Docket #0012 Date Filed: 5/17/2026

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| 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) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS, (D) PERFORM INTERCOMPANY TRANSACTIONS, AND (E) GRANT ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION INTERCOMPANY CLAIMS; (II) SUSPENDING THE TIME TO COMPLY WITH 11 U.S.C. § 345(b) AND WAIVING CERTAIN OPERATING GUIDELINES; 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 "Final Order"): (a) authorizing, but not directing, the Debtors to (i) continue to operate their Cash

[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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Management System (as defined herein) and maintain their existing Bank Accounts (as defined herein), (ii) honor certain prepetition and postpetition obligations related thereto, (iii) maintain existing Business Forms (as defined herein) in the ordinary course of business, (iv) continue to perform the Intercompany Transactions (as defined herein) consistent with historical practice, (v) granting administrative expense status to postpetition intercompany balances; (b) granting an interim limited waiver of the Debtors' compliance with the deposit and investment guidelines set forth in section 345 of the Bankruptcy Code and waiving certain operating guidelines related to the Bank Accounts (as defined herein), to the extent applicable; 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 *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, 345, 363, 364 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"),

rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1, 2015-1, and 9013-1.

## Background

5. West Marine is the leading integrated, omni channel provider of aftermarket products to the boating, fishing, sailing, and watersports markets in the United States. For more than fifty years, West Marine has been recognized as a principal resource for cruisers, sailors, anglers, fishers, and other boating enthusiasts. Founded in 1968 in Sunnyvale, California, West Marine employs approximately 2,600 crew members and operates a retail footprint of more than 200 stores across thirty-four states and Puerto Rico, as well as a digital footprint through its eCommerce websites that reach domestic, international, and professional customers.

6. On the date hereof, (the "Petition Date"), each 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 Cash Management System

### I. Overview.

7. In the ordinary course of business, West Marine maintains an integrated, centralized cash management system (the "Cash Management System") to facilitate the efficient operation of their business, a schematic[3] of which is attached as **Exhibit C** hereto. The main components of

[3] For illustrative purposes only. To the extent that the actual Cash Management System varies from the illustration, the Debtors seek to maintain the existing system.

the Cash Management System include, among others, collections from brick-and-mortar store locations, eCommerce transactions, and credit card sales, and disbursements to fund daily operations of the business.[4] The Cash Management System is comparable to the centralized cash management systems used by other similarly sized retail companies to manage the cash flow of operating units in a cost effective, efficient manner. The Debtors use their Cash Management System in the ordinary course to collect, transfer, and disburse funds generated from their operations and to facilitate cash monitoring, forecasting, and reporting. The Debtors' Operational Accounting & Cash Management Department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with Intercompany Transactions. Additionally, the Debtors' General Accounting Department regularly reconciles the Debtors' books and records to ensure transfers are accounted for properly.

8. As of the Petition Date, the Cash Management System is comprised of forty-nine bank accounts, forty-eight of which are owned by Debtor West Marine Products, Inc. and one of which is owned by Debtor Rising Tide Holdings Inc. (such accounts, together with any other bank accounts the Debtors may open in the ordinary course of business, the "Bank Accounts") and are maintained at various banks (such banks, collectively, the "Cash Management Banks"). The Bank Accounts are listed in the schedule attached hereto as **Exhibit D**.

[4] Certain of the Debtors' crew members have been issued corporate credit cards that are used to cover certain business-related expenses. The Debtors' corporate card program (the "Corporate Card Program") is further described in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, (B) Continue Employee Benefits Programs, and (C) Pay and Honor Workers' Compensation Obligations; (II) Authorizing Banks to Honor And Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief*, filed contemporaneously herewith.

9. Pursuant to the relevant credit agreements and other loan documents (including deposit account control agreements) governing the Debtors' prepetition asset based revolving credit facility (the "ABL Facility") and the Debtors' various term loan credit facilities, subject to certain limitations, substantially all of the cash held in the Bank Accounts is subject to properly perfected security interests in favor of Eclipse Business Capital LLC solely in its capacity as administrative agent under the ABL Facility.

10. Given the economic and operational scale of the Debtors' retail enterprise, any disruption to the Cash Management System will have an immediate and significant adverse effect on the Debtors' businesses and operations to the detriment of their estates and stakeholders. Because of the disruption to the business that would result if they were forced to close their existing Bank Accounts, it is critical that the Debtors' Cash Management System remain in place on a postpetition basis. Accordingly, to minimize disruption and maximize the value of the Debtors' estates, the Debtors request authority, but not direction, to continue operating their existing Cash Management System and to honor certain prepetition obligations related thereto in the ordinary course of business and consistent with prepetition practices during the pendency of these chapter 11 cases, subject to the terms described herein.

## II. Cash Management System.[5]

### A. Concentration Accounts.

11. The Cash Management System is based around four concentration accounts (each a "Concentration Account" and, collectively, the "Concentration Accounts"), of which one is maintained by Wells Fargo, N.A. ("Wells Fargo"), two are maintained by Bank of America,

[5] The Cash Management System described herein reflects the Bank Account structure as of the date of this Motion. The Debtors may further adjust the Cash Management System postpetition to reflect the terms of any postpetition financing agreements and the orders related thereto.

N.A. ("Bank of America") and one is maintained by Capital One Bank, N.A. ("Capital One"). The Concentration Accounts pool incoming funds, via daily sweeps, from the Debtors' Collection and Store Depository Accounts (as defined below). These funds result from cash sales at the Debtors' brick-and-mortar locations and various operating, deposit, and loan-funding receipts. As further described below, the Concentration Accounts, in turn, fund the Debtors' various Disbursement Accounts (as defined below), as needed, for their respective locations.

**B. Store Depository Accounts.**

12. The Debtors maintain twenty-nine store-level deposit accounts (the "Store Depository Accounts")[6] for their store locations, into which all non-credit card, store-level cash sales are deposited by the store manager, in most cases, on a daily basis. Under ordinary circumstances, each week, armored cars collect and transfer cash from certain of the Debtors' store locations to a depository account where the cash is counted and electronically deposited into the applicable Store Depository Accounts. Cash from the Debtors' other store locations is deposited directly with the applicable Cash Management Bank utilizing night depository services, a bank teller, or an automated teller machine. Cash deposited at the Store Depository Accounts is then automatically swept[7] into one of the Concentration Accounts maintained by Wells Fargo or Bank of America[8] either (a) on a daily basis or (b) when such Store Depository Account reaches a target balance.

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[6] The Store Depository Accounts include twelve "sub-accounts" held at Wells Fargo (collectively, the "Sub-Accounts"), as reflected on **Exhibit C** attached hereto. The Sub-Accounts are zero-balance accounts, which are swept daily to the Concentration Account ending in 3213.

[7] Funds in excess of $250,000.00 are manually swept from Store Depository Account ending in 3165 (the "Banco Popular Store Depository Account") into Bank Account ending in 3971 (the "Banco Popular Primary Account"), which is used to pay payroll and expenses in connection with the Debtors' operations in Puerto Rico.

