



Trying a Class Action

Simona Agnolucci, Partner, Keker, Van Nest & Peters
Nathan Vitan, Chief Legal Officer, Public Storage

June 6, 2019

Simona Agnolucci

PRACTICE AREAS

Consumer & Class Actions, Contract
& Commercial, White Collar Criminal

Partner, Keker, Van Nest & Peters
sagnolucci@keker.com
(415) 676-2259



Simona Agnolucci specializes in high-stakes complex litigation, including class actions, white collar criminal defense and commercial disputes. Her clients include “sharing economy” technology companies, medical device manufacturers, brokerage companies, investment advisors, smartphone manufacturers, and leading law firms. Simona has tried cases in state, federal and administrative court, including several as first chair.

Nathan Vitan

Chief Legal Officer, Public Storage
nvitan@publicstorage.com
(415) 676-225



PRIOR EXPERIENCE

Altria Client Services
Latham & Watkins

Nathan Vitan is the Chief Legal Officer of Public Storage, the world's largest owner, operator and developer of self-storage facilities. The company's nearly 2,500 facilities across the United States serve more than one million customers. Previously, Nathan spent eight years as assistant general counsel at Altria, where he was responsible for products liability, regulatory, and other high-profile and high-stakes litigation matters—including jury trials and appeals—for Philip Morris USA Inc. and other Altria Group Inc. companies throughout the United States.

Case Background

Case Background

700,000 Member Class sought \$151 Million in damages

Rare Class Action Trial

- According to Lex Machina data, only five class actions have been tried in the past two years in California.

Complete Defense Win

Cases and Claims

Downey v. Public Storage Claims:

- **\$1 Special**: Misrepresented terms of promotion
- **Late Fees**: Premature late fees violated Cal. Bus. & Prof. Code § 21713.5(a)(1)
- **Lien Fees**: Multiple late fees violated Cal. Bus. & Prof. Code § 21713.5(a)(3)
- **Insurance**: Misrepresented terms of insurance program
 - Concealed involvement in and profit from tenant insurance program
 - Copycat claim from *Bowe v. Public Storage* (S.D. Fla.)
 - Misrepresentation that insurance program was mandatory

Perez v. Public Storage Claims:

- Same insurance claims as *Downey*

Discovery Coordination

Stipulated Coordination Order Streamlined Discovery

- Key efficiencies gained:
 - Limited Depositions
 - Answers deemed to have been made in both actions
 - Witnesses only deposed once
 - Common written discovery
 - Insurance-related discovery requests served on all parties
 - Plaintiffs permitted to share insurance-related document productions
 - Insurance-related documents marked with a separate Bates Number.
 - Written discovery responses deemed to have been made in both actions

Post-Bowe disclosures

LEASE/RENTAL AGREEMENT

THIS LEASE/RENTAL AGREEMENT is executed this _____, by and between Public Storage (as owner or agent for owner "Owner") of the self storage facility, at _____ (the "Property") and _____ (as "Occupant"), whose address and alternate contact address are as follows:

Alternate Contact Name

Occupant Address

Alternate Address

Occupant City/State/Zip Code

Occupant Telephone

ID/Driver's License

Occupant Email Address for Electronic Communication Occupant's Author

Enclosed/Parking Space No. _____ (approximately _____) Account

FEES AND CHARGES:

Monthly Rent (Due on or before 1st of Month)

New Account Administration Fee (Non-Refundable)

\$55

Dishonored Check Charge

\$75

\$13

Occupant acknowledges that the above information is correct, that unless C
payments are due before the close of business on the first day of the month, a
and then fees and other charges that have become due. Occupant also understand
reserves the right to require that rent, fees and charges be paid in cash, certified

It is agreed by and between Owner and Occupant:

1. PURPOSE AND DESCRIPTION OF PREMISES. The parties have entered into this Lease/Rental Agreement for the purpose of renting the above noted storage space (the "Premises") and agree that no bailment or deposit of goods for safekeeping is intended or created hereunder. Occupant shall examine the Premises and the Property and acknowledges that space size is estimated per Building Office Management Association standards and does not refer to usable space, that the size of the Premises and any referenced sizes are approximate, given for illustration only and may vary materially, that Occupant has had the opportunity to measure the Premises prior to moving in, and that the Premises and the common areas of the Property are satisfactory for all purposes for which Occupant shall use the Premises and the Property including the size and capacity of the Premises. This Property being leased or rented has not undergone inspection by a Certified Access Specialist (CASp). Occupant shall have access to the Premises and the common areas of the Property only during the Property's posted hours and days of operation. This access is conditioned on the Owner's ability to maintain the business, rentability, safety, or security of the Premises and the Property, and if such ability is compromised, the Owner may take reasonable preventative or corrective measures such as, but not limited to, restricting access hours and requiring verification of Occupant's identity. Loitering on the Property or the Premises is prohibited. The person(s) listed above as "Authorized Access Persons" is/are solely agents of the Occupant and is/are not parties to this Lease/Rental Agreement, has/have no rights of tenancy or standing to bring any claim arising under this Lease/Rental Agreement or from the use of the Premises.

Occupant understands that if Occupant elects to obtain the insurance offered at this facility a wholly owned subsidiary of Public Storage reinsures the risk for the Perfect Solution Storage Insurance Program, and Public Storage may benefit financially from your purchase of insurance.

Success on Pre-Certification Motions

Downey v. Public Storage

- Demurrer to claim that Public Storage prematurely charged late fees
 - Sustained without leave to amend
 - Plaintiff could not establish cognizable economic injury
- Motion for summary adjudication of claim Public Storage improperly charged lien fees
 - Granted in favor of Public Storage

Class Certification

Downey v. Public Storage

“Plaintiffs therefore have failed to show that common issues of fact and law predominate. There must be some connection between the allegedly false advertising and the transaction for which restitution is sought.”

Downey Class Certification Order

- Plaintiffs sought certification of claim alleging that Public Storage falsely advertised that customers could rent a unit for \$1 for the first month
 - Plaintiffs argued that tenants could not rent a storage unit for \$1 because they had to pay additional administrative fees and purchase insurance/locks
- Court denied Plaintiffs’ motion to certify the class
 - No evidence that all class members were exposed to the alleged misrepresentations
 - Even if there was uniform exposure, the advertisements at issue were not uniform

Perez v. Public Storage

“Plaintiffs seek to certify a class to pursue UCL claims premised on two factual theories [C]ommon issues predominate, and class certification is granted, as to the first theory, but not as to the second.”

Perez Class Certification Order

- Plaintiffs sought certification of two claims:
 1. **Insurance Requirement:** Public Storage misled customers into believing they had to purchase the storage insurance offered at Public Storage facilities.
 2. **Reinsurance:** Public Storage failed to disclose that it reinsured the insurance program sold at its facilities.
- Insurance Requirement claim certified
 - Court cautioned that Plaintiffs would have to prove their case based on the uniform sales presentation
- Reinsurance claim not certified
 - No evidence that the materiality of Public Storage’s allegedly fraudulent omission was subject to common proof

Perez v. Public Storage

“It is important to emphasize that Plaintiffs will have to prove their case based on the training materials and uniform sales representation. If Plaintiffs stray into reliance on individual class members’ assertions that sales employees deviated from the presentation, common issues will not predominate and the case will not be able to proceed as a class action.”

Perez Class Certification Order

Anticipated discovery needs on certified claim and gained key admissions from class reps for trial.

Q. You testified that you purchased the insurance because a Public Storage employee told you were required to purchase the insurance, right?

A. Correct.

Q. Was that the only reason you purchased the insurance?

A. That’s the only reason I purchased Public Storage’s insurance, yes.

Sargon Motion

Excluded All Of Plaintiffs' Damages Experts and Theories

Dept. 12 SSC
BC611584 (related case: BC575661)
Carolina Perez, et al. v. Public Storage
December 14, 2018

Defendant's Motion In Limine

Tentative Ruling: The motion is denied.

Los Angeles County Court Rules, rule 1.1.

A motion *in limine* may not be used to seek summary judgment or the suppression of evidence.

Those motions may only be made at the trial.

Procedure section 437c and a motion for summary judgment.

A motion in limine "may be made to the court at any time before the trial begins."

be objected to at the trial, either as to the admission or exclusion of evidence.

exclusion as unduly prejudicial." (1999).

"What in limine motions are *not* designed to be decided by the court before the trial begins."

motions prescribed by the Code of Civil Procedure.

