

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
CHRISTOPHER R. LONNER, individually and :  
on behalf of all others similarly situated, : Index No. 04-2246  
Plaintiff, : (Scheinkman, J.)  
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

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION  
AND FAIRNESS HEARING, AND CLAIM FORM/RELEASE**

TO: (A) ALL PERSONS RESIDING WITHIN THE STATE OF NEW YORK WHO HOLD OR HELD **SIMON GIFT CARDS** SOLD ON OR BEFORE APRIL 29, 2005 (“GIFT CARD(S)”) THAT ARE OR WERE SUBJECT TO A DECREASE IN VALUE RESULTING FROM THE IMPOSITION BY SIMON PROPERTY GROUP, INC. (“SIMON”) OF \$2.50 MONTHLY CHARGES AUTOMATICALLY DEDUCTED BY SIMON FROM ANY GIFT CARD BALANCE REMAINING MORE THAN SIX MONTHS AFTER CARD ISSUANCE (“ADMINISTRATIVE FEES”); AND (B) ALL OTHER PERSONS WHO HOLD OR HELD **SIMON GIFT CARDS** SOLD WITHIN THE STATE OF NEW YORK ON OR BEFORE APRIL 29, 2005 THAT ARE OR WERE SUBJECT TO THE ADMINISTRATIVE FEES DESCRIBED ABOVE (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. ADDITIONALLY EXCLUDED FROM THE CLASS ARE SIMON, ITS

OFFICERS, DIRECTORS, AFFILIATES, SUBSIDIARIES AND SUCCESSORS.

**IMPORTANT: PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A MEMBER OF THE CLASS, YOU MAY BE ENTITLED TO RECEIVE MONEY PURSUANT TO THE PROPOSED SETTLEMENT DESCRIBED HEREIN.**

This Notice is given pursuant to an order of the Supreme Court of the State of New York for Westchester County to inform you of the proposed settlement (the "Settlement") of the above-captioned class action (the "Action"). The Settlement is between Plaintiffs Christopher R. Lonner ("Lonner") and Aliza Goldman ("Goldman") (hereinafter collectively "Plaintiffs") and the Class described above, and Defendant Simon Property Group, Inc. ("Simon") (hereinafter, collectively with Plaintiffs, the "Parties"). Records indicate that you may be included within the above-described Class. If you do not fall within the definition of the Class set forth above, you may ignore this notice.

NOTE: If you requested exclusion from the Class in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court, then you will not be entitled to participate in the benefits of the Settlement and you will not be bound by any Final Judgment entered in the Action approving the Settlement and releasing the claims of Class Members.

There will be a hearing (the "Fairness Hearing") on \_\_\_\_\_, 2010 at \_\_\_\_\_ .m. 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 proposed Settlement as set forth in the Parties' Settlement Agreement dated \_\_\_\_\_, 2010 as fair, reasonable,

and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Simon with prejudice; 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. If the Settlement is approved, eligible Class Members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims. The Court may adjourn or continue the Fairness Hearing without further notice to the members of the Class.

The purpose of this Notice is to explain to you:

1. What the Lawsuit Is About, and the Certified Class.
2. Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, the *Cy Pres* Payment, and the Judgment and Releases.
3. Application of Settlement Class Counsel for an Award of Attorneys' Fees and Expenses, and an Award of Incentive Fees to Plaintiffs.
4. The Fairness Hearing.
5. Your Options If You Are Included in the Class, including Your Right to File a Claim for Settlement Benefits, and Your Right to Object to the Settlement.
6. How to Get More Information.

**1. What the Lawsuit Is About.**

Plaintiffs Christopher R. Lonner and Aliza Goldman have asserted claims against Simon in connection with Simon's prior practice of automatically deducting monthly Administrative Fees of \$2.50 from any Gift Card balance remaining more than six months after the Gift Card was issued. Plaintiffs allege that, under New York law, Simon's practice of deducting the Administrative Fees was deceptive, caused Simon to be unjustly enriched, and breached the Gift Card contract and the duty of good faith and fair dealing. The lawsuit also alleges that the term regarding the Administrative Fees in the Cardholder Agreement and on the Gift Card was not legally enforceable. Among other things, Plaintiffs specifically allege that the Administrative Fee term in the Cardholder Agreement and on the Gift Card

was in a print size too small to be enforceable under New York law, and that the placement of the Administrative Fee term and the general description of the Administrative Fees in a print size of less than 8 points and not clear and legible on the cardboard sleeve that accompanied the Gift Card and on the back of the Gift Card was a violation of New York law.