[8] Funds deposited into Store Depository Accounts ending in 3569 and 1945 are automatically swept to the Concentration Account ending in 4360 before being manually swept to the Concentration Account ending in 3889.

**C. Collections Accounts.**

13. All remaining funds are deposited into six primary collection accounts (the "Collection Accounts"), of which four are maintained by Bank of America and two are maintained by Capital One. Credit card sales are processed through a third party, and the proceeds are deposited (net of fees, chargebacks, and returns)[9] into two of the Collection Accounts maintained by Bank of America. The receipts primarily consist of income proceeds from stores (including those mentioned above), credit card funds, and eCommerce and website receipts. However, the Debtors also receive receipts on account of (a) cash collections related to their West Marine Pro business, which are deposited into one of two Collections Account maintained by Bank of America, (b) cash collections from PayPal related to their eCommerce business, which are deposited (net of fees) into a Collection Account maintained by Capital One, and (c) collections related to their lockbox account, which primarily receives checks from West Marine Pro customers that are deposited into a Collection Account maintained by Capital One. The funds from the Collection Accounts are swept daily to one of two Concentration Accounts maintained at Bank of America and Capital One.

**D. Disbursement Accounts.**

14. The Concentration Accounts fund, either directly or indirectly, each of the Debtors' eight disbursement accounts (the "Disbursement Accounts"), six of which are maintained by Bank of America, one of which is maintained by Wells Fargo, and one of which is the Banco Popular Primary Account maintained at Banco Popular. The Disbursement Accounts make disbursements

[9] To process non-cash methods of payment from customers, the Debtors utilize payment processors and incur fees (the "Processing Fees") in connection therewith. The Debtors seek authority to pay Processing Fees in connection with the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain 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.

to fund the Debtors' daily operations, such as accounts payable (including payments made to vendors and freight providers), payroll (including benefits), sales tax and other tax obligations, employee obligations, postage, rent, and fees for licenses and permits. In addition, the Concentration Account maintained by Capital One makes disbursements on account of the Debtors' Corporate Card Program. Certain of the Disbursement Accounts are zero-balance accounts and are funded by one of the Concentration Accounts on an as-needed basis.[10]

15. The Debtors anticipate that disbursements from the Disbursement Accounts will be funded, as they have been in the ordinary course of business, from funds in the Concentration Accounts generated from the Debtors' operations and from the use of the Debtors' cash collateral. Because of the nature of the Debtors' business and the disruption that would result if the Debtors were forced to close their existing Bank Accounts, the continued existence of the Cash Management System is critical to the Debtors' restructuring efforts.

**E. Adequate Assurance Account.**

16. The Debtors maintain a segregated Bank Account at Bank of America (the "Adequate Assurance Account") that the Debtors propose will hold an adequate assurance deposit (the "Adequate Assurance Deposit") for the benefit of the Debtors' utility providers throughout the course of these chapter 11 cases.[11]

**F. Professional Fee Escrow Account**

17. The Debtors maintain a segregated Bank Account (the "Professional Fee Escrow Account") at Citibank, N.A. ("Citibank"), which was opened prior to the Petition Date to hold

[10] Bank Accounts ending in 4445 and 7467 are not zero-balance accounts.

[11] The Adequate Assurance Deposit is described further in the *Debtors' Motion for Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief*, filed contemporaneously herewith.

funds in escrow for the payment of professional fees and expenses (the "Professional Fees") during these chapter 11 cases.

**G. Intercompany Transactions.**

18. The Debtors may maintain business relationships with each (the "Intercompany Transactions") resulting in intercompany receivables and payables (the "Intercompany Claims"). As of the Petition Date, the Debtors do not routinely engage in Intercompany Transactions with each other and are unaware of any outstanding Intercompany Claims. However, among other things, Intercompany Claims may arise related to the Debtors' insurance program[12] and their prepetition funded indebtedness structure. As more fully described in the First Day Declaration, Debtor Rising Tide Holdings Inc. is the borrower for the Debtors' various tranches of prepetition debt. However, all of the Debtors' active Bank Accounts are owned by Debtor West Marine Products, Inc.[13]

19. Any discontinuation of the Intercompany Transactions would unnecessarily disrupt the Cash Management System and the Debtors' operations to the detriment of the Debtors, their creditors, and other stakeholders. Accordingly, out of an abundance of caution, the Debtors seek relief to continue any Intercompany Transactions as necessary and appropriate to maintain the Cash Management System.

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[12] The Debtors' insurance program is 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.

[13] Except for the Professional Fee Escrow Account, which is owned by Rising Tide Holdings Inc.

## III. Bank Accounts and Fees.

20. The Bank Accounts and the Cash Management System are described further in the following table:

| Bank Account(s) | Account Description |
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| **Concentration Accounts**<br>*Wells Fargo x3213*<br><br>*Bank of America x3889, x4360*<br><br>*Capital One x2880* | The Concentration Accounts are the primary accounts used for the Debtors' cash collection process, pooling incoming funds across the Debtors' businesses. The Concentration Accounts fund, either directly, or indirectly via another Concentration Account, all of the Disbursement Accounts. In addition, the Concentration Account ending in 4360 disburses payments to import vendors on account of imported merchandise, and the Concentration Account ending in 2880 disburses payments on account of the Corporate Card Program. |
| **Store Depository Accounts**<br>*Wells Fargo x9636, x3680, x6240, x6058, x3862, x8686, x3706, x3813, x5824, x6743, x6190, x9924, x9907*<br><br>*Bank of America x0180*<br><br>*Banco Popular x3165*<br><br>*Amegy Bank of Texas x3569*<br><br>*First National Bank Bar Harbor x4772*<br><br>*Centennial Bank x3305*<br><br>*Central Bank Ozarks x7119*<br><br>*First Hawaiian Bank x2739*<br><br>*Fifth Third Bank x7421*<br><br>*First Citizens Bank x6217*<br><br>*Peoples Powered by Hanscom Federal Credit Union Bank x1945*<br><br>*Huntington Bank Ohio x4448*<br><br>*PNC Bank x7112*<br><br>*Key Bank of Vermont x9758*<br><br>*JPMorgan Case Bank, N.A. x1167*<br><br>*Regions Bank x9334*<br><br>*Truist Bank x1584* | The Store Depository Accounts, including the Banco Popular Store Depository Account, are used by the Debtors' businesses to deposit cash receipts from their brick-and-mortar store locations. The Store Depository Accounts are swept into Concentration Accounts except for the Banco Popular Store Depository Account. Funds in excess of $250,000.00 are manually swept from such account into the Banco Popular Primary Account. |

