

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 16-25009-CIV-MARTINEZ-GOODMAN

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

Plaintiffs,

v.

CLASS ACTION

CUBESMART, a Maryland Real Estate
Investment Trust,

Defendant.

**THE CLASS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD**

The attorneys' fees, costs, and incentive award sought by Class Counsel are well within the ranges established by case law and are fully supported by the applicable factors.¹

The requested fee award of \$1,370,362 represents 25% of the total \$5,481,450 Settlement Value and is supported by the guidelines for common fund fee awards in the Eleventh Circuit and nationwide. Moreover, Class Counsel incurred over \$12,621.52.97 in uncompensated and necessary out-of-pocket litigation expenses, and the request for reimbursement of \$11,000 of these expenses is also reasonable. (Ex. 1 at ¶8). Finally, Named Plaintiff and Class Representative, Jerry Lee Coleman ("Plaintiff"), participated in the litigation with diligence and played a valuable role in obtaining the Settlement Agreement on behalf of the Class. Accordingly, he has earned the

¹ All capitalized defined terms herein have the same meaning ascribed in the Settlement Agreement, the Class' Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class and Incorporated Memorandum of Law (D.E. 78), and the Court's Order Preliminarily Approving Class Settlement (D.E. 79).

requested incentive award of \$15,000.

Class Counsel, therefore, respectfully requests that this Court: (1) grant the fee award of \$1,370,362 plus the \$11,000 in expenses; and (2) award the \$15,000 incentive award to Plaintiff and Class Representative.

Regarding the position of Defendant CubeSmart, CubeSmart does not oppose or object to the amount of attorneys' fees, costs and incentive award sought in the Class' Motion for Attorneys' Fees, Expenses and Incentive Award.

I. INTRODUCTION

On December 1, 2016, Plaintiff sued on behalf of himself and all others similarly situated who had purchased storage insurance through CubeSmart. (D.E. 1). The Plaintiff alleged that CubeSmart deceived its customers about the extent of its financial interest in the storage insurance product. The Plaintiff claimed that CubeSmart's conduct (1) violated Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"); (2) breached contracts; (3) was unconscionable; (4) resulted in CubeSmart being unjustly enriched; and (5) breached covenants of good faith and fair dealing. CubeSmart vigorously denied the Plaintiff's claims.

The Class has actively litigated this lawsuit for over two years. The litigation was hard-fought. The Parties engaged in motion practice and discovery, including the production of more than 17,000 pages of documents and electronically stored information. (Ex. 1 at ¶4). The lawsuit involved sharply opposed positions on several fundamental legal questions, including whether CubeSmart's conduct violated FDUTPA. The Parties mediated this case three times before an experienced mediator. (*Id.* at ¶9). The parties initially mediated on September 29, 2018. They again mediated on October 31, 2018 and November 20, 2018. (*Id.*). Over the next weeks, the Parties engaged in a series of detailed discussions finalizing the terms of the Settlement Agreement. (*Id.*). Once those additional terms were agreed-to, the Settlement Agreement was

finalized and executed by the Parties on January 23, 2019. (*Id.*). On April 3, 2019, the Court issued an Order Preliminarily Approving the Settlement (D.E. 79).

II. STATEMENT OF FACTS

A. FACTUAL BACKGROUND

1. Procedural History

The Plaintiff brought this lawsuit seeking monetary damages and declaratory and injunctive relief arising from the sale of storage insurance, alleging that CubeSmart deceived its customers about the extent of its financial interest in the storage insurance product. (D.E. 1). The Plaintiff alleged that, as a result of CubeSmart's deception, the Class paid millions of dollars to CubeSmart that CubeSmart was not legally entitled to receive.

CubeSmart denied all of the Class' allegations of wrongdoing. CubeSmart consistently defended its conduct by, inter alia, arguing that it never deceived its customers about its financial interest in the storage insurance product. CubeSmart also advanced other affirmative defenses.

On January 31, 2017, CubeSmart moved to dismiss the Class' Complaint. (D.E. 21). On June 21, 2018, the Court denied CubeSmart's Motion to Dismiss. (D.E. 56). Discovery continued. During the course of discovery, CubeSmart produced more than 17,000 pages of documents. (Ex. 1 at ¶4). The Parties agreed to the material terms of a settlement on November 20, 2018, and fully executed the Settlement Agreement on January 23, 2019. (*Id.* at ¶9).

On April 3, 2019, the Court issued an Order Preliminarily Approving the Settlement and Certifying a Class for Settlement. (D.E. 79). The Court also approved a class notice program. (*Id.*). Pursuant to that notice, which is ongoing, Class Counsel is providing notice to more than 101,175 potential Class members through email and U.S. Mail notice. (Ex. 1 at ¶5).

2. Settlement Negotiations

The Parties mediated three separate times before mediator Rodney Max, of Upchurch

Watson White and Max. (Ex. 1 at ¶5). The Parties' first mediation took place on September 29, 2018. (*Id.*). The Parties were unable to resolve the dispute. (*Id.*). On October 31, 2018, counsel for the Parties participated in a second mediation with Mr. Max. (*Id.*). The Parties were still unable to resolve the dispute. (*Id.*). Although the Parties were still unable to resolve the dispute, they continued settlement discussions. (*Id.*). It was not until November 20, 2018, that the Parties came to an agreement on material terms. On January 23, 2019, the Parties executed the Settlement. (*Id.*).

Under the terms of the Settlement Agreement, Settlement Class Members who do not opt out will be able to receive 66% of the insurance monies paid that were retained by CubeSmart. (Ex. 1 at ¶6). On average, this equates to approximately \$6.76 per month.

III. **ARGUMENT**

A. **CLASS COUNSEL'S FEE REQUEST SHOULD BE APPROVED.**

1. **Class Counsel Is Entitled To Be Compensated For Creating A Common Benefit For The Class.**

Attorneys who create a common fund or benefit for a group of persons are entitled to their fees and costs based on the common benefit achieved. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney’s fee from the fund as a whole.”). This exception to the general rule that all parties are to bear their own costs “rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.” *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 349 (N.D. Ga. 1993) (quoting *Boeing*, 444 U.S. at 478). “Furthermore, courts have also recognized that in order to encourage ‘private attorney general’ class actions brought on behalf of persons with small individual losses, a financial incentive is necessary to entice qualified attorneys to devote their time to complex, time-consuming cases for which they may never be paid.” *Id.*

Appropriate fee awards in cases such as this encourage redress for wrongs caused to entire classes of persons and deter future misconduct of a similar nature. *See, e.g., Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 679, 687 (M.D. Ala. 1988). Adequate compensation promotes the availability of counsel for aggrieved persons:

If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear . . . We as members of the judiciary must be ever watchful to avoid being isolated from the experience of those who are actively engaged in the practice of law. It is difficult to evaluate the effort it takes to successfully and ethically prosecute a large plaintiffs' class action suit. It is an experience in which few of us have participated. The dimensions of the undertaking are awesome.

Muehler v. Land O' Lakes, Inc., 617 F. Supp. 1370, 1376 (D. Minn. 1985).

“[A]ttorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991). In *Camden I* – the controlling authority regarding attorneys' fees in common-fund class actions – the Eleventh Circuit held that “the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774. Courts in this Circuit have applied the percentage of the fund approach, holding:

Even before *Camden I*, courts in this Circuit recognized that ‘a percentage of the gross recovery is the only sensible method of awarding fees in common fund cases.’ *Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 670 (M.D. Ala. 1988). More importantly, the Court observed first hand the monumental effort exerted by Class Counsel in this case, and does not need to see timesheets to know how much work Class Counsel have put in to reach this point.

In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2001).

