

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 16-25009-CIV-MARTINEZ-GOODMAN

JERRY LEE COLEMAN, on behalf of himself
and all others similarly situated,
Plaintiff,

vs.

CUBESMART, a Maryland Real Estate
Investment Trust,
Defendant.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT, CERTIFYING CLASS FOR SETTLEMENT
PURPOSES, DIRECTING THE ISSUANCE OF CLASS NOTICE, AND SCHEDULING
A FINAL APPROVAL HEARING**

THIS MATTER is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class, [ECF No. 78]. The Court has reviewed the Motion, the record in this action, and is otherwise fully advised in the premises. The Settlement Agreement has been submitted to the Court for approval pursuant to Rule 23(e), Federal Rules of Civil Procedure, [ECF No. 78-1]. After careful consideration, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class, [ECF No. 78], is **GRANTED**, as set forth herein. Consistent with the Court's ruling, the Court finds as follows:

A. Settlement

Plaintiff Jerry Lee Coleman ("Plaintiff") and Defendant CubeSmart ("CubeSmart") (collectively, "Parties") have negotiated a settlement of this action (the "Litigation") to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve any and all claims being

released by the Settlement Agreement, including all claims which have been or could be asserted by Plaintiff and/or other members of the Settlement Class in the Litigation against CubeSmart and its respective past or present divisions, parents, employees, officers, directors, agents, shareholders, predecessors, attorneys, and each of their respective past or present divisions, parents, employees, shareholders, predecessors, and all of the officers, directors, employees, agents, shareholders, and attorneys of all such entities, including CubeSmart Management, LLC (“CubeSmart Management”) or CubeSmart Asset Management, LLC (“CubeSmart Asset”).

B. Review

The Court has carefully reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement.

C. Preliminary Approval

The Settlement Agreement entered into by and among Plaintiff and CubeSmart has been negotiated at arm’s length and is approved on a preliminary basis as fair, reasonable, and adequate.

D. Settlement Class

The settlement class in the Agreement is the approximately 105,366 persons who, in the State of Florida between January 1, 2014 through March 31, 2017, rented cube(s) from CubeSmart Management or CubeSmart Asset and who participated in the Great American Stored Property Insurance Program by signing Great American’s Personal Property Insurance Participation Form and making monthly payments for their stored personal property insurance (“Settlement Class”).

The Court finds that, taking into account the settlement terms, and considering the class

certification requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), settlement only class certification is warranted because: (i) the settlement class is so numerous that joinder of all members is impractical; (ii) there are questions of law and fact common to the settlement class that predominate over any questions affecting only individual class members; (iii) Plaintiff's claims are typical of the other class members in that the same procedures can be used to determine his right to the proceeds of the settlement as are used for other class members; and (iv) Plaintiff will fairly and adequately protect the interests of the class. He is committed to vigorously litigating this matter. He has retained counsel to handle the class claims and who represent that they are adequate class counsel. Neither Plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this claim. The Settlement Class is hereby preliminary approved for purposes of the Parties' Settlement Agreement.

E. Settlement Class Relief

The Settlement Class Relief agreed to in the Settlement Agreement is hereby approved on a preliminary basis as fair, reasonable, and adequate.

F. Designation of Class Representatives

Plaintiff Jerry Lee Coleman is designated as representative of the Settlement Class for the sole purpose of seeking a settlement of the Litigation.

G. Designation of Class Counsel

Attorneys Seth Miles at Buckner + Miles and Scott B. Cosgrove at León Cosgrove, LLP are hereby designated as Class Counsel for the Settlement Class.

H. Final Approval Hearing

A hearing regarding final approval of the Settlement ("Final Approval Hearing") will be held at **1:30 p.m. on July 19, 2019** before the Honorable Jose Martinez, United States District

Judge, 400 N. Miami Ave., Suite 10-1, Miami, Florida 33128 to determine, among other things:

(i) whether the Settlement of the Litigation should be approved as fair, reasonable, and adequate; (ii) whether the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (iii) whether Settlement Class Members should be bound by the Release set forth in the Settlement Agreement; (iv) whether Settlement Class Members should be subject to a permanent injunction which, among other things, bars Settlement Class Members who have not opted out, from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), organizing, or soliciting the participation of other Settlement Class Members to pursue any action in any jurisdiction based on or relating to any of the Released Claims (as defined in the Settlement Agreement) or the facts and circumstances relating thereto; and (v) whether the application of Class Counsel for an award of Attorneys' Fees, Costs and Expenses, and for an Incentive Award to Plaintiff, should be approved.

