (a) the Taxing Authorities may initiate Audits, which would unnecessarily divert the Debtors' attention from these chapter 11 cases; (b) the Taxing Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and/or pursue other remedies that will harm the Debtors' estates; and (c) in certain instances, certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract those key employees from their duties related to these chapter 11 cases. In addition, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Taxing Authorities, and these funds may not constitute property of the Debtors' estates; as such, there is a strong legal basis for allowing the Debtors to remit these funds to the applicable Taxing Authorities on a postpetition basis. Moreover, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, and nonpayment of the Taxes and Fees may also give rise to priority claims entitled to payment before general unsecured claims.

I. Certain of the Taxes and Fees May Not Be Property of the Debtors' Estates.

30. Many of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Taxing Authorities and are held in trust by the Debtors. *See, e.g.*, I.R.C. § 7501 (stating that certain taxes and fees are held in trust). As such, these Taxes and Fees are not property

[13] For the avoidance of doubt, the Debtors do not seek to pay any Tax Service Provider to the extent that such provider needs to be retained pursuant to an order of the Court.

of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g.*, *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes, such as excise taxes, is not a transfer subject to avoidance because such funds are not the debtor's property); *In re First Pay, Inc.*, 773 F.3d 583, 590 (4th Cir. 2014) (same); *DuCharmes & Co. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (per curiam) (same); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *Rosenow v. Ill. Dept. of Revenue (In re Rosenow)*, 715 F.2d 277, 279–82 (7th Cir. 1983) (same); *W. Surety Co. v. Waite (In re Waite)*, 698 F.2d 1177, 1179 (11th Cir. 1983) (same); *see also In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 105 (Bankr. E.D. Pa 1987) (finding that funds held in trust for federal excise taxes are not property of a debtor's estate and, therefore, are not available for distribution to the debtor's creditors). The Debtors, therefore, generally do not have an equitable interest in such funds, and they should be permitted to pay those funds to the Taxing Authorities as they become due.[14]

II. Certain of the Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment Under the Bankruptcy Code.

31. Claims for certain of the Taxes and Fees are or may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Taxing Authorities may attempt to assess fees, interest, and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority

[14] For the avoidance of doubt, the Debtors hereby request authority to pay the Taxes and Fees as provided herein, regardless of whether such Taxes and Fees constitute trust fund obligations.

status to "a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss"). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain of the Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of junior creditors. Paying such Taxes and Fees likely will give Taxing Authorities no more than they otherwise would be entitled to under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that might otherwise accrue on the Taxes and Fees during these chapter 11 cases. For the avoidance of doubt, the Debtors are not seeking to make any payments pursuant to this Motion for tax periods that would be older than those entitled to priority treatment.

32. Some of the Taxes and Fees may be entitled to secured status with respect to property owned by the Debtors. As secured claims, these Taxes and Fees would be entitled to priority treatment if the Debtors sell the property to which Taxes and Fees relate when the Debtors confirm a chapter 11 plan. *See* 11 U.S.C. §§ 506(a), 1129(a)(9)(C); 1129(b)(2)(A) (requiring that any plan of reorganization "crammed down" over a class of secured creditors pay those creditors in full or allow those creditors to retain their liens). Moreover, such secured claims could accrue interest if not timely paid. Thus, paying such secured Taxes and Fees only affects the timing of the payments, may reduce the ultimate amount owed with respect to such Taxes and Fees, and does not prejudice the rights of other creditors of the Debtors.

III. Paying the Taxes and Fees and Undertaking the Tax Planning Activities as Provided Herein Is a Sound Exercise of the Debtors' Business Judgment.

33. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's

going-concern value. *See, e.g.*, *In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

34. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See Ionosphere*, 98 B.R. at 175 (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing the doctrine of necessity and authorizing the debtor to pay prepetition claims if such payment was essential to the continued operation of the debtor); *In re Orion Refining Corp.*, 372 B.R. 688, 703 (Bankr. D. Del. 2007) (authorizing payment of prepetition claim of critical vendor pursuant to section 363(b) of the Bankruptcy Code). To do so under section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose" justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987); *see also Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring the debtor to show a "good business reason" to approve a sale pursuant to section 363(b)). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to

the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task."). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

35. Furthermore, section 105(a) of the Bankruptcy Code provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, pursuant to the "doctrine of necessity." 11 U.S.C. § 105(a). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See Lehigh*, 657 F.2d at 581 (holding that a court may authorize payment of prepetition claims if such payment is essential to the debtor's continued operation); *see also Just for Feet*, 242 B.R. 821 at 824–25 (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of pre-petition claims" under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan).