The Court has substantial discretion in determining the appropriate fee percentage. “There is no hard and fast rule mandating a certain percentage of a common fund which may reasonably

be awarded as a fee because the amount of any fee must be determined upon the facts of each case.” *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (quoting *Camden I*, 946 F.2d at 774). Therefore, “[t]he district court has wide discretion to award attorneys’ fees based on its own expertise and judgment because of the district court’s superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Waters v. Cook’s Pest Control, Inc.*, 2:07-CV-00394-LSC, 2012 WL 2923542, at *15 (N.D. Ala. July 17, 2012) (internal quotations omitted). In making the determination, courts are guided by a number of non-exclusive guidelines. *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1359. Nevertheless, “[t]o avoid depleting the funds available for distribution, an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.” *Cook’s Pest Control*, 2012 WL 2923542, at *15 (internal quotations omitted); *Muransky v. Godiva Chocolatier, Inc.*, No. 16-16486, 2019 WL 1760292, at *12 (11th Cir. Apr. 22, 2019) (upholding award to class counsel of 33% of the class settlement fund). “The majority of common fund fee awards fall between 20% to 30% of the fund.” *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *James D. Hinson Elec. Contracting Co. v. AT&T Servs., Inc.*, 2016 WL 10459419, at *3 (M.D. Fla. Dec. 16, 2016) (describing 25% as the “benchmark”). Here, Class Counsel’s request for fees of \$1,370,362, representing 25% of the \$5,481,450 Settlement Value, is reasonable.

B. APPLICATION OF THE CAMDEN I FACTORS SUPPORTS THE REQUESTED FEE.

The Eleventh Circuit in *Camden I* provided a set of factors the Court should use to determine a reasonable percentage of the fund to award class counsel: (1) the time and labor required; (2) the novelty and difficulty of the relevant questions; (3) the skill required to properly carry out the legal services; (4) the preclusion of the other employment by the attorney as a result

of his acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the clients or the circumstances; (8) the results obtained, including the amount recovered for the clients; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and the length of the professional relationship with the clients; and (12) fee awards in similar cases. *Camden I*, at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

These twelve factors are guidelines and are not exclusive. “Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.” *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). In addition, the Eleventh Circuit has “encouraged the lower courts to consider additional factors unique to the particular case.” *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d at 1333 (internal quotations omitted). As applied here, the *Camden I* factors demonstrate that the Court should approve the requested fee.

1. The Issues Involved Were Novel And Difficult (Factor 2) Making It Viewed As Undesirable (Factor 10), And Required The Skill Of Highly Talented Attorneys (Factor 3).

These factors favor a higher fee award where there are “complex issues requiring experience and skill on the part of Class Counsel.” *In re Bayou Sorrel Class Action*, 2006 WL 3230771, at *4. Difficult issues in a case can also often contribute to the undesirability of a case. *Id.* at *6 (finding undesirability due in part to issues such as “problems of proof, problems of causation, and a host of other complex issues”); *see also Cook’s Pest Control, Inc.*, 2012 WL 2923542, at *18 (finding undesirability due to complex discovery issues, along with “the expense and time involved in prosecuting such litigation on a contingent basis, with no guarantee or high

likelihood of recovery”). “Counsel should be rewarded for taking on a case from which other law firms shrunk.” *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1364.

This litigation presented complex legal issues regarding FDUTPA that centered on CubeSmart’s business practices. Specifically, CubeSmart maintained the Class’ FDUTPA claim failed because of the particular phrasing of the representations made to the Class and sought to distinguish the facts of the case from prior precedent. CubeSmart also argued that the Class’ FDUTPA claim failed because the Class could prove neither causation nor damages. The discovery in this case was also complex and required a substantial amount of resources. Class Counsel was required to spend money to obtain, manage, and review the documents that served as the foundation of its case. These significant expenses were incurred with no guarantee of repayment thereby making the case relatively undesirable to other law firms.

These complex legal issues impacted the desirability of taking on this lawsuit. With respect to CubeSmart, no other law firm has taken the risk to bring this or a similar action. Each stage of the litigation was hotly contested and required substantial expertise to ensure the Class’ claims were effectively prosecuted. Absent the diligence, care, and expertise of Class Counsel, CubeSmart could have prevailed in full at multiple junctures in this litigation. Indeed, a loss by the Class on causation or damages would have summarily ended the Class’ case.

Furthermore, in evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel. *See Camden I*, 946 F.2d at 772, n.3; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). Throughout this litigation, CubeSmart was represented by extremely capable counsel from the prominent national law firms of Morgan Lewis & Bockius LLP and Boies Schiller Flexner LLP. These are worthy, highly competent adversaries. *Walco Invs. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (stating that “[g]iven the quality

of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results”). These factors, therefore, weigh in favor of the requested fees.

2. Class Counsel Attained An Excellent Result For Class Members (Factor 8).

The significant monetary relief Class Counsel obtained for Class members favors the requested fee award. A \$5,481,450 settlement was an excellent result. It is especially significant that Class Counsel achieved a common fund, which is “a substantial, tangible, and real benefit for the Class.” *See Wolff v. Cash 4 Titles*, 03-22778-CIV, 2012 WL 5290155, at *3 (S.D. Fla. Sept. 26, 2012), report and recommendation adopted, 03-22778-CIV, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012) (“Unlike cases in which attorneys for a class petitioned for a fee award after obtaining non-monetary relief for the class, such as in the form of ‘coupons’, Class Counsel here created a wholly cash common fund.”).

The \$5,481,450 settlement fund is an unqualified success. (Ex. 1 at ¶6). The fund represents 66% of the Class’ estimated damages. (*Id.*). Because of Class Counsel’s efforts, thousands of Class members will be able to recover 66% of the total money retained by CubeSmart that, according to the Class’ allegations, CubeSmart obtained through deception. (*Id.*). Because Class Counsel obtained this significant relief despite substantial financial risks, this factor supports the requested fee award.

3. Class Counsel Assumed Considerable Risk To Bring This Action On A Contingent Basis (Factor 6), Which Precluded Other Employment (Factor 4).

Class Counsel took a significant risk in prosecuting this action entirely on a contingent fee basis. Attorneys’ risk is “perhaps the foremost factor” in determining an appropriate fee award. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (internal quotation omitted).

Indeed, “[a] contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1364; *Ressler*, 149 F.R.D. at 656 (“Numerous cases recognize that the attorney’s contingent fee risk is an important factor in determining the fee award.”). This is particularly the case when the law firms prosecuting the case are of the size of Class Counsel’s firms, and thus the time devoted to the class action precludes other employment. *See In re Bayou Sorrel Class Action*, 2006 WL 3230771, at *5 (W.D. La. Oct. 31, 2006) (awarding 36% fee based in part on the reasoning that due to the small size of class counsel, it lost “the time and opportunity they would have had available to accept other employment.”).

Without the “bonus” from a contingency fee arrangement, “very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks involved in recovering nothing.” *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1365 (quoting *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d sub nom. Behrens v. Wometco Enterprises*, 899 F.2d 21 (11th Cir. 1990)). For instance, in *Wolff v. Cash 4 Titles*, the court awarded 33.3% of the settlement fund where class counsel’s “risk was magnified by the fact that, unlike some class actions, th[e] case was a full, not partial, contingency fee case.” 2012 WL 5290155, at *2. The court particularly noted that there was no guarantee of class counsel receiving their hourly rates or reduced hourly rates for their efforts in the litigation and that there was no hybrid contingent fee negotiated guaranteeing counsel even a minimum amount of fees and costs. *Id.* at *2. Similarly, in *Cook’s Pest Control*, the court found this factor supported the approval of a 35% fee award because class counsel accepted the matter on a contingent basis, incurred significant expense in prosecuting the action, and received no compensation. 2012 WL 2923542, at *17.

