Docket #0009 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 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 above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully 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 the Debtors to (i) pay all prepetition wages, salaries, other compensation, and Reimbursable Expenses on account of the Compensation and Benefits (each as defined below) and (ii) continue to administer the Compensation and Benefits (as defined below) in the ordinary

[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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course of business, including payment of prepetition obligations related thereto; (b) authorizing banks and other financial institutions (collectively, the "Banks") to honor and process check and electronic transfer requests related to the foregoing; and (c) 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), 362(d), 363(b), 507(a), and 541(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 6003 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 (as defined below) 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 Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties 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 Debtors' Workforce

7. As of the Petition Date, the Debtors employ approximately 2,600 employees (the "Crew Members")[3]—approximately 1,100 of whom are full-time and approximately 1,200 of whom are part-time, as well as approximately 300 employees employed by the Debtors on a seasonal or temporary basis[4]—to help their customers earn, develop, and exercise their sea legs. The Debtors' Crew Members perform a wide variety of functions critical to the administration of these chapter 11 cases and the Debtors' successful reorganization. Given that the Debtors' business operations rely on boaters serving fellow boaters, the Crew Members' skills, knowledge,

[3] The Debtors also currently employ two interns who supplement the Debtors' workforce. In the ordinary course of business, the Debtors hire interns to perform various tasks and provide support in a variety of departments. The interns are not eligible to receive Health and Welfare Coverage and Benefits (as defined below).

[4] The Debtors seasonal or temporary employees are not eligible to receive Health and Welfare Coverage and Benefits (as defined below).

and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. In many instances, the Debtors' Crew Members include highly trained personnel who are not easily replaced. Without the continued, uninterrupted services of their Crew Members, the Debtors' business operations will be halted, materially impairing the administration of the Debtors' estates. In addition to the Crew Members, the Debtors' workforce also includes approximately 73 independent contractors (the "Independent Contractors") who supplement the Debtors' workforce, performing various tasks and functions for a variety of different departments.

8. The vast majority of the Crew Members and Independent Contractors rely on their Compensation and Benefits (as defined below) to pay their daily living expenses and support their families. These workers will be unfairly harmed if the Debtors are not permitted to continue paying compensation, providing health insurance, and honoring other crucial benefits during these chapter 11 cases. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Compensation and Benefits

9. To minimize the personal hardship that the Crew Members and Independent Contractors would suffer if prepetition obligations related thereto remain unpaid during these chapter 11 cases, the Debtors seek authority, but not direction, to: (a) pay and honor certain prepetition claims relating to, among other things, Wage Obligations, Withholding Obligations, Payroll Processing Services, Reimbursable Expenses, Health and Welfare Coverage and Benefits, the Workers' Compensation Program, the 401(k) Plan (including the 401(k) Matching Contributions), Paid Leave Benefits, the Company Car Program, Crew Member Discount Programs, Non-Insider Incentive Programs, the Non-Insider Severance Program, and certain other benefits that the Debtors have provided in the ordinary course (each as defined below, and

collectively, the "Compensation and Benefits"),[5] and (b) pay all costs related to or on account of the Compensation and Benefits.

10. Subject to the Court's approval, the Debtors intend to continue their prepetition Compensation and Benefits in the ordinary course of business and consistent with past practice on a postpetition basis. However, out of an abundance of caution, the Debtors request the right to modify, change, and/or discontinue any of their Compensation and Benefits and/or to implement new programs, policies, and benefits in their sole discretion and in the ordinary course of business during these chapter 11 cases (subject in all respects to the terms of the Interim Order and Final Order) and without the need for further Court approval, subject to applicable law. The Debtors estimate that the following prepetition amounts are outstanding on account of the Compensation and Benefits:

Relief Sought	Interim Amount	Final Amount
Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses	$5,644,700.00	$5,644,700.00
Wage Obligations	$4,090,000.00	$4,090,000.00
Withholding Obligations	$1,303,200.00	$1,303,200.00
Payroll Processing	$1,500.00	$1,500.00
Reimbursable Expenses	$250,000.00	$250,000.00
Health and Welfare Coverage and Benefits	$391,000.00	$391,000.00
Medical and Prescription Coverage	$346,000.00	$346,000.00
Flex Spending Accounts and Health Savings Accounts	$16,000.00	$16,000.00
Life Insurance Coverage	$4,000.00	$4,000.00
Critical Illness, Accident, and Hospital Indemnity	N/A	N/A
Dental Insurance Coverage	$23,000.00	$23,000.00
Vision Insurance Coverage	$2,000.00	$2,000.00

[5] The descriptions of the Compensation and Benefits set forth in this Motion constitute a summary only. The actual terms of the agreements, contracts, plans, programs, and manuals governing the Compensation and Benefits will govern in the event of any inconsistency with the description in this Motion. The Debtors request authority, but not direction, to honor obligations related to the Compensation and Benefits in the ordinary course of business consistent with prepetition practices, regardless of whether the Debtors inadvertently failed to include a particular benefit or aspect of compensation in the defined term "Compensation and Benefits," and any such omitted benefit or aspect of compensation is hereby included in the defined term "Compensation and Benefits" as used herein and in the Interim Order and Final Order.

Relief Sought	Interim Amount	Final Amount
Additional Benefit Programs	$315,000.00	$3,622,500.00
Workers' Compensation	$150,000.00	$3,100,000.00
401(k) Plan	$165,000.00	$165,000.00
Company Car Program	N/A	N/A
Non-Insider Incentive Programs	N/A	$290,000.00
Non-Insider Severance Program	N/A	$67,500.00
Crew Member Discount Programs	N/A	N/A
Total	**$6,350,700.00**	**$9,658,200.00**

II. Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses.

11. As of the Petition Date, the Debtors estimate that approximately $9,658,200.00 on account of the Compensation and Benefits will be accrued and unpaid, approximately $6,350,700.00 of which will come due between entry of the Interim and Final Orders (the "Interim Period"). The Debtors do not seek to pay any outstanding prepetition amounts on account of the Compensation and Benefits in excess of the priority amount of $17,150.00 imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Statutory Cap") pursuant to the Interim Order. The Debtors request any such relief solely pursuant to the Final Order.