Simon has denied and continues to deny the allegations made by Plaintiffs, and has asserted affirmative defenses. Simon alleges that each Gift Card contained a disclosure that a \$2.50 monthly fee would be charged beginning with the seventh month from the month of purchase on the back of the Gift Card and on the cardboard sleeve included with each Gift Card sold. In addition, Simon alleges that the Administrative Fees were disclosed in numerous other ways. Furthermore, Simon contends that neither of the Plaintiffs was deceived or sustained any damage as a result of the Administrative Fees charged under the Gift Card program.

The claims in the Action and this Settlement do not apply to Simon's current gift card programs.

The Court has made no final ruling on the validity of Plaintiffs' claims. The Settlement does not constitute an admission of any wrongdoing whatsoever by Simon, and Simon is entering into the Settlement solely for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risk of this litigation, without admitting any wrongdoing whatsoever.

**The Certified Class.** By Preliminary Approval Order entered \_\_\_\_\_, 2010, the Court has preliminarily certified the following class for the purpose of considering and approving the Settlement:

(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.

In its Preliminary Approval Order, the New York Supreme Court, Westchester County, also certified Plaintiffs Christopher R. Lonner and Aliza Goldman as Class Representatives, and certified the following Settlement Class Counsel for Plaintiffs and the Class:

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

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

2. **Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, the *Cy Pres* Payment, and the Judgment and Releases.**

**Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, and the *Cy Pres* Payment.** Under the terms of the Settlement, Simon will pay the claims of Class members through a claims process that will refund Administrative Fees for the Gift Cards of all Class Members who properly complete the Claim Form/Release included with this Settlement Notice.

The claims procedure first requires a Class Member to provide the Gift Card number in question to the Settlement Administrator by filing the Claim Form with the required

certification under penalties of perjury that the Card Number supplied by the Cardholder is the Class Member's Card Number and that the Class member is the Cardholder entitled to the Refund for the Card number described in the Claim Form. Simon will then run the transaction history for that Gift Card to determine whether Administrative Fees were incurred, and provide the transaction history to the Settlement Administrator. Simon will refund to a Class Member 100% of the \$2.50 Administrative Fees incurred after 6 months from the Gift Card purchase up to the Card expiration date. If a Gift Card was renewed through the purchase of a replacement Gift Card and the payment of an expired Card fee, if applicable, and additional \$2.50 Administrative Fees were deducted from the Gift Card balance after the expiration date and before the issuance of the new Gift Card, Simon will also refund 100% of these additional \$2.50 Administrative Fees (but not the expired card replacement fee). Simon will only pay one Class Member for each Gift Card number.

In addition, Simon has agreed to make a *cy pres* payment of \$350,000 for distribution to charities agreed to by the Parties, and the *cy pres* payment will be divided so that 25% will be paid to the following four charities and be restricted so that the funds are used solely in New York: the Greater New York City Affiliate of Susan G. Komen for the Cure; National MS Society with three New York Chapter designations; Junior Achievement with New York Chapter designations; and designated Feeding America New York Food Banks.

Simon also has agreed to pay Plaintiffs' attorneys' fees and expenses, as further described below, and an incentive payment of \$5,000 each to Plaintiff Lonner and Plaintiff Goldman on account of their participation in the lawsuit (subject to Court approval). Simon will also pay 100% of the costs of the administration of the Settlement. None of those amounts will affect or reduce the amounts refunded to Class Members.

**The Judgment and Release.** If the Court approves the Settlement provided for in the Settlement Agreement, a final judgment or judgments will be entered (1) approving the proposed Settlement; (2) dismissing the Amended Complaints against Simon with prejudice; and (3) approving an award to counsel for Plaintiffs and the Class of such attorneys' fees and expenses, and an award of the incentive fees to Plaintiffs, as the Court deems appropriate.