Here, Class Counsel incurred substantial risk given the contingent nature of the fee, Class Counsel's wholly contingent outlay of out-of-pocket sums, and the high risk of failure and nonpayment. Additionally, Class Counsel have incurred unreimbursed expenses in litigating on behalf of the Class, none of which would have been recovered if the case were not successfully concluded. (Ex. 1 at ¶2). From the time Class Counsel filed suit, there existed a significant possibility that they would achieve no recovery for the Class and, hence, no compensation. Indeed, Class Counsel took the risk that CubeSmart would prevail at the motion to dismiss stage, the class certification stage, or the summary judgment stage.

Furthermore, the time spent on this case by law firms of the sizes of Class Counsel detracted from work on other potential cases. Class Counsel put off other matters, outsourced work, and declined cases they could otherwise have pursued but for the efforts toward this case. (*Id.*). Although Class Counsel has successfully resolved the litigation, this result was not foreseeable at the outset; rather, the contingency risks were substantial. (*Id.*). These factors support the reasonableness of Class Counsel's fee request. (*Id.*).

4. The Requested Fee Is Lower Than Awards in Similar Cases (Factor 12).

The fee sought here – 25% of the Common Fund – is below the fee typically awarded in similar cases. Indeed, “[a]n award of 25% is on the *low end* of the range of acceptable fee awards in common fund cases, which ranges between 22% and 37%, and more in some cases.” *CompSource Oklahoma v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (E.D. Okla. Oct. 25, 2012). By contrast, several recent decisions in this Circuit award attorneys’ fees up to or in excess of thirty percent, confirming the fairness and reasonableness of the 25% fee requested here. *See e.g., Muransky*, 2019 WL 1760292, at *12 (upholding award to class counsel of 33% of the class settlement fund). *In re Managed Care Litig v. Aetna*, MDL No. 1334, 2003

WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding 35.5%); *Cook's Pest Control, Inc.*, 2012 WL 2923542, at *18 (awarding 35%); *Wolff*, 2012 WL 5290155, at *7 (awarding 33.3%); *In re: Terazosin Hydrochloride Antitrust Litig.*, No. 99-1317-MDL-Seitz, D.E. 1557 (S.D. Fla. Apr. 19, 2005) (awarding 33.3%); *Gutter v. E.I. Dupont De Nemours & Co.*, No. 95-2152-CIV-Gold, D.E. 626 (S.D. Fla. May 30, 2003) (awarding 33.33%); *Tapken v. Brown*, No. 90-691-CIV-MARCUS, D.E. 362 (S.D. Fla. Feb. 28, 1995) (awarding 33%); *See also Bickel v. Sherrieff of Whitley County*, 1:08-CV-102-TLS, 2015 WL 1402018, at *6 (N.D. Ind. Mar. 26, 2015) (awarding 43.7%); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, CIV-12-1319-D, 2015 WL 2254606, at *2 (W.D. Okla. May 13, 2015) (awarding 40%); *Donovan v. Sheriff*, 3:11-CV-133-TLS, 2015 WL 7738035, at *5 (N.D. Ind. Dec. 1, 2015) (awarding 40%); *Braud v. Transp. Serv. Co. of Illinois*, CIV.A. 05-1898, 2010 WL 3283398, at *13 (E.D. La. Aug. 17, 2010) (awarding 37%); *In re Bayou Sorrel Class Action*, 2006 WL 3230771, at *7 (awarding 36%); *In re U.S. Bancorp Litig.*, 291 F.3d 1035 (8th Cir. 2002) (affirming award of 36%); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1133-1141 (W.D. La. 1997) (awarding 36%); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding 45%); Accordingly, this factor attests to the reasonableness of Class Counsel's fee request.

5. The Requested Fee Is Lower Than The Customary Fee For Similar Services In The Market (Factor 5).

The requested fee is more than reasonable when considering what the customary fee would be for similar services in the market. The Court should consider the market rate when determining fee awards to class counsel. *See Wolff*, 2012 WL 5290155, at *4. "[C]lass counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome for a paying client." *Id.* (quoting *In re Cont'll Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992)). Class Counsel's fee request falls within the range of the private marketplace,

where contingency fee arrangements often approach or equal forty percent of any recovery. See *Continental*, 962 F.2d at 572 (“The object in awarding a reasonable attorneys’ fee . . . is to simulate the market.”); *RJR Nabisco, Inc. Sec. Litig.*, 818 (MBM), 1992 WL 210138, at *7, Fed. Sec. L. Rep. (CCH) ¶ 94,268 at 94,268 (S.D.N.Y. Aug. 24, 1992) (“[W]hat should govern [fee] awards . . . what the market pays in similar cases.”).

And, “[i]n tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.” *Blum v. Stenson*, 465 U.S. 886, 904 (1984) (Brennan, J., concurring); see also *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (noting “40 percent is the customary fee in tort litigation”); *In re Public Service Co. of New Mexico*, 91-0536M, 1992 WL 278452, at *7 (S.D. Cal. July 28, 1992) (“If this were a non-representative litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery.”); *In re Pearlman*, 6:07-BK-00761-KSJ, 2014 WL 1100223, at *3 (Bankr. M.D. Fla. Mar. 20, 2014) (“[T]he Court finds the 35% contingency fee to be reasonable and in line with similar non-bankruptcy rates.”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1366 n.35 (noting that contingency fees of up to 40% are customary in the private marketplace). The record here leaves no doubt that Class Counsel’s fee request is appropriate and comports with attorneys’ fees awarded in similar cases.

6. The Professional Skill And Standing Of Respective Counsel Support The Requested Fee Award (Factor 9).

The requested fee is reasonable given Class Counsel’s professional skill and expertise, which has served the Class well in this litigation. The Court should consider the “experience, reputation, and ability of the attorneys” in determining a fee award. *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1359; See also *Gevaerts v. T.D. Bank*, 1:14-CV-20744-RLR, 2015 WL 6751061, at *12 (S.D. Fla. Nov. 5, 2015) (“In the private marketplace, counsel of

exceptional skill commands a significant premium. So too should it here.”).

Here, Class Counsel are qualified and competent counsel who have extensive experience and expertise prosecuting complex class actions. (Ex. 1 at ¶7). Class Counsel have not only successfully tried class actions to jury verdicts and defended those verdicts in the appellate courts but have also obtained hundreds of millions of dollars in settlements for classes throughout the United States. (*Id.*). CubeSmart’s Counsel, moreover, defended against the Class’ claims with fervor and adeptness, raised significant legal roadblocks to recovery, and required Class Counsel to maintain the highest quality of representation in order to reach the point of settlement. (*Id.*). This factor weighs in favor of the requested fees. (*Id.*).

7. The Remaining *Camden I* Factors Also Favor Approving The Requested Fee.

The remaining *Camden I* factors likewise support granting Class Counsel’s fee request. As noted above, the burdens of this litigation foreclosed Class Counsel’s pursuit of other work; the relatively small size of the firms representing the Class, and the major commitment involved, precluded Class Counsel from working on other cases and accepting other representations. Moreover, without adequate compensation and financial reward, cases such as this simply could not be pursued. As a court in this Circuit previously found in *In re: Checking Account Overdraft Litigation*, “given the positive societal benefits to be gained from lawyers’ willingness to undertake difficult and risky, yet important, work like this, such decisions must be properly incentivized. The Court believes, and holds, that the proper incentive here is a 30% fee.” 830 F. Supp. 2d at 1364.

8. The Claims Presented Serious Risk.

The settlement here is particularly noteworthy given the combined litigation risk. CubeSmart mounted vigorous defenses, filed a motion to dismiss, and made compelling arguments

at an oral argument. CubeSmart was represented by experienced and talented trial lawyers and therefore the Class had no guarantee of success at any future trial. Success under these circumstances represents a genuine milestone and further supports the reasonableness of Class Counsel's fee request.