A. Wage Obligations.

12. In the ordinary course of business, the Debtors incur obligations for Crew Member Compensation and Independent Contractor Obligations (each as defined below, and collectively, the "Wage Obligations"). Wages are paid to the majority of Crew Members on a bi-weekly basis, with certain Crew Members receiving payroll disbursements on a weekly basis. Approximately 300 Crew Members are employed on a salaried basis and approximately 2,300 are employed on an hourly basis. As of the Petition Date, the Debtors estimate that they owe approximately $4,090,000.00 on account of accrued but unpaid Wage Obligations.

i. Crew Member Compensation.

13. In the ordinary course of business, the Debtors pay wages and overtime to their hourly Crew Members and wages and yearly bonuses, as applicable, for their salaried Crew Members (the "Crew Member Compensation"). Because Crew Members are generally paid in arrears, certain Crew Members are owed accrued but unpaid Crew Member Compensation as of the Petition Date (the "Unpaid Crew Member Compensation").[6]

14. The majority of the Debtors' payroll is made by direct deposit through electronic transfer of funds to the Crew Members' bank accounts or other electronic means on a bi-weekly or weekly basis, as applicable. On average, the Debtors paid their Crew Members approximately $10,620,000.00 per month on account of Crew Member Compensation for the 12 months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate they owe approximately $4,030,000.00 in prepetition amounts outstanding on account of accrued but Unpaid Crew Member Compensation, all of which will come due within the Interim Period. The Debtors do not believe that any Crew Member is individually owed, or has outstanding invoices, in excess of the Statutory Cap, however, to the extent such prepetition amounts are outstanding in excess of the Statutory Cap, such relief is requested solely pursuant to the Final Order. Accordingly, the Debtors seek authority to pay any and all outstanding Unpaid Crew Member Compensation, including any prepetition amounts and continue to pay the Crew Member Compensation on a postpetition basis in the ordinary course and consistent with prepetition practice.

[6] Crew Member Compensation may also be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Crew Members believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Crew Members, or as a result of Crew Members holding uncashed paper paychecks as of the Petition Date.

ii. Independent Contractor Obligations.

15. In the ordinary course of business, the Debtors incur payment obligations to their Independent Contractors for services rendered to the Debtors, whose services are procured indirectly through certain third-party staffing agencies (the "Independent Contractor Obligations").[7] The Debtors rely on the Independent Contractors to complete a variety of tasks at the Debtors' stores and distribution centers to support the Debtors' operations. The Independent Contractors are paid directly by the staffing agencies who, in turn, send invoices to the Debtors.

16. On average, the Debtors pay an aggregate of approximately $108,000.00 per month in Independent Contractor Obligations for the 12 months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe approximately $57,000.00 in accrued but unpaid Independent Contractor Obligations, inclusive of fees owed to the staffing agencies (the "Unpaid Independent Contractor Obligations"), all of which will come due within the Interim Period. The Debtors do not believe that any Independent Contractor is individually owed, or has outstanding invoices, in excess of the Statutory Cap, however, to the extent such prepetition amounts are outstanding in excess of the Statutory Cap, such relief is requested solely pursuant to the Final Order. Accordingly, the Debtors seek authority, but not direction, to pay any and all prepetition amounts on account of the Unpaid Independent Contractor Obligations and to continue to pay the Independent Contractor Obligations on a postpetition basis in the ordinary course and consistent with prepetition practice.

B. Withholding Obligations.

17. In the ordinary course of business, the Debtors incur obligations on account of Payroll Deductions and Payroll Taxes (each as defined below, and collectively, the "Withholding

[7] The Independent Contractor Obligations include fees owed to the staffing agencies by the Debtors.

Obligations"). On average, the Debtors deducted approximately $3,500,000.00 per month in Withholding Obligations for the 12 months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate there are approximately $1,303,200.00 in prepetition amounts outstanding on account of Withholding Obligations, all of which will come due within the Interim Period. As described further herein, the Debtors believe that the amounts withheld on account of the Withholding Obligations are not property of their estates. Out of an abundance of caution, the Debtors seek authority to remit the Withholding Obligations to the respective third-party payees and to continue to honor and process the Withholding Obligations on a postpetition basis in the ordinary course and consistent with prepetition practice.

i. Payroll Deductions.

18. During each applicable payroll period, the Debtors routinely deduct certain amounts from Crew Members' paychecks, including garnishments, child support, and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as a Crew Member's share of healthcare benefits and insurance premiums, legally ordered deductions, and other miscellaneous deductions (collectively, the "Payroll Deductions"). The Debtors then forward the Payroll Deductions to various third-party recipients. As of the Petition Date, the Debtors estimate that there are approximately $286,200.00 in prepetition amounts outstanding on account of Payroll Deductions, all of which is currently payable or will become payable within the Interim Period. Accordingly, the Debtors seek authority to remit the Payroll Deductions to the respective third-party payees and to continue to honor and process the Payroll Deductions on a postpetition basis in the ordinary course and consistent with prepetition practice.

ii. Payroll Taxes.

19. In addition to the Payroll Deductions, the Debtors are required by law to withhold from the Crew Members' Compensation certain amounts related to, among other things, federal, state, city, and local income taxes and social security and Medicare taxes for remittance to the appropriate federal, state, city, or local taxing authorities (collectively, the "Crew Member Payroll Taxes"). The Debtors must then match the Crew Member Payroll Taxes from their own funds (the "Employer Payroll Taxes") and pay additional amounts for certain employer-responsible city and local taxes, including for example, paid family leave, as well as Social Security and Medicare taxes (the Employer Payroll Taxes collectively with the Crew Member Payroll Taxes are referred to herein as the "Payroll Taxes").