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| **Collection Accounts**<br>*Bank of America x4365, x4384, x4402, x3946*<br><br>*Capital One x2877, x5284* | Receipts, excluding cash receipts, are deposited into the Collection Accounts, which are swept daily to the Concentration Accounts. |
| **Disbursement Accounts**<br>*Bank of America x4426, x4445, x7467, x4464, x4440, x4421*<br><br>*Banco Popular x3971*<br><br>*Wells Fargo x9558* | The Disbursement Accounts make disbursements to fund the Debtors' operations and are funded by the Concentration Accounts. Disbursement Account ending in 4440 disburses postage disbursements; Disbursement Account ending in 4445 disburses payroll, payroll taxes, and benefits payments; Disbursement Account ending in 7467 disburses payments on account of checks outstanding to merchandise vendor payables; Disbursement Account ending in 4464 disburses payments on account of employee benefits; Disbursement Account ending in 4421 disburses payments to, among other things, suppliers on account of trade-related expenses; Disbursement Account ending in 4426 disburses payments on account of flex spending benefits; and Disbursement Account ending in 9558 disburses payments to the Florida Fish and Wildlife Conservation Commission on account of licenses and permits. |
| **Adequate Assurance Account**<br>*Bank of America x8690* | The Debtors maintain the Adequate Assurance Account for the purpose of holding the Adequate Assurance Deposit. |
| **Professional Fee Escrow Account**<br>*Citibank x2464* | The Debtors maintain the Professional Fee Escrow Account to hold funds in escrow for payment of Professional Fees. |

21. In the ordinary course of business, on a monthly basis, the Debtors pay approximately $75,000.00 in service fees (net of earnings credits) pursuant to their cash management and treasury service agreements covering the Bank Accounts (the "Bank Account Agreements") to the Cash Management Banks (collectively with any other amounts owning under the Bank Account Agreements, the "Bank Fees"). The Debtors paid approximately $900,000.00 on account of Bank Fees in the prior fiscal year (after earnings credits). The Debtors believe they owe approximately $90,000.00 on account of Bank Fees as of the Petition Date, all of which is due or will come due between entry of the Interim Order and the Final Order. To ensure the uninterrupted operation of the Cash Management System, the Debtors request authority, but not direction, to continue paying Bank Fees owed under the Bank Account Agreements, including any prepetition amounts, in the ordinary course of business on a postpetition basis.

## IV. Compliance with the Depository Requirements of the Bankruptcy Code and the U.S. Trustee Guidelines.

### A. Compliance with U.S. Trustee Guidelines and Section 345 of the Bankruptcy Code.

22. Section 345(a) of the Bankruptcy Code governs a debtor's cash deposits during a chapter 11 case and authorizes deposits of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). To comply with section 345 of the Bankruptcy Code, the *Region 3 Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees* (the "U.S. Trustee Guidelines") for the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with certain requirements set by the U.S. Trustee (each, an "Authorized Depository"). Section 345(b) of the Bankruptcy Code requires a debtor's bank to post a bond unless a debtor's funds are "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States." 11 U.S.C. § 345(b).

23. The Bank Accounts substantially comply with the requirements of section 345 of the Bankruptcy Code. All but five of the Debtors' Bank Accounts (collectively, the "Non-UDA Accounts") are maintained at Cash Management Banks designated as Authorized Depositories by the U.S. Trustee pursuant to the U.S. Trustee Guidelines. The Debtors submit that cause exists to temporarily suspend the requirements of section 345(b) with respect to the Non-UDA Accounts for an interim period of thirty days from the Petition Date, without prejudice to the Debtors' ability to seek further extensions to the extent applicable. Each of these five Non-UDA Accounts is FDIC-insured and maintained at well capitalized, financially stable, and reputable institutions. Additionally, each of the Non-UDA Accounts is a Store Depository Account, none of which carry

balances over the FDIC-insured amount. In many cases, the Non-UDA Accounts are the only or nearest banks to the stores. To avoid the additional and unnecessary disruption to the Debtors' operations that would ensue if the Debtors were required to close these accounts, the Debtors submit that cause exists to suspend the requirements of section 345 of the Bankruptcy Code for a period of thirty days.

24. Moreover, as explained below, the Debtors seek a waiver of certain of the U.S. Trustee Guidelines requiring the Debtors to close all of their prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and establishing a separate general account for the purpose of paying bills incurred during the administration of these chapter 11 cases. Although the Debtors are requesting a waiver of the requirement to close all Bank Accounts, the Debtors may determine, in their business judgment, that opening new bank accounts and/or closing existing Bank Accounts in the ordinary course of business is in the best interests of their estates. While the Debtors do not currently have plans to open or close a Bank Account, nothing contained herein should prevent the Debtors from opening any additional bank accounts, or closing any existing Bank Accounts, as they may deem necessary and appropriate in their sole discretion. In the event the Debtors open new accounts, any new bank account opened by the Debtors shall be established at an institution that is a party to a Uniform Depository Agreement with the U.S. Trustee or is willing to immediately execute a Uniform Depository Agreement.

**B. Compliance with U.S. Trustee Guidelines as to Business Forms and Books and Records.**

25. In the ordinary course of business, as part of the Cash Management System, the Debtors use a variety of preprinted business forms, including checks, letterhead, deposit slips, purchase orders, and invoices (collectively, the "Business Forms"). The Debtors also maintain books and records to document their financial results and a wide array of operating information

(collectively, the "Books and Records"). To avoid a material disruption to their business operations and to minimize administrative expense to their estates, the Debtors request authorization, but not direction, to continue using the Business Forms and Books and Records, without reference to the Debtors' status as debtors in possession in accordance with Local Rule 2015-1.

## Basis for Relief

### I. Cause Exists to Authorize the Debtors' Continued Use of the Cash Management System as Essential to the Debtors' Operations and Restructuring Efforts.

26. The U.S. Trustee Guidelines require debtors in possession to, among other things: (a) close all existing bank accounts and open new debtor-in-possession accounts; (b) establish one debtor-in-possession bank account for all estate monies required for the payment of taxes, including payroll taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) obtain checks that bear the designation "debtor in possession" and reference the bankruptcy case number and type of account on such checks. These requirements are intended to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. Considering that the Debtors' business and financial affairs are complex and require the collection, transfer, disbursement, and movement of funds through the Debtors' Bank Accounts, enforcing these provisions of the U.S. Trustee Guidelines during these chapter 11 cases would severely disrupt the Debtors' business operations and their ability to effectively administer these chapter 11 cases. Accordingly, the Debtors request that the Court allow them to operate each of the Bank Accounts listed on **Exhibit D** attached hereto, as they were maintained in the ordinary course of business before the Petition Date.

27. The continuation of the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Bankruptcy courts routinely treat requests for authority to continue utilizing existing cash management systems as a relatively "simple matter[.]" *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In granting such relief, courts recognize that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in relevant part*, 997 F.2d 1039, 1061 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit emphasized that requiring a debtor to maintain all accounts separately "would be a huge administrative burden and economically inefficient." *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (stating that the debtor used a cash management system "to administer more efficiently and effectively its financial operations and assets").