Dynamics, Inc. (Amtower) (2008) 154 Cal. App. 4th 1111, 1115 (original).

.) The use of motions in limine as motions for summary judgment or summary adjudication may "circumvent procedural protections provided by the statutory motions or by trial on the merits [and may] risk blindsiding the nonmoving party Adherence to the statutory processes would avoid all these risks." (*Id.* at p. 1594.)

Plaintiffs' actual experts carry out analysis that second guesses the rates themselves. . . . This retrospective analysis goes beyond merely comparing the insurance policy rates with other similar policies. Thus admitting Alexander's and Roth's testimony would . . . directly contravene the filed rate doctrine.

Trial

Trial Issues

Original Claim

- Public Storage made uniform misleading statements to customers, leading them to believe that they were required to purchase insurance offered to them during the rental transaction.

New Claim

- Public Storage made uniform misrepresentations to customers that they were required to insure their stored property when there was no such requirement.

“At trial, Plaintiffs offered a different theory of UCL liability than had been argued in the Motion for Class Certification.”

Tentative Statement of Decision

Evidence of Key Disclosures

INSURANCE ADDENDUM TO LEASE/RENTAL AGREEMENT
THIS ADDENDUM TO BE ATTACHED TO AND MADE PART OF THE LEASE/RENTAL AGREEMENT

# <u> </u> Lease/Rental Agreement	# <u> </u> Storage Unit	# <u> </u> Facility
--	--	--

As more fully set forth in the Lease/Rental Agreement, all personal property is stored by Occupant at occupant's sole risk. Occupant is solely responsible for insuring his own goods and understands that Owner will not insure Occupant's personal property and that Occupant is obligated under the terms of this lease/rental agreement to insure his own goods.

INSURANCE CERTIFICATION
I acknowledge that I understand and agree to the provisions of the above stored property. I acknowledge that the Lease/Rental Agreement requires property that I intend to store at this facility. Purchase of the self-storage requirement. I understand that if I do not have insurance, or if my insurance goods. I personally assume all risk of loss and Owner is not responsible.

This facility and its employees are not qualified or authorized to evaluate offered by this self-storage agent may provide a duplication of coverage source of coverage. Questions regarding the Storage Insurance Program Smith, Inc. (Marsh). I understand this insurance is not required in order to

I ACKNOWLEDGE I HAVE REVIEWED THE ABOVE INSURANCE CERTIFICATION

Date Signed _____ Tenant Signature _____

I understand this insurance is not required in order to store my goods at this facility.

I ACKNOWLEDGE I HAVE REVIEWED THE ABOVE INSURANCE CERTIFICATION AND DISCLOSURES

New Hampshire Insurance Company
APPLICATION FOR INSURANCE

I elect to obtain the insurance coverage available through Marsh, in the amount indicated below.

\$5,000 Coverage \$15.00 per Month Initial <u> </u>	\$4,000 Coverage \$13.00 per Month Initial <u> </u>	\$3,000 Coverage \$11.00 per Month Initial <u> </u>
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Date Signed _____ Tenant Signature _____ Print Name _____

ACKNOWLEDGEMENT: I understand the amount noted is the Premium I must pay monthly for the Amount of Insurance I have selected. I authorize Owner to conduct the administrative function of receiving the premium to send to the insurance company on my behalf. I have elected to satisfy my obligation to have insurance for the stored goods by purchasing the insurance protection available through Marsh. I have read and completed this Insurance Election Addendum to apply for the coverage. I have read the insurance literature provided and understand that the insurance I am applying for underwritten by New Hampshire Insurance Company has EXCLUSIONS and CONDITIONS.

COVERAGE EFFECTIVE: The insurance coverage will be effective immediately upon completion of your application and payment of Premium. You will become insured effective as of that time, for the Amount of Insurance you selected and initialed above.

ELIGIBILITY: I understand that insurance on personal property in the enclosed storage space described in the Rental Agreement is available to all Tenants who have entered into a Rental Agreement with the Owner for such enclosed storage space.