I. Class Notice

(i) The Court approves the Class Notice attached as Exhibit B to the Settlement Agreement, and the manner of providing Notice via electronic mail ("Email") to Settlement Class Members and via U.S. Mail to those members without a known Email address or to which the Email transmission failed provided that the Settlement Administrator can identify a mailing address for such members of the class described in the Settlement Agreement ("Email Notice"). The Court finds that Email Notice is the best practicable notice to the Settlement Class under the circumstances and is reasonably calculated, under all the circumstances, to apprise the members of the Settlement Class of the pendency of this Litigation, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Settlement Class. The Court finds that Email Notice is reasonable, constitutes due, adequate, and sufficient

notice to all persons entitled to receive notice, and meets the requirements of due process.

(ii) The Email Notice shall be sent within twenty-eight (28) days of the date this Preliminary Approval Order is entered.

(iii) Prior to the sending of the Email Notice, the Settlement Administrator shall establish an Internet site (the "Settlement Website"), which shall contain images of the Complaint, the Settlement Agreement, the Email Notice, the Claim Form, and this Order. The Settlement Website shall have a Uniform Resource Locator which adequately identifies the Settlement Website in relation to this Litigation. The Settlement Website shall remain open and accessible through the expiration period of all issued and reissued settlement checks. The Settlement Website also shall prominently display contact information for Class Counsel and shall direct all questions about the Class Settlement to either the Settlement Administrator or Class Counsel.

J. Administrator

The Court approves JND Legal Administration as the Settlement Administrator and authorizes it to implement the terms of the Settlement Agreement to: (i) send the Email Notice; (ii) establish the Settlement Website; (iii) review and process Claim Forms; (iv) send Cash Settlement Payments to members of the Settlement Class who submit valid and timely Claims; and (v) carry out such other responsibilities as are provided for in the Settlement Agreement or may be agreed to by the Parties in the Litigation.

K. Exclusion from the Settlement Class

Any Settlement Class Member who wishes to be excluded from the Settlement Class must send a written Request for Exclusion to the Settlement Administrator by first-class mail, postage prepaid, to the address provided in the Class Notice. Any such Request for Exclusion must be postmarked on or within forty-five (45) days from the date the Class Notice is sent.

(i) To be valid, the Request for Exclusion must: (a) identify the case name; (b) identify the name, address, and telephone number of the member of the Settlement Class; (c) be personally signed by the member of the Settlement Class requesting exclusion; and (d) contain a dated statement that indicates a desire to be excluded from the Settlement Class in the Litigation to the effect of “Exclude me from the *CubeSmart* Settlement.”

(ii) A member of the Settlement Class who desires to opt out must take timely affirmative written action pursuant to this Order and the Settlement Agreement, even if the member of the Settlement Class desiring to opt out of the Settlement Class (a) files or has filed a separate action against any of the Released Persons (as defined in the Settlement Agreement), or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Persons.

(iii) Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members, will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Final Approval Date (as defined in the Settlement Agreement), will be bound by its terms.

(iv) If the proposed Settlement is given final approval, any Settlement Class Member who has not submitted a timely, written Request for Exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this Litigation, even if he or she has pending, or subsequently initiates, litigation against CubeSmart or any Released Person relating to any of the Released Claims.

(v) Any member of the Settlement Class who properly opts out of the Settlement Class as provided for in this Section shall not: (i) be bound by any orders or judgments relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Agreement; (iii)

gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement.

L. Objections and Appearances

Any Settlement Class Member who has not filed a timely written Request for Exclusion and who complies with the requirements of this Paragraph may object to any aspect of the proposed settlement either on his or her own or through an attorney hired at his or her expense. Any member of the Settlement Class who wishes to object to the Settlement Agreement must do so in writing and must file with the Clerk of Court and serve on Class Counsel and CubeSmart Counsel, at the addresses listed below, a written statement of objection in accordance with the requirements set forth below and in the Settlement Agreement. The written statement of objection must be postmarked no later than on or within forty-five (45) days from the date the Class Notice is sent.