20. The Payroll Taxes generally are processed and forwarded to the appropriate federal, state, city, or local taxing authority with remittance intervals and deadlines established by those taxing authorities. As of the Petition Date, the Debtors estimate that there are approximately $1,017,000.00 in prepetition amounts outstanding on account of Payroll Taxes, all of which will come due within the Interim Period. Accordingly, the Debtors seek authority to remit the Payroll Taxes to the respective taxing authorities and to continue to honor and process the Payroll Taxes on a postpetition basis in the ordinary course and consistent with prepetition practice.

C. Payroll Processing.

21. Certain Withholding Obligations for the Debtors' Crew Members are processed and administered by UKG Inc. (the "Payroll Processor"). The Debtors use the Payroll Processor's services to process Payroll Taxes calculations and filings and other payroll-related services (collectively, the "Payroll Processing Services"). For each payroll period, the Payroll Processing Services are used to process direct deposit transfers or administer payroll checks to Crew

Members. The Payroll Processing Services are integral to the Debtors' ability to pay their Crew Members.

22. The Debtors incur a quarterly average of approximately $293,000.00 on account of the Payroll Processing Services (the "Payroll Processing Fees"). As of the Petition Date, the Debtors estimate that approximately $1,500.00 is owed on account of the Payroll Processing Fees, all of which will come due within the Interim Period. Failure to pay the Payroll Processor could lead to delayed disbursement of Payroll Taxes to the appropriate third parties to the detriment of the Crew Members and the Debtors' operations. Accordingly, the Debtors seek authority, but not direction, to continue to use the Payroll Processor, to pay any and all prepetition amounts on account of the Payroll Processing Fees, and to continue to pay the Payroll Processing Fees on a postpetition basis in the ordinary course and consistent with past prepetition practice.

D. Reimbursable Expenses.

23. The Debtors reimburse Crew Members for certain reasonable and customary expenses incurred on behalf of the Debtors within the scope of their employment (the "Reimbursable Expenses") and the Debtors expect that the Crew Members will continue to incur necessary Reimbursable Expenses in connection with the Debtors' operations during these chapter 11 cases. Reimbursable Expenses include, among other expenses, travel, lodging, ground transportation, meals, and certain other business-related expenses, including a "bring your own device" program, which allows Crew Members to use personal devices and get reimbursed for the business use of those devices. Crew Members who pay for their own Reimbursable Expenses up front apply for reimbursement of such expenses by submitting an expense report to the Debtors. Once the Debtors have determined that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Crew Members for such expenses. Without reimbursement, Crew Members may be personally liable for any unpaid obligations. The Debtors' inability to

reimburse such expenses would impose significant financial hardship on Crew Members where the obligations were incurred for the Debtors' benefit.

24. As part of the Reimbursable Expenses provided by the Debtors, certain Crew Members have the option to receive tuition reimbursement (the "Tuition Reimbursement Program"). Full-time Crew Members who have worked for the Debtors for a minimum of six months of uninterrupted employment and have not received a formal warning within the three months prior to applying for reimbursement are eligible to participate in the Tuition Reimbursement Program. The Crew Member must successfully complete an approved course, and the maximum reimbursement available to any Crew Member per year cannot exceed $1,000.00. As of the Petition Date, the Debtors do not believe any payments are owed to Crew Members on account of the Tuition Reimbursement Program.

25. In connection with the reimbursement program, the Debtors also provide corporate credit cards (the "Corporate Credit Cards"), serviced by American Express, to approximately 190 Crew Members, each in the Crew Member's own name. Statements for the charges accrued on the Corporate Credit Cards are sent to the Debtors and the Debtors remit payment on account of such charges directly to American Express. Crew Members are not liable for any accrued and unpaid charges on the Corporate Credit Cards. On average, the Debtors pay approximately $250,000.00 each month on account of Reimbursable Expenses charged to the Corporate Credit Cards.

26. As of the Petition Date, the Debtors estimate that they owe approximately $250,000.00 on account of Reimbursable Expenses, all of which will come due within the Interim Period. The Debtors will not seek to pay any outstanding Reimbursable Expenses or fees related thereto in advance of the date they come due. Accordingly, the Debtors request authority, but not

direction, to satisfy any accrued but unpaid prepetition Reimbursable Expenses and to continue to pay the Reimbursable Expenses on a postpetition basis in the ordinary course and consistent with prepetition practice.

III. Health and Welfare Coverage and Benefits.

27. In the ordinary course of business, the Debtors offer certain eligible Crew Members the ability to participate in a number of health, insurance, and benefits programs, including, among other programs, Medical and Prescription Coverage, HSAs, FSAs, Life Insurance Coverage, Dental Insurance Coverage, and Vision Insurance Coverage (each as defined below). The Debtors also historically subsidize or continue to provide certain benefits to certain former Crew Members after their termination, retirement, or disability leave, including, without limitation, benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA," and, together with the Medical and Prescription Coverage, HSAs, FSAs, Life Insurance Coverage, Dental Insurance Coverage, and Vision Insurance Coverage, the "Health and Welfare Coverage and Benefits"). The Health and Welfare Coverage and Benefits are generally available thirty days after the date of hire to full-time Crew Members working at least thirty hours per week (the "Eligible Crew Members").

28. The Debtors' Health and Welfare Coverage and Benefits include:

a. **Medical and Prescription Coverage:** The Debtors provide Eligible Crew Members with medical and prescription coverage programs (the "Medical and Prescription Coverage")[8] through (i) self-funded plans administered by Anthem Blue Cross Blue Shield ("Anthem"), (ii) fully-insured plans administered by (a) Kaiser Permanente ("Kaiser"), (b) Triple-S Salud ("Triple S"), and (c) University Health Alliance ("UHA"), and (iii) prescription coverage plans through RxBenefits and Optum Rx. The Kaiser

[8] The Debtors utilize a third-party vendor to provide services related to ensuring the Debtors' Medical and Prescription Coverage is compliant with various governmental regulations (the "Compliance Vendor"). As of the Petition Date, the Debtors estimate they owe approximately $9,000.00 on account of accrued and unpaid obligations to the Compliance Vendor, all of which will become due within the Interim Period.

