

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. :
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ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
 :
Plaintiff, :
 :
vs. :
 :
SIMON PROPERTY GROUP, INC. :
 :
Defendant. :
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**ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT AND AWARDED
ATTORNEYS' FEES AND EXPENSES AND INCENTIVE FEES**

WHEREAS:

A. On _____, 2010, the Parties applied to the Court pursuant to Civil Practice Law and Rules ("CPLR") Article 9 for an order implementing the settlement of this litigation (the "Action") in accordance with the settlement agreement dated July _____, 2010 that, together with the exhibits annexed thereto ("Settlement Agreement"), sets forth the terms and conditions for a proposed settlement of this Action (the "Settlement") and for a judgment dismissing this Action with prejudice upon the terms and conditions set forth in the Settlement Agreement.

B. In the Order Preliminarily Approving Class Action Settlement, Scheduling Fairness Hearing and Authorizing Dissemination of Notice of Settlement, dated _____, 2010 (the "Preliminary Approval Order"), this Court, among other things: (i) certified the Class for purposes of the Settlement as follows:

(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;

(ii) preliminarily approved the Settlement; (iii) scheduled a hearing for _____, 2010 to consider whether to approve the Settlement as being fair, reasonable and adequate, to enter final judgment thereon and to consider any application by Settlement Class Counsel for an award of attorneys' fees and expenses, and an award of incentive fees to Plaintiffs (the "Fairness Hearing"); and (iv) directed that the Notice of Proposed Class Action Settlement and Fairness Hearing and Claim Form/Release ("Settlement Notice"), substantially in the form annexed as Exhibit B to the Settlement Agreement, be disseminated to all potential Class members who could be identified with reasonable effort and who had not previously requested exclusion, along with publication of the Summary Notice of Proposed Class Action Settlement and Fairness Hearing ("Summary Settlement Notice") and posting of the Summary Settlement Notice as a table top placard in prescribed Simon Malls, substantially in the form annexed as Exhibit D to

the Settlement Agreement, and also along with the posting of the Settlement Notice and Settlement Agreement and other papers to the websites of Settlement Class Counsel and the Settlement Administrator, and the posting of the Settlement Notice on Simon's giftcard website for a period of thirty (30) days.

C. RG2, the Settlement Administrator appointed in the Preliminary Approval Order, Settlement Class Counsel and Simon have submitted affidavits or affirmations attesting that the Settlement Notice and Summary Settlement Notice were disseminated in accordance with the Court's Preliminary Approval Order.

D. Settlement Class Counsel previously filed with the Court the April 19, 2010 Affidavit of John R. Davis of RG2 with annexed Exhibit I identifying all potential Class members who requested exclusion from the Class in response to the Notice of Pendency of Class Action disseminated pursuant to the October 30, 2009 Order of this Court (the "Notice Order"), which list of persons requesting exclusion is attached as Exhibit 1 hereto.

E. The Court held a Fairness Hearing on _____, 2010 and has considered all prior proceedings in the Action, the Settlement Agreement and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Fairness Hearing. Members of the Class were (1) notified of their right to appear at the Fairness hearing in support of or in opposition to the proposed Settlement and/or the award of fees and reimbursement of costs and expenses; and (2) given the opportunity to submit an Objection to the Settlement.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent not defined herein, this Order and Final Judgment (the "Final Judgment") incorporates by reference the definitions in the Settlement Agreement, and all terms

not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court hereby determines that the Settlement Notice and Summary Settlement Notice and their dissemination in accordance with the Preliminary Approval Order complied with the requirements of CPLR 904, 907 and 908 and due process and were the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all potential Class members who could be located through reasonable effort. The Settlement Notice and Summary Settlement Notice provided due and adequate notice of these proceedings, the Settlement, the application of Settlement Class Counsel for an award of attorneys' fees and expenses and an award of incentive fees to Plaintiffs, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to potential Class members, and a full opportunity having been offered to Class members to object to the proposed Settlement, to participate in the Fairness Hearing thereon, or to request exclusion from the Class, it is hereby determined that all Class members who have not requested exclusion are bound by this Final Judgment (whether or not any Class member has objected to the Settlement).

4. Those persons identified in Exhibit 1 hereto shall be excluded from the Class and any benefits under the Settlement.

5. Pursuant to CPLR 907 and 908, the Court finds that the Settlement is in all respects fair, reasonable and adequate to each of the releasing parties and each Class member, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing liability and damages, and the value of Settlement now in

comparison to the likely probable duration, complexity and further expense of this litigation in the absence of a settlement. The Court further finds that the Settlement has been the product of arm's-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Settlement Agreement.

(a) In determining that the Settlement is in all respects fair, reasonable and adequate to each of the releasing parties and each member of the Class, and in approving the Settlement, the Court has considered that no [alternatively : only X] objections have been raised by Class members to the Settlement.