36. Moreover, the doctrine of necessity is designed to foster a debtor's rehabilitation, which courts have recognized is "the paramount policy and goal of Chapter 11." *See Ionosphere*, 98 B.R. at 176; *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code," but "[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant

to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment."); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as "necessary to avert a serious threat to the Chapter 11 process"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

37. The Debtors' ability to pay the Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Taxing Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting these key personnel from the administration of the Debtors' chapter 11 cases. *See, e.g.*, *In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (stating "[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax" and finding director personally liable for unpaid taxes) (citing *United States v. Energy Res. Co*., 495 U.S. 545, 547 (1990)). Any collection action on account of such claims, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of the Debtors' estates and all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and essential to the orderly administration and, ultimately, the success of these chapter 11 cases.

38. Finally, failure to timely pay the Taxes and Fees may ultimately result in increased tax liability for the Debtors if interest and penalties accrue on the claims for Taxes and Fees, which amounts may also be entitled to priority treatment. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders. As noted above, many of the Taxes and Fees

may be entitled to priority status pursuant to section 507(a)(8)(C) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. To the extent that the Debtors are not able to timely pay the prepetition Taxes and Fees, they may ultimately be required to pay those amounts with additional interest and penalties. The Debtors' failure to pay the prepetition Taxes and Fees as they come due may, thus, ultimately increase the amount of priority claims held by the Taxing Authorities against the Debtors' estates, to the detriment of the Debtors' general unsecured creditors and other non-priority creditors. *See* 11 U.S.C. §§ 507(a)(8)(C) and 507(a)(8)(G). Accordingly, the Court should grant the Debtors authority to pay the Taxes and Fees and undertake the Tax Planning Activities as provided herein.

Cause Exists to Authorize the Debtors'
Financial Institutions to Honor Checks and Electronic Fund Transfers

39. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests relating to any authorized payment in respect of the relief requested herein. Therefore, the Debtors respectfully request that the Court (a) authorize the Debtors' banks and financial institutions (collectively, the "Banks") to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief sought herein to the extent that the Debtors have sufficient funds on deposit in their accounts with the Banks, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (b) authorize the Banks to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtors'

instructions. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to payments authorized by the relief requested herein, will not be honored inadvertently.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

40. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty-one days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is "needed to avoid immediate and irreparable harm." *See* Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

41. An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors' operations. Failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture and cause immediate and irreparable harm. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is "needed to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

42. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease

of property under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates.

Reservation of Rights

43. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; or (h) a waiver of the obligation of any party in interest to file a proof of claim.

Notice

44. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) the

holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to Eclipse, as ABL Agent and FILO Agent; (d) counsel to Wilmington Savings Fund Society, FSB, as Term Loan Agent; (e) counsel to the Consenting Stakeholders; (f) the office of the attorney general for each of the states in which the Debtors operate; (g) the United States Attorney's Office for the District of Delaware; (h) the Internal Revenue Service; (i) the Banks; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[*Remainder of Page Intentionally Left Blank*]

WHEREFORE, the Debtors request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: May 17, 2026
Wilmington, Delaware

/s/ Shella Borovinskaya

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WEST MARINE, INC., *et al.*,[1]	)	Case No. 26-10794 (___)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. _**

INTERIM ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AND POSTPETITION TAXES AND FEES; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an interim order (this "Interim Order"): (a) authorizing the Debtors to negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to, including, or following the Petition Date); (b) scheduling a final hearing to consider approval of the Motion on a final basis; and (c) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 and the *Amended Standing Order of*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: West Marine, Inc. (5502); Marine One Holdco, LLC (2231); Marine One Parent, Inc. (0402); Rising Tide Holdings Inc. (2628); Rising Tide Parent Inc. (6153); Seascapes, Inc. (3739); W Marine Management Company, Inc. (4151); and West Marine Products, Inc. (4523). For purposes of these chapter 11 cases, the Debtors' service address is West Marine Headquarters, 1 East Broward Blvd., Suite 200, Fort Lauderdale, FL 33301.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter this Interim Order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.