28. Here, requiring the Debtors to adopt a new, segmented cash management system during these chapter 11 cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors' operations. Importantly, the Cash Management System provides the Debtors with the ability to quickly track and report the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Any disruption of the Cash Management System could have a negative effect on the Debtors' restructuring efforts. By contrast, maintaining the current Cash Management System will facilitate

the Debtors' smooth transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies. Finally, maintaining the current Cash Management System will allow the Debtors' treasury and accounting employees to focus on their daily responsibilities, as opposed to the non-accretive task of reconstructing the Cash Management System.

29. Parties in interest will not be harmed by the Debtors' maintenance of the Cash Management System, including maintenance of the Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of prepetition obligations. Specifically, with the assistance of their advisors, the Debtors have implemented internal control procedures, where possible, that prohibit payments on account of prepetition debts without the prior approval of the Debtors' treasury department. In light of such protective measures, the Debtors submit that maintaining the Cash Management System is in the best interests of their estates and creditors.

30. Accordingly, the Debtors request the Court authorize, but not direct, the continued use of their existing Cash Management System to facilitate the Debtors' transition into chapter 11. Specifically, the Debtors request that the Court authorize the Cash Management Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors-in-possession, without interruption and in the ordinary course of business, subject to the Interim Order and the Final Order. Notwithstanding the foregoing, any check, draft, or other notification that the Debtors advise the Cash Management Banks to have drawn, issued, or otherwise presented before the Petition Date may be honored by the Cash Management Banks only to the extent authorized by order of the Court. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts, and

payments to vendors could be delayed, resulting in unnecessary disruption to their business operations and additional costs to their estates.

## II. Authorizing the Debtors to Continue Using Debit, Wire, Credit Card, and ACH Payments Is Warranted.

31. The Debtors request that the Court grant further relief from the U.S. Trustee Guidelines to the extent such guidelines require the Debtors to make all disbursements by check. In particular, the U.S. Trustee Guidelines state that all disbursements of estate funds should be made by check. In the ordinary course of business, the Debtors conduct transactions through wires, ACH transactions, direct debits, and other similar methods. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts, their business operations may be unnecessarily disrupted, and their estates will incur additional costs.

## III. Authorizing the Cash Management Banks to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course of Business Is Warranted.

32. As discussed above, implementing the U.S. Trustee Guidelines would needlessly interrupt the Debtors' operations and impair the Debtors' efforts to preserve the value of their estates and restructure in an efficient manner. Thus, the Debtors respectfully request the Court authorize the continued use of the existing Cash Management System to facilitate the Debtors' transition into chapter 11. Specifically, the Debtors request that the Court authorize the Cash Management Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business. In this regard, the Cash Management Banks should be authorized to receive, process, honor, and pay any and all checks, ACH transfers and other instructions, and drafts payable through, drawn, or directed on such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto. Notwithstanding the foregoing, any

check, draft, or other notification that the Debtors advise the Cash Management Banks to have been drawn, issued, or otherwise presented before the Petition Date may be honored by the Cash Management Banks only to the extent authorized by order of the Court. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts, and payments to vendors could be delayed, resulting in unnecessary disruption to their business operations and additional costs to their estates.

33. The Debtors further request that the Court authorize the Cash Management Banks to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, wires, or ACH transfers are dated before or subsequent to the Petition Date. The Debtors also request that, to the extent a bank honors a prepetition check or other item drawn on any account either (a) at the direction of the Debtors or (b) in a good-faith belief that the Court has authorized such prepetition check or item to be honored, such bank will not be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item honored postpetition. The Debtors respectfully submit that such relief is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

34. Moreover, the Debtors request that the Court authorize the Cash Management Banks to (a) continue to charge the Debtors the Bank Fees, as applicable, and (b) charge back returned items to the Bank Accounts, whether such items are dated before, on, or subsequent to the Petition Date, in the ordinary course of business and only to the extent consistent with historical practices. The Debtors further request that the Court order that liens on any of the Bank Accounts

granted to creditors will not have priority over the Bank Fees of the respective bank at which the Bank Account is located.

## IV. Cause Exists to Authorize the Payment of Fees and Prepetition Obligations Related to the Bank Accounts.

35. The relief requested herein is essential to the Debtors' continuation of ordinary course operations and, as such, is warranted under sections 105(a) and 363 of the Bankruptcy Code. 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.

36. 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) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow 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 debtors); *In re 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)).

37. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code 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), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See In re 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.*, *In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England 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 prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (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." *In re CoServ*, 273 B.R. at 497.

38. These standards are satisfied here because the payment of fees, including Bank Fees, and related prepetition obligations are necessary to maintain the Cash Management System and avoid any disruption in the administration of the Bank Accounts. The Debtors request authority to continue to pay the Bank Fees, including any prepetition Bank Fees, if any, in the ordinary course of business, in light of the material benefit of maintaining the Cash Management System. The relief requested represents a sound exercise of the Debtors' business judgment, 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 and Bankruptcy Rule 6003.

## V. Cause Exists to Authorize the Debtors to Continue Using Their Existing Business Forms.

39. To avoid disruption of the Cash Management System and unnecessary expense, pursuant to Local Rule 2015-1, the Debtors request that they be authorized to continue to use their Business Forms substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession. The Debtors submit that parties in interest will not be prejudiced by this relief. Parties doing business with the Debtors undoubtedly will be aware of their status as debtors in possession and, thus, changing the Business Forms is unnecessary and would be unduly burdensome. Nonetheless, and in accordance with Local Rule 2015-1(a), with respect to any checks that are generated electronically, or following the depletion of the Debtors' preprinted check stock during the pendency of these chapter 11 cases, the Debtors shall ensure that such electronic checks and new check stock reflect their status as debtors in possession and the corresponding bankruptcy case number.

## VI. Cause Exists to Authorize the Debtors to Continue Conducting Intercompany Transactions in the Ordinary Course and Grant Administrative Priority Status to Postpetition Intercompany Claims Among the Debtors.

40. The Debtors' funds move through the Cash Management System as described above. At any given time, in the ordinary course of business, there may be Intercompany Claims owed by one Debtor to another Debtor. The Debtors track all fund transfers in their accounting system and can ascertain, trace, and account for all Intercompany Transactions previously described. The Debtors, moreover, will continue to maintain records of such Intercompany Transactions.

41. The Intercompany Transactions are made in the ordinary course of business and are an essential component of the Cash Management System. Therefore, the Debtors request the authority to continue conducting them postpetition in the ordinary course of business without need for further Court order. The Debtors further request that pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all postpetition payments on account of postpetition Intercompany Transactions between or among the Debtors that give rise to an Intercompany Claim be accorded administrative expense status, which would result in an administrative expense claim in favor of the applicable Debtor payer. This relief will ensure that each entity receiving payments from a Debtor will continue to bear ultimate repayment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions would jeopardize the recoveries available to each Debtor's respective creditors. For the avoidance of doubt, the relief requested herein with respect to the postpetition Intercompany Transactions and the intercompany balances resulting therefrom shall not constitute an admission of the Debtors or any other party as to the validity, priority, or status of any prepetition intercompany balance or the Intercompany Transaction(s) from which such intercompany balance may have arisen.