Evidence of Key Disclosures

Storage Presentation Script

For Internal Use Only

“All of our customers are required to have insurance on their goods in storage. One option is to purchase insurance through the Perfect Solution Storage Insurance Program.”
(Provide them with a brochure)

Evidence of Key Disclosures

HOW MUCH COVERAGE

PERFECT SOLUTION
STORAGE INSURANCE PROGRAM

CALL US TOLL-FREE (877) 878-6730
WWW.PERFECTSOLUTIONSTORAGEINSURANCE.COM

THE PURCHASE OF THIS INSURANCE IS NOT REQUIRED TO COMPLETE YOUR RENTAL TRANSACTION

Monthly premium includes premium taxes.

TTY: 1-800-735-2239
Fax: 410-468-2334 or 410-468-2307 (Property and Casualty)
www.insurance.state.md.us/Consumers/File-a-complaint.html

In connection with PSCC and New Hampshire Insurance Company, this program is made available by:

Public Storage

CA Self-Service Storage Agent's License Public Storage
dba Public Storage Processing Insurance Services (License #010910)
P.O. Box 25050, Glendale, CA 91221-9550

THIS SELF-STORAGE FACILITY IS NOT RESPONSIBLE FOR YOUR PROPERTY. The purchase of this insurance is not required to complete your rental transaction. This facility and employees are not qualified or authorized to evaluate the adequacy of any insurance you may have. The insurance policy offered by this self-storage agent may provide a duplication of coverage already provided by your homeowners' insurance policy or by another source of coverage. Questions regarding the Perfect Solution Storage Insurance Program should be directed to PSCC, Inc. at the phone number listed on this brochure. This insurance is considered under a Master policy issued.

Certificate of Insurance is available for you to review at this facility. A wholly owned subsidiary of Public Storage reinsures the risk for the Perfect Solution Storage Insurance Program, and Public Storage may benefit financially from your insurance purchase.

PSCC, Inc. is a wholly owned subsidiary of Public Storage. PSCC, Inc. is the Authorized Producer for the Perfect Solution Storage Insurance Program and administers the program for New Hampshire Insurance Company (PSCC, Inc. is paid a fee for administering the program. Certain products and services may be provided by independent third parties. Insurance products may be distributed through affiliated or unaffiliated entities. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting their website at www.aigproducercompensation.com or by calling AIG at 1-800-706-3100.

PSCC, Inc. dba in CA as PSCC Insurance Services
Processing, CA Ins. Lic. #0E14626
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IT'S A GOOD POLICY TO GET INSURANCE.

DON'T JUST STORE IT. PROTECT IT.

IS YOUR PROPERTY COVERED?

Your belongings are important to you. Why else would you be keeping them in storage? Protect your property from loss or damage with the right coverage. After all, you are responsible for the things you're storing at this facility and insurance for your stored belongings is required.

CHECK YOUR CURRENT POLICY

Your renters' or homeowners' policy may provide the insurance you need. Check with your agent to determine if your personal property stored at a location other than your home or business

NEED TO BUY INSURANCE?

Afterable coverage is available through the Perfect Solution

CHECK YOUR CURRENT POLICY

Your renters' or homeowners' policy may provide the insurance you need. Check with your agent to determine if your personal property stored at a location other than your home or business is covered.

Evidence of Key Disclosures

LEASE/RENTAL AGREEMENT

THIS LEASE/RENTAL AGREEMENT is executed this _____, by and between Public Storage (as owner or agent for owner "Owner") of the self storage facility, at _____ and _____ (as "Occupant"), whose address and alternate contact address are as follows:

Occupant Address _____

Occupant City/State/Zip Code _____

Occupant Telephone _____

ID/Driver's License _____

Occupant Email Address for Electronic Communication Occupant's Author _____

Premises: Enclosed/Parking Space No. _____ (approximately _____)

FEES AND CHARGES:

_____ Monthly Rent (Due on or before 1st of Month)

_____ New Account Administration Fee (Non-Refundable)

_____ Dishonored Check Charge

Late Charge after _____ in or on the account	
\$55.50	Lien Fee 1 after (31) Days (Whether or not Sale Occurs)
\$7.50	Lien Fee 2 after (40) Days (Whether or not Sale Occurs)
\$130.00	Lien Sale Fee

By **INITIALING HERE** _____, Occupant acknowledges that the above information is correct, that unless Occupant is identified above as a business, Occupant is an individual, that all payments are due before the close of business on the day indicated, and that all payments are to be applied to the oldest delinquency first, including late charges and other fees which have become due. Occupant also understands and agrees to pay the charges, fees and Rent as noted above and that Owner reserves the right to require that Rent, fees and charges be paid in cash, certified check or money order.

