

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.	:	
-----X		

**SETTLEMENT AGREEMENT**

This Settlement Agreement along with the annexed exhibits ("Settlement Agreement") is made and entered into as of this 9<sup>th</sup> day of July, 2010, by, between and among Plaintiffs Christopher R. Lonner ("Lonner") and Aliza Goldman ("Goldman") (hereinafter collectively "Plaintiffs"), individually and on behalf of the class defined herein (the "Class"), 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 (the "Action"), by their respective attorneys, subject to Court approval.

WHEREAS:

A. On February 18, 2004, Lonner filed a Class Action Complaint (“Lonner’s) Complaint) in the Supreme Court for the State of New York, Westchester County, asserting claims for breach of contract, violations of General Business Law § 349 and unjust enrichment against Simon in connection with its sale of Simon Visa Gift Cards (“Card(s)”) and the imposition by Simon of the \$2.50 monthly administrative fee automatically deducted by Simon from any Card balance remaining more than six months after Card issuance (the “Administrative Fee(s)”).

B. By Decision and Order dated September 23, 2004 and entered September 24, 2004, Justice Rudolph granted Simon’s April 30, 2004 motion to dismiss, finding that Lonner’s claims were preempted by federal law. Lonner filed a timely notice of appeal.

C. On February 7, 2005, Goldman filed a Class Action Complaint in the Supreme Court for the State of New York, Nassau County, asserting claims, *inter alia*, for breach of contract, violations of General Business Law § 349 and unjust enrichment (“Goldman’s) Complaint”).

D. By Order dated September 8, 2005 and entered September 12, 2005, Justice McCarty of the Supreme Court, Nassau County, granted Simon’s motion to dismiss on federal preemption grounds. Goldman timely appealed Justice McCarty’s decision to the Second Department.

E. By decisions in the two appeals issued the same day, July 5, 2006, the Second Department reversed the orders of the lower courts, and remanded the cases for further proceedings.

F. After remand, Lonner filed an Amended Class Action Complaint on August 18, 2006 (“Lonner’s) Amended Complaint”), and Goldman filed an Amended Class Action

Complaint on August 21, 2006 (“Goldman(’s) Amended Complaint”) (collectively hereafter the “Amended Complaints”), asserting claims, *inter alia*, for breach of contract, violations of GBL § 349 and unjust enrichment. The Complaints included amended class definitions and class periods. Simon filed a CPLR 3211 motion in each action seeking the dismissal of the Amended Complaints in their entirety.

G. On February 27, 2007, Justice Rudolph issued a Decision and Order denying Simon’s motion to dismiss Lonner’s claims for breach of contract and violations of GBL § 349, and granting Simon’s motion to dismiss Lonner’s claim for unjust enrichment. Simon timely appealed.

H. On March 23, 2007, Simon answered Lonner’s Amended Complaint denying claims and asserting affirmative defenses.

I. On June 20, 2007, Justice Parga denied Simon’s motion to dismiss Goldman’s claims for breach of contract, unjust enrichment and money had and received, and granted Simon’s motion to dismiss Goldman’s GBL §§ 349 and 396-i claims and claims for declaratory and injunctive relief. Both Simon and Goldman timely appealed Justice Parga’s order.

J. On or about August 9, 2007, Simon answered Goldman’s Amended Complaint denying the claims and asserting affirmative defenses.

K. On August 20, 2007, Goldman moved for an order that sought, among other things, to consolidate her action with Lonner’s action in Westchester County, which was granted by Order issued on November 27, 2007.

L. On October 14, 2008, the Second Department affirmed Justice Rudolph’s February 27, 2007 Decision and Order denying Simon’s motion to dismiss Lonner’s breach of contract and GBL § 349 claims.

M. On November 25, 2008, the Second Department affirmed those parts of Justice Parga's June 20, 2007 Order denying Simon's motion to dismiss Goldman's breach of contract, unjust enrichment, and money had and received claims, affirmed the dismissal of the § 396-i claim, and reversed the part of the court's order dismissing Goldman's § 349 claim and for declaratory and injunctive relief.

