

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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CHRISTOPHER R. LONNER, individually and :
on behalf of all others similarly situated, : Index No. 04-2246
 : (Scheinkman, J.)
Plaintiff, :
 :
vs. :
 :
SIMON PROPERTY GROUP, INC. :
 :
Defendant. :
-----X
ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
 :
Plaintiff, :
 :
vs. :
 :
SIMON PROPERTY GROUP, INC. :
 :
Defendant. :
-----X

**ORDER PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT, SCHEDULING FAIRNESS HEARING
AND AUTHORIZING DISSEMINATION OF NOTICE OF SETTLEMENT**

Plaintiffs Christopher R. Lonner (“Lonner”) and Aliza Goldman (“Goldman”) (hereinafter collectively “Plaintiffs”), individually and on behalf of the Class defined herein, and Defendant Simon Property Group, Inc. (“Simon”) (hereinafter, collectively with Plaintiffs, the “Parties”), having reached a Settlement of the disputes between them in the above-captioned Action, subject to the Court’s approval, which is embodied in the Settlement Agreement presented to the Court;

The Parties having applied to this Court for approval of the Settlement and for dismissal of Plaintiffs' Amended Complaints with prejudice upon the terms and conditions set forth in the Settlement Agreement; and

The Court having read and considered the Settlement Agreement and accompanying exhibits, and the Parties to the Settlement Agreement having consented to the form and entry of this Preliminary Approval Order, and all capitalized terms used herein having the same meaning defined in the Settlement Agreement;

IT IS HEREBY ORDERED THAT:

1. The requirements for class certification under Article 9 of the New York Civil Practice Law and Rules ("CPLR"), having previously been held to be satisfied by Order dated June 25, 2009 granting Plaintiffs' July 15, 2008 Motion for Class Certification (the "Class Order"), the following is the Class certified for the purpose of considering and approving the Settlement only:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively "Simon")) residing within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 ("Card(s)") that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance ("Administrative Fees"); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Administrative Fees (the "Class").

Excluded from the Class are all persons who requested exclusion in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court (the "Notice Order"). Additionally excluded from the Class are Simon, its officers, directors, affiliates, subsidiaries and successors.

2. In accordance with the Class Order, the Court has previously certified Plaintiffs Lonner and Goldman as representatives of the Class and their counsel, William R. Weinstein of

Law Offices of William R. Weinstein and Trief & Olk, as co-counsel for the Class (“Settlement Class Counsel”), and they are hereby certified as Class representatives and Settlement Class Counsel, respectively, for purposes of this Settlement as well. The Court also preliminarily finds and concludes that in negotiating and entering into the Settlement Agreement, Plaintiffs and Settlement Class Counsel have fairly and adequately represented and protected the interests of all Class members, as required under CPLR Article 9.

3. The Court preliminarily approves the Settlement Agreement as fair, just and reasonable to the Class, subject to the Fairness Hearing as described in the Notice of Proposed Settlement of Class Action and Fairness Hearing, and Claim Form/Release (“Settlement Notice”), Exhibit B to the Settlement Agreement, and the Summary Notice of Proposed Class Action Settlement and Fairness Hearing (“Summary Settlement Notice”), Exhibit D to the Settlement Agreement, to be disseminated to the Class pursuant to CPLR Article 9.

4. The Court approves, as to form and content, the Settlement Notice, Exhibit B to the Settlement Agreement, and the Summary Settlement Notice, Exhibit D to the Settlement Agreement, and finds that the emailing and distribution of the Settlement Notice substantially in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, the publication of the Summary Settlement Notice substantially in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, the website postings in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, and the Simon Mall placard postings in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, meet the requirements of CPLR Article 9 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice for all purposes to all persons entitled thereto.