plans are only offered to a subset of California Crew Members, the Triple S plans are only offered to Puerto Rico Crew Members, and the UHA plans are only offered to Hawaii Crew Members. Under the Anthem plan, Crew Members can choose between two plan options with varying premiums and HSA (as defined below) contributions. The Debtors' cost of Medical and Prescription Coverage claims is backstopped by a medical stop-loss policy (the "Stop-Loss Policy") issued and administered by Sun Life and Health Insurance Company (U.S.). The Stop-Loss Policy reimburses the Debtors for claims paid out over a $400,000.00 deductible per individual. On average, the Debtors cover approximately 75% of the cost of premiums, while the Crew Members cover the remaining 25%. Legal spouses, domestic partners, and dependent children are eligible to be additionally covered. The Debtors pay an annual administration fee of approximately $620,000.00 to Anthem, and a monthly administrative fee of approximately $13,000.00 to Triple S, on account of the Medical and Prescription Coverage. The total monthly cost of the Medical and Prescription Coverage to the Debtors is approximately $1,100,000.00. The Debtors retain the services of an insurance broker, Mercer Health & Benefits LLC ("Mercer"), to help obtain comprehensive Medical and Prescription Coverage for their Crew Members. As of the Petition Date, the Debtors estimate they owe approximately $8,750.00 on account of accrued but unpaid obligations to Mercer. As of the Petition Date, the Debtors estimate they owe approximately $346,000.00 on account of accrued but unpaid Medical and Prescription Coverage obligations, all of which will become due within the Interim Period.

b. **Flex Spending Accounts and Health Savings Accounts:** The Debtors provide Crew Members with the opportunity to contribute to a dependent care flexible spending account (the "FSA") and a health savings account (the "HSA"), each administered by Anthem ActWise. The FSA and the HSA allow Crew Members to voluntarily set aside pre-tax funds to pay for eligible health and welfare expenses. The Debtors do not contribute to the FSAs but do contribute to the HSAs. The Debtors pay a monthly administration fee of approximately $5,000.00 to Anthem ActWise on account of the HSAs and, as of the Petition Date, the Debtors do not believe any amounts on account of administration fees for the HSAs are outstanding. As of the Petition Date, the Debtors estimate they owe approximately $16,000.00 on account of HSA contributions, all of which will come due within the Interim Period.

c. **Life Insurance Coverage:** The Debtors provide (i) basic life and accidental death and dismemberment insurance, (ii) long-term disability insurance to all Eligible Crew Members, (iii) short-term

disability insurance to all Eligible Crew Members, (iv) supplemental, spouse, and child life products offered on a voluntary, Crew Member-paid basis, and (v) executive life insurance for the Debtors' vice presidents (the "Life Insurance Coverage"). The Life Insurance Coverage for the Crew Members in the United States is administered by the Hartford Financial Services Group, Inc. (the "Hartford"), except the executive life insurance, which is administered by The Lincoln National Life Insurance Company. Additionally, Life Insurance Coverage for Puerto Rico Crew Members is administered by Multinational Insurance Company. The average monthly cost of the Life Insurance Coverage to the Debtors is approximately $46,300.00, excluding voluntary products and executive life insurance. As of the Petition Date, the Debtors estimate they owe approximately $4,000.00 on account of unpaid Life Insurance Coverage, all of which will come due within the Interim Period.

d. **Critical Illness, Accident, and Hospital Indemnity**: The Debtors offer Crew Members coverage for critical illness, accident, and hospital indemnity (the "Critical Illness, Accident, and Hospital Indemnity Coverage"). Under the Critical Illness, Accident, and Hospital Indemnity Coverage, Crew Members can purchase additional coverage to protect against the unexpected costs of serious illness and expenses related to treatment for certain injuries. The Crew Members can also receive payments to help cover the costs incurred during a hospital stay. One hundred percent of the costs associated with Critical Illness, Accident, and Hospital Indemnity Coverage are paid by Crew Members.

e. **Dental Insurance Coverage:** The Debtors offer basic and enhanced dental plans administered by Delta Dental (the "Dental Insurance Coverage"). The dental plans provide for both in- and out-of-network coverage. Approximately 40% of the dental premiums are employer-paid, while the Crew Members cover the remaining 60%. The Debtors pay a monthly administration fee of approximately $5,000.00 on account of the Dental Insurance Coverage. The average total monthly cost of the Dental Insurance Coverage to the Debtors is approximately $29,000.00. As of the Petition Date, the Debtors estimate they owe approximately $23,000.00 on account of unpaid Dental Insurance Coverage, all of which will come due within the Interim Period.

f. **Vision Insurance Coverage:** The Debtors offer vision insurance plans provided by VSP Vision for United States Crew Members and Delta Dental (Vision) Puerto Rico for Puerto Rico Crew Members (the "Vision Insurance Coverage"). One hundred percent of the vision premium for the United States Crew Members is paid by the

Crew Members and one hundred percent of the vision premiums for the Puerto Rico Crew Members is paid by the Debtors. The Debtors pay a monthly administration fee of approximately $1,000.00 and approximately $5,000.00 annually in premiums on account of the Vision Insurance Coverage. As of the Petition Date, the Debtors estimate they owe approximately $2,000.00 on account of unpaid Vision Insurance Coverage, all of which will come due within the Interim Period.

g. **COBRA:** The Debtors are required to offer certain of their former Crew Members certain health benefits following termination of employment. Pursuant to COBRA, former Crew Members (the "COBRA Eligible Crew Members") may continue using the Medical and Prescription Coverage and Dental Insurance Coverage (the "COBRA Benefits"). COBRA Eligible Crew Members are entitled by law to continue to receive COBRA Benefits for up to eighteen, and occasionally thirty-six months, following termination of employment.