## VII. A Suspension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code and a Waiver of the U.S. Trustee Guidelines Is Warranted.

42. To the extent that the requirements of section 345 of the Bankruptcy Code are inconsistent, or otherwise conflict, with (a) the cash management practices under the Cash Management System or (b) any actions the Debtors take in accordance with an order of the Court, the Debtors seek an extension to come into compliance with the requirements of section 345 of the Bankruptcy Code to allow the Debtors to continue their existing cash management practices.

43. Section 345(a) of the Bankruptcy Code authorizes a debtor in possession to make deposits or investments of estate money in a manner "as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). If a deposit or investment is not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code provides that a debtor must require that the entity with which the deposit or investment is made obtain a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety or deposit securities of the kind specified in 31 U.S.C. § 9303, unless the court for cause orders otherwise. *See* 11 U.S.C. § 345(b); *see also* 140 Cong. Rec. H10767 (1994) (stating that while the requirement under section 345(b) for debtor funds to be FDIC insured, collateralized, or bonded may be "wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors"). Local Rule 2015-1 provides that, if a motion for suspension of the section 345 requirements is filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim suspension of the section 345 requirements until such motion is heard. *See* Del. Bankr. L.R. 2015-1.

44. In *In re Serv. Merch. Co.*, the court identified the following factors for determining whether cause exists to suspend the requirements of section 345(b) of the Bankruptcy Code:

(a) the sophistication of the debtor's business;

(b) the size of the debtor's business operations;

(c) the amount of investments involved;

(d) the bank ratings of the financial institutions where the debtor's funds are held;

(e) the complexity of the case;

(f) the safeguards in place within the debtor's own business for insuring the safety of the funds;

(g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;

(h) the benefit to the debtor of current practices;

(i) the harm, if any, to the estate; and

(j) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). Examining these factors, the *Service Merchandise* court concluded that "cause" existed in that case because the debtors were "large, sophisticated [companies] with a complex cash management system," with the ability to shift money as needed to insure the safety of their funds. *Id.* Moreover, the benefits to the debtor of suspending the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to suspend the requirements "would needlessly handcuff this debtor's reorganization efforts." *Id.* at 896–97.

45. As in *Service Merchandise*, the Debtors operate a sophisticated enterprise with a complex Cash Management System that provides the Debtors with the ability to transfer funds rapidly to ensure their safety. In light of the foregoing factors and the safety of the institutions that the Debtors propose to utilize as part of the Cash Management System, the Debtors believe that sufficient cause exists to allow deviation from the deposit and investment guidelines set forth in section 345(b) of the Bankruptcy Code. Satisfaction of those requirements would impose needless costs on the Debtors' estates and the process of satisfying those requirements would lead to needless inefficiencies in the management of the Debtors' business.

46. Any effort to reconfigure the Debtors' entire Cash Management System could have significant tax or regulatory impacts and will require the Debtors' extensive time and resources, to the detriment of all creditors. The Debtors' estates and creditors, however, will not be harmed by the Debtors' maintenance of the status quo as modified by the relief requested herein because of the relatively safe and prudent practices already utilized by the Debtors.

47. Moreover, the Debtors submit that they are in substantial compliance with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines. The five Non-UDA Accounts are each insured by the FDIC and held at well-capitalized, financially stable, reputable institutions. Furthermore, the Non-UDA Accounts are the only or nearest banks to the respective stores.

48. As a result of the foregoing, to the extent that the requirements of section 345 of the Bankruptcy Code are inconsistent, or otherwise conflict, with the Cash Management System or any action taken by the Debtors in accordance with an order of the Court, the Debtors respectfully request a thirty day (or such longer period as the Debtors may request) suspension of time to address any questions that the U.S. Trustee may have regarding the Cash Management System and the Debtors' compliance with section 345(b) of the Bankruptcy Code to allow the

Debtors to continue their existing cash management practices. The Debtors will work in good faith with the U.S. Trustee to address any concerns regarding the Bank Accounts on a post-petition basis and, should the U.S. Trustee have concerns regarding the continued use of the Bank Accounts, make such arrangements as are acceptable to the U.S. Trustee (without prejudice to the Debtors' right to request further suspensions of time in the Court).

49. As part of the relief requested herein, the Debtors also seek a waiver of the U.S. Trustee Guidelines with respect to the requirements to close all existing bank accounts and open new debtor in possession accounts and to establish specific bank accounts for cash collateral or tax payments. The Debtors' tax obligations can be paid out of the Bank Accounts, and the U.S. Trustee can adequately monitor the flow of funds into, among, and out of the accounts, through the Debtors' required reporting. Moreover, as stated above, maintaining the Cash Management System as-is is in the best interests of the Debtors' estates and the creation of new debtor-in-possession accounts designated solely for cash collateral or tax obligations would be unnecessary and inefficient.

50. For the reasons set forth herein, the Debtors seek a temporary suspension of the requirements of section 345 of the Bankruptcy Code with respect to the Non-UDA Accounts and a waiver U.S. Trustee Guidelines to close all existing bank accounts and open new debtor in possession accounts and to establish specific bank accounts for cash collateral or tax payments.

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

51. 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 as relating

to any authorized payment in respect of the relief requested herein. Therefore, the Debtors respectfully request that the Court (a) authorize the Cash Management 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 Cash Management Banks, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (b) authorize the Cash Management 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**

52. 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).

53. 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)**

54. 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**

55. 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**

56. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (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 Cash Management Banks; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors 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) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS, (D) PERFORM INTERCOMPANY TRANSACTIONS, AND (E) GRANT ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION INTERCOMPANY CLAIMS; (II) SUSPENDING THE TIME TO COMPLY WITH 11 U.S.C. § 345(b) AND WAIVING CERTAIN OPERATING GUIDELINES; 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, but not directing, the Debtors to (i) continue to operate their Cash Management System and maintain their existing Bank Accounts, (ii) honor certain prepetition and postpetition obligations related thereto, (iii) maintain existing Business Forms in the ordinary course of business, (iv) continue to perform the Intercompany Transactions consistent with historical practice, and (v) granting administrative expense status to postpetition intercompany balances; (b) granting an interim limited waiver of the Debtors' compliance with the deposit and investment guidelines set

[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.

forth in section 345 of the Bankruptcy Code; (c) granting related relief; and (d) scheduling a final hearing to consider approval of the Motion on a final basis; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this 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 this Interim Order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth 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: (a) continue operating their Cash Management System; (b) honor their prepetition obligations related thereto in an amount not to exceed $90,000.00; (c) use, in their present form, all preprinted correspondence and Business Forms as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date without reference to the Debtors' status as debtors in possession; (d) continue to perform and record Intercompany Transactions consistent with historical practice and grant administrative expense status to postpetition Intercompany Claims; (e) continue to use, with the same account numbers, the Debtor Bank Accounts in existence as of the Petition Date, including those accounts identified on Exhibit D attached to the Motion; (f) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (g) deposit funds in and withdraw funds from the Debtor Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; and (h) pay the Bank Fees, including prepetition amounts, if any, and any ordinary course Bank Fees incurred in connection with the Bank Accounts and to otherwise perform their obligations under the documents governing the Bank Accounts; *provided* that in the case of each of (a) through (h), such action is taken in the ordinary course of business and consistent with historical practices.