N. By Decision and Order dated June 25, 2009, Justice Rudolph granted Plaintiffs' motion for class certification, including certifying Plaintiffs as class representatives and their counsel as counsel on behalf of the class. The class identified in Plaintiffs' motion was 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 ("Dormancy 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 Dormancy Fees.

Simon timely appealed Justice Rudolph's decision to the Second Department.

O. Effective June 30, 2009, the case was transferred to Justice Alan D. Scheinkman of the Commercial Part, Supreme Court for Westchester County.

P. By order dated October 30, 2009, Justice Scheinkman directed that notice of the pendency of the class action be disseminated to the class identified therein in accordance with the schedule set forth in the order. Notice was disseminated in accordance with that order beginning in January, 2010, and potential class members were given the right to request exclusion from the class.

Q. On April 15, 2010, Justice Scheinkman scheduled the trial of the matter to take place the week of June 14-18, 2010.

R. The parties conducted arm's length settlement negotiations and reached a settlement, subject to satisfactory settlement papers on May 26, 2010, and reported that settlement to the Court on May 28, 2010.

S. Although Plaintiffs believe, based on the thorough investigation they have conducted, that their claims have substantial merit, they recognize that the claims are disputed and that the ultimate outcome of the Action is uncertain. Plaintiffs and their counsel have also taken into account factors including the length and expense of continued proceedings necessary to prosecute the Action against Simon through trial and appeals. Plaintiffs and their counsel therefore desire to settle the Action on the terms and conditions hereinafter set forth, and believe such Settlement to be fair, reasonable and adequate and in the best interests of Plaintiffs and the other members of the Class defined herein.

T. Simon has denied, and continues to deny, each and every allegation of wrongdoing made against it and that could have been made against it in the Amended Complaints, and asserts that it has meritorious defenses to those claims, that its conduct has been lawful and proper in all respects, that no person or entity has suffered any harm or damages as a result of any matter that is the subject or underlies any of the claims against it in the Action, and that judgment should be entered dismissing all claims against it with prejudice. Simon has entered into this Settlement Agreement for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risk of this litigation, without admitting any wrongdoing or liability whatsoever. By so doing, Simon desires to settle, compromise and terminate the Action with prejudice, and put to rest forever all claims alleged in the Amended Complaints.

Plaintiffs and Simon agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Simon or a concession by Plaintiffs that the claims lack merit.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned Parties, through their respective counsel and subject to all of the terms and conditions set forth herein and the approval of the Court pursuant to CPLR Article 9, that this Action, as well as the claims alleged in the Amended Complaints hereby are compromised and settled on the terms and conditions hereinafter set forth:

1. Promptly after the execution of the Settlement Agreement, the Parties shall apply to the Court for the entry of an Order Preliminarily Approving Class Action Settlement, Scheduling Fairness Hearing and Authorizing Dissemination of Notice of Settlement (the "Preliminary Approval Order") substantially in the form annexed as Exhibit A:

(a) Certifying the following class for purposes of this 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.

(b) Scheduling a hearing (the "Fairness Hearing") to determine whether the proposed Settlement should be approved as fair, reasonable and adequate to the members of the

Class, and the amount of fees and expenses to be awarded to Plaintiffs' counsel and incentive fees to Plaintiffs;

(c) Approving as to form the content of the Notice of Proposed Settlement of Class Action and Fairness Hearing, and Claim Form/Release (the "Settlement Notice"), attached hereto as Exhibit B, and the Summary Notice of Proposed Settlement of Class Action and Fairness Hearing ("Summary Settlement Notice"), attached as Exhibit D hereto;

(d) Directing (i) the Settlement Administrator to email the Settlement Notice if email addresses are available, or to mail the Settlement Notice by first-class mail, to potential members of the Class who have not previously requested exclusion and to whom notice of pendency of the action previously was disseminated pursuant to the Notice Order, (ii) the Settlement Administrator to publish the Summary Settlement Notice in the manner agreed to by the Parties; (iii) Simon and Settlement Class Counsel and the Settlement Administrator to post the agreed-upon Settlement Notices or documents as set forth herein to their respective websites, and (iv) Simon to post placards with the Summary Settlement Notice in the designated Simon Malls;