29. The Health and Welfare Benefits are customary for similarly sized companies, and the Debtors' workforce and their dependents have come to rely on these benefits. Failure to continue the Health and Welfare Coverage and Benefits may force Crew Members to either forego healthcare benefit coverage completely or obtain potentially expensive out-of-pocket insurance coverage, which would likely adversely affect Crew Member morale and make it difficult to retain the Debtors' workforce. The Debtors incur a monthly average of approximately $1,240,000.00 on account of the Health and Welfare Coverage and Benefits. As of the Petition Date, the Debtors estimate they owe approximately $391,000.00 on account of unpaid Health and Welfare Coverage and Benefits, including amounts owed to Sun Life and Health Insurance Company (U.S.) on account of the Stop Loss Policy, all of which will come due within the Interim Period. Accordingly, the Debtors request authority, but not direction, to pay all outstanding prepetition amounts due on account of the Health and Welfare Coverage and Benefits and to continue to pay amounts related to the Health and Welfare Coverage and Benefits on a postpetition basis in the ordinary course and consistent with prepetition practice.

IV. Workers' Compensation.[9]

30. In the ordinary course of business, the Debtors maintain workers' compensation insurance for their Crew Members at the statutorily required level for each state in which they have Crew Members (collectively, with the Letter of Credit (as defined below) and as described herein, the "Workers' Compensation Program"). As part of the Workers' Compensation Program, the Debtors maintain workers' compensation insurance policies with Travelers Casualty & Surety Company (the "Workers' Compensation Insurance Policy").

31. The Debtors must continue the claim assessment, determination, adjudication, and payment process in connection with the Workers' Compensation Program claims, without regard to whether such liabilities were outstanding before the Petition Date, to ensure that the Debtors comply with applicable laws and requirements.[10] There are currently approximately forty-six active claims under the Workers' Compensation Program. For those Crew Members with active claims and to the extent any additional Crew Members assert claims arising under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Crew Members to proceed with such claims. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

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[9] In addition to the Workers' Compensation Insurance Policy (as defined herein), the Debtors maintain numerous other insurance policies, which are described in 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 and incorporated herein by reference.

[10] The Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this Motion, the Debtors request authority to continue making all payments related to Workers' Compensation Obligations postpetition, including making any changes to current policy and practices that become necessary.

32. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that potentially could disrupt the reorganization process. All claims under the Workers' Compensation Program are administered by Travelers Casualty & Surety Company, with the Debtors assuming responsibility for the costs within their deductible. Additionally, in connection with the Debtors' obligations under the Workers' Compensation Insurance Policy, the Debtors are required to maintain a $4,170,000.00 letter of credit (the "Letter of Credit") issued by The Travelers Indemnity Company. As of the Petition Date, the Debtors estimate that they owe approximately $3,100,000.00 on account of unpaid Workers' Compensation Program obligations, exclusive of fees owed in connection with the Letter of Credit, $150,000.00 of which will come due within the Interim Period. Accordingly, the Debtors request authority, but not direction, to: (a) pay all prepetition amounts due on account of the Workers' Compensation Program and the Letter of Credit and consistent with past practice, (b) continue the Workers' Compensation Program and maintain the Letter of Credit postpetition in the ordinary course, including renewing, amending, supplementing, extending, entering into, or purchasing new letters of credit, and (c) to the extent applicable, modify the automatic stay solely to allow Crew Members to assert claims under the Workers' Compensation Program. For the avoidance of doubt, this requested modification to the automatic stay pertains solely to claims under the Workers' Compensation Program.

V. The 401(k) Plan.

33. The Debtors maintain a retirement savings plan for the benefit of their Crew Members that satisfies the requirements of section 401(k) of the Internal Revenue Code (the "401(k) Plan"). The 401(k) plan is administered by Aon PEP (Voya) ("Aon"), for which the Debtors pay Aon approximately $60,000.00 in administrative fees annually.

34. All full-time Crew Members that have completed one month of service, and part-time Crew Members that have completed one year of service in which they worked 1,000 hours, are eligible to participate in the 401(k) Plan. Each pay period the Debtors deduct the participating Crew Members' 401(k) Plan contributions from the Crew Members' wages in connection with their applicable pay periods and hold such amounts in trust until they are forwarded to Aon (the "401(k) Deductions"). As of the Petition Date, the Debtors estimate they hold approximately $141,000.00 in trust on account of the prepetition 401(k) Deductions that have yet to be remitted to Aon, all of which will come due within the Interim Period.

35. The Debtors also provide certain matching contribution programs for its Crew Members (the "401(k) Matching Contributions"). More specifically, the Debtors match each Crew Member's contributions up to 5% of pay at 33%. These 401(k) Matching Contributions vest after two years of employment. The Debtors pay on average approximately $65,000.00 in 401(k) Matching Contributions per month. As of the Petition Date, the Debtors estimate they owe approximately $24,000.00 in trust on account of the prepetition 401(k) Matching Contributions that have yet to be remitted to Aon, all of which will come due within the Interim Period.

36. Many Crew Members' retirement savings consist solely of their 401(k) Plan. A disruption in or discontinuation of the 401(k) Plan could violate the terms of a Crew Member's employment. If the Debtors did not offer the 401(k) Plan, they would be less competitive in the employment market. Further, many Crew Members choose to participate in the 401(k) Plan because of the 401(k) Matching Contributions. Continuing the 401(k) Matching Contributions is essential to maintaining Crew Member morale and to recruiting and retaining Crew Members. The Debtors request authority, but not direction, to (a) pay any accrued but unpaid prepetition amounts owed on account of the 401(k) Plan, including the 401(k) Matching Contributions, (b) remit any

unpaid prepetition 401(k) Deductions, and (c) continue the 401(k) Plan and 401(k) Matching Contributions postpetition in the ordinary course consistent with prepetition practice.