5. The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business consistent with historical practices, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition

Date by the holders or makers thereof, as the case may be, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order; *provided* that the Debtors shall only instruct or request any Cash Management Bank to pay or honor any check, draft, or other payment item issued on a Bank Account prior to the Petition Date but presented to such Cash Management Bank for payment after the Petition Date as authorized by an order of this Court.

6. The Cash Management Banks are authorized to debit the Debtors' accounts in the ordinary course of business, consistent with historical practices, without the need for further order of this Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of Debtors' accounts with such Cash Management Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the Cash Management System, including any Bank Fees incurred in the ordinary course of business, subject to the aggregate "cap" set forth in paragraph 4 herein.

7. Any existing deposit agreements between or among the Debtors, the Cash Management Banks, and other parties shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect unless otherwise ordered by this Court, and the Debtors and the Cash Management Banks may, without further order of this Court, agree to and implement changes to

the Cash Management System and cash management procedures in the ordinary course of business, consistent with historical practices and the Debtors' prepetition secured debt agreements, including, without limitation, the opening and closing of bank accounts, subject to the terms and conditions of this Interim Order; *provided*, that the Debtors shall provide counsel to the Consenting Stakeholders and Eclipse, in its capacity as ABL Agent and FILO Agent, with not less than five business days' written notice prior to implementing any material changes to the Cash Management System, and if a written objection to such material changes is filed with this Court and served on the Debtors within the aforementioned period, the Debtors shall not implement such changes absent (a) the consensual resolution of such objection or (b) further order of this Court.

8. Notwithstanding anything to the contrary herein, the Cash Management Banks are not authorized to automatically cause or direct any available amounts of Debtor West Marine Products, Inc.'s deposits to be swept to any Debtor concentration account or other account subject to any blocked account agreement.

9. To the extent any of the Debtors' Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the U.S. Trustee Guidelines, the Debtors shall have until a date that is thirty days from the date of entry of this Interim Order, without prejudice to seeking an additional extension, to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as are agreed to by the U.S. Trustee or approved by this Court.

10. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby suspended without prejudice, as applicable.

11. For Cash Management Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall immediately

upon entry of this Interim Order (a) contact each Cash Management Bank, (b) provide such bank with each of the Debtors' employer identification numbers, and (c) identify each of their Bank Accounts held at such Cash Management Banks as being held by a debtor in possession in a bankruptcy case, and provide the case number. For Cash Management Banks at which the Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause such banks to execute a Uniform Depository agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Interim Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned Cash Management Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

12. Notwithstanding anything contained herein, despite the Debtors' use of the consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor pays those disbursements.

13. The Debtors are authorized to use their existing Business Forms; *provided,* that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor-in-Possession" or "DIP" and the corresponding bankruptcy case number on all checks; *provided, further*, within fifteen days of the entry of this Interim Order, any electronically produced checks shall reflect the designation "Debtor-in-Possession" or "DIP" and the corresponding bankruptcy case number.

14. The Debtors are authorized, but not directed, in the ordinary course of business consistent with historical practices and the Debtors' prepetition secured debt agreements, to open any new bank accounts or close any existing Bank Accounts and enter into any ancillary

agreements, including deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate. The relief granted in this Interim Order is extended to any new bank account opened by the Debtors in the ordinary course of business after the date hereof, which account shall be deemed a "Bank Account," and to the bank at which such account is opened, which bank shall be deemed a "Cash Management Bank"; *provided* that any new bank account opened by the Debtors shall be established at an institution that is a party to a Uniform Depository Agreement with the U.S. Trustee or is willing to immediately execute such a Uniform Depository Agreement*; provided further* that the Debtors will provide the U.S. Trustee with notice within fifteen calendar days of opening or closing any Bank Account.

15. In the event the Debtors open any new Bank Account following the Petition Date, the Debtors shall subject the Bank Account to a deposit account control agreement in favor of the ABL Agent and the Term Loan Agent, within thirty calendar days of the opening of such Bank Account.

16. The Debtors shall serve a copy of this Interim Order on the Cash Management Banks as soon as possible after entry of this Interim Order, and upon any new bank at which the Debtors open a new bank account immediately upon the opening of such new account.

17. All banks maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue timely stop payment orders in accordance with the documents governing such Bank Accounts.

18. The Cash Management Banks are authorized, without further order of this Court, to deduct any applicable Bank Fees from the applicable Bank Accounts in the ordinary course of

business consistent with historical practices, subject to the aggregate "cap" set forth in paragraph 4 herein.

19. The Cash Management Banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

20. Subject to the terms set forth herein, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Interim Order.

21. Any banks, including the Cash Management Banks, are further authorized to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

22. The Debtors are authorized, but not directed, to continue engaging in Intercompany Transactions in connection with the Cash Management System in the ordinary course of business, consistent with historical practices. The Debtors shall maintain accurate and detailed records of all Intercompany Transactions and the payment of Intercompany Claims so that all transactions may be readily traced, ascertained, and recorded properly on applicable intercompany accounts, if any, and distinguished between prepetition and postpetition transactions for the purposes of determining administrative expense status.

23. All postpetition payments from a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder that result in an Intercompany Claim are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

24. Nothing contained in the Motion or this Interim Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, priority, enforceability, or perfection of any security interest or lien or setoff right, in favor of any person or entity, that existed as of the Petition Date.

25. 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 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.

26. 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.

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

28. 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.

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

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

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

**Exhibit B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS, (D) PERFORM INTERCOMPANY TRANSACTIONS; AND (E) GRANT ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION INTERCOMPANY CLAIMS; (II) SUSPENDING THE TIME TO COMPLY WITH 11 U.S.C. § 345(b) AND WAIVING CERTAIN OPERATING GUIDELINES; 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, but not directing, the Debtors to (i) continue to operate their Cash Management System and maintain their existing Bank Accounts, (ii) honor certain prepetition and postpetition obligations related thereto, (iii) maintain existing Business Forms in the ordinary course of business, (iv) continue to perform the Intercompany Transactions consistent with historical practice, and (v) granting administrative expense status to postpetition intercompany balances; (b) granting a further limited waiver of the Debtors' compliance with the deposit and investment guidelines set forth in section 345 of the

[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.

