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9 Bradley, Greg Abraham and David Goldwasser and  
Proposed Class Counsel

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN BERNARDINO**

13  
14 FRANK COWEN, BARRY MOREN,  
15 PAT BRADLEY, individually and on  
behalf of all similarly situated individuals,

16 Plaintiffs,

17 v.

18 EVERGREEN ALLIANCE GOLF  
19 LIMITED, L.P., d/b/a Arcis Golf, and  
20 DOES 1 through 10, inclusive,

21 Defendants.

CASE NO.: CIVDS1719283

*Assigned to the Honorable Gilbert Ochoa, Dept. S33*

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Date: May 2, 2018

Time: 8:30 a.m.

Dept.: S33

*Complaint Filed: September 29, 2017*

**RECEIVED**

**MAR 28 2018**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

1 Plaintiffs' motion for preliminary approval of class action settlement came on for hearing  
2 before this Court in Department S33, Judge Gilbert Ochoa presiding, on May 2, 2018. The Court,  
3 having considered the papers submitted in support of the motion and having heard oral argument  
4 of the parties, **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court grants preliminary approval of the settlement based upon the terms set  
6 forth in the Joint Stipulation of Settlement and Release ("Settlement Agreement") filed with the  
7 Court. The Court finds that the proposed settlement and Settlement Agreement appear to be fair,  
8 reasonable and adequate for the Class.

9 2. The settlement falls within the range of reasonableness and appears to be  
10 presumptively valid, subject only to any objections that may be raised at the final approval hearing.

11 3. A Final Approval hearing shall be held on \_\_\_\_\_, 2018 at \_\_\_\_\_.m.  
12 before the undersigned for the purpose of determining (a) whether the proposed settlement is fair,  
13 reasonable, and adequate and should be finally approved by the Court and (b) whether to issue a  
14 Final Order and Judgment. The Court reserves the right to adjourn or continue the Final Approval  
15 Hearing, or any further adjournment or continuance thereof, without further notice other than  
16 announcement at the Final Approval Hearing or at any adjournment or continuance thereof, and to  
17 approve the settlement with modifications, if any, consented to by Class Counsel and Defendant's  
18 Counsel without further notice. All pretrial proceedings in the Action are stayed and suspended  
19 until further order of this Court.

20 4. For purposes of the Settlement Agreement and for settlement only, the Court  
21 preliminarily certifies the following Settlement Class:

22 [A]ll persons in the United States to whom, through use of a machine  
23 used by golf courses operated by Defendant, were provided an  
24 electronically printed receipt at the point of a sale or transaction on  
25 which more than then last five digits of the person's credit or debit  
26 card number was printed between June 15, 2015 and the Date of  
27 Preliminary Approval.

28 5. The Court finds, solely for purposes of preliminary approval, that (a) members of  
the proposed Settlement Class are so numerous as to make joinder of all members impracticable;  
(b) there are questions of law or fact common to the proposed Settlement Class; (c) the claims of

1 the Named Plaintiffs are typical of the claims of the proposed Settlement Class; (d) the Named  
2 Plaintiffs and Class Counsel will fairly and adequately protect the interests of the proposed  
3 Settlement Class; (e) questions of law or fact common to the members of the proposed Settlement  
4 Class predominate over any questions affecting only individual members; and (f) a class action is  
5 superior to other available methods for the fair and efficient adjudication of the controversy.

6         6.       The Court notes and further finds that neither the certification of the Settlement  
7 Class, nor the settlement of this action, shall be deemed to be a concession by Defendant of the  
8 propriety of the certification of a litigation class, in this action or any other action, and Defendant  
9 shall retain all rights to assert that the action may not be certified as a class action except for  
10 settlement purposes. Furthermore, the preliminary certification of the Settlement Class,  
11 appointment of the class representative and Class Counsel, and all other actions associated with  
12 preliminary approval are undertaken on the condition that the certification and other actions shall  
13 be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the  
14 Court, any appellate court, and/or any other court of review, or if Defendant invokes the right to  
15 revoke the settlement according to the terms of the Settlement Agreement, in which case the  
16 Settlement Agreement and that fact that it was entered into shall not be offered, received, or  
17 construed as evidence for any purpose, including but not limited to an admission by Defendant of  
18 liability or of any misrepresentation or omission in any statement or written document approved or  
19 made by Defendant; or of the certifiability of a litigation class, as further provided in the Settlement  
20 Agreement.