6. The Amended Complaints against Simon in this Action are dismissed on the merits and with prejudice, with each party to bear his, her or its own costs, except for the payment of the attorneys' fees and reimbursement of expenses and the award of incentive fees to Plaintiffs as otherwise provided for in Paragraph 12 below and in Paragraphs 2(a)(3) and 2(a)(4) of the Settlement Agreement.

7. Releases:

(a) Upon the Effective Date of the Settlement, as defined in the Settlement Agreement, the named Plaintiffs in this Action 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 Plaintiff Parties), for good and sufficient consideration, the receipt of which is hereby acknowledged, 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, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted or that could have been asserted by each named Plaintiff against the Released Defendant Parties, including but not limited to, all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted, including, without limitation, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, and violations of any other state or federal statutes, regulations or principles of common law, by any Plaintiff arising out of, relating to, in connection with or concerning the claims alleged in the Amended Complaints of any kind, nature and/or description, matured or unmatured, liquidated, or unliquidated, accrued or unaccrued, known or unknown, contingent or non-contingent, whether or not asserted, threatened, alleged or litigated, at law, equity, or otherwise, that existed as of the date of the Settlement Agreement or theretofore existed, that have been or could have been asserted, whether directly, indirectly, representatively, derivatively or in any other capacity, in this Action or any other forum (judicial, administrative, arbitral or other) by any of the Releasing Plaintiff Parties (the “Released Plaintiff Claims”).

(b) Upon the Effective Date of the Settlement, as defined 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 (collectively the “Releasing Class Parties”), for good and sufficient consideration, the receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged the Released Defendant Parties from all claims, demands, rights, liabilities and causes

of action of every nature and description whatsoever, asserted, including, without limitation, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, and violations of any other state or federal statutes, regulations or principles of common law, by any Plaintiff or Class member against the Released Defendant Parties arising out of, relating to, in connection with or concerning the claims alleged in the Amended Complaints (the “Released Claims”).

8. Upon the Effective Date of the Settlement, each of the Released Defendant Parties shall be deemed to have, and by operation of law and this Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged the named Plaintiffs, Class members, Settlement Class Counsel and their agents, and all other counsel representing Plaintiffs and the Class members in the Action from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action and the Released Claims, and as to Plaintiffs, the Released Plaintiff Claims; provided, however, that nothing in this Final Judgment shall bar any action or release any claim to enforce the terms of the Settlement Agreement or this Final Judgment.

9. Without any further action by anyone, on and after the Effective Date of the Settlement, all Class members shall be barred forever and are permanently enjoined from asserting any Released Claim against any Released Defendant Party, and shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Claims.

10. Without any further action by anyone, on and after the Effective Date of the Settlement, Plaintiffs shall be barred forever and permanently enjoined 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.

11. Pursuant to CPLR Article 9 and this Court's Preliminary Approval Order entered on _____, 2010, for the purpose of settling the Released Claims in accordance with the Settlement Agreement, the following persons are members of the Class:

(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.

12. (a) The application by Settlement Class Counsel on behalf of all counsel representing Plaintiffs and Class members in this Action for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded total legal fees and expenses of \$ _____. Simon shall pay to Settlement Class Counsel the portions of the foregoing amount of attorneys fees and disbursements as directed by them within fourteen (14) calendar days after the Effective Date as defined in the Settlement Agreement. If there is any appeal filed or pending by any Class member on the amount of attorneys' fees and disbursements to be paid to Settlement Class Counsel, Settlement Class Counsel undertake and agree to return to Simon the amounts reflecting any reduced amounts of the attorneys' fees and disbursements

paid to them consistent with the reversal or modification no later than fourteen (14) calendar days after such reversal or modification.

(b) The application by Settlement Class Counsel for an award of incentive fees to Plaintiffs for their efforts in connection with the prosecution of the Action is granted, and Plaintiffs Lonner and Goldman each are awarded an incentive fee of \$5,000 on account of their efforts in connection with the prosecution of the Action, to be paid by Simon in accordance with the terms of the Settlement Agreement.

(c) The fees and costs for the administration of the Settlement shall be paid by Simon to the Settlement Administrator in accordance with the terms of the Settlement Agreement.

[(d) The Court has considered any objection to the application for the award of attorneys' fees and expenses, and the award of incentive fees to Plaintiffs, and any such objection is overruled.]

13. Neither the Settlement Agreement nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Plaintiffs, of the lack of merit of this Action, or (b) on the part of Simon, of any violation of any statute or regulation or principle of common law or of any liability or wrongdoing or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by each of the Plaintiffs and Simon.

14. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action and the Parties to the Settlement Agreement and

the Class in order to enter any further orders as may be necessary to effectuate the Settlement Agreement, the Settlement provided for therein, and the provisions of this Final Judgment.

Dated: New York, New York

_____, 2010

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

EXHIBIT 1

Persons requesting exclusion from the Settlement in the Action captioned *Lonner v. Simon Property Group, Inc. and Goldman v. Simon Property Group, Inc.:*