(e) Finding that the emailing and mailing of the Settlement Notice, the publication of the Summary Settlement Notice, and the websites and placard postings pursuant to paragraph 1(d) hereof constitutes the best notice practicable under the circumstances and is due and sufficient notice of the matters set forth in the Settlement Notice and Summary Settlement Notice to all members of the Class, pursuant to CPLR 904, 907 and 908, and that the Settlement Notice and Summary Settlement Notice and their dissemination prescribed herein fully satisfy the requirements of due process and the CPLR;

(f) Appointing RG2 as designated Settlement Administrator selected by the Parties for approval by the Court in the Preliminary Approval Order (and subject to further court order and this Settlement Agreement), to administer the notice procedures of the Settlement, as well as the administration of the claims process and disbursement of the Cy Pres Fund (as further described in Paragraphs 2-3 below); and

(g) Pending the final determination of the fairness, reasonableness and adequacy of the proposed Settlement, enjoining any member of the Class either directly, representatively, or in any other capacity from prosecuting, instituting or commencing, on behalf of that Class member or the Class, any claim alleged in the Amended Complaints.

2. (a) Simon has agreed to make the following payments on the conditions set forth in this Settlement Agreement:

(1) (a) Simon will pay the claims of Class members through a claims process that will refund Administrative Fees (the \$2.50 per month charge imposed on any card balances after 6 months of card issuance) for the Cards of all Class members who properly complete the Claims Form/Release in accordance with the procedures set forth in Paragraph 2(a)(1) (the "Refund(s)"). Simon will pay a Refund to a Class member equal to 100% of the Administrative Fees incurred after 6 months from the Card purchase up to the Card expiration date. If a Gift Card was renewed through the purchase of a replacement 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 Card, the Refund paid by Simon will also include 100% of these additional Administrative Fees (but not the expired card replacement fee). Simon will only pay a Refund to one Class member for each Card number.

(b) Under the claims process for the determination of Refunds, the Class member will provide the Card number in question to the Settlement Administrator by filing the Claim Form with the required certification under penalties of perjury 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 Card to determine whether Administrative Fees were incurred and provide the transaction history to the Settlement Administrator. Simon will refund to a Class member the amount determined by the Settlement Administrator in accordance with this Agreement, and set forth on the list of approved claims prepared by the Settlement Administrator and agreed to by the Parties or, if a dispute arises, as determined by the Court.

(2) Simon will make a cy pres payment of \$350,000 as further prescribed herein (“Cy Pres Payment”) for distribution to charities agreed to by Parties (the “Cy Pres Fund”), and this Cy Pres Fund 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.

(3) Simon will pay Plaintiffs’ total combined attorneys’ fees and expenses as determined in the JAMS proceeding by high-low arbitration before the Honorable John C. Lifland, retired judge of the United States District Court and JAMS mediator, subject to Court approval. The Parties had agreed that the total combined attorneys’ fees and expenses to be paid by Simon, and subject to the mediation and high-low arbitration, shall be no less than

\$750,000 and no more than \$1,000,000. The mediation and arbitration costs will be paid 50% by Simon and 50% by Plaintiffs.

(4) Simon will pay an incentive award of \$5,000 each to Plaintiff Lonner and Plaintiff Goldman on account of their efforts in connection with the prosecution of the Action, subject to Court approval.

(5) Simon will pay 100% of the reasonable fees and costs of the Settlement Administrator in connection with notifying Class members of the proposed Settlement, responding to inquiries from all potential Class members regarding their claims and claim forms, processing submitted claim forms, and administering the Settlement prior to and after final approval, including the preparation of the approved claims list, and final distribution of the Cy Pres Payment and, if required, the preparation of all forms and reports necessary for tax and other regulatory compliance in connection with the Settlement. The Parties hereby agree that the Settlement Administrator shall be RG2, the administrator previously agreed to by the Parties and approved by Court in the Notice Order in connection with the dissemination of the Notice of Pendency of Class Action.