9. CLASS COUNSEL'S LITIGATION EXPENSES SHOULD BE REIMBURSED.

"Upon submission of adequate documentation, plaintiffs' attorneys are entitled to reimbursement of those reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class." *Int'l Previous Metals Corp.*, 190 F.3d at 1298 (internal quotation and citation omitted); *Gevaerts*, 2015 WL 6751061, at *14 (awarding costs and expenses for, *inter alia*, "fees for experts, photocopies, travel, online research, translation services, mediator fees, and document review and coding expenses").

Class Counsel seeks reimbursement for a total of \$11,000 in litigation costs and expenses. (Ex. 1 at ¶8). This sum is actually *less than* the costs and expenses that Class Counsel incurred in connection with the prosecution and settlement of this lawsuit. (*Id.*). Specifically, these costs and expenses consisted of, but were not limited to: mediator's fees and expenses and document review and management expenses. (*Id.*). All of these out-of-pocket expenses were reasonably and necessarily incurred in furtherance of the prosecution of this lawsuit. Accordingly, Class Counsel are entitled to reimbursement of \$11,000 in costs.

B. THE CLASS REPRESENTATIVE IS ENTITLED TO AN INCENTIVE AWARD.

"[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (quoting *Ingram v. Coca-Cola, Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001)); *see also Godshall v. Franklin*

Mint Co., 01-CV-6539, 2004 WL 2745890, at *6 (E.D. Pa. Dec. 1, 2004) (granting special award of \$20,000 to each named plaintiff for their work as class representatives); *In re Linerboard Antitrust Litig.*, CIV.A. 98-5055, 2004 WL 1221350, at * 18-19 (E.D. Pa. June 2, 2004) (awarding \$25,000 for each of the five class representatives), amended on other grounds, CIV.A.98-5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004).

The Class seeks an award of \$15,000 to compensate the Class Representative Jerry Lee Coleman for taking significant risks and expending significant efforts on behalf of the Class, of which the \$5,481,450 Settlement Value is a direct result. Mr. Coleman undertook additional substantial risk in acting as the class representative because CubeSmart could have pursued cost-shifting remedies under FDUTPA had a settlement not been reached or Mr. Coleman not prevailed. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (awarding incentive award where “Plaintiff filed this lawsuit despite the knowledge that if he lost, the court might have ordered him to pay Defendant’s attorneys’ fees and costs.”). These risks were substantial.

In addition to those risks, Mr. Coleman dedicated significant time to this litigation. He gathered documents in response to CubeSmart’s document requests. He also appeared and participated in a full-day mediation session. Mr. Coleman remained in constant contact with Class Counsel regarding the progress of the litigation and had no less than fifteen phone calls with Class Counsel to discuss the various aspects of the litigation. Mr. Coleman also reviewed even the most ministerial of pleadings that were essential in guiding Class Counsel’s litigation efforts. Thus, the modest award of \$15,000 should be granted.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Class Counsel respectfully requests that the Court: (1) grant the fee award of \$1,370,362 plus expenses of \$11,000.00; and (2) award the

\$15,000 incentive award to Plaintiff and class representative Mr. Coleman.

Dated: June 3, 2019.

Respectfully submitted,

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Fla. Bar No. 35022

John R. Byrne, Esq.

Fla. Bar No. 126294

Jordi C. Martínez-Cid, Esq.

Fla. Bar No. 100566

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AND

David M. Buckner, Esq.

Fla. Bar No. 60550

Seth E. Miles, Esq.

Fla. Bar No. 385530

Brett E. von Borke, Esq.

Fla. Bar No. 0044802

Buckner + Miles

3350 Mary Street

Miami, Florida 33133

Tel: 305.964.8003

Email: david@bucknermiles.com

Email: seth@bucknermiles.com

Email: vonborke@bucknermiles.com

Counsel for Plaintiff and the putative class

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that, pursuant to Local Rule 7.1(a)(3), the parties have conferred regarding the instant motion. CubeSmart does not oppose or object to the amount of attorneys' fees, costs and incentive award sought in the Class' Motion for Attorneys' Fees, Expenses and Incentive Award.

Scott B. Cosgrove
Scott B. Cosgrove, Esq.

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 16-25009-CIV-MARTINEZ-GOODMAN

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

Plaintiffs,

v.

CLASS ACTION

CUBESMART, a Maryland
Real Estate Investment Trust,

Defendant.

DECLARATION OF CLASS COUNSEL SCOTT B. COSGROVE

I, Scott Brian Cosgrove, declare as follows:

1. I am one of the founding partners of the law firm of León Cosgrove LLP and I have been appointed as Class Counsel in this litigation. I submit this declaration in support of the Class' Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Award.

I. CLASS COUNSEL'S ATTORNEYS' FEES

2. Class Counsel prosecuted this lawsuit entirely on a contingent fee basis and received no compensation for its work on this matter over the past two years.

3. Given the size of Class Counsel's law firms, pursuing this case prevented Class Counsel from working on other cases and accepting other representations.

4. Discovery in this case was significant. CubeSmart produced more than 17,000 pages of documents.

5. The Parties mediated three separate times before mediator Rodney Max, of Upchurch Watson White and Max. The Parties first mediation took place on September 29, 2018.

The Parties were unable to resolve the dispute. On October 31, 2018, counsel for the Parties participated in a second mediation with Mr. Max. The Parties were still unable to resolve the dispute. Although the Parties were still unable to resolve the dispute, they continued settlement discussions. It was not until November 20, 2018, that the Parties came to an agreement on material terms. On January 23, 2019, the Parties executed the Settlement. The Court issued an Order Preliminarily Approving the Settlement on April 3, 2019. [D.E. 79]. The Court also approved a class notice program. [*Id.*]. Pursuant to that notice, which is ongoing, Class Counsel is providing notice to more than 101,175 potential Class members through email and U.S. Mail notice.

II. CLASS COUNSEL ATTAINED AN EXCELLENT RESULT FOR CLASS MEMBERS.

6. The \$5,481,450 Settlement Value is an unqualified success. The Settlement Value represents 66% of the Class' estimated damages. Because of Class Counsel's efforts, thousands of Class members will be able to recover 66% of their estimated individual losses that, according to the Class' allegations, CubeSmart obtained through deception.

III. THE PROFESSIONAL SKILL AND STANDING OF CLASS COUNSEL SUPPORT THE REQUESTED FEE AWARD.

7. Class Counsel are experienced trial and appellate lawyers who appear in state and federal courts across Florida and around the country. They have litigated numerous cases, including complicated class actions, through trial and have collectively recovered hundreds of millions of dollars for class members in other litigation. *See* Class Counsel's CVs (attached as **Exhibit A**).

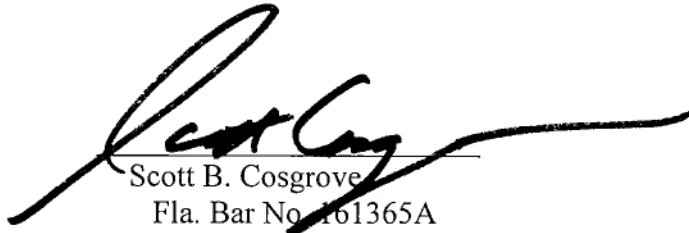
IV. CLASS COUNSEL'S LITIGATION EXPENSES.

8. To date, Class Counsel has incurred over \$12,621.52 in costs, for which it is only seeking \$11,000 in reimbursement. *See* Class Counsel's Itemization of costs (attached as **Exhibit B**).

9. These costs were all necessary in the prosecution of this lawsuit.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 3, 2019

A handwritten signature in black ink, appearing to read 'Scott B. Cosgrove', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail.