Additionally, generally under the release prescribed in the Settlement Agreement, all Class Members who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever ("Releasing Class Parties"), shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Simon, Simon Property Group, LP, a Delaware limited liability partnership, SPGGC, LLC, a Virginia limited liability company, and any person, firm, trust, corporation, partnership and partner, limited liability company, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney, insurer or agent for such entities (collectively, the "Released Defendant Parties") from all claims alleged in the Amended Complaints (the "Released Claims"). Furthermore, the named Plaintiffs will provide a general release. Please refer to the Settlement Agreement and its exhibits for the exact language and scope of the releases.

**3. Application of Settlement Class Counsel for an Award of Attorneys' Fees and Expenses, and an Award of Incentive Fees to Plaintiffs.**

Settlement Class Counsel, on behalf of all counsel for Plaintiffs and the Class, intend to apply to the Court for an award of attorneys' fees and reimbursement of expenses (including, without limitation, the fees and expenses of Plaintiffs' expert) in an amount equal

to \$ \_\_\_\_\_. Settlement Class Counsel also will seek Court approval for the award of incentive fees of \$5,000 each to Plaintiff Lonner and Plaintiff Goldman on account of their efforts in connection with the prosecution of the Action.

As noted above, Simon has agreed to pay the awarded attorneys' fees and expenses, Plaintiffs' incentive fees and the administration costs of the Settlement, in addition to the other Settlement benefits described herein, and none of these amounts will affect or reduce the amounts refunded to Class Members.

**4. The Fairness Hearing.**

The Fairness Hearing will be held on \_\_\_\_\_, 2010 at \_\_\_\_\_m. 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 to determine: (1) whether to finally approve the proposed Settlement as set forth in the Parties' Settlement Agreement dated \_\_\_\_\_, 2010 as fair, reasonable, and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Simon with prejudice; 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. If the Settlement is approved, eligible Class Members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims.

The Fairness Hearing may be rescheduled or continued to a later time without further notice. You are not required to attend the hearing, but you may do so on your own or through an attorney retained by you at your own expense.

**5. Your Options If You Are Included Within the Class, Including Your Right to File a Claim for Settlement Benefits, and Your Right to Object to the Settlement.**

You may exercise any of the following options on your own or through an attorney retained by you at your own expense:

**Submit Your Claim Form/Release to Receive the Settlement Benefits if the Settlement is Approved.** If you are a Class Member and wish to receive the Settlement benefits if the Settlement is approved, you must execute and mail your Claim Form/Release with the required proof of the Gift Card for which you are submitting your claim, **postmarked no later than \_\_\_\_\_, 2010**, to the Settlement Administrator as follows:

RG2 Claims Administration LLC  
Simon Gift Card Settlement  
30 South 17th Street  
Philadelphia, PA 19103  
(800) XXX-XXXX

**Object to the Settlement:** If you are a Class Member, you also may object in writing to the Settlement. Objecting to the proposed Settlement does not affect your right to participate in the Settlement benefits if you have filed a proper claim and the Settlement is approved by the Court. To object, **no later than fifteen days prior to the date of the Fairness Hearing set forth above, \_\_\_\_\_**, you must file your written objection with the Clerk of the New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, and additionally mail copies by first-class mail **postmarked no later than fifteen days prior to the date of the Fairness Hearing set forth above, \_\_\_\_\_**, to each Settlement Class Counsel and to Simon's Counsel at the following addresses:

## 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

Your written objection should include your name, current address and telephone number, and Card number, along with a detailed explanation of the reasons for your objection, and any documents on which you base your objection. **If you wish to attend the Fairness Hearing and voice your objection either personally or through counsel retained by you, you must timely submit a written objection that also includes a statement that it is your intention to appear at the Fairness Hearing.**

#### **6. How to Get More Information.**

For more information regarding the Action and the Settlement, please refer to the Settlement Agreement and the pleadings and other papers filed in this action, which may be inspected at the Office of the Clerk, New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York 10601, during regular business hours each day.

