

You Can Get Benefits from a Class Action Settlement with CubeSmart

Steven Kendall v. CubeSmart L.P., *et al.*
Civil Action No. 3:15-cv-6098

Summary of the Case and the Settlement

This is a Notice to inform you about a proposed Settlement in a class action lawsuit brought against CubeSmart L.P., CubeSmart, CubeSmart Management LLC, and CubeSmart Asset Management, LLC (“CubeSmart” or “Defendants”). CubeSmart has identified you as a Settlement Class Member.

PLEASE TAKE THE TIME TO READ THIS NOTICE CAREFULLY. It describes the proposed Settlement and outlines your rights. You must decide whether to remain in the Settlement Class and receive certain benefits and release claims or remove yourself. If you remove yourself, you will not receive any of the Settlement benefits and will not give up any claims against CubeSmart. You may also remain in the Settlement Class, but object to the Settlement.

The Claims in the Case

Plaintiff claimed that CubeSmart violated the Truth-in-Consumer Contract, Warranty, and Notice Act, N.J.S.A. 56:12-14 et seq. (TCCWNA), in its contracts and other documents by including provisions which violated the New Jersey Self-Service Storage Facility Act (SSFA), N.J.S.A. 2A:44-187, *et seq.*, the United States Bankruptcy Code, 11 U.S.C. 365, New Jersey decisional law, and the TCCWNA. CubeSmart denies all allegations in the class action lawsuit and denies any wrongdoing.

The Court has not decided who is right. To avoid the time, expense, and uncertainty of litigation, the Parties have agreed to the Settlement. This Settlement must be approved by the Court before it becomes effective.

What You Will Receive If You Remain in the Settlement Class

If you do nothing, you will receive the Settlement benefits in exchange for releasing claims, as described in this Notice. If you remain in the Settlement Class, you will receive a check in the amount of \$35.00 and a certificate in the amount of \$65.00 that can be used to purchase any goods or services sold at CubeSmart facilities in New Jersey and/or Pennsylvania, to pay for the rental of a new rental unit(s) at any CubeSmart facility in New Jersey and/or Pennsylvania, or to pay for the rental of existing rental unit(s) at any CubeSmart facility in New Jersey and/or Pennsylvania.

Without admitting any wrongdoing or liability, CubeSmart has also agreed to abide by New Jersey law. CubeSmart has also agreed to pay the costs and expenses of the Settlement Administrator and, subject to Court approval, the reasonable attorneys’ fees and costs of Class Counsel and an award to the Plaintiff who filed this class action.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND STAY IN THE SETTLEMENT CLASS If you do nothing, you will automatically remain in the Settlement Class and receive the benefits described above and described in response to Question 6 below in exchange for releasing certain claims described in response to Question 7 below.

REMOVE YOURSELF If you take the steps necessary to remove yourself, you will not receive any benefit from the Settlement, but you will not give up any claims you may have against the Defendant.

OBJECT Remain a part of the Settlement Class, but write to the court about why you don’t like the Settlement.

The following pages describe in greater detail your rights, the Settlement, and the Class Action. If you have questions, you may contact the lawyers identified in Answer to Question #5 below, who have been appointed by the Court to represent the Settlement Class.

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BASIC INFORMATION

1. What is this lawsuit about?

Plaintiff filed his Complaint against CubeSmart on July 2, 2015. Plaintiff's claims are based upon his rental of a storage unit at one of CubeSmart's facilities in New Jersey. Plaintiff alleges that CubeSmart improperly included certain language in their contracts. Plaintiff alleges that CubeSmart's conduct violated the TCCWNA. Plaintiff also alleged additional individual claims in the Complaint concerning damage to his property stored at CubeSmart.

CubeSmart denies any wrongdoing. There has been no finding of any violation or wrong doing by CubeSmart by the Court.

2. What is a class action and who is involved?

In a class action lawsuit, a "Class Representative" can sue on behalf of other people who are in a similar position. In this case, Steven Kendall is a "Class Representative" or the "Plaintiff". A court can determine that people with similar claims are a "Settlement Class" or "Settlement Class Members." Since everyone in the Settlement Class has the same or similar claims, one court case can resolve the issues for everyone in the Settlement Class. In this case, CubeSmart identified the ten thousand nine hundred and eighty (10,980) individual consumers who entered a contract with a U-Store-it or CubeSmart storage facility in New Jersey during the period from July 3, 2009 to September 29, 2011 that was the same as the Lease Agreement that Plaintiff signed that comprise the Settlement Class. Those individuals are being sent this Settlement Notice.

3. Why did I get this Settlement Notice?

You received this Settlement Notice because CubeSmart's records show that you are a member of the proposed Settlement Class.