5. (a) Within thirty (30) days after the entry of this Preliminary Approval Order, RG2 Claims Administration LLC (“RG2”), the Settlement Administrator agreed to by the Parties in the Settlement Agreement and the same Settlement Administrator previously approved by the Court in the Notice Order and again approved herein, shall cause a copy of the Settlement Notice, substantially in the form annexed as Exhibit B to the Settlement Agreement, to be distributed to the same persons to whom the Notice of Pendency of Class Action (“Notice of Pendency”) previously was disseminated in this Action (i) by email to those persons for whom Simon previously provided email addresses; (ii) by mail to those persons for whom Simon previously provided a mailing address but not an email address (provided however with respect to (i) and (ii) that notice need not be sent to addresses or email addresses previously returned as undeliverable or improper email addresses); and (iii) by mail to those persons whose email or mail delivery of the Settlement Notice or the previously disseminated Notice of Pendency is or was returned as undeliverable, to such more current or updated address as is or has been obtained by the approved Settlement Administrator. No Settlement Notice shall be distributed to those persons who requested exclusion from the Class, as identified in Exhibit I to the April 19, 2010 Affidavit of John R. Davis of RG2 previously filed with the Court by Plaintiffs in accordance with the Notice Order.

(b) Within thirty (30) days after the entry of this Preliminary Approval Order, Settlement Class Counsel, by RG2, shall cause a copy of the Summary Settlement Notice, substantially in the form annexed as Exhibit D to the Settlement Agreement, to be published on one weekday in a size no smaller than 1/12 of a page in the same newspapers identified in the Notice Order in which the Summary Notice of Pendency of Class Action previously was published.

(c) Within thirty (30) days after the entry of this Preliminary Approval Order, Simon shall place a table top placard of the Summary Settlement Notice in one location at the desk or counter where the Gift Cards can be purchased in each of the eight Simon New York locations where the Gift Cards were sold prior to April 29, 2005 (Chautauqua, Jefferson Valley, The Mall at the Source, Nanuet, Roosevelt Field, Smithhaven, The Westchester, and Walt Whitman) for a period of thirty (30) days. In addition, the Settlement Notice shall be posted on the website for Simon's gift cards with a conspicuous link stating "For information concerning a proposed settlement of the court action in New York regarding a previous Simon Gift Card program involving Cards issued to or used by Cardholders in New York, click here." This posting shall be for a period of thirty (30) days.

(d) Within thirty (30) days after the entry of this Preliminary Approval Order, a copy of the Settlement Agreement and its exhibits, and Plaintiffs' Amended Class Action Complaints, shall be posted to the websites of Settlement Class Counsel, www.wweinsteinlaw.com (follow the link for Cases), and www.triefandolk.com (follow the link) and also on the Settlement Administrator's website.

6. RG2 shall disseminate notice to the Class, process all Claim Forms and all other tasks necessary to effect and complete the administration of the Settlement in accordance with the Settlement Agreement and such Orders as may be issued by the Court. The reasonable fees and costs of the Settlement Administrator in connection with the administration of the Settlement shall be paid by Simon in accordance with the terms of the Settlement Agreement.

7. A Fairness Hearing will be held before this Court at _ .m. on the _____ day of _____ 2010, in the Commercial Part, Courtroom 105, New York State Supreme Court, County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, on the

fairness of the proposed Settlement, including: (1) whether to finally approve the Settlement as fair, reasonable, and adequate; (2) whether a Final Judgment in the form of Exhibit C to the Settlement Agreement should be entered; and (3) whether the application of Settlement Class Counsel for an award of attorneys' fees and expenses, and an award of incentive fees to Plaintiffs, should be granted. The Court may adjourn or continue the Fairness Hearing without further notice to the members of the Class.

8. At or before the Fairness Hearing, Settlement Class Counsel, Simon and the Settlement Administrator, as appropriate, shall file proof, by affidavit or affirmation, of the dissemination of notice in accordance with this Preliminary Approval Order.

