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9 Goldwasser and Proposed Class Counsel

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

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

15 Plaintiffs,

16 v.

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

19 Defendants.

CASE NO.: CIVDS1719283

Assigned to the Honorable Gilbert Ochoa,
Dept. S33

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT THEREON

Date: October 24, 2018
Time: 8:30 a.m.
Dept.: S33

Complaint Filed: September 29, 2017

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 24 2018

BY Kimberly Reynolds
KIMBERLY WEYNOLDS, DEPUTY

RECEIVED

OCT 11 2018

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

1 In March 2018, Plaintiffs Frank Cowen, Barry Moren, Pat Bradley, Greg Abraham
2 and David Goldwasser (collectively, "Plaintiffs"), individually and on behalf of the
3 Settlement Class, and Defendant Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf
4 ("Defendant") (Plaintiffs and Defendant are collectively referred to herein as the "Parties")
5 entered into a class action settlement (the "Settlement"), the terms and conditions of which
6 are set forth in the Parties' Joint Stipulation of Settlement and Release (collectively, the
7 "Stipulation"). This matter having come before the Court on October 24, 2018 for the Final
8 Approval Hearing on Plaintiffs' Unopposed Motion for Final Approval of Class Action
9 Settlement and Plaintiffs' Unopposed Application for Approval of Attorneys' Fees and
10 Costs, Claims Administration Fees, and Class Representatives' Service Payments, due and
11 adequate notice having been given to Class Members as required by the Court's Preliminary
12 Approval Order dated May 2, 2018, and the Court, having considered all the papers filed and
13 proceedings herein, having received no objections to the Settlement, having determined that
14 the Settlement is fair, adequate and reasonable, and otherwise being fully informed, **hereby**

15 **ORDERS as follows:**

- 16 1. All terms used herein shall have the same meaning as given them in the
17 Stipulation.
- 18 2. The Court has jurisdiction over the subject matter of this proceeding and over
19 all Parties to this proceeding, including all Class Members.
- 20 3. The Court hereby unconditionally certifies the Settlement Class, as set forth in
21 the Stipulation, for purposes of this Settlement only.
- 22 4. Distribution and publication of the Notice directed to the Class Members as
23 set forth in the May 2, 2018 Order granting preliminary approval has been completed in
24 conformity with the Preliminary Approval Order, including individual notice by e-mail
25 and/or U.S. Mail to all individuals on Defendant's e-mail marketing list, and publication and
26 website notice to all other Class Members. The notice program agreed upon by the Parties
27 and approved by the Court constitutes the best notice practicable under the circumstances.

1 The Notice provided due and adequate notice of the proceedings and of the matters set forth
2 in the Preliminary Approval Order, including the proposed Settlement as set forth in the
3 Stipulation. The Notice provided adequate and appropriate notice to all persons entitled to
4 such notice, and therefore fully satisfied the requirements of due process. All Class Members
5 and all Class Member Released Claims are covered by and included within the Settlement
6 and within this Final Approval Order.

7 5. The Court finds that the Settlement has been reached as a result of intensive,
8 serious, and non-collusive arms-length negotiations and the Settlement was entered into in
9 good faith. The Court further finds that the Settlement is fair, reasonable, and adequate, and
10 that Plaintiffs have satisfied the standards and applicable requirements for final approval of
11 this class action Settlement under California law.

12 6. The Court hereby approves the Settlement as set forth in the Stipulation and
13 directs the parties to effectuate the Settlement according to the terms set forth in the
14 Stipulation. In granting final approval of the Stipulation, the Court considered the nature of
15 the claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement
16 proceeds among the Settlement Class Members, and the fact that a settlement represents a
17 compromise of the parties' respective positions rather than the result of a finding of liability
18 at trial. Additionally, the Court finds that the terms of the Stipulation have no obvious
19 deficiencies and do not improperly grant preferential treatment to any individual Class
20 Member.

21 7. As of the date of this Final Approval Order, except as to such rights or claims
22 that may be created by the Settlement, each and every Class Member Released Claim of each
23 Class Member who has not excluded him or herself from the Settlement is and shall be
24 deemed to be conclusively released as against the Released Parties (as those terms are defined
25 in the Stipulation).

26 8. Neither the Settlement nor any of the terms set forth in the Stipulation
27 constitute an admission by the Released Parties of liability to the named Plaintiffs or any
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1 Class Member, nor does this Final Approval Order constitute a finding by the Court of the
2 validity of any of the claims alleged in the Lawsuit, or of any liability of the Released Parties.

3 9. The Court hereby finds the consideration to be distributed to the Settlement
4 Class as provided for in the Stipulation to be fair, reasonable and adequate.

5 10. The Court hereby confirms Kenneth S. Gaines, Esq., Daniel F. Gaines, Esq.,
6 and Alex P. Katofsky, Esq. of Gaines & Gaines, A Professional Law Corporation as Class
7 Counsel.

8 11. Pursuant to the terms of the Stipulation, and the authorities, evidence, and
9 argument set forth in Class Counsel's application, an award of attorneys' fees in the amount
10 of \$375,000 and costs in the amount of \$15,687.98, as final payment for and complete
11 satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel
12 is hereby granted. The Court finds that Class Counsel's request falls within the range of
13 reasonableness and that the result achieved justifies the award. The payment of fees and
14 costs to Class Counsel shall be made in accordance with the terms of the Stipulation.

15 12. The Court also hereby approves Plaintiffs Frank Cowen, Barry Moren, Pat
16 Bradley, Greg Abraham and David Goldwasser as Class Representatives and orders payment
17 to Plaintiffs for their service as Class Representatives the sum of \$5,000 each. The payment
18 of the Class Representatives' service payments shall be made in accordance with the terms of
19 the Stipulation.

20 13. The Court hereby finds the consideration to the Settlement Class as provided
21 in the Stipulation to be fair, reasonable and adequate. The Court hereby authorizes and
22 directs the Settlement Administrator, Kurtzman Carson Consultants LLC, to issue Settlement
23 Certificates and cash consideration to Qualified Cash Claimants and Qualified Settlement
24 Certificate Claimants in accordance with the terms of the Stipulation.

25 14. The Court further approves the administration fees charged by Kurtzman
26 Carson Consultants LLC for the costs of administering the Settlement as set forth in the
27 Stipulation. As attested to in the Declaration of Andrew Perry, the administration charges to
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1 date are \$23,332.07 and are expected to increase to \$49,013.76 as the administration of the
2 settlement proceeds. Defendant shall pay Kurtzman Carson Consultants LLC its fees and
3 expenses incurred through the conclusion of this matter in accordance with the terms of the
4 Stipulation.

5 15. If the Settlement does not become final and effective in accordance with the
6 terms of the Stipulation, this Final Approval Order and all orders entered in connection
7 herewith, including the Judgment on this Order, shall be vacated and shall have no further
8 force or effect.

9 16. Pursuant to California Rules of Court, rule 3.769(h), the Court hereby enters
10 Judgment in this action; provided, however, that without affecting the finality of the
11 Settlement or the judgment entered herein, this Court shall retain exclusive and continuing
12 jurisdiction over the Lawsuit and the Parties, including all Class Members, for purposes of
13 enforcing and interpreting this Order, the Settlement and the claims process established
14 therein.

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16 **IT IS SO ORDERED.**

17 Dated: 10-24-18

JOHN M. TOMBERLIN

JUDGE OF THE SUPERIOR COURT

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