Scott B. Cosgrove
Fla. Bar No. 461365A
León Cosgrove LLP
255 Alhambra Circle, Suite 800
Coral Gables, Florida 33134
Tel: 305.740.1975
Email: scosgrove@leoncosgrove.com

EXHIBIT A

BUCKNER + MILES

TRIAL LAWYERS

3350 Mary Street

Miami, Florida 33133

(305) 964-8003

www.bucknermiles.com

Buckner + Miles is a boutique team of experienced trial lawyers with a well-earned reputation for extraordinary advocacy and adherence to the highest ethical standards. The firm handles cases in state and federal courts in Florida and throughout the United States, and even on occasion in other countries. The panoply of work includes complex commercial disputes and class actions, catastrophic personal injury and wrongful death claims including multi-jurisdictional aviation accident cases, and *qui tam* claims. The firm enjoys a record of success that includes more than \$1 billion in verdicts and settlements for its clients.

Though intentionally small in size, the firm has nearly 100 years of combined trial experience. The firm's partners are regularly hired to try complex cases of all kinds. In addition, the firm's partners have been involved in significant class action and MDL cases in the Southern District of Florida and federal courts throughout the United States, routinely arguing before both the district court, the courts of appeal, and even the United States Supreme Court.

THE FIRM'S LAWYERS

David M. Buckner

David Buckner regularly tries cases and argues appeals in state and federal courts across Florida and around the country. He represents corporations and individuals in matters involving complex commercial and class action litigation. Mr. Buckner has successfully certified, and defended on appeal, numerous classes of plaintiffs seeking redress for violations of Federal securities laws, common law fraud, breach of fiduciary duty, unfair trade practices, breach of contract and the duty of good faith and fair dealing, and unjust enrichment, and has obtained settlements and verdicts after trial on behalf of the members of those classes in the hundreds of millions of dollars. Most recently, he served as class counsel in *Champs Sports Bar & Grill Co., et al. v. Mercury Payment Systems, LLC*, in the Northern District of Georgia, obtaining a settlement worth \$72.5 million for the class. He also represents corporations and individuals in significant commercial litigation, including matters involving the First Amendment, the Communications Decency Act, and the Racketeer Influenced and Corrupt Organizations Act.

Mr. Buckner earned his B.A. in Political Science with High Honors from Rutgers College, and was selected a Harry S Truman Scholar. He received his *juris doctor* from Harvard Law School, *magna cum laude*, and his Master of Public Policy degree from the John F. Kennedy School of Government at Harvard University. Mr. Buckner served as a law clerk for Judge R. Lanier Anderson III of the United States Eleventh Circuit Court of Appeals. After several years at the Washington, D.C., law firm of Williams & Connolly, he spent eight years as an Assistant United States Attorney in the Southern District of Florida. As a federal prosecutor, Mr. Buckner investigated and prosecuted cases involving securities fraud, tax fraud, public corruption, money

laundering, espionage and other crimes related to national security. He conducted numerous jury trials in the United States District Court for the Southern District of Florida, and argued a number of cases before the United States Eleventh Circuit Court of Appeals, including the *en banc* court. He received two Director's Awards for Superior Performance from the United States Department of Justice for his work.

Seth E. Miles

Seth Miles is an experienced trial lawyer prosecuting cases ranging from class actions to complex commercial litigation to personal injury and wrongful death.

The first time Mr. Miles served as class counsel, he recovered \$39 million on behalf of all Lloyds of London property insurance clients assessed a hurricane deductible during the 2004-2005 hurricane season. Mr. Miles next served as class counsel in *Dishkin v. Tire Kingdom*, a class action brought under the Florida Deceptive and Unfair Trade Practices Act. The trial court certified the class and granted summary judgment in favor of the class. These rulings were defended all the way to the Florida Supreme Court. Ultimately, the trial court granted final approval to a \$4.5 million settlement that afforded each class member approximately 100% of their loss.

Within just the past five years, Mr. Miles served as a bank team leader for the PNC bank class in the *In re: Checking Account Overdraft Litigation*, recovering \$90 million for the class; class counsel in *Gevaerts v. TD Bank*, recovering \$20 million for the class; class counsel in *Morgan v. Public Storage*, certifying a nationwide RICO class; and liaison counsel in *Clements v. JP Morgan Chase*, resulting in a \$22.1 million settlement.

In one of the pivotal cases in his career, Mr. Miles received an \$80 million verdict on behalf of three Cuban migrants forced to work as modern day slaves at a drydock. As a result of his work on this case, which included trial in the district court and oral argument in the Eleventh Circuit Court of Appeals, he was honored with the prestigious "Most Effective Lawyer" award given by the Daily Business Review.

Mr. Miles currently serves on the Southern District of Florida's Bar Grievance Committee. In addition, Mr. Miles was selected by the Florida Supreme Court to serve on the Civil Jury Instruction Committee.

Prior to entering private practice, Mr. Miles served as an Assistant United States Attorney in the criminal division of the United States Attorney's Office in the Southern District of Florida. While serving as an Assistant United States Attorney, he tried numerous jury trials on matters ranging from airplane skyjacking to healthcare fraud and argued before the Eleventh Circuit Court of Appeals multiple times.

Mr. Miles obtained his B.S. degree from Northwestern University, and his J.D. magna cum laude, from the Georgetown University Law Center where he was a member of the Order of the Coif Honor Society.

Brett E. von Borke

Brett von Borke is an accomplished trial lawyer focusing on complex business litigation, class actions, and personal injury in federal and state courts throughout the country. His representations frequently involve both individuals and corporations in products liability, antitrust, consumer and securities fraud, fiduciary duty, wrongful death, trade secret, and deceptive/unfair trade practice claims.

Mr. von Borke has substantial trial experience. For example, in 2010, Mr. von Borke served as class counsel in *Hester v. Vision Airlines*, where he represented a class comprised of airline pilots and flight attendants that flew into and out of the war zones in Baghdad, Iraq and Kabul, Afghanistan. A jury awarded the class more than \$7 million in hazard pay that it determined the class' employer had wrongfully withheld. In 2011, Mr. von Borke tried *Delta RF Technology v. Sunair Electronics*, which involved a dispute over high powered broadcasting amplifiers installed in NATO bases worldwide. Mr. von Borke, along with co-counsel, successfully obtained a multi-million dollar award. Mr. von Borke also served as class counsel in *Gevaerts v. TD Bank*, where he successfully represented a class of investors helping them recover more than \$20 million lost in a complex international viatical fraud.

Mr. von Borke also has substantial trial experience in the area of environmental law. Mr. von Borke represented a prominent South Florida real estate developer in a lawsuit against three major public utilities companies for pollution dumped on the developer's property in the 1950s. Through the use of complex chemical finger printing, the chemical makeup of the pollution dumped at the developer's property was analyzed and chemically matched with pollution found at the locations where the public utility companies operated. At the conclusion of a six-week trial, all of the public utilities companies entered into a confidential settlement with the developer.

Mr. von Borke obtained his B.A. degree in Political Science, summa cum laude and his J.D. cum laude from Boston College.

Michael S. Olin

Michael Olin's civil trial skills before juries, judges and arbitration panels have continually received accolades from peers, clients and the media. His work encompasses extraordinarily diverse subjects in all venues across Florida, the United States, and even in foreign countries.

In just the last few years, for example, he has successfully tried a property conversion case against U-Haul involving the valuation of over 500 high quality master tape recordings of well-known classical musicians, recorded in the 1970s and 1980s; a personal injury case against Big Tobacco - Philip Morris - whose cigarettes the jury found caused his client's disfiguring and life-altering oral cancer; and a fraud claim against a Wall Street titan who wrongly and secretly twisted what appeared to be otherwise legal process so he could wipe out the loan of a second mortgage holder on property one of his companies had purchased. In all three of these cases, the clients recovered not only millions of dollars in compensatory damages, but millions of dollars in punitive damages. More recently, he tried and won a claim for bad faith against Geico, which had wrongly exposed its policy holder to a multi-million-dollar judgment, and required Geico to pay that full judgment, plus attorney's fees, despite its policy limits of only \$250,000 in coverage. The case resulted in an

affirmance in the Eleventh Circuit Court of Appeals that significantly enhanced the landscape for such cases.