Additional information concerning the Action and the Settlement, including a copy of the Settlement Agreement and its exhibits, and Plaintiffs' Amended Class Action Complaints,

are available for your review at the websites of Settlement Class Counsel, [www.wweinsteinlaw.com](http://www.wweinsteinlaw.com) (follow the link for Cases), and [www.triefandolk.com](http://www.triefandolk.com) (follow the link). Additional information is also available on the Settlement Administrator's website, [www.\\_\\_\\_\\_\\_](http://www._____).

Any questions you may have concerning your claim or the claim form or the amount of potential settlement benefits should be directed first to the Settlement Administrator, either in writing to the address above or by phone at (800), XXX-XXXX.

Any other questions you may have about the Action or the Settlement and the other matters described in this Notice (other than questions concerning your claim or the claim form or the amount of potential settlement benefits) should be directed to Settlement Class Counsel by asking for William R. Weinstein at Law Offices of William R. Weinstein, or Barbara Olk at Trief & Olk, at the addresses and phone numbers described above.

**DO NOT CALL THE COURT OR SIMON.**

Dated: White Plains, New York  
\_\_\_\_\_, 2010

BY ORDER OF THE NEW YORK  
SUPREME COURT, WESTCHESTER  
COUNTY

HONORABLE ALAN D.  
SCHEINKMAN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
CHRISTOPHER R. LONNER, individually and :  
on behalf of all others similarly situated, :  
Plaintiff, :  
vs. :  
SIMON PROPERTY GROUP, INC. :  
Defendant. :  
-----X

Index No. 04-2246  
(Scheinkman, J.)

**CLAIM FORM/RELEASE**

-----X  
ALIZA GOLDMAN, individually and :  
on behalf of all others similarly situated, :  
Plaintiff, :  
vs. :  
SIMON PROPERTY GROUP, INC. :  
Defendant. :  
-----X

This Claim Form/Release must be completed and mailed to the Settlement Administrator by \_\_\_\_\_, 2010 in order for you to be entitled to receive a refund of Administrative Fees under the Settlement. The amount of the refund will be equal to 100% of the Administrative Fees you incurred after 6 months from the Gift Card purchase up to the Gift Card expiration date. Additionally, if you renewed a Gift Card through the purchase of a replacement Gift Card and the payment of an expired Card fee, if applicable, and additional Administrative Fees were deducted from the Card balance after the expiration date and before the issuance of the new Gift Card, Simon will also refund 100% these additional Administrative Fees (but not the expired card replacement fee). Simon will only pay one Class Member for each Gift Card number.

**IN ORDER TO BE ENTITLED TO RECEIVE YOUR REFUND, YOU MUST EXECUTE THE CERTIFICATION UNDER PENALTIES OF PERJURY THAT YOU ARE A CLASS MEMBER AS DEFINED IN THE ACCOMPANYING NOTICE, THAT THE CARD NUMBER BELOW IS YOUR CARD NUMBER AND THAT YOU ARE**

**THE CARDHOLDER ENTITLED TO CLAIM AND BE PAID THE REFUND OF THE ADMINISTRATIVE FEES PURSUANT TO THE SETTLEMENT FOR THE CARD NUMBER YOU HAVE IDENTIFIED BELOW.**

In addition, please provide the following information where and to whom the refund check should be mailed, and sign and date the certification and release below.

CARD NUMBER: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

**I hereby certify under penalties of perjury that I am a member of the Class as defined in the accompanying Notice, that the Card Number above is my Card Number and that I am the Cardholder entitled to claim and be paid the Refund of the Administrative Fees pursuant to the Settlement for the Card Number identified above.**

**I also hereby agree to the terms of the Settlement Agreement Release described in the Notice of Settlement and stated in full in the Settlement Agreement.**

\_\_\_\_\_ Dated: \_\_\_\_\_, 2010

[Print Name] \_\_\_\_\_

**ALL QUESTIONS REGARDING THIS CLAIM FORM OR ANY POTENTIAL SETTLEMENT BENEFITS YOU MAY BE ENTITLED TO RECEIVE UNDER THE SETTLEMENT SHOULD BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR:**

**SIMON GIFT CARD SETTLEMENT  
RG2 CLAIMS ADMINISTRATION  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103  
(800) XXX-XXXX**