Bankruptcy Code; (c) granting related relief; and (d) scheduling a final hearing to consider approval of the Motion on a final basis; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this 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 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"), 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: (a) continue operating their Cash Management System; (b) honor their prepetition obligations related thereto in an amount not to

exceed $90,000.00; (c) use, in their present form, all preprinted correspondence and Business Forms as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date without reference to the Debtors' status as debtors in possession; (d) continue to perform and record Intercompany Transactions consistent with historical practice and grant administrative expense status to postpetition Intercompany Claims; (e) continue to use, with the same account numbers, the Debtor Bank Accounts in existence as of the Petition Date, including those accounts identified on Exhibit D attached to the Motion; (f) treat the Debtor Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (g) deposit funds in and withdraw funds from the Debtor Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; and (h) pay the Bank Fees, if any, including any prepetition amounts and any ordinary course Bank Fees incurred in connection with the Bank Accounts and to otherwise perform their obligations under the documents governing the Bank Accounts; *provided* that in the case of each of (a) through (h), such action is taken in the ordinary course of business and consistent with historical practices.

4. The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business consistent with historical practices, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order; *provided* that the Debtors shall only instruct or request any Cash Management Bank to pay or honor any check, draft, or other payment item issued

on a Bank Account prior to the Petition Date but presented to such Cash Management Bank for payment after the Petition Date as authorized by an order of this Court.

5. The Cash Management Banks are authorized to debit the Debtors' accounts in the ordinary course of business consistent with historical practices without the need for further order of this Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of Debtors' accounts with such Cash Management Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the Cash Management System, including any Bank Fees incurred in the ordinary course of business, subject to the aggregate "cap" set forth in paragraph 3 herein.

6. Any existing deposit agreements, between, among other parties, the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect unless otherwise ordered by this Court, and the Debtors and the Cash Management Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and cash management procedures in the ordinary course of business, consistent with historical practices and the Debtors' prepetition secured debt agreements, including, without limitation, the opening and closing of bank accounts, subject to the terms and conditions of this Final Order; *provided*, that the Debtors shall provide counsel to the Consenting

Stakeholders and Eclipse, in its capacity as ABL Agent and FILO Agent with not less than five business days' written notice prior to implementing any material changes to the Cash Management System, and if a written objection to such material changes is filed with this Court and served on the Debtors within the aforementioned period, the Debtors shall not implement such material changes absent (a) the consensual resolution of such objection or (b) further order of this Court..

7. Notwithstanding anything to the contrary herein, the Cash Management Banks are not authorized to automatically cause or direct any available amounts of Debtor West Marine Products, Inc.'s deposits to be swept to any Debtor concentration account or other account subject to any blocked account agreement.

8. To the extent any of the Debtors' Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the U.S. Trustee Guidelines, the Debtors shall have until a date that is thirty days from the date of entry of this Final Order, without prejudice to seeking an additional extension, to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as are agreed to by the U.S. Trustee or approved by this Court.

9. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby suspended without prejudice, as applicable.

10. For Cash Management Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall immediately upon entry of this Final Order (a) contact each Cash Management Bank, (b) provide such bank with each of the Debtors' employer identification numbers, and (c) identify each of their Bank Accounts held at such Cash Management Banks as being held by a debtor in possession in a bankruptcy case, and provide the case number. For Cash Management Banks at which the Debtors

hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause such banks to execute a Uniform Depository agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Final Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned Cash Management Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

11. Notwithstanding anything contained herein, despite the Debtors' use of the consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor pays those disbursements.

12. The Debtors are authorized to use their existing Business Forms; *provided,* that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor-in-Possession" or "DIP" and the corresponding bankruptcy case number on all checks; *provided, further*, within fifteen days of the entry of this Interim Order, any electronically produced checks shall reflect the designation "Debtor-in-Possession" or "DIP" and the corresponding bankruptcy case number.

13. The Debtors are authorized, but not directed, in the ordinary course of business consistent with historical prepetition practices, to open any new bank accounts or close any existing Bank Accounts and enter into any ancillary agreements, including deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate. The relief granted in this Final Order is extended to any new bank account opened by the Debtors in the ordinary course of business after the date hereof, which account shall be deemed a "Bank Account," and to the bank at which such account is opened, which bank shall be deemed a "Cash

Management Bank" *provided* that any new bank account opened by the Debtors shall be established at an institution that is a party to a Uniform Depository Agreement with the U.S. Trustee or is willing to immediately execute such a Uniform Depository Agreement; *provided further* that the Debtors will provide the U.S. Trustee with notice within fifteen calendar days of opening or closing any Bank Account.

14. In the event the Debtors open any new Bank Account following the Petition Date, the Debtors shall subject the Bank Account to a deposit account control agreement in favor of both the ABL Agent and Term Loan Agent, within thirty calendar days of the opening of such Bank Account.

15. The Debtors shall serve a copy of this Final Order on the Cash Management Banks as soon as possible after entry of this Final Order, and upon any new bank at which the Debtors open a new bank account immediately upon the opening of such new account.

16. All banks maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue timely stop payment orders in accordance with the documents governing such Bank Accounts.

17. The Debtors' Cash Management Banks are authorized, without further order of this Court, to deduct any applicable Bank Fees from the applicable Bank Accounts in the ordinary course of business consistent with historical practices, subject to the aggregate "cap" set forth in paragraph 3 herein.

18. The Cash Management Banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire

transfers, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

19. Subject to the terms set forth herein, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Final Order.

20. Any banks, including the Cash Management Banks, are further authorized to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

21. The Debtors are authorized, but not directed, to continue engaging in Intercompany Transactions in connection with the Cash Management System in the ordinary course of business, consistent with historical practices. The Debtors shall maintain accurate and detailed records of all Intercompany Transactions and the payment of Intercompany Claims so that all transactions may be readily traced, ascertained, and recorded properly on applicable

intercompany accounts, if any, and distinguished between prepetition and postpetition transactions for the purposes of determining administrative expense status.

22. All postpetition payments from a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder that result in an Intercompany Claim are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

23. Nothing contained in the Motion or this Final Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, priority, enforceability, or perfection of any security interest or lien or setoff right, in favor of any person or entity, that existed as of the Petition Date.

24. 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 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.

25. 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.

26. 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.

27. 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.