(b) Within fourteen (14) calendar days of the Effective Date of the Settlement as set forth in paragraph 7 herein, Simon shall cause the Cy Pres Payment to be paid to the Settlement Administrator to be placed by the Administrator into a non-interest bearing Settlement escrow account named the "Simon Gift Cards Litigation Settlement Fund" to be maintained by the Settlement Administrator in a banking institution acceptable to the Parties.

(c) If the Preliminary Approval Order is entered, the reasonable fees and costs necessary to give Settlement Notice and Summary Settlement Notice of the proposed Settlement to members of the Class and for preliminarily administering the Settlement and processing

claims prior to final approval shall be payable by Simon to RG2 regardless of the final approval of the Settlement. Such fees and costs, which shall be agreed to by Simon and RG2 prior to the Fairness Hearing, include, but are not limited to: (i) the costs of printing and mailing the Settlement Notice and publication of the Summary Notice to all potential Class members; and (ii) the fees for the services of the Settlement Administrator for providing notice of the Settlement to potential members of the Class and preliminarily administering the Settlement and processing claims prior to final approval of the Settlement. Such fees and costs shall be paid by Simon to RG2 within fourteen (14) calendar days after the Fairness Hearing. Simon also agrees to pay the Settlement Administrator's other fees and costs incurred after the Fairness Hearing through and including completion of the administration of the Settlement in accordance with Paragraph 3(e) below.

(d) The Cy Pres Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

3. If the Settlement is approved, the Settlement benefits and other payment obligations of Simon shall be paid and disbursed as follows:

(a) Simon shall pay to Class members the Refunds in the amounts prescribed and determined in accordance with Paragraph 2(a)(1) above, as to undisputed amounts within thirty (30) calendar days after the later of the Effective Date as set forth in Paragraph 7 hereof or the final determination of the undisputed amounts to be paid in accordance with Paragraph 2(a)(1) by agreement of the Parties, or as to disputed amounts, within thirty (30) calendar days

after the later of the Effective Date as set forth in Paragraph 7 hereof or after the dispute is resolved by agreement or by the Court.

(b) The Settlement Administrator shall cause the Cy Pres Fund to be distributed to the charities prescribed in Paragraph 2(a)(2) above within thirty (30) calendar days after the Effective Date.

(c) Simon shall pay to Settlement Class Counsel the amount of fees and disbursements determined in accordance with this Settlement Agreement and approved by the Court, divided to each Settlement Class Counsel as directed by them, within fourteen (14) calendar days after the Effective Date as set forth in Paragraph 7 hereof. 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.

(d) Simon shall pay to each Plaintiff for their efforts in connection with the prosecution of the Action such incentive fees as may be awarded by the Court in an amount up to and including \$5,000, with such incentive fees paid by Simon to each Plaintiff within fourteen (14) calendar days after the Effective Date as set forth in Paragraph 7 hereof.

(e) Simon shall pay to RG2 all reasonable fees and costs incurred after the Fairness Hearing through and including completion of the administration of the Settlement not otherwise required to be paid under Paragraph 2(c) above, within thirty calendar (30) days after the later of the Effective Date and the submission of proper documentation in support of those fees and costs and the joint review and approval by the Parties.

4. (a) The Cy Pres Fund shall, upon the Effective Date (defined in Paragraph 7 hereof), constitute a “qualified settlement fund” with the meaning of Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). The Parties and the Settlement Administrator shall treat the Cy Pres Fund as a qualified settlement fund for all reporting purposes under the federal tax laws.

(b) The Settlement Administrator shall pay any taxes (and any other tax-related fees and expenses) required under applicable law without prior approval of the Court. Neither Plaintiffs, Simon nor their counsel shall have any responsibility for the payment of taxes described in this paragraph.

(c) The Settlement Administrator shall serve as the administrator of the Cy Pres Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3) (1992). The Settlement Administrator will comply with all applicable reporting, withholding, and filing requirements for a qualified settlement fund, including as provided for in Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). Neither Plaintiffs, Simon, nor their counsel shall have any responsibility for the payment or withholding of taxes assessed on the Cy Pres Fund. The Parties to this Settlement agree to cooperate with the Settlement Administrator, each other and any tax attorneys or accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 4.