2. Any objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.

3. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2026, at__:__ _.m., (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2026 and shall be served on: (a) the Debtors, West Marine, Inc., 1 East Broward Blvd., Suite 200, Fort Lauderdale, Florida 33301, Attn.: Paulee Day, Chief Executive Officer; (b) proposed counsel to the Debtors, (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Matthew C. Fagen, P.C. (matthew.fagen@kirkland.com); (ii) Kirkland & Ellis LLP, 830 Brickell Plaza, Miami, Florida 33131, Attn.: Brian J. Nakhaimousa

(brian.nakhaimousa@kirkland.com) and Trevor Eck (trevor.eck@kirkland.com); and (iii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn.: Michael R. Nestor (mnestor@ycst.com), Kara Hammond Coyle (kcoyle@ycst.com), Shella Borovinskaya (sborovinskaya@ycst.com), and Kristin L. Cardoza (kcardoza@ycst.com); (c) counsel to Eclipse, as ABL Agent and FILO Agent, (i) Riemer Braunstein LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, New York 10036, Attn: Lyle Stein (lstein@riemerlaw.com), Emily Lustbader (elustbader@riemerlaw.com), and Steven Fox (sfox@riemerlaw.com); and (ii) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, Wilmington, Delaware 19801, Attn: Gregory A. Taylor (gtaylor@ashbygeddes.com); (d) counsel to the Consenting Stakeholders, (i) Otterbourg P.C., 230 Park Avenue, New York, New York 10169, Attn: Daniel F. Fiorillo (dfiorillo@otterbourg.com) and Nicholas Palazzolo (npalazzolo@otterbourg.com); (ii) Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Matthew Brod (mbrod@milbank.com) and Benjamin Schak (bschak@milbank.com); and (iii) Richards, Layton, & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant (merchant@rlf.com); (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Linda Casey (linda.casey@usdoj.gov); and (f) any statutory committee appointed in these chapter 11 cases. If no objections are filed to the Motion, this Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.

4. The Debtors are authorized to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy the Taxes and Fees (including corresponding Assessments and fees owed to Tax Service Providers) that arose or accrued prior to the Petition Date and that will become

due and owing during the Interim Period in the ordinary course of business in an aggregate amount not to exceed $5,748,000.00 pending entry of the Final Order; and (b) negotiate, pay and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business during the Interim Period on a postpetition basis, until the date a Final Order on the Motion is entered, including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to any Audits or Assessments or paying any Taxes and Fees arising as a result of any Audits or Assessments; *provided* that notwithstanding anything to the contrary herein or in the Motion, that in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under sections 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from the Court requiring a return of such amounts, and the payment of such amount shall, upon order of the Court, be refunded to the Debtors.

5. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

6. Notwithstanding anything to the contrary herein or in the Motion, the Debtors are authorized to file amended tax returns, if necessary, including for prepetition periods, and pay Taxes and Fees in connection therewith.

7. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to any audits that have been completed, are in progress, or arise from prepetition periods. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

8. No payments shall be made pursuant to this Interim Order for past due taxes; *provided*, *however*, that nothing herein shall limit the Debtors' authority to pay any Assessment or any other amount in connection with an Audit, including the settlement thereof, subject to the aggregate "cap" amount stated in paragraph 4 of this Interim Order.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

10. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Taxing Authorities.

11. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief (including any payment made in accordance with this Interim Order), nothing in this Interim Order is intended as or shall be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code

or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; or (h) a waiver of the obligation of any party in interest to file a proof of claim.

12. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed and authorized to be paid in connection with the relief granted herein.

13. The Debtors have demonstrated that the requested relief is "needed to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003(a), and the contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(a).

14. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

15. Nothing in this Interim Order authorizes the Debtors to pay any Tax Service Provider to the extent such provider needs to be retained pursuant to an order of this Court.