VI. Paid Leave Benefits.

37. In the ordinary course of business, the Debtors provide paid time off to certain eligible Crew Members (the "Paid Leave Benefits"). The Debtors' Paid Leave Benefits program includes, but is not limited to, flexible time off, vacation, sick, holiday, parental leave, and bereavement leave. When a Crew Member elects to use Paid Leave Benefits, that Crew Member is paid his or her regular hourly or salaried rate. Full-time Crew Members begin accruing Paid Leave Benefits on the first day of regular employment and part-time Crew Members begin accruing Paid Leave Benefits after completing one year of employment. Full-time Crew members are not eligible to use any Paid Leave Benefits until the Crew Member completes thirty days of employment with the Debtors. Paid Leave Benefits for Crew Members are calculated at specified rates based on the Crew Member's hours worked and years of service. Crew Members may carry over accrued but unused Paid Leave Benefits from year to year, subject to the accrual cap, which is determined by the Crew Member's years of service. Upon a Crew Member's termination or resignation, the Debtors will cash out the Crew Member's Paid Leave Benefits to the extent required by applicable law.

38. The Debtors believe that the continuation of the Paid Leave Benefits program in accordance with prior practice is essential to maintaining Crew Member morale during these chapter 11 cases. Further, the Crew Members have come to depend on the Paid Leave Benefits. The Paid Leave Benefits typically do not involve incremental cash outlays beyond standard payroll obligations. As of the Petition Date, the Debtors estimate that approximately $3,670,000.00 has accrued on account of Paid Leave Benefits. The Debtors request authorization to continue the

Paid Leave Benefits in the ordinary course on a postpetition basis and pay prepetition claims, if any, with respect thereto, to the extent required by applicable law.

VII. Company Car Program.

39. In addition to the foregoing, the Debtors offer certain Crew Members the opportunity to participate in a range of ancillary benefits, including providing vehicles to certain district managers, territory managers, and sales staff that travel throughout the Debtors' stores (the "Company Car Program"). Approximately 130 Crew Members participate in the Company Car Program. The vehicles are maintained and serviced by the Debtors, with model years ranging from 2012 to 2026. The Company Car Program is 100% funded by the Debtors, including covering expenses such as insurance, registration, gas, and tolls. Taxes are imputed to the Crew Members at year end.

40. The Debtors pay an aggregate of approximately $290,000.00 per month on account of the Company Car Program. As of the Petition Date, the Debtors do not believe any amounts on account of the Company Car Program are outstanding and believe that they are authorized to pay any postpetition amounts on account of the Company Car Program in the ordinary course. Out of an abundance of caution, the Debtors seek authority, but not direction, to continue to pay any amounts on account of the Company Car Program on a postpetition basis in the ordinary course consistent with prepetition practices.

VIII. Non-Insider Incentive Programs.

41. The Debtors have historically maintained certain incentive programs to motivate and reward eligible non-insider[11] Crew Members as an additional component of their overall

[11] For the avoidance of doubt, through this Motion, the Debtors do not seek authority to make any bonus payments to any "insider" (as the term is defined in section 101(31) of the Bankruptcy Code) without further order of the Court.

compensation (collectively, the "Non-Insider Incentive Programs").[12] The Debtors have historically offered Crew Members monthly, quarterly, or annual incentive payments to reward and incentivize exemplary performance. As part of the Non-Insider Incentive Programs, the Debtors offer a monthly variable incentive program (the "Monthly Variable Incentive Program") to eligible Crew Members. Each Crew Member in the Monthly Variable Incentive Program is assigned to a monthly incentive tier based on annual performance for the prior fiscal year, which determines the payout structure for two metrics: sales and margin. Crew Members receive monthly payments based on their assigned tier.

42. The Debtors also reward non-insider Crew Members for exemplary performance on a quarterly and annual basis (the "Quarterly and Annual Incentive Program"). The Quarterly and Annual Incentive Program payments are calculated based on Crew Member performance during set intervals and weighted according to sales plan achievements, management of controllable expenses, and, with respect to annual incentive payments, level of position with the Debtors. Quarterly and Annual Incentive Program payments are generally paid out two to three pay cycles after the end of the fiscal quarter or fiscal year, as applicable, using the Debtors' standard payroll system.

43. In addition, in the ordinary course of business, certain non-insider Crew Members are eligible to participate in the Debtors' sales-based bonuses for the marketing and sale of the Debtors' "West Advantage Gold" membership.[13] Generally, Crew Members receive payments on

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[12] In the interest of full disclosure, separate from and unrelated to the Incentive Programs described herein, the Debtors paid retention bonuses to certain insider and non-insider Crew Members, which must be repaid if the recipient does not continue working for the Debtors for the specified retention period. By this Motion, the Debtors do not seek approval or authorization from the Court or any other relief with respect to such payments, which were made prior to the Petition Date.

[13] The "West Advantage Gold" membership and the Debtors' other customer programs are discussed in greater detail in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain*

a bi-weekly basis in varying percentages based on the monthly recurring revenue generated by any new sales on account of the Crew Member's efforts. The Debtors also occasionally offer sign-on bonuses to certain Crew Members, which generally include a provision that the bonus is repayable for the first year of the Crew Member's employment on a pro rata basis if the Crew Member terminates his or her employment.

44. In recognition and appreciation of the dedication and contribution of the Crew Members, the Debtors have historically offered tenure awards (the "Tenure Awards")[14] to celebrate significant work anniversaries for their Crew Members. The Tenure Awards are paid via direct deposit to the Crew Member based on continuous service with the Debtors at specific work anniversary milestones. The amount of the Tenure Awards varies based on time of service with the Debtors. As of the Petition Date, the Debtors estimate that they owe approximately $13,000.00 on account of unpaid Tenure Awards obligations.

45. As of the Petition Date, the Debtors estimate that they owe approximately $290,000.00 on account of the Non-Insider Incentive Programs. The Debtors believe the Non-Insider Incentive Programs are necessary to properly motivate Crew Members to outperform and drive value for all stakeholders. The Debtors therefore seek authority, but not direction, to continue the existing Non-Insider Incentive Programs with respect to non-insiders and pay all prepetition amounts owed on account of the Non-Insider Incentive Programs when due in the ordinary course of business, subject to entry of the Final Order.

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and Administer their Customer Programs and (B) Honor Certain Prepetition Obligations Related Thereto; (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief, filed contemporaneously herewith and incorporated herein by reference.