9. Any person who previously requested exclusion from the Class, as identified in Exhibit I of the April 19, 2010 Affidavit of John R. Davis of RG2 previously filed with the Court by Plaintiffs in accordance with the Notice Order, is excluded from the Class, shall not be entitled to apply for or receive any of the benefits of the Settlement, shall not be bound by the release of any claim identified in the Settlement Agreement, and shall not be entitled to object to the proposed Settlement or appear at the Fairness Hearing. All persons within the Class who did not previously exercise the option to be excluded from the Class shall be bound by the Settlement Agreement, the release contained therein and the Final Judgment as may be entered, and shall have no further opportunity to be excluded from the Class.

10. Any Class member who did not previously request exclusion shall have the right to object to the Settlement of the Action, to Settlement Class Counsel's application for an award attorneys' fees and expenses, to an award of incentive fees to Plaintiffs, or to the proposed Final Judgment, and shall have the right to appear and be heard at the Fairness Hearing, either personally or through an attorney retained at the Class Member's own expense. Any such

objections to the Settlement shall be considered by the Court at the Fairness Hearing only if the objecting Class member files with the Court and serves a notice of his, her or its intention to appear and supporting papers, with information sufficient to identify the Card number for a Card purchased in New York or sold to or given to a New York resident on or before April 29, 2005, and a certification under penalties of perjury that the Class member is the Cardholder entitled to the Refund for the Card number described, along with a detailed statement of the reason(s) for the objection, by first-class mail postmarked no less than 15 days before the Fairness Hearing, on each Settlement Class Counsel and on Simon's Counsel at the addresses prescribed in the Settlement Notice and Summary Settlement Notice, as follows:

SETTLEMENT CLASS COUNSEL

William R. Weinstein, Esq.
LAW OFFICES OF WILLIAM R. WEINSTEIN
500 Fifth Avenue, Suite 1610
New York, NY 10110
(212) 575-2205

TRIEF & OLK
Attn: Barbara E. Olk, Esq.
150 East 58th Street, 34th Floor
New York, NY 10022
(212) 486-6060

-and-

COUNSEL FOR SIMON

Jeffrey J. Greenbaum, Esq.
SILLS CUMMIS & GROSS
One Rockefeller Plaza
New York, New York 10020

Any Class member who does not make his, her or its objection in the manner provided in this paragraph shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement or the application of Settlement Class Counsel for the award of attorneys' fees and expenses, and the award of incentive fees to Plaintiffs.

11. Upon the Effective Date of the Settlement as defined in paragraph 7 of the Settlement Agreement, all Class members shall be barred forever from asserting any Released Claim against any Released Defendant Party, and by operation of the Final Judgment shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Claims.

12. Upon the Effective Date of the Settlement as defined in paragraph 7 of the Settlement Agreement, Plaintiffs shall be barred forever from asserting any Released Plaintiff Claim against any Released Defendant Party, and by operation of the Final Judgment shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Plaintiff Claims.

13. All Class members are preliminarily enjoined from commencing or prosecuting any actions asserting any of the Released Claims, and Plaintiffs are preliminarily enjoined from commencing or prosecuting any actions asserting any of the Released Plaintiff Claims, either directly, representatively, derivatively or in any other capacity, against any Released Defendant Party, pending the final determination of whether the Settlement Agreement should be finally approved by the Court. Pending final determination of whether the Settlement will be approved, all other proceedings in this Court relating to the Action shall be stayed.

14. It shall be the responsibility of the Settlement Administrator to respond to all inquiries from persons potentially within the Class regarding their claims or the claim form or the amount of potential settlement benefits, with such participation and assistance from Settlement Class Counsel and Simon as is reasonably necessary and appropriate under the circumstances.

15. This Court has jurisdiction over all Class members with respect to all claims asserted in this Action and the Settlement.

16. In the event the Settlement Agreement shall terminate, or not become effective for any reason, this Preliminary Approval Order shall be vacated and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; in such event, the Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of the Parties hereto, who shall be restored to their respective positions as of the date of the Settlement Agreement.

17. The Court may, for good cause shown, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Class. The Fairness Hearing may, from time to time and without further notice to the Class, be adjourned or continued without further order of the Court.

Dated: New York, New York

_____, 2010

HON. ALAN D. SCHEINKMAN, J.S.C.