4. Why is there a Settlement?

Both sides agreed to a Settlement before going to trial in order to avoid the costs and uncertainties of litigation. The Class Representative and Class Counsel believe the proposed Settlement is in the best interest of the Settlement Class. **The Court has not decided in favor of either the Plaintiff or CubeSmart.**

5. Who is representing the Settlement Class in this case?

The Court appointed the following attorneys as "Class Counsel" to represent the Settlement Class:

Andrew R. Wolf, Esq.	The Wolf Law Firm, LLC
Matthew S. Oorbeek, Esq.	1520 U.S. Highway 130, Suite 101
Henry P. Wolfe, Esq.	North Brunswick, NJ 08902
	(732) 798-8055- phone
	(732) 545-1030 – fax
	info@wolflawfirm.net

These attorneys are experienced in handling class actions. You will not be charged for their services. You may hire your own attorney to represent you in this matter. If you want to be represented by your own lawyer, you will be responsible for paying his or her fees.

THE TERMS OF THE SETTLEMENT

6. What is the proposed Settlement and what will I receive?

What You Will Receive

If the Settlement becomes final, then Settlement Class Members who do not opt-out of the Settlement will automatically receive total relief in the amount of \$100.00 including a Settlement check in the amount of \$35.00 and a Settlement Certificate in the amount of \$65.00.

The \$35.00 Settlement check that each Settlement Class Member shall receive will be valid for 125 days from the date it is mailed.

The \$65.00 Certificate that each Settlement Class Member shall receive may be used (i) for the purchase of any goods or services sold at CubeSmart facilities in New Jersey and/or Pennsylvania, (ii) to pay for the rental of a new rental unit(s) at any CubeSmart facility in New Jersey and/or Pennsylvania, or (iii) to pay for the rental of existing rental unit(s) at any CubeSmart facility in New Jersey and/or Pennsylvania. The Certificates may be used in multiple transactions until there is a \$0.00 balance. Each original Certificate shall be freely transferable and usable by the bearer. Up to three Certificates can be used in a single transaction. The Certificates can also be used in conjunction with any other sales or special offer, e.g. if CubeSmart offers one free month on new rentals then the certificate holder will get the one free month plus the \$65.00 applied toward future months. Notwithstanding the foregoing, the Certificates shall not be useable to pay for any applicable sales tax, insurance payments to a third party, or other payments to any third party. The Certificates shall expire three years plus five days after they are issued and mailed to Class Members.

CubeSmart Will Change Certain Business Practices

Without admitting any liability or wrongdoing, CubeSmart agrees that it will fully comply with New Jersey consumer protection statutes and regulations going forward including the SSFA, CFA and TCCWNA as they currently exist and as they may be amended in the future.

CubeSmart Will Pay All Costs of Administering the Settlement

CubeSmart has agreed to pay the costs and expenses of the Settlement Administrator.

CubeSmart Will Pay the Fees and Expenses of Class Counsel

Subject to Court approval, Defendants will not oppose, and agree to pay, Class Counsel's fees and costs not to exceed \$117,000.00. This amount includes costs and expenses, time already spent and time to be spent including finalizing the Settlement, preparing Settlement documents, drafting briefs, attending the final approval hearing and monitoring of the Settlement and Settlement administration.

The amount of the attorneys' fees and cost award is not part of the substantive terms of the proposed Settlement and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the proposed Settlement. Payment by the CubeSmart of any attorneys' fees and costs will not reduce the benefits to the Class.

CubeSmart Will Pay \$35,000 to the Settlement Class Representative Who Filed This Lawsuit

Subject to Court approval, CubeSmart will pay the Settlement Class Representative who filed this lawsuit a total of \$35,000.00, which amount includes a \$5,000.00 payment for his services to the Settlement Class and \$30,000.00 to resolve his individual claims related to damage to his property.

7. What am I giving up by staying in the Settlement and receiving payment?

Persons who remain in the Settlement Class will not be able to sue, or continue to sue, Defendants and other released persons as part of any other lawsuit about the same legal claims that are the subject of this lawsuit; that is, being provided contracts and other documents containing allegedly unlawful provisions. If you remain in the Settlement Class, you will be legally bound by all of the Orders the Court issues and judgments the Court makes in the proposed Settlement.

Under the Settlement Agreement, if you remain a member of the Settlement Class you will be bound by the following release of claims:

If the Court approves the Settlement then upon the Effective Date, Settlement Class Members other than Plaintiff, for themselves, their heirs, successors and assigns, will have released, relinquished, remised, acquitted, and forever discharged the Released Parties of and from any and all claims counterclaims, remedies, liabilities, debts, demands, costs, expenses, attorneys' fees, set-offs, and third party actions of any kind whatsoever, including all claims for declaratory relief, injunctive relief, statutory damages, punitive damages, and liquidated damages, whether known or unknown, matured or un-matured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued,

based on any federal, state, or local law, statute, regulation, or common law, arising out of, or in any way connected to, the claims that were made or could have been made in the Complaint concerning and limited to any and all claims relating to Defendants' alleged violations of the SSFA and the TCCWNA in the Lease Agreements or associated documents used in the transaction with Plaintiff and members of the Settlement Class.

You will remain in the Settlement Class and be bound by the above release unless you remove yourself from the Settlement Class, as described below. If you do not remain in the Settlement Class, you will not be releasing any claims.