[14] Tenure Awards are historically owed to insiders and non-insiders in the ordinary course. For the avoidance of doubt, the Debtors seek authority, but not direction, to pay any unpaid Tenure Award obligations only upon entry of the Final Order.

IX. Non-Insider Severance Program.

46. In the ordinary course of business, the Debtors maintain a severance program for the benefit of certain non-insider Crew Members (the "Non-Insider Severance Program").[15] Under the Non-Insider Severance Program, certain Crew Members may be eligible for payment of severance if their employment is terminated due to any not-for-cause employer-initiated termination. Such severance payments (the "Non-Insider Severance Benefits") are calculated by reference to a terminated Crew Member's weekly salary in accordance with standard Debtor-instituted guidelines. Non-Insider Severance Benefits are offered over a period of time in payment installments on a case-by-case basis for each individual Crew Member receiving payments.

47. The Debtors' maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Crew Member morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors' workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

48. As of the Petition Date, the Debtors estimate that they owe approximately $67,500.00 in accrued and outstanding unpaid obligations on account of the Non-Insider Severance Program. The Debtors therefore seek authority, but not direction, to continue the existing Non-Insider Severance Program with respect to non-insiders and pay all prepetition amounts owed on account of the Non-Insider Severance Program when due in the ordinary course of business, subject to entry of the Final Order.

[15] For the avoidance of doubt, through this Motion, the Debtors do not seek authority to make any severance payments to any "insider" (as the term is defined in section 101(31) of the Bankruptcy Code) without further order of the Court.

X. Crew Member Discount Programs.

49. In the ordinary course of business, active Crew Members and immediate family living in the same household are eligible to receive a 40 percent discount off all merchandise (the "Active Crew Member Discount Program"). The Crew Member must be present for the transaction, and the Active Crew Member Discount cannot be used for resale purposes and/or professional use. The Debtors also offer a discount program for retired Crew Members who provided twenty or more years of service to the Debtors (the "Retired Crew Member Discount Program," and together with the Active Crew Member Discount Program, the "Crew Member Discount Programs"). As of the Petition Date, the Debtors estimate that approximately 140 retired Crew Members participate in the Retired Crew Member Discount Program. Discounts for the Crew Member Discount Programs are taken at the time of the sale, therefore the Debtors are not liable for any amounts on account of the Crew Member Discount Programs. The Debtors request authority, but not direction, to continue the Crew Member Discount Programs in the ordinary course consistent with prepetition practice.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

A. Certain of the Compensation and Benefits Are Entitled to Priority Treatment.

50. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits owed to the Crew Members to priority treatment to the extent such payments do not exceed $17,150.00 for each individual as provided for under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the

Bankruptcy Code, for (a) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that a Crew Member receives no more than $17,150.00 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Crew Members and does not have any material negative impact on recoveries for general unsecured creditors. To the extent a Crew Member is owed more than $17,150.00 on account of certain Compensation and Benefits, the Debtors submit that the full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

51. The Debtors' Crew Members and Independent Contractors are essential to the success of the Debtors' business. As such, the payment of the Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtors' ordinary course operations. Finding, attracting, and training new qualified talent would be extremely difficult absent the relief requested herein. Even if ultimately successful, such recruitment efforts would most likely leave the Debtors with personnel vacancies at a critical business juncture and, once replacement personnel were hired, leave the Debtors to invest additional resources in training new staff members. The additional uncertainty created by needing to expend time, manpower, and money recruiting and training new personnel at a critical time would be non-accretive. In light of the Debtors' ongoing restructuring efforts, losing the Debtors' significant talent base would create additional challenges to maximizing value in these chapter 11 cases.

B. Payment of Certain Compensation and Benefits Is Required by Law.

52. As discussed above, the Debtors seek authority to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Crew Member earnings that governments, Crew Members, and judicial authorities have designated for deduction from the

Crew Members' wages. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Crew Members' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal and state laws require the Debtors to withhold certain tax payments from the Crew Members' wages and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between the debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request authorization to transmit the Withholding Obligations on account of the Crew Members to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998).

53. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Moreover, if the Debtors fail to maintain the Letter of Credit and pay prepetition amounts owed in respect thereof, the Debtors' Workers' Compensation Policy insurer may take adverse action against the Debtors to the detriment of the Debtors' estates and all stakeholders in these chapter 11 cases. Payment of all obligations related to the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of these chapter 11 cases.

54. The Debtors, therefore, request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors

collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business and consistent with past practice.

II. Payment of the Compensation and Benefits Is Warranted Under Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

55. 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. (In re 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.

56. 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). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also James A. Phillips*, 29 B.R. at 397 (relying on section 363 of the Bankruptcy Code to allow a contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to the debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–

36 (Bankr. D. Del. 1987) (requiring the debtor to show a "good business reason" for a proposed transaction under section 363(b) of the Bankruptcy Code).

57. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize prepetition payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Just for Feet*, 242 B.R. at 825−26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g.*, *Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286, 310–311 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *CoServ*, 273 B.R. at 497.

58. These standards are satisfied here. The Debtors submit that the payment of the Compensation and Benefits in the ordinary course represents a sound exercise of the Debtors'

business judgment and is necessary to avoid immediate and irreparable harm to the Debtors' estates and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying the Compensation and Benefits in the ordinary course will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption. Indeed, the Debtors believe that without the relief requested herein, Crew Members may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, thereby hindering the Debtors' ability to operate their businesses and, likely, diminishing stakeholder confidence in the Debtors' ability to successfully reorganize. The loss of valuable Crew Members and the resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. Accordingly, the Debtors must do their utmost to retain their workforce by, among other things, paying Compensation and Benefits in the ordinary course.

59. In addition, many Crew Members and Independent Contractors rely exclusively on the Compensation and Benefits to satisfy their daily living expenses. Consequently, Crew Members and Independent Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to pay and honor obligations pursuant to the Compensation and Benefits in the ordinary course. Moreover, if the Court declines to grant the relief requested herein, Crew Members will not receive continued health coverage and, thus, may be obligated to pay certain health care claims that the Debtors have not satisfied. The loss of health care coverage will result in considerable anxiety for Crew Members (and likely attrition) at a time when the Debtors need all Crew Members to perform at their best.