(d) The Settlement Administrator shall be responsible for the administration of the Settlement, including but not limited to emailing and mailing the Settlement Notice to potential members of the Class and publication of the Summary Settlement Notice, processing and approving claim forms submitted by Class members, and making the Cy Pres distributions to

the designated charities from the Cy Pres Fund. At the completion of the claims process, the Settlement Administrator shall provide a list of all allowed Class member claims to Settlement Class Counsel and counsel for Simon for review prior to Simon making the required Refund payment to those Class members in accordance with Paragraph 3(a). The Settlement Administrator shall also have the responsibility for filing any tax forms with the appropriate authorities and issuing any tax forms to Class members that may be required under tax laws.

(e) Simon shall have the responsibility for providing the Settlement Administrator with the Card history information for each Card for which a Claim Form is submitted in the form required under this Settlement Agreement setting forth a card number. Additionally, Simon shall be responsible for making the payment of all Refunds to the persons at the addresses identified on the Claim Forms approved by the Settlement Administrator after the required list of allowed claims with supporting card history information is reviewed and agreed to by counsel for the Parties, or as determined by the Court.

(f) Settlement Class Counsel shall respond to inquiries from Class members and potential Class members regarding the Settlement, other than inquiries regarding claims and potential Refund amounts, which shall be handled by the Settlement Administrator, and jointly with Simon, shall review the list of approved claims prior to the payment of the Refunds by Simon.

5. Releases:

(a) Upon the Effective Date of the Settlement, as defined in Paragraph 7 hereto, 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 now exist as of the date of the Settlement Agreement or heretofore 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 Paragraph 7 hereto, 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”).

6. Upon the approval by the Court of the Settlement, a Final Judgment shall be entered in the Action, substantially in the form annexed hereto as Exhibit C:

(a) Approving the Settlement and adjudging the terms to be fair, reasonable and adequate; directing consummation of its terms and provisions; awarding Plaintiffs’ counsel such attorneys’ fees and expenses and Plaintiffs such incentive fees as the Court deems appropriate; and retaining jurisdiction to effectuate the foregoing;

(b) Dismissing the Amended Complaints against Simon in the Action on the merits and with prejudice, permanently barring Plaintiffs from prosecuting against the Released Defendant Parties any Released Plaintiff Claim, and permanently barring the members of the Class except those persons who excluded themselves therefrom from prosecuting against any Released Defendant Party any of the Released Claims; and

(c) Containing such other and further provisions consistent with the terms and provisions of this Settlement Agreement as the Court may deem advisable.

7. The Settlement embodied in this Settlement Agreement shall not become effective (the "Effective Date") until all of the following conditions have been satisfied, unless one or more such conditions is expressly waived by Plaintiffs and Simon in writing:

(a) The entry by the Court of a Preliminary Approval Order, substantially in the form annexed as Exhibit A hereto;

(b) The entry by the Court of the Final Judgment substantially in the form annexed as Exhibit C hereto approving the Settlement and dismissing the Amended Complaints against Simon in the Action on the merits and with prejudice; and

(c) The expiration of any time for appeal or review of the Final Judgment referred to in Paragraph 6 and 7(b), or if any appeal is filed and not dismissed, such Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or by writ of certiorari. For the purposes of this Paragraph 7(c), an appeal by or on behalf of any Class member or by any person or entity pertaining solely to the Court's determination regarding the application by Settlement Class Counsel for an award of attorneys' fees, expenses and incentive fees to Plaintiffs or the distribution of the amounts awarded as attorneys' fees or expenses will not in any way delay the Effective Date of the Settlement Agreement and Settlement, but will delay the payment obligation of the incentive fees until any appeal of the incentive fees is finally resolved.