YOUR RIGHTS AND OPTIONS

8. How do I participate in the Settlement and receive the Settlement benefits?

You will be automatically included in the proposed Settlement unless you remove yourself. If you do not remove yourself and the Settlement is approved, you will receive the benefits described in the answer to Question 6.

9. What if I want to remove myself from the Class Settlement?

If you don't want to give up your claims in exchange for receiving the benefits described in this notice, then you must take steps to remove yourself, also known as opting out of the Settlement Class. You may remove yourself by timely submitting a removal request. Your removal request must include: (1) your printed name, signature, and mailing address, and (2) the statement "I request to be removed from the Settlement Class in the *Steven Kendall v. CubeSmart, et al., Civil Action No.: 3:15-cv-6098* class action Settlement." Your removal request must be received by the Settlement Administrator at the following address no later than February 2, 2018:

Kendall v CubeSmart Settlement
c/o Atticus Administration
PO Box 1440
Minneapolis, MN 55440

If the Settlement Administrator receives your request after February 2, 2018, your request may be considered untimely and you may continue to be a member of the Settlement Class.

10. How can I object to the terms of the Settlement?

Objecting is telling the Court that you do not approve of the Settlement. Only those who have not removed themselves from the Settlement Class are eligible to object to the terms of the Settlement. At the Fairness Hearing, any person who has remained in the Settlement Class may appear in person or through counsel of his or her own choosing, and at his or her own expense, and be heard to the extent allowed by the Court to object to any aspect of the Settlement.

In order to object to the Settlement, you must send a written notice to the Clerk of Court, and to the lawyers representing the parties in this case. To be effective, a written objection must contain a concise statement of each objection being made; a description of the facts underlying each objection; a description of the legal authorities underlying each objection; a statement of whether the objector intends to appear at the Fairness Hearing; a list of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Fairness Hearing; and a list of exhibits which the objector may offer during the Fairness Hearing, along with copies of all of the exhibits, and it must be received by the Court, Class Counsel and CubeSmart's attorneys by no later than February 2, 2018.

These addresses are as follows:

Clerk, United States District Court Re: Civil Action No.: 3:15-cv-6098 Clarkson S. Fisher Building & US Courthouse 402 East State Street Trenton, NJ 08608	The Wolf Law Firm, LLC Kendall v. CubeSmart Settlement 1520 U.S. Highway 130, Suite 101 North Brunswick, NJ 08902 Attorneys for Plaintiffs	Lowenstein Sandler, LLP Kendall v. CubeSmart Settlement One Lowenstein Drive Roseland, NJ 07068 Attorneys for Defendants
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The written notice must include notice that you or your attorney will appear. Any and all documents submitted must contain a reference to Re: *Kendall v. CubeSmart, et al.*, Civil Action No.: 3:15-cv-6098.

Any Settlement Class member who does not object in the manner provided above may be deemed to have waived his or her objection and may not be able to object to the fairness, reasonableness, or adequacy of the proposed Settlement or any payment of Settlement Class attorneys' fees and expenses and payment of the Class Representative's incentive award.

11. What is the difference between objecting to the Settlement and not joining the Settlement Class?

You can object, but only if you are a member of the Settlement Class. If you remove yourself from the Settlement, you may not object. You may not object and then remove yourself. You may not remove yourself and then object.

12. What will happen at the Fairness Hearing?

At the Fairness Hearing, presently scheduled for April 18, 2018 at 10:00a.m., the Judge will decide whether the settlement is fair, reasonable, and adequate and whether it should be given final approval. The Judge will also consider any objections and determine the amount that Class Counsel will receive in attorneys' fees and expenses and whether payment of the award to the Class Representative should be approved. Unless you wish to object to the Settlement, **you are not required to attend the Fairness Hearing.** You are welcome to attend at your own expense. The Court may adjourn the Fairness Hearing without further written notice to the Settlement Class.

13. How will I know if the Settlement is approved?

If the Settlement is approved, within two months of the Fairness Hearing you will receive a letter that includes your \$35.00 Settlement check and your \$65.00 Settlement Certificate. You may also contact Class Counsel for information.

ADDITIONAL INFORMATION

14. How may I obtain more information about the case?

Do not contact the judge or the Clerk of Court for legal questions or advice. You may obtain copies of the complaint and other documents filed in this case from the Clerk, United States District Court, Re: Civil Action No.: 3:15-cv-6098, Clarkson S. Fisher Building & U.S. Courthouse

402 East State Street, Trenton, NJ 08608 during the hours when the Clerk's office is open. You will need to provide the Civil Action Number. You may also contact Class Counsel at the addresses listed above

15. What if my address changes?

If your address has changed, or changes in the future, you should send your new address and telephone number to Atticus Administration, the company appointed by the Court to serve as Settlement Administrator:

Kendall v CubeSmart Settlement
c/o Atticus Administration
PO Box 1440
Minneapolis, MN 55440
888-233-2228
CubeSmartSettlement@atticusadmin.com

This NOTICE was approved by The United States District Court for the District of New Jersey.