Mr. Olin also has a niche practice in entertainment litigation, having represented HBO, Time Warner, Top Rank, Inc. (Bob Arum's company), Bernard Hopkins, Golden Boy Promotions, LLC (Oscar De La Hoya's company) and Canelo Alvarez in litigation or arbitration. The Top Rank and Golden Boy/Alvarez matters involved eight and nine figure claims against his clients, were tried before juries and resulted in outright judgments for his clients.

Mr. Olin also knows how to settle cases. For example, he was the lead plaintiff's liability lawyer for the 163 victims in the crash of American Airlines flight 965 into a mountain near Cali, Colombia. Over a two-day period, he argued and obtained a summary judgment on liability from then U.S. District Court Judge Stanley Marcus, who shortly thereafter was appointed to the U.S. Court of Appeals for the Eleventh Circuit. Judge Marcus found – without a trial and in an opinion of more than 100 pages - that American's pilots were guilty of willful misconduct. This extraordinary result on a summary proceeding less than three years after the crash, and just a few weeks before a jury trial was to begin, established American's liability for full damages to all the passengers. After the ruling, his firm's cases were all settled within a few months.

In short, Mr. Olin's practice is far ranging, and he likes it that way. He handles business disputes and class actions, of all kinds, for small and large businesses as well as Fortune 500 companies, and for both Plaintiffs and Defendants. Mr. Olin is equally comfortable with all manner of personal injury claims for plaintiffs, from automobile accidents to aviation accidents, medical malpractice and product liability cases, along with business tort claims, like fraud, civil theft and tortious interference. He is regularly engaged by other lawyers in their personal cases, whether business, law or injury related, and frequently requested by other lawyers to assist in preparing and trying complex cases that require his level of courtroom experience and expertise.

Mr. Olin currently serves on the Southern District of Florida's Bar Grievance Committee, was a member for many years of the Florida Civil Rules Committee, and Vice-Chair one year, and a 2007 Florida Supreme Court appointee as a charter member to the Business Jury Instruction Committee, where he served for ten years.

Mr. Olin obtained his B.A. degree in Economics, with High Distinction, and his J.D. magna cum laude, from the University of Michigan where he was a member and Associate Editor of the Law Review, and a member of the Order of the Coif Honor Society.

Elena Marlow

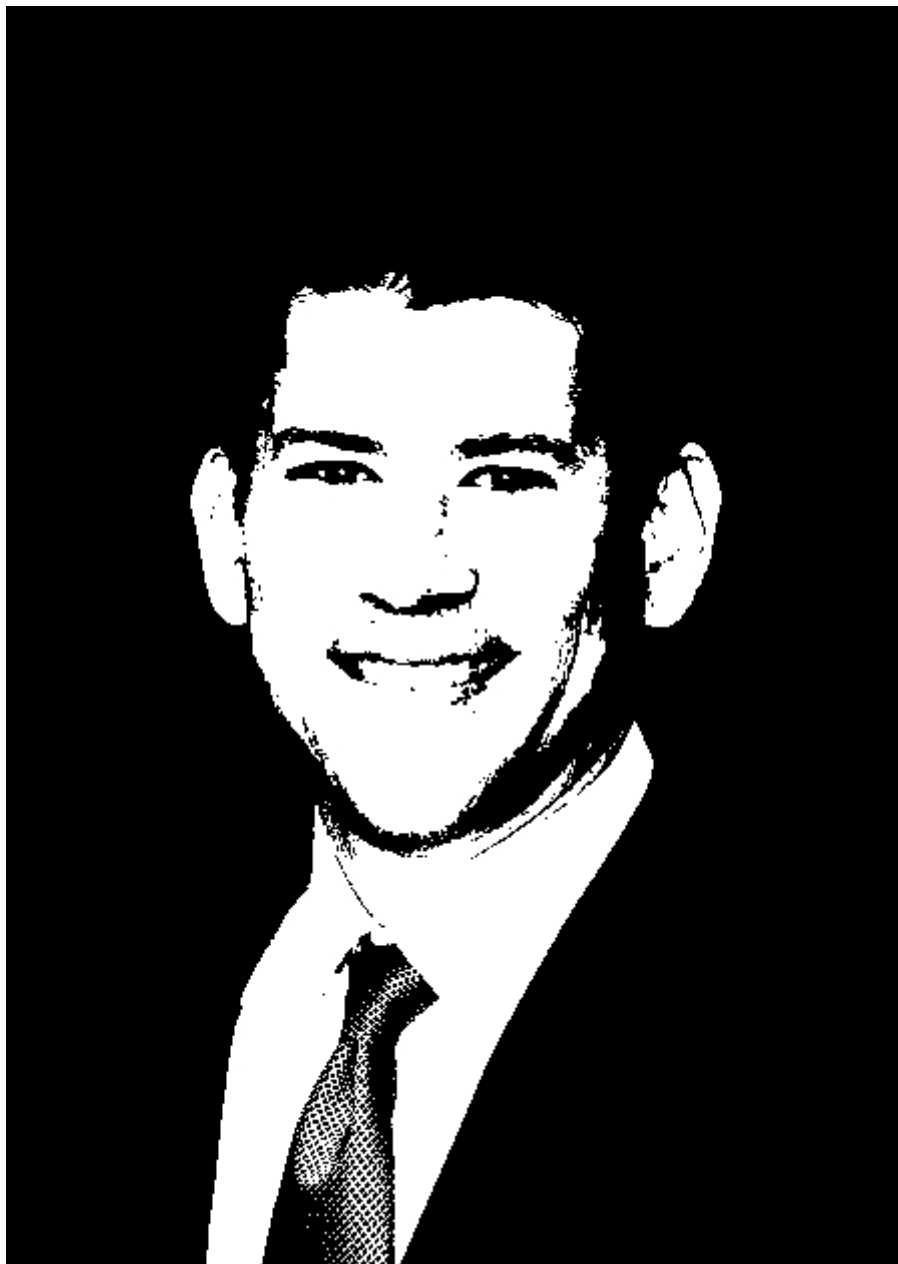
Elena Marlow focuses her practice at Buckner + Miles on class actions, commercial litigation, personal injury, and medical malpractice, representing individuals and corporations in federal and state courts. Ms. Marlow has also represented large corporate clients in a variety of complex commercial matters, including shareholder and corporate-governance disputes, disputes concerning telecommunications businesses, and disputes arising under distributorship, manufacturing and other trade-related agreements.

Ms. Marlow has dedicated a significant portion of her career to working with members of the federal and state judiciary. Ms. Marlow first worked as a staff attorney for the Eleventh Judicial Circuit of Florida, handling matters ranging from zoning appeals to complex products liability actions and assisting with high-profile cases. She later served as a law clerk to both Judge Paul C. Huck and to Judge Jose E. Martinez of the Southern District of Florida, before becoming a staff attorney for that same district.

Fully bilingual in English and Spanish, Ms. Marlow also has substantial international experience. She has represented U.S. and Latin American parties in federal and state courts, as well as in adversarial Spanish-language arbitration proceedings applying foreign law and has managed local counsel in Latin American and productions of voluminous foreign documents. Ms. Marlow co-authored the Florida Bar rule that authorizes non-Florida lawyers to handle international arbitrations in Florida and drafted the petition to the Florida Supreme Court that resulted in the passage of the rule. She also worked for the United States Department of Justice in Guantanamo Bay, developing and implementing the out-processing procedures for Cuban migrants granted humanitarian parole into the United States.

Before entering the civil arena, Ms. Marlow was a staff attorney at the Law Office of the Public Defender in Seattle, Washington. As a public defender, Ms. Marlow carried a heavy criminal caseload and tried numerous cases before juries to verdict.

Ms. Marlow earned her B.A. degree from the University of California, Berkeley, with honors, and her J.D. from the University of Washington, with honors. She also attended the University of Madrid, in Madrid, Spain.