It is agreed by and between Owner and Occupant:

1. PURPOSE AND DESCRIPTION OF PREMISES. The parties have entered into this Lease/Rental Agreement for the purpose of renting the above noted storage space (the "Premises") and agree that **no bailment or deposit of goods for safekeeping is intended or created hereunder. Occupant shall examine the Premises and the Property and, by INITIALING HERE** _____, acknowledges that space size is estimated per Building Office Management Association standards and does not refer to usable space, that the size of the Premises and any referenced sizes are approximate, given for illustration only and may vary materially, that Occupant has had the opportunity to measure the Premises prior to moving in, and that the Premises and the common areas of the Property are satisfactory for all purposes for which Occupant shall use the Premises and the Property including the size and capacity of the Premises. This Property being leased or rented has not undergone inspection by a Certified Access Specialist (CASp). Occupant shall have access to the Premises and the common areas of the Property only during the Property's posted hours and days of operation. This access is conditioned on the Owner's ability to maintain the business, rentability, safety, or security of the Premises and the Property, and if such ability is compromised, the Owner may take reasonable preventative or corrective measures such as, but not limited to, restricting access hours and requiring verification of Occupant's identity. The person(s) listed above as "Authorized Access Persons" is/are solely agents of the Occupant and is/are not parties to this Lease/Rental Agreement, has/have no rights of tenancy or standing to bring any claim, or to file suit from occurrences arising from the use of the storage space.

Occupant understands that if Occupant elects to obtain the insurance available at the Property, the additional amount for such insurance coverage must be included with the monthly payments as noted above

Evidence of Key Disclosures

LEASE/RENTAL AGREEMENT

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Occupant Address _____

Occupant City/State/Zip Code _____

Occupant Telephone _____

ID/Driver's License _____

Occupant Email Address for Electronic Communication Occupant's _____ Author _____

Premises: Enclosed/Parking Space No. _____ (approximately _____)

FEES AND CHARGES:

_____ Monthly Rent (Due on or before 1st of Month)

_____ New Account Administration Fee (Non-Refundable) \$55

_____ Dishonored Check Charge \$7.50

\$130.00 Lien Sale Fee

OCCUPANT UNDERSTANDS THAT OWNER WILL NOT INSURE OCCUPANT'S PERSONAL PROPERTY AND THAT OCCUPANT IS OBLIGATED UNDER THE TERMS OF THIS LEASE/RENTAL AGREEMENT TO INSURE HIS OWN GOODS.

By **INITIALING HERE** _____, Occupant acknowledges that the above information is correct, that unless Occupant is identified above as a business, Occupant is an individual, that all payments are due before the close of business on the day indicated, and that all payments are to be applied to the oldest delinquency first, including late charges and other fees which have become due. Occupant also understands and agrees to pay the charges, fees and Rent as noted above and that Owner reserves the right to require that Rent, fees and charges be paid in cash, certified check or money order.

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Evidence of Key Disclosures

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Premises: Enclosed/Parking Space No. _____ (approximately _____)

FEES AND CHARGES:

_____ Monthly Rent (Due on or before 1st of Month)

_____ New Account Administration Fee (Non-Refundable) \$55

_____ Dishonored Check Charge \$7.50

\$130.00 Lien Sale Fee

To the extent Occupant's insurance lapses or Occupant does not obtain insurance coverage for the full value of Occupant's personal property stored in the Premises, Occupant agrees Occupant will personally assume all risk of loss.

By **INITIALING HERE** _____, Occupant acknowledges that the above information is correct, that unless Occupant is identified above as a business, Occupant is an individual, that all payments are due before the close of business on the day indicated, and that all payments are to be applied to the oldest delinquency first, including late charges and other fees which have become due. Occupant also understands and agrees to pay the charges, fees and Rent as noted above and that Owner reserves the right to require that Rent, fees and charges be paid in cash, certified check or money order.