21         7.       The Court approves, as to form and content, the Notice of Class Action Settlement  
22 (“Class Notice”), attached as Exhibit “1” to the Settlement Agreement, the Posted Notice, attached  
23 as Exhibit “2” to the Settlement Agreement, the Email Notice, attached as Exhibit “3” to the  
24 Settlement Agreement, and the Claim Form, attached as Exhibit “4” to the Settlement Agreement.  
25 The Court finds preliminarily that the Class Notice, Posted Notice, and Email Notice described in  
26 the Settlement Agreement and the Notice Plan submitted to the Court, and the dates for submissions  
27 of Claim Forms, Requests for Exclusion, and Objections, provide (i) the best practicable notice; (ii)  
28 are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the

1 pendency of the Action and of the proposed settlement, and of their right to object or to exclude  
2 themselves from the proposed settlement; (iii) provide reasonable, due, adequate, and sufficient  
3 notice to all persons entitled to receive notice; and (iv) are compliant with applicable law and due  
4 process. The Court therefore directs the Parties and the Settlement Administrator to implement the  
5 Notice program contemplated by the Settlement Agreement, including the Class Notice, Posted  
6 Notice, and Email Notice.

7 8. Any Settlement Class Member who timely requests exclusion from the Settlement  
8 Class in accordance with the Class Notice and Settlement Agreement shall not be bound by any  
9 judgment entered in this Action and shall not be entitled to receive any benefits provided by the  
10 settlement in the event it is finally approved by the Court.

11 9. Any Settlement Class Member who does not timely request exclusion as set forth in  
12 the Class Notice and Settlement Agreement shall be bound by all proceedings, orders, and  
13 judgments in the Action, even if such Settlement Class Member has previously initiated or  
14 subsequently initiates individual litigation or other proceedings encompassed by the Class Member  
15 Released Claims, as defined in the Settlement Agreement, and even if he or she never received  
16 actual notice of the Action or the settlement.

17 10. Any Settlement Class Member who does not timely request exclusion as set forth in  
18 the Notice, and who wishes to object to the fairness, reasonableness, or adequacy of the proposed  
19 settlement, including the Attorneys Fee and Cost Award, must submit an objection that complies  
20 with the requirements for objections as set forth in Paragraph 74 of the Settlement Agreement and  
21 the Class Notice. Failure to adhere to these requirements will bar the objection.

22 11. The Court confirms Kenneth S. Gaines, Esq., Daniel F. Gaines, Esq. and Alex P.  
23 Katofsky, Esq. of Gaines & Gaines, APLC as Class Counsel.

24 12. The Court confirms Frank Cowen, Barry Moren, Pat Bradley, Greg Abraham and  
25 David Goldwasser as the Class Representatives.

26 13. The Court hereby approves Kurtzman Carson Consultants LLC as the Settlement  
27 Administrator.

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1           14.    The Court orders the following schedule of dates for the specified actions/further  
 2 proceedings:

<u>EVENT</u>	<u>TIMING</u>
5 Defendant will provide to the Claims Administrator 6 the names and last known e-mail addresses for all 7 United States residents who appear on the listserv of 8 email addresses maintained by the daily fee courses 9 operated by Defendant as of the Date of Preliminary 10 Approval ("Class List")	Within 42 calendar days after the Court grants Preliminary Approval of the Settlement
8 Claims Administrator shall send via e-mail the Court- 9 approved Notice of the Class Action Settlement, in a 10 form substantially similar to that attached to the 11 Settlement Agreement as Exhibit 3, to all persons 12 who appear on the Class List	Within 21 calendar days of receiving the Class List
11 The Claims Administrator shall maintain the 12 Settlement Website	No later than the date the Notice of Class Action Settlement is first e-mailed, and ending no earlier than one year after the Effective Date
15 Defendant shall post a placard notice in each of the 16 pro shops at the daily-fee courses it manages, 17 containing both the Settlement Website address and a 18 brief explanation of the Action and settlement, in the 19 form attached to the Settlement Agreement as Exhibit 20 2	From the date notice is first e-mailed and for 45 days thereafter
18 Last day for Claims to be submitted by Class 19 Members to Settlement Administrator	63 calendar days from the date the Claims Administrator emails the Settlement Documents to Class Members
21 Last day for requests for exclusion by Class Members 22 to be submitted to Settlement Administrator	63 calendar days from the date the Claims Administrator emails the Settlement Documents to Class Members
23 Deadline for written objections to the settlement by 24 Class Members to be filed with the Court and mailed 25 to Class Counsel and Defendant's Counsel	63 calendar days from the date the Claims Administrator emails the Settlement Documents to Class Members
26 Last day for Class Counsel to file and serve moving 27 papers in support of final settlement approval and 28 request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Counsel to file with the Court and serve declaration by settlement administrator describing the scope and effect of the Notice Plan	10 calendar days prior to the final settlement approval hearing date
Final settlement approval hearing	<u>10-2</u> , 2018, at 8 <sup>30</sup> a.m. (Approximately 145 days after entry of this Order)

Dated: 5/2, 2018

**GILBERT G. OCHOA**

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JUDGE OF THE SUPERIOR COURT

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