60. Accordingly, the relief requested herein is a necessary and critical element of the Debtors' efforts to maximize estate value and will give the Debtors the greatest likelihood of retention of their workforce as the Debtors seek to operate their business in these chapter 11 cases.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.

61. Section 362(a) of the Bankruptcy Code operates to stay:

> [T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C. § 362(a)(1).

62. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.*

63. In accordance with section 362(d) of the Bankruptcy Code, the Debtors seek to modify the automatic stay to permit the Crew Members to proceed with their workers' compensation claims in the appropriate judicial or administrative forum during these chapter 11 cases. Cause exists here to modify the automatic stay because staying the workers' compensation claims could have a detrimental effect on the financial wellbeing and morale of the Crew Members and lead to the departure of certain Crew Members who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' businesses to the detriment of all parties in interest. In addition, as noted above, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Workers' Compensation Program and workers' compensation claims to proceed.

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

64. 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 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

65. 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).

66. 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)

67. 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

68. 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

69. 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.

WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

Dated: May 17, 2026
Wilmington, Delaware

/s/ Shella Borovinskaya

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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 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

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"): (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, (c) scheduling a final hearing to consider approval of the Motion on a final basis, and (d) 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

[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.

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 Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 this Court may enter this Interim Order consistent with Article III of the United States Constitution; 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 in this Interim Order.

2. 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.

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

4. The Debtors are authorized, but not directed, to continue, amend, modify, or discontinue the Compensation and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases in their sole discretion, in accordance with the Debtors' prepetition policies and practices, (subject in all respects to the terms of the Interim Order and Final Order, as applicable) and applicable law; *provided* that pending entry of the Final Order, the Debtors shall not amend, modify, or create new Non-Insider Incentive Programs or the Non-Insider Severance Program.

5. The Debtors are authorized, but not directed, to honor and pay any prepetition amounts related to the Compensation and Benefits pursuant to this Interim Order in the ordinary course of business and consistent with past practice in an amount not to exceed $6,350,700.00 in the aggregate, pending entry of the Final Order; *provided* that pending entry of the Final Order, the Debtors shall not honor any obligations on account of the Compensation and Benefits in excess of the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, except as otherwise required under applicable state law.

6. Nothing herein shall be deemed to authorize the payment of any amounts that violate or implicate section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code by separate motion at a later time; *provided further*, payments on account of postpetition severance and bonus obligations are not authorized under this Interim Order.

7. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Crew Members to proceed with their workers' compensation claims in the appropriate judicial or administrative forum, and the Debtors are authorized to continue the Workers' Compensation Program and pay any amounts relating thereto in the

ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

8. The Debtors are authorized, but not directed, to (a) continue and maintain the Letter of Credit and, subject to paragraph 5 herein, pay any prepetition or postpetition amounts in the ordinary course of business and consistent with prepetition practices, and (b) renew, amend, supplement, extend, enter into, or purchase letters of credit, to the extent the Debtors determine that such action is in the best interests of their estates.

9. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Withholding Obligations to the appropriate third-party recipients or taxing authorities in the ordinary course of business and consistent with past practice.

10. The Debtors are authorized, but not directed, to pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the unpaid Payroll Processing Fees, all administrative and processing costs, and necessary payments to outside professionals.

11. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Compensation and Benefits obligations.

12. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of a Crew Member and where applicable non-bankruptcy law requires such payment.

13. The Banks 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 are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

14. 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 any order granting the relief requested by the 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.

15. 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 in connection with the relief granted herein.

16. The Debtors have demonstrated that the requested relief is "needed to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003.

17. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

18. 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.

19. 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.

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

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

22. 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 Nos. _ & _**

FINAL ORDER (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

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"): (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, 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

[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.

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 Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court 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 in this Final Order.

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

3. The Debtors are authorized, but not directed, to continue, amend, modify, or discontinue the Compensation and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases in their sole discretion, in accordance with the Debtors' prepetition policies and practices, (subject in all respects to the terms of the Interim Order and Final Order, as applicable) and applicable law.

4. The Debtors are authorized, but not directed, to honor and pay any prepetition amounts related to the Compensation and Benefits pursuant to this Final Order in the ordinary course of business and consistent with past practice, as and when such obligations are due, in an amount not to exceed $9,658,200.00, in the aggregate, including, for the avoidance of doubt, any prepetition obligations relating to the Compensation and Benefits, if any, that exceed the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

5. Nothing herein shall be deemed to authorize the payment of any amounts that violate or implicate section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code by separate motion at a later time.

6. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Crew Members to proceed with their workers' compensation claims in the appropriate judicial or administrative forum, and the Debtors are authorized to continue the Workers' Compensation Program and pay any amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

7. The Debtors are authorized, but not directed, to (a) continue and maintain the Letter of Credit and, subject to paragraph 4 herein, pay any prepetition or postpetition amounts in the ordinary course of business and consistent with prepetition practices, and (b) renew, amend,

supplement, extend, enter into, or purchase letters of credit, to the extent the Debtors determine that such action is in the best interests of their estates.

8. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Withholding Obligations to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

9. The Debtors are authorized, but not directed, to pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the unpaid Payroll Processing Fees, all administrative and processing costs, and necessary payments to outside professionals.

10. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Compensation and Benefits obligations.

11. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of a Crew Member, where applicable non-bankruptcy law requires such payment.

12. The Debtors are authorized, but not directed, to pay and honor all claims and obligations, if any, whether arising prepetition or postpetition, on account of the Non-Insider Severance Program and Non-Insider Incentive Programs; *provided* that the Debtors shall not make any severance or bonus payments to any insiders (as that term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

13. The Banks 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 are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

14. 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 this Final Order or the Motion or any order granting the relief requested by the 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.

15. 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 in connection with the relief granted herein.

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

17. 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.

18. 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.

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

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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