8. Upon the Effective Date, as defined in Paragraph 7 hereof, each of the Released Defendant Parties shall be deemed to have, and by operation of law and the Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged the named Plaintiffs, Class members, Settlement Class Counsel 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 Settlement Agreement or the Final Judgment shall bar any action or release any claim to enforce the terms of this Settlement Agreement or the Final Judgment.

9. Consistent with and to the fullest extent provided for under CPLR § 4547 and any other relevant law, neither this Settlement Agreement nor any proceedings taken in accordance with the terms set forth herein 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 the 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. Neither this Settlement Agreement, nor the fact of its execution, nor any of its provisions, shall be offered or received in evidence in any action or proceeding of any nature or otherwise referred to or used in any manner in any court of other tribunal, except as evidence of the fact of the making of this Settlement Agreement in an action or proceeding seeking to enforce its terms.

10. In the event the proposed Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Judgment as described in Paragraph 6 above or the Settlement fails to become effective as described in Paragraph 7 hereof, then, in any such event, the Settlement Agreement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement and all negotiations shall become null and void, and all proceedings relating thereto

shall be withdrawn without prejudice as to the rights of any and all Parties thereto who shall be restored to their respective positions existing as of the date of the Settlement Agreement.

11. The Parties to this Settlement Agreement and the Settlement embodied herein agree to cooperate in the prompt submission of this Settlement Agreement to the Court, and to take all steps that may be required by the Court and otherwise to use their best efforts to consummate the Settlement and to obtain entry of the Preliminary Approval Order and a Final Judgment.

12. No Party or their counsel shall initiate, directly or indirectly, any releases, announcements, or any communication with the public, other than Class members, or the press about the Settlement other than the website disclosures expressly agreed to in the Settlement or factual updates to existing references on Settlement Class Counsels' websites, and in the event of any communication or inquiry from the public or the press, will limit their responses to directing the public or the press to the Court files, and to the papers publicly available regarding the case on the websites of Settlement Class Counsel, Simon and the Settlement Administrator.

13. This Settlement Agreement shall be binding and shall inure to the benefit of the Parties hereto and their respective successors, assigns, executors, administrators, heirs and legal representatives, as the case may be; provided, however, that no assignment by any Party hereto shall operate to relieve such Party hereto of his, her, or its obligations hereunder.

14. This Settlement Agreement constitutes the sole and entire agreement among the Parties hereto with respect to the subject matter hereof, and no representations, warranties, inducements, promises or agreements (oral or otherwise) not embodied or incorporated herein, can override the terms of this Settlement Agreement. Any and all prior discussions, negotiations, agreements and understandings relating thereto are superseded hereby and merged herein. The

provisions of this Settlement Agreement (including any time periods specified herein) may be modified by written agreement of all Parties with the consent of the Court without further notice to the Class, unless the Court requires such notice. The terms or provisions of this Settlement Agreement may not be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by all Parties hereto or their counsel. Any failure by any Party to this Settlement Agreement to insist on strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement by such other Party.

15. This Settlement Agreement, including but not limited to the releases contained herein, shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles. This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be performed, wholly within the State of New York. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereto and members of the Class submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Settlement Agreement.

16. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties hereto, all Parties hereto have contributed substantially and materially to the preparation of this Settlement Agreement.

17. The undersigned each represent that they have the full authority necessary to execute this Settlement Agreement.

18. This Settlement Agreement may be executed in separate counterparts, and a facsimile or "PDF" signature shall be deemed to constitute an original signature for the purposes hereof.

Dated: New York, New York  
July 14, 2010

LAW OFFICES OF WILLIAM R. WEINSTEIN

BY: 

William R. Weinstein  
500 Fifth Avenue, Suite 1610  
New York, NY 10110  
(212) 575-2205

ATTORNEYS FOR PLAINTIFF  
CHRISTOPHER R. LONNER AND  
SETTLEMENT CLASS

TRIEF & OLK

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ATTORNEYS FOR PLAINTIFF  
ALIZA GOLDMAN AND  
SETTLEMENT CLASS

SILLS CUMMIS & GROSS P.C.

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ATTORNEYS FOR DEFENDANT  
SIMON PROPERTY GROUP, INC.