16. Notwithstanding anything to the contrary contained herein, any payment to be made, and any relief or authorization granted hereunder, shall not conflict with, and shall be subject to, the requirements imposed on the Debtors under the terms of any order authorizing the use of cash collateral (the "Cash Collateral Order") and the budget approved thereunder (the "Budget"), and nothing herein shall alter the rights of the secured parties under the Cash Collateral Order or the Budget, as applicable. To the extent that there may be any conflict between the terms of this

Interim Order, the terms of the Cash Collateral Order or the Budget, the terms of the Cash Collateral Order or the Budget, as applicable, shall govern.

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Interim Order.

20. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WEST MARINE, INC., *et al.*,[1]	)	Case No. 26-10794 (___)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. _ & _**

FINAL ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AND POSTPETITION TAXES AND FEES; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of a final order (this "Final Order"): (a) authorizing the Debtors to negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to, including, or following the Petition Date); and (b) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: West Marine, Inc. (5502); Marine One Holdco, LLC (2231); Marine One Parent, Inc. (0402); Rising Tide Holdings Inc. (2628); Rising Tide Parent Inc. (6153); Seascapes, Inc. (3739); W Marine Management Company, Inc. (4151); and West Marine Products, Inc. (4523). For purposes of these chapter 11 cases, the Debtors' service address is West Marine Headquarters, 1 East Broward Blvd., Suite 200, Fort Lauderdale, FL 33301.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"), if any; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.

2. Any objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.

3. The Debtors are authorized to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy the Taxes and Fees (including corresponding Assessments and fees owed to Tax Service Providers) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these chapter 11 cases in an amount not to exceed $6,248,000.00; and (b) negotiate, pay and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis, including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to any Audits or Assessments or paying any Taxes and Fees arising as a

result of any Audits or Assessments; *provided* that notwithstanding anything to the contrary herein or in the Motion, that in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under sections 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from the Court requiring a return of such amounts, and the payment of such amount shall, upon order of the Court, be refunded to the Debtors.

4. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

5. Notwithstanding anything to the contrary herein or in the Motion, the Debtors are authorized to file amended tax returns, if necessary, including for prepetition periods, and pay Taxes and Fees in connection therewith.

6. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to any audits that have been completed, are in progress, or arise from prepetition periods. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

7. No payments shall be made pursuant to this Final Order for past due taxes; *provided*, *however*, that nothing herein shall limit the Debtors' authority to pay any Assessment or any other amount in connection with an Audit, including the settlement thereof.

8. The Debtors are authorized, but not directed, to undertake certain typical activities related to tax planning, including any Tax Planning Activities; *provided*, that the Debtors will give counsel to Eclipse Business Capital LLC ("Eclipse") and counsel to the Consenting Stakeholders

5 business days' notice before effectuating any such Tax Planning Activity. To the extent Eclipse and/or the Consenting Stakeholders believe any such activity affects their substantive rights or take other issue with the Tax Planning Activities, Eclipse and/or the Consenting Stakeholders may object to such Tax Planning Activities and request an expedited hearing before this Court.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

10. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Taxing Authorities.

11. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief (including any payment made in accordance with this Final Order), nothing in this Final Order is intended as or shall be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or

reject any executory contract or unexpired lease; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; or (h) a waiver of the obligation of any party in interest to file a proof of claim.

12. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed and authorized to be paid in connection with the relief granted herein.

13. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

14. Nothing in this Final Order authorizes the Debtors to pay any Tax Service Provider to the extent such provider needs to be retained pursuant to an order of this Court.

15. Notwithstanding anything to the contrary contained herein, any payment to be made, and any relief or authorization granted hereunder, shall not conflict with, and shall be subject to, the requirements imposed on the Debtors under the terms of any order authorizing the use of cash collateral (the "Cash Collateral Order") and the budget approved thereunder (the "Budget"), and nothing herein shall alter the rights of the secured parties under the Cash Collateral Order or the Budget, as applicable. To the extent that there may be any conflict between the terms of this Final Order, the terms of the Cash Collateral Order or the Budget, the terms of the Cash Collateral Order or the Budget, as applicable, shall govern.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Final Order.

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.