

**** E-filed October 19, 2011 ****

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15 Attorneys for Plaintiff, West Marine, Inc.

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 17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

19 WEST MARINE, INC.

20 Plaintiff,

21 vs.

22 WATERCRAFT SUPERSTORE,
 23 INC., and DOES 1 through 50,
 24 inclusive,

25 Defendants.

26 CASE NO. 5:11-cv-04459-HRL

27 STIPULATION AND ~~PROPOSED~~
ORDER

28 **(AS MODIFIED BY THE COURT)**

STIPULATION AND ~~PROPOSED~~ ORDER

1 The parties in this case have reached a stipulation that they jointly request to be
2 entered as an order of the Court. This stipulation to allow Plaintiff West Marine, Inc. to
3 conduct limited jurisdictional discovery and setting a briefing schedule regarding
4 Defendant Watercraft Superstore's motion to dismiss or, in the alternative, transfer
5 venue, is entered into by and between Plaintiff and Defendant through their counsel of
6 record.

7 **RECITALS**

8 This Stipulation is entered into with reference to the following facts:

9 A. On August 11, 2011, Plaintiff West Marine filed its Complaint against
10 Defendant Watercraft Superstore, in the Superior Court for the State of California,
11 County of Santa Cruz.

12 B. On September 7, 2011, Watercraft Superstore filed its notice of removal,
13 removing this case from the Superior Court for the State of California, County of Santa
14 Cruz, to the United States District Court for the Northern District of California.

15 C. On September 14, 2011, Watercraft Superstore filed its motion to dismiss
16 the Complaint or, in the alternative, transfer venue to the Middle District of Florida. The
17 motion alleges that this Court has no personal jurisdiction over Watercraft Superstore and
18 that, if the Complaint is not dismissed, the Middle District of Florida is a more
19 convenient and appropriate venue and the case should, thus, be transferred. Watercraft
20 Superstore's motion is currently set to be heard before this Court on October 25, 2011,
21 with West Marine's responsive pleading due on September 28, 2011.

22 D. Counsel for Plaintiff and Defendant have met and conferred in writing and
23 telephonically regarding an agreement by which West Marine would be permitted to take
24 limited jurisdictional discovery, and regarding a corresponding briefing schedule with
25 respect to Watercraft Superstore's motion to dismiss. The dates set forth in this
26 Stipulation are based on the parties' best approximation of the dates on which
27 jurisdictional discovery will be completed.

1 STIPULATION

2 Based upon the foregoing, the parties hereby stipulate, by and through their
3 counsel of record, as follows:

4 1. West Marine will serve interrogatories and/or requests for production of
5 documents on jurisdictional issues on or before September 28, 2011.

6 2. West Marine will serve upon Watercraft Superstore a Rule 30(b)(6)
7 deposition notice concerning jurisdictional matters. The deposition will take place in
8 Florida, on a mutually agreeable date and time, and a mutually agreeable location, *within 60 days of the date of this order*

9 3. All discovery discussed in this Stipulation, including both written discovery
10 and the Rule 30(b)(6) deposition, will be limited to jurisdictional issues. In the event that
11 West Marine notices a subsequent Rule 30(b)(6) deposition of Watercraft Superstore, the
12 subsequent deposition will not be duplicative and West Marine will not ask jurisdictional
13 questions in any later Rule 30(b)(6) deposition that were already covered in the earlier
14 deposition.

15 4. The time for West Marine to respond to Watercraft Superstore's motion to
16 dismiss shall be extended to December 14, 2011. West Marine will file its opposition to
17 Watercraft Superstore's motion to dismiss on or before December 14, 2011, and
18 Watercraft Superstore's reply in support of its motion to dismiss will be filed on or
19 before December 21, 2011.

20 5. In the event that completion of discovery takes longer than contemplated in
21 this Stipulation, the parties will meet and confer in good faith regarding any necessary
22 adjustment to the briefing schedule.

23 6. The hearing on Watercraft Superstore's motion to dismiss shall be continued
24 ~~to a date and time to be set by the Court, following the filing of Watercraft Superstore's~~
25 ~~reply.~~ *January 10, 2012, at 10:00 a.m. in Courtroom 2, 5th Floor, 280 South 1st. St., San Jose, CA 95113.*

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1 Dated: September 28, 2011

Respectfully submitted,
GREENBERG TRAURIG, LLP

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4 By: /s/ Lisa C. McCurdy
LISA C. McCURDY
Attorneys for Plaintiff
WEST MARINE, INC.

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8 DATED: September 28, 2011

MOUNT, SPELMAN & FINGERMAN, P.C.

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10 By: /s/ Daniel H. Fingerman
DANIEL H. FINGERMAN
Attorneys for Defendant
WATERCRAFT
SUPERSTORE, INC.

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15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 DATED: October 19, 2011

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HON. HOWARD R. LLOYD
UNITED STATES DISTRICT COURT
MAGISTRATE JUDGE

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C11-04459 HRL Notice will be electronically mailed to:

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