For Plaintiff and Settlement Class:

Seth Miles
Buckner + Miles
3350 Mary Street
Miami, Florida 33133
Telephone: (305) 964-8003
Fax: (786) 523-0485
Email: seth@bucknermiles.com

Scott B. Cosgrove
León Cosgrove, LLP
255 Alhambra Circle, Suite 800
Coral Gables, Florida 33134
Telephone: (305) 740-1975
Fax: (305) 437-8158
Email: scosgrove@leoncosgrove.com

Class counsel for the Settlement Class

For CubeSmart:

Robert M. Brochin
Brian M. Ercole
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard, Suite 5300
Miami, Florida 33131-2339
Telephone: (305) 415-3000
Fax: (305) 415-3001
Email: bobby.brochin@morganlewis.com
brian.ercole@morganlewis.com

Counsel for CubeSmart

(i) The requirements to assert a valid written objection shall be set forth in the Class Notice, and shall include the caption *Jerry Lee Coleman v. CubeSmart*, Case No. 1:16-cv-25009-JEM, and (a) the member of the Settlement Class' full name, current address, and telephone number; (b) a signed declaration that he or she is a member of the Settlement Class; (c) the names of all attorneys that assisted the member of the Settlement Class in preparing the objection; (d) a list of all other class action cases in which the member of the Settlement Class or all attorneys assisting the member of the Settlement Class in the preparation of the objection have filed objections to settlements; (e) the specific grounds for the objection; and (f) all documents, writings or evidence that such member wants the Court to consider.

(ii) Any member of the Settlement Class who fails to object to the Settlement in the manner described in the Agreement, the Class Notice, and this Order shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

M. Releases

If the Settlement is finally approved, all members of the Settlement Class who have not filed a timely and proper Request for Exclusion shall release the Released Persons from all Released Claims.

N. Preliminary Injunction

All members of the Settlement Class who do not timely exclude themselves from the Settlement Class are hereby preliminarily enjoined from directly or indirectly: (i) asserting any of the Released Claims (as that term is defined in the Settlement Agreement) in any action or proceeding; (ii) filing, commencing, prosecuting, intervening in, or participating in (as class

members or otherwise) any lawsuit based on or relating to any of the Released Claims or the facts and circumstances relating thereto: (iii) organizing any Settlement Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to any of the Released Claims or the facts and circumstances relating thereto against the Released Parties.

O. Service of Papers

CubeSmart Counsel and Class Counsel shall serve on each other and on all other parties who have filed notices of appearance, at or before the Final Approval hearing, any further documents in support of the proposed Settlement, including responses to any papers filed by members of the Settlement Class. CubeSmart Counsel and Class Counsel shall promptly furnish to each other any and all objections or written Requests for Exclusion that may come into their possession and shall file such objections or requests for exclusion with the Court on or before the date of the Final Approval Hearing.

P. Termination of Settlement

This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed Settlement is not fully approved by the Court, or does not become final (as defined in the Settlement Agreement), pursuant to the terms of the Settlement Agreement; or (ii) the Settlement Agreement is terminated or does not become final, as required by the terms of the Settlement Agreement, for any other reason. In such event, the proposed Settlement and Settlement Agreement shall become null and void and be of no further force and effect; the preliminary certification of the Settlement Class for settlement purposes shall be

automatically vacated; neither the Settlement Agreement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification, including the right to argue that no class should be certified for any purpose.

Q. Use of Order Following Termination of Settlement

This Order shall be of no force and effect if the Settlement does not become Final and shall not be construed or used as an admission, concession, or declaration by or against CubeSmart or any Released Person of any fault, wrongdoing, breach, or liability, or by or against Plaintiff or member of the Settlement Class that their claims lack merit or that the relief requested in the Class Complaint in this Action is inappropriate, improper, or unavailable, or as a waiver by any party or any defenses or arguments it may have.

R. Necessary Steps

The Court authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this 3 day of April, 2019.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Goodman
All Counsel of Record