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FEES AND CHARGES:

_____ Monthly Rent (Due on or before 1st of Month)

_____ New Account Administration Fee (Non-Refundable)

_____ Dishonored Check Charge

_____ Late Charge after _____ in or on the month

\$55.50 Lien Fee 1 after (31) Days (Whether or not Sale Occurs)

\$7.50 Lien Fee 2 after (40) Days (Whether or not Sale Occurs)

\$130.00 Lien Sale Fee

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This Lease/Rental Agreement and any written amendments . . . set forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto.

Evidence of Key Disclosures

INSURANCE ADDENDUM TO LEASE/RENTAL AGREEMENT
THIS ADDENDUM TO BE ATTACHED TO AND MADE PART OF THE LEASE/RENTAL AGREEMENT

# <u>Lease/Rental Agreement</u>	# <u>Storage Unit</u>	# <u>Facility</u>
---------------------------------	-----------------------	-------------------

As more fully set forth in the Lease/Rental Agreement, all personal property is stored by Occupant at occupant's sole risk. Occupant is solely responsible for insuring his own goods and understands that Owner will not insure Occupant's personal property and that Occupant is obligated under the terms of this lease/rental agreement to insure his own goods.

INSURANCE CERTIFICATION

I acknowledge that I understand and agree to the provisions of the above stored property. I acknowledge that the Lease/Rental Agreement requires property that I intend to store at this facility. Purchase of the self-storage requirement. I understand that if I do not have insurance, or if my insurance goods. I personally assume all risk of loss and Owner is not responsible.

This facility and its employees are not qualified or authorized to evaluate offered by this self-storage agent may provide a duplication of coverage source of coverage. Questions regarding the Storage Insurance Program Smith, Inc. (Marsh). I understand this insurance is not required in order to store my goods at this facility.

I ACKNOWLEDGE I HAVE REVIEWED THE ABOVE INSURANCE CERTIFICATION AND DISCLOSURES

Date Signed _____ Tenant Signature _____ Print Name _____

I acknowledge that the Lease/Rental Agreement requires me to maintain insurance that covers loss or damage for the personal property that I intend to store at this facility.

New Hampshire Insurance Company
APPLICATION FOR INSURANCE

I elect to obtain the insurance coverage available through Marsh, in the amount indicated below.

\$5,000 Coverage \$15.00 per Month Initial _____	\$4,000 Coverage \$13.00 per Month Initial _____	\$3,000 Coverage \$11.00 per Month Initial _____
--	--	--

Date Signed _____ Tenant Signature _____ Print Name _____

ACKNOWLEDGEMENT: I understand the amount noted is the Premium I must pay monthly for the Amount of Insurance I have selected. I authorize Owner to conduct the administrative function of receiving the premium to send to the insurance company on my behalf. I have elected to satisfy my obligation to have insurance for the stored goods by purchasing the insurance protection available through Marsh. I have read and completed this Insurance Election Addendum to apply for the coverage. I have read the insurance literature provided and understand that the insurance I am applying for underwritten by New Hampshire Insurance Company has EXCLUSIONS and CONDITIONS.

COVERAGE EFFECTIVE: The insurance coverage will be effective immediately upon completion of your application and payment of Premium. You will become insured effective as of that time, for the Amount of Insurance you selected and initialed above.

ELIGIBILITY: I understand that insurance on personal property in the enclosed storage space described in the Rental Agreement is available to all Tenants who have entered into a Rental Agreement with the Owner for such enclosed storage space.

Evidence of Key Disclosures

INSURANCE ADDENDUM TO LEASE/RENTAL AGREEMENT
THIS ADDENDUM TO BE ATTACHED TO AND MADE PART OF THE LEASE/RENTAL AGREEMENT

Lease/Rental Agreement # _____ Storage Unit # _____ Facility # _____

As more fully set forth in the Lease/Rental Agreement, all personal property is stored by Occupant at occupant's sole risk. Occupant is solely responsible for insuring his own goods and understands that Owner will not insure Occupant's personal property and that Occupant is obligated under the terms of this lease/rental agreement to insure his own goods.

INSURANCE CERTIFICATION AND DISCLOSURES

I acknowledge that I understand and agree to the provisions of the above paragraph and that I understand I am solely responsible to insure my stored property. I acknowledge that the Lease/Rental Agreement requires that I purchase the self-storage insurance. I understand that if I do not have insurance, or if my insurance lapses, I am personally responsible for any loss or damage to my goods. I personally assume all risk of loss and Owner is not responsible.