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[Linkedin profile](#)



SCOTT B. COSGROVE IS A FOUNDING PARTNER OF LEÓN COSGROVE LLP AND A CHAMBERS-RANKED TRIAL LAWYER FOCUSING ON COMPLEX COMMERCIAL LITIGATION. HIS

REPRESENTATIONS INVOLVE ALL MANNER OF COMMERCIAL DISPUTES, INCLUDING FINANCIAL SERVICES LITIGATION, FIDUCIARY DUTY, FRAUD, PARTNERSHIP, INTELLECTUAL PROPERTY, AND DECEPTIVE/UNFAIR TRADE PRACTICE CLAIMS.

Mr. Cosgrove is praised by Chambers for the “commercial sophistication” he brings to a “wide range of complex litigation” involving “IP, unfair trade practices and financial services disputes.” In 2018, following a significant win for the State of Florida in its ongoing litigation against tobacco company RJ Reynolds, Chambers noted that Mr. Cosgrove had been described by his colleagues and clients as a respected litigator with “very good persuasive ability, and a great reputation and pedigree.” The Daily Business Review selected him one of South Florida’s “Most Effective Lawyers” on three separate occasions for his work on *Berry et al., v. Budget Rent A Car Systems, Inc.* (2007), *In re NationsRent Rental Fee Litig.*, (2009), and most recently, *CDR Créances, S.A.S. v. Leon Cohen et al.*, (2011). By age 34, Florida Trend Magazine named Mr. Cosgrove a “Legal Elite” – an honor bestowed upon the top 2% of Florida attorneys as voted by their peers, with an average age of 55. He was named one of Florida’s “Top 100” attorneys by Super Lawyers in 2016 and has been ranked a Top-Rated Business Litigation Attorney since 2013. He also maintains an AV rating by Martindale-Hubbell.

Prior to co-founding León Cosgrove, Mr. Cosgrove was a partner in a renowned litigation boutique.

His recent trial successes include the defense of a multi-count dispute in which the plaintiff claimed a 50% interest in assets totaling \$75 million. After a three-week trial, a complete defense verdict was returned in favor of Mr. Cosgrove’s client. In 2011, he represented CDR Créances, S.A.S., a French-government instrumentality charged with realizing the assets of an insolvent French bank. After a three-day evidentiary hearing on a heightened “clear and convincing” burden, Mr. Cosgrove and his former firm partner persuaded the trial court to strike the defendants’ pleadings for fraud on the court. The client received a judgment ordering the defendants to relinquish property valued in excess of \$120 million. The judgment was affirmed on appeal. In 2013, Mr. Cosgrove defended the president of a corporation in a shareholder derivative action claiming corporate misuse of \$9 million. The jury returned a \$0.00 verdict on the derivative claims.

Representations

General Commercial Litigation

Cellco Partnership d/b/a Verizon Wireless v. Jason Hope et al.: Represented Verizon Wireless in the trial court (U.S. District Court for the District of Arizona) and on appeal (U.S. 9th Circuit Court of Appeals), obtaining a preliminary injunction and extremely favorable settlement. The preliminary injunction was applicable nationwide in Verizon Wireless’ favor against a defendant company and its principals, on the grounds that they had engaged in a complex fraud against Verizon Wireless and its customers by fraudulently obtaining access to Verizon’s network in order to market their premium text messaging services to Verizon’s customers through unauthorized and deceptive websites.

CDR Créances, S.A.S. v. Leon Cohen et al.: Representing CDR Créances, S.A.S., a French-government instrumentality charged with realizing the assets of an insolvent French bank. Obtained an order striking the defendants’ pleadings for fraud on the court, and a final judgment ordering the surrender of property valued in excess of \$120 million. The final judgment was affirmed on appeal.

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Class Actions

In re CarMax Rental Fee Litigation (S.D. Fla. 2010): Represented CarMax in a putative class action alleging illegal billing practices. Mr. Cosgrove called the plaintiff’s counsel and explained his theory was simply wrong. Plaintiff’s counsel agreed to dismiss the lawsuit before the filing of a responsive pleading was due.

Romano v. Motorola, Inc., (S.D. Fla. 2007): Defended Motorola against putative class action alleging that Motorola's RAZR phone was sold with a defective battery. The individual named plaintiff's claim was settled, and the case was dismissed.

In re NationsRent Rental Fee Litigation (S.D. Fla. 2006): Represented a leader in the heavy rental equipment industry regarding the imposition of environmental fees and damage waiver fees. Mr. Cosgrove defeated class certification on the damage waiver fee aspect of the claim, and settled the environmental fee aspect by providing increased disclosures on the rental ticket (no payment to the class).

Berry et al., v. Budget Rent A Car Systems, Inc. (S.D. Fla. 2006): Represented Budget Rent A Car Systems in a putative class action alleging violations of consumer protection statutes. Budget Rent A Car's potential exposure exceeded \$150 million. Mr. Cosgrove obtained a dismissal with prejudice of plaintiffs' claims.

Scheck Investments, L.P. et al., v. Viatical Benefactors, LLC et al. (S.D. Fla. 2004): Represented RBC Centura Bank in this class action, which alleged that the bank was a co-conspirator in a billion-dollar Ponzi scheme. After convincing the Magistrate Judge to issue a Report and Recommendation for dismissal with prejudice, plaintiffs voluntarily agreed to dismiss the bank as a defendant.

Stelter et al., v. Panthers BRHC, Ltd., et al.; Bebergal et al., v. Panthers BRHC, Ltd. (Palm Beach County Circuit Court 2002): Defended the Boca Raton Hotel and Club in a putative class action lawsuit regarding the service charge collected from hotel guests. Obtained dismissal of plaintiffs' amended complaint, with prejudice.

Reported Decisions

Empire World Towers, LLC v. CDR Créances, S.A.S., 89 So. 3d 1034 (Fla. 3d 2012)

Kavouras v. Mario City Restaurant Corp., 88 So. 3d 213 (Fla. 3d DCA 2011)

Cellco P'ship v. Hope, et al., 2012 WL 605801 (D. Ariz., July 26, 2011)

Premier Real Estate Holdings, LLC v. Butch, 24 So. 3d 708 (Fla. 4th DCA 2010)

Berry v. Budget Rent A Car Systems, Inc., 497 F. Supp. 2d 1361 (S.D. Fla. 2007)

In re NationsRent Rental Fee Litigation, 2009 WL 636188 (S.D. Fla. February 24, 2009)

Romano v. Motorola, Inc., 2007 WL 4199781 (S.D. Fla. November 26, 2007)

Dasma Investments, LLC v. Realty Associates Fund III, L.P., 459 F. Supp. 2d 1294 (S.D. Fla. 2006)

Padron Warehouse Corp., v. The Realty Associates Fund III, L.P., 377 F. Supp. 2d 1259 (S.D. Fla. 2005)

Fiscal Operations, Inc. v. Metropolitan Dade County, 808 So. 2d 1287 (Fla. 3d DCA 2002)

Practice Areas

Honors & Awards

Scott B. Cosgrove

Recognized by The Best Lawyers in America© 2019 for Commercial Litigation and Litigation in Banking and Financing

Ranked as a Top-Rated Business Litigation Attorney by Super Lawyers, 2013-2018

Ranked in Florida for Commercial Litigation, Chambers USA 2018

Ranked in Florida for Commercial Litigation, Chambers USA 2017

Ranked in Florida for Commercial Litigation, Chambers USA 2016

Law360 ‘Trial Pro’ 2016

“Top 100” attorneys statewide, 2016 Florida Super Lawyers

Recognized by The Best Lawyers in America© 2015 for Commercial Litigation

The Best Lawyers in America©, Commercial Litigation, 2015

“Most Effective Lawyer,” Miami Daily Business Review, 2007, 2009, 2011

Finalist, "Most Effective Lawyer," Miami Daily Business Review, 2016

“Legal Elite,” Florida Trend magazine, 2007 to present

“Rising Star,” Florida Super Lawyers, 2009

“Up & Comer,” South Florida Legal Guide, 2010

Court Admissions

Florida

U.S. District Courts for the Southern, Middle, and Northern Districts of Florida

U.S. Courts of Appeals for the Ninth and Eleventh Circuits

U.S. Supreme Court

Education

J.D., Emory University, 1998

Clerkships

Hon. Peter T. Fay, U.S. Court of Appeals for the Eleventh Circuit, 1998-1999

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- Miami, Florida 33134

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SEARCH

Alec Schultz

Alec Schultz



Office: 305.740.1986

Email: aschultz@leoncosgrove.com

ALEC SCHULTZ IS A PARTNER AT LEÓN COSGROVE LLP WHERE HE FOCUSES HIS PRACTICE ON COMMERCIAL LITIGATION AND APPELLATE MATTERS.