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

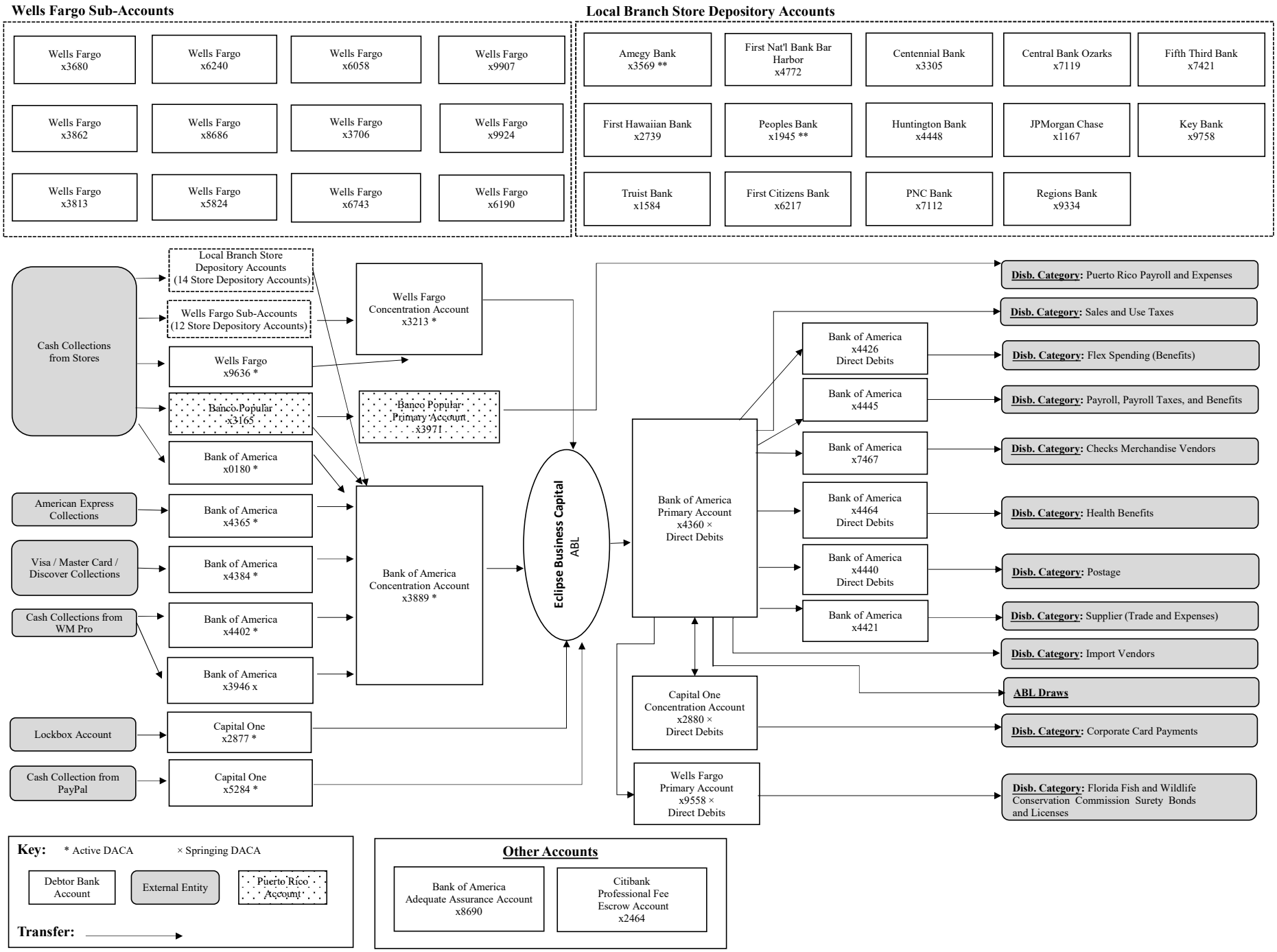
29. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

**Exhibit C**

**Cash Management System Schematic**

# Cash Management System Schematic




** Funds from Bank Accounts ending in 3569 and 1945 are automatically swept to Bank Account ending in 4360. Thereafter, the Debtors manually sweep such funds to Bank Account ending in 3889 to pay down the ABL Facility as required under the Debtors' prepetition financing arrangements.

**Exhibit D**

**Bank Accounts**

| Number | Debtor | Bank Name | Account Number (last four digits) |
|---|---|---|---|
| | | | |
| 1. | West Marine Products, Inc. | Amegy Bank of Texas | 3569 |
| 2. | West Marine Products, Inc. | Banco Popular | 3971 |
| 3. | West Marine Products, Inc. | Banco Popular | 3165 |
| 4. | West Marine Products, Inc. | Bank of America, N.A. | 3889 |
| 5. | West Marine Products, Inc. | Bank of America, N.A. | 0180 |
| 6. | West Marine Products, Inc. | Bank of America, N.A. | 4365 |
| 7. | West Marine Products, Inc. | Bank of America, N.A. | 4384 |
| 8. | West Marine Products, Inc. | Bank of America, N.A. | 4402 |
| 9. | West Marine Products, Inc. | Bank of America, N.A. | 4360 |
| 10. | West Marine Products, Inc. | Bank of America, N.A. | 7467 |
| 11. | West Marine Products, Inc. | Bank of America, N.A. | 4464 |
| 12. | West Marine Products, Inc. | Bank of America, N.A. | 4440 |
| 13. | West Marine Products, Inc. | Bank of America, N.A. | 4426 |
| 14. | West Marine Products, Inc. | Bank of America, N.A. | 4445 |
| 15. | West Marine Products, Inc. | Bank of America, N.A. | 4421 |
| 16. | West Marine Products, Inc. | Bank of America, N.A. | 8690 |
| 17. | West Marine Products, Inc. | Bank of America, N.A. | 3946 |
| 18. | West Marine Products, Inc. | Capital One Bank N.A. | 2880 |
| 19. | West Marine Products, Inc. | Capital One Bank N.A. | 2877 |
| 20. | West Marine Products, Inc. | Capital One Bank N.A. | 5284 |
| 21. | West Marine Products, Inc. | Centennial Bank | 3305 |
| 22. | West Marine Products, Inc. | Central Bank Ozarks | 7119 |
| 23. | Rising Tide Holdings Inc. | Citibank, N.A. | 2464 |
| 24. | West Marine Products, Inc. | Fifth Third Bank | 7421 |
| 25. | West Marine Products, Inc. | First Citizens Bank | 6217 |

| Number | Debtor | Bank Name | Account Number (last four digits) |
|---|---|---|---|
| 26. | West Marine Products, Inc. | First Hawaiian Bank | 2739 |
| 27. | West Marine Products, Inc. | First National Bank of Bar Harbor | 4772 |
| 28. | West Marine Products, Inc. | Huntington Bank OH | 4448 |
| 29. | West Marine Products, Inc. | JPMorgan Chase Bank, N.A. | 1167 |
| 30. | West Marine Products, Inc. | Key Bank of Vermont | 9758 |
| 31. | West Marine Products, Inc. | Peoples Powered by Hanscom Federal Credit Union Bank | 1945 |
| 32. | West Marine Products, Inc. | PNC Bank | 7112 |
| 33. | West Marine Products, Inc. | Regions Bank | 9334 |
| 34. | West Marine Products, Inc. | Truist Bank | 1584 |
| 35. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 9558 |
| 36. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 3213 |
| 37. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 9636 |
| 38. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 6240 |
| 39. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 5824 |
| 40. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 3680 |
| 41. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 3706 |
| 42. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 3813 |
| 43. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 3862 |
| 44. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 6743 |
| 45. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 6190 |
| 46. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 8686 |
| 47. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 9924 |
| 48. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 6058 |
| 49. | West Marine Products, Inc. | Wells Fargo Bank, N.A. | 9907 |