This facility and its employees are not qualified or authorized to evaluate the insurance coverage. Questions regarding the Storage Insurance Program should be directed to Marsh, Inc. (Marsh). I understand this insurance is not required in order to rent storage space.

I ACKNOWLEDGE I HAVE REVIEWED THE ABOVE INSURANCE CERTIFICATION AND DISCLOSURES.

Date Signed _____ Tenant Signature _____ Print Name _____

I understand that if I do not have insurance, or if my insurance lapses, I am personally responsible for any loss or damage to my goods.

New Hampshire Insurance Company
APPLICATION FOR INSURANCE

I elect to obtain the insurance coverage available through Marsh, in the amount indicated below.

\$5,000 Coverage \$15.00 per Month Initial _____	\$4,000 Coverage \$13.00 per Month Initial _____	\$3,000 Coverage \$11.00 per Month Initial _____
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Date Signed _____ Tenant Signature _____ Print Name _____

ACKNOWLEDGEMENT: I understand the amount noted is the Premium I must pay monthly for the Amount of Insurance I have selected. I authorize Owner to conduct the administrative function of receiving the premium to send to the insurance company on my behalf. I have elected to satisfy my obligation to have insurance for the stored goods by purchasing the insurance protection available through Marsh. I have read and completed this Insurance Election Addendum to apply for the coverage. I have read the insurance literature provided and understand that the insurance I am applying for underwritten by New Hampshire Insurance Company has EXCLUSIONS and CONDITIONS.

COVERAGE EFFECTIVE: The insurance coverage will be effective immediately upon completion of your application and payment of Premium. You will become insured effective as of that time, for the Amount of Insurance you selected and initialed above.

ELIGIBILITY: I understand that insurance on personal property in the enclosed storage space described in the Rental Agreement is available to all Tenants who have entered into a Rental Agreement with the Owner for such enclosed storage space.

Mid-Trial Motions

Motion to Decertify the Class

- Plaintiffs' claims were premised on individualized misrepresentations made by specific employees, not the uniform sales presentation

Motion for Judgment

- Following close of Plaintiffs' evidence, moved for judgment on the grounds that there was insufficient evidence of any misrepresentations or fraudulent omissions
 - Evidence of disclosures affirmatively established no liability

Motion to Strike Damages Theory

- During closing briefing, Plaintiffs attempted to offer their damages model through an attorney declaration in lieu of expert testimony

Tentative Statement of Decision

Original Theory of Classwide Liability

“The court finds in favor of Defendant and against the certified class of Plaintiffs on the Class Claims for violation of the UCL on the issue certified by the court in its Order of May 2, 2018, viz., that Defendant made uniform misleading statements to customers, leading them to believe that they were required to purchase insurance offered to them during the rental transaction.”

“The court finds that there were not uniform misleading statements to the class that would lead a reasonable person to believe that they were required to purchase insurance offered to them during the rental transaction.”

Tentative Statement of Decision

New Theory of Classwide Liability

“Defendants argue that the court should not consider this second theory of UCL liability because it was not certified for decision on a class basis. However, the court finds that the Class Certification Notice was broad enough to encompass this theory of liability.”

“Plaintiffs argue that the fact Public Storage would rent storage space to customers who did not have insurance meant that insurance was not required despite the insurance requirement of the lease. Because the Insurance Code precludes self-service storage employees from analyzing insurance coverage, Public Storage did not ask customers to provide proof of insurance coverage. There would be no purpose in proffering proof of insurance because the Public Storage employee was not able to consider whether customers insurance (e.g., a homeowner’s policy) covered goods the customer would place into storage at a self-storage company.”

“Public Storage could legally require a renter to have insurance but nevertheless use its discretion in how to enforce that requirement. As one witness testified, Public Storage would rent to a person without insurance on the expectation that the person would obtain insurance elsewhere in order to comply with the lease requirement. There is nothing misleading or unlawful in this course of action by Public Storage.”

Diversity

Conclusion

Key Lessons

- Robust disclosures
- Divide and conquer; attack individual causes of action
- Coordinate and streamline discovery
- Think of class certification early, including in depositions
- Diversity