Mr. Schultz specializes in the litigation of complex commercial transactions, antitrust disputes, employment matters and privacy law actions on behalf of both plaintiffs and defendants. He has extensive experience in international litigation, as well as broad experience litigating cases on appeal in both state and federal courts.

Prior to joining León Cosgrove, Mr. Schultz practiced at Boies, Schiller & Flexner LLP, where his practice included a wide array of substantive matters on behalf of Fortune 500 companies and prominent individuals.

Prior to law school, Mr. Schultz served as a counter-terrorism officer in the Central Intelligence Agency's Directorate of Operations. In that capacity, Mr. Schultz planned and implemented operations against a high-profile terrorist group on behalf of the U.S. government. He was the recipient of the Director's Award for Exceptional Performance.

Representations

Defended the Bank of New York Mellon against claims brought by the Russian government in a Moscow Arbitrazh Court, where the litigation settled for less than 1% of claimed damages.

Represented the CEO of a large sporting franchise in a federal court action asserting violations of state privacy and security of communication laws, as well as federal wiretapping laws.

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Practice Areas

Honors & Awards

"Up-and-Comer," Florida Trend Magazine, 2010

"Rising Star," Florida Super Lawyers, 2012 and 2013

Court Admissions

Florida

U.S. District Courts for the Southern and Middle Districts of Florida

U.S. Court of Appeals for the Eleventh Circuit

Education

J.D., University of Chicago Law School, 2006; McQuiston Scholar

B.S., Georgetown University, cum laude, 2002; John Carroll Scholar

Clerkships

Hon. Donald M. Middlebrooks, U.S. District Court for the Southern District of Florida, 2006-2007

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John R. Byrne is a partner at LEÓN COSGROVE LLP where he focuses his practice on commercial litigation and appellate matters.

Mr. Byrne specializes in the litigation of complex commercial transactions and consumer fraud matters on behalf of both plaintiffs and defendants.

Prior to joining León Cosgrove, he was an Assistant United States Attorney for the Southern District of Florida. During his time at the U.S. Attorney's Office, Mr. Byrne charged over 60 cases, including numerous fraud cases. He took 16 of these cases to trial, serving as first chair ten times and second chair six times. During his time as a prosecutor, he developed an extensive knowledge of federal law, including federal statutory law, the Federal Rules of Evidence, and the Federal Rules of Criminal Procedure.

Mr. Byrne also has extensive federal appellate experience. In addition to having argued a case before the U.S. Court of Appeals for the Eleventh Circuit, he served as the law clerk to Chief Judge Jeffrey R. Howard of the U.S. Court of Appeals for the First Circuit.

Prior to his time as an Assistant U.S. Attorney, Mr. Byrne practiced with Ropes & Gray LLP, where he focused on internal investigations, regulatory enforcement matters, and complex commercial disputes.

Representations

Obtained a \$66 million award for alternative energy client following a three week arbitration hearing in Chicago. Proved that wind turbine manufacturer supplied client with defective wind turbine blades.

Represented a Latin American former head of state in extradition proceedings, obtained an order releasing said individual on bond and dealt with numerous issues of first impression.

Represented energy company in fraud action in federal court, resulting in a \$10 million settlement.

Represented prominent former NCAA basketball coach in connection with federal investigation arising out of Southern District of New York. No charges filed.

Represented former State Department official in connection with high-profile federal lawsuit in the Southern District of Florida, successfully obtaining protective order governing his testimony.

Practice Areas

Honors & Awards

“Rising Star,” Miami Daily Business Review, 2016

Court Admissions

Massachusetts

U.S. District Court for District of Massachusetts

U.S. District Court for District of New Hampshire

U.S. Court of Appeals for the First Circuit

Florida

U.S. District Courts for the Southern and Middle Districts of Florida

U.S. Court of Appeals for the Eleventh Circuit

Education

J.D., Cornell Law School, cum laude, 2007

Clerkships

Hon. Jeffrey R. Howard, U.S. Court of Appeals for the First Circuit

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255 Alhambra Circle - Suite 800 Miami, Florida 33134

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EXHIBIT B

<u>Trans Date</u>	<u>Amount</u>	
Transaction Date 12/01/2016		
12/01/2016	400.00	Filing fee for Class Action Complaint.
Transaction Date 12/08/2016		
12/08/2016	125.00	Service of summons on Cubesmart in Baltimore, MD.
Transaction Date 01/09/2017		
01/09/2017	30.00	Parking - Attendance of meeting with opposing counsel re scheduling report.
01/09/2017	10.00	Additional Parking - Attendance of meeting in Miami-Dade, FL.
01/09/2017	14.00	Parking - Attendance of meeting in Miami-Dade, FL.
Transaction Date 04/30/2017		
04/30/2017	416.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 05/31/2017		
05/31/2017	241.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 06/30/2017		
06/30/2017	241.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 01/23/2018		
01/23/2018	1,332.50	KLDiscovery, LLC - Access to and use of document database. (July 2017 through December 2017).
Transaction Date 01/31/2018		
01/31/2018	126.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 02/28/2018		
02/28/2018	126.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 03/31/2018		
03/31/2018	126.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 04/18/2018		
04/18/2018	15.00	Parking - Attendance of hearing in Miami-Dade, FL.
Transaction Date 04/25/2018		
04/25/2018	77.40	Case Law Reporting, Inc. - Transcript copy of hearing before Judge J. Goodman on 4/18/18.
Transaction Date 04/30/2018		
04/30/2018	126.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 05/31/2018		
05/31/2018	126.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 06/30/2018		
06/30/2018	126.25	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 07/31/2018		
07/31/2018	749.50	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 08/31/2018		
08/31/2018	246.55	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 09/12/2018		
09/12/2018	446.39	Airfare - Attendance of mediation on 09-29-18 in Miami-Dade, FL.
Transaction Date 09/30/2018		
09/30/2018	558.15	Hotel - Attendance of mediation on 09-29-18 in Miami-Dade, FL.
Transaction Date 10/01/2018		
10/01/2018	427.55	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 10/17/2018		
10/17/2018	2,267.13	Upchurch Watson White & Max - Mediation fee.
Transaction Date 10/31/2018		
10/31/2018	626.55	KLDiscovery, LLC - Access to and use of document database.

Trans Date	Amount	
Transaction Date 11/23/2018		
11/23/2018	1,875.00	Upchurch Watson White & Max - Mediation fee.
Transaction Date 11/30/2018		
11/30/2018	630.55	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 12/12/2018		
12/12/2018	217.90	Jerry Coleman - Reimbursement for expenses incurred during attendance of mediation on 09-29-18 in Miami-Dade, FL.
Transaction Date 12/31/2018		
12/31/2018	630.55	KLDiscovery, LLC - Access to and use of document database.
Transaction Date 01/31/2019		
01/31/2019	285.55	KLDiscovery, LLC - Access to and use of document database.
GRAND TOTALS		
Billable	12,621.52	