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on behalf of himself and all other similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 DIEGO ORNELAS, an individual, on behalf
of himself and others similarly situated,

14 Plaintiff,

15 vs.

16 NATIONAL STORAGE AFFILIATES
17 TRUST, a Maryland real estate investment
trust; INTANDEM HUMAN RESOURCES,
18 LLC, a Colorado limited liability company;
STORAGE MANAGEMENT AND
19 LEASING CO., LLC, a Florida limited
liability company; ISTOREAGE JV, LLC, a
20 Delaware limited liability company; and
DOES 1 through 50, inclusive,

21 Defendants.
22

Case No.: CGC-18-571421

CLASS ACTION

Assigned for Law and Motion Purposes To:
Hon. Ethan P. Schulman
Dept.: 302, Civic Center Courthouse

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Unopposed Motion;
Memorandum of Points and Authorities;
Declaration of Alvin B. Lindsay; and [Proposed]
Order]*

Date: August 19, 2020
Time: 9:30 a.m.
Department 302

Complaint Filed: November 19, 2018
First Amended Complaint: March 28, 2019
Trial Date: None Set

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

07/28/2020
Clerk of the Court

BY: JUDITH NUNEZ
Deputy Clerk

1 **DECLARATION OF DAVID YEREMIAN**

2 I, David Yeremian, declare:

3 1. I am an attorney licensed and admitted to practice before all courts of the State of
4 California, the United States District Court for the Central, Southern, Eastern, and Northern
5 Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of
6 David Yeremian & Associates, Inc., counsel for Plaintiff DIEGO ORNELAS (“Plaintiff”), on
7 behalf of himself and all other similarly situated employees of Defendants, NATIONAL
8 STORAGE AFFILIATES TRUST (“NSAT”), INTANDEM HUMAN RESOURCES, LLC
9 (“InTandem”), STORAGE MANAGEMENT AND LEASING CO., LLC (“SMLC”), and
10 ISTOREAGE JV, LLC (“iStorage”) (collectively, “Defendants”) (with Plaintiff, “the parties”). I
11 and my firm are referred to herein as Class Counsel. I have personal knowledge of the facts herein
12 and if called as a witness, I could and would competently testify.

13 2. All of the matters set forth herein are within my personal knowledge, except those
14 matters that are stated to be upon information and belief. As to such matters, I believe them to be
15 true. I have represented Plaintiff and the putative Class since the inception of this matter. I submit
16 this Declaration in support of the Motion for Preliminary Approval, filed by Plaintiff, on behalf of
17 himself and other similarly situated employees of Defendants, and without opposition from
18 Defendants, for preliminary approval of the parties’ Joint Stipulation of Class Action Settlement
19 (“Settlement Agreement”), a true and correct copy of which is attached to this Declaration as
20 **Exhibit A**. Also provided for the Court’s approval is the Notice of Class Action Settlement
21 (“Class Notice”) at **Exhibit 1** to the Settlement.

22 **QUALIFICATIONS AND ADEQUACY OF CLASS COUNSEL**

23 3. My firm is well-qualified because of our experience, knowledge, and resources to
24 act as counsel and represent Plaintiff and the putative class in this action. My practice is
25 exclusively focused on employment matters, with a substantial percentage devoted to litigating
26 wage, hour, and working-conditions violations on a class-wide basis.

27 4. I graduated from UC Berkeley in 1997 and received my law degree and MBA from
28 UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California

1 Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009,
2 2010, 2012-2015. I have been named honored as a Super Lawyer since 2016.

3 5. I have been practicing law since 2003. Since 2007, I have focused almost
4 exclusively on representing employees, including in wage-and-hour class actions. During my
5 career I have represented employees in over 100 wage-and-hour class action lawsuits as lead or
6 co-lead counsel (including in the Central, Southern, Eastern and Northern Districts of California),
7 and I have obtained six and seven figure settlements against a range of defendants, including
8 Fortune 500 companies. These cases have involved the gamut of wage-and-hour claims, including
9 claims for failure to pay minimum wages, unpaid wages and overtime, failure to provide meal and
10 rest breaks, failure to reimburse necessary business expenses, inaccurate pay statements, failure to
11 pay timely wages—similar to claims at issue in the present matter.

12 6. I am experienced in prosecuting employment matters, particularly class actions. In
13 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
14 class-action lawsuits pending in various state and federal jurisdictions throughout California.

15 7. My extensive experience in litigating employment wage and hour matters has been
16 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
17 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
18 wage and hour litigation requires skill and knowledge concerning the constantly evolving
19 substantive law (state and federal), as well as the procedural law of class action litigation. In this
20 action, I am fully equipped to use the skills and knowledge I have developed through more than a
21 decade of prosecuting and defending wage and hour class actions to fairly and adequately
22 represent the interests of the Class. Therefore, on the account of my resources, experience, and
23 knowledge, I am well qualified to act as class counsel and represent Plaintiff and the putative class
24 members in this action.

25 8. In the last several years I have had several contested class cases certified. When
26 necessary we pursue cases on appeal. Owing to my experience, I am well-qualified to evaluate the
27 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
28 over 100 class action settlements, including many involving the same issues presented in this case.

1 A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis v.*
2 *Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
3 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead
4 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
5 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;
6 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
7 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx. 860;
8 lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead counsel);
9 *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600; lead
10 counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx. 300;
11 lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
12 counsel); *Utley v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
13 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
14 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
15 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
16 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
17 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
18 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
19 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479; class
20 size approx. 60; lead counsel).

21 9. For purposes of this motion, the “Class Members” or “Settlement Class” is defined
22 as “all individuals who are or previously were employed by Defendants or predecessor entities as
23 non-exempt, hourly employees at Defendants’ storage facilities within the State of California
24 during the time period of **November 19, 2014** and **February 3, 2020** (the “Class Period”).”
25 (Exhibit A, Settlement, ¶¶ A.3, A.5., A.8). I do not believe that I have any conflicts of interest with
26 the Class or with the Class Representative. I am not related to the Class Representative. I have not
27 previously represented Defendants in any matter. I respectfully submit that I and David Yeremian
28 & Associates, Inc., along with our co-counsel Emil Davtyan are well suited to act as Class

1 Counsel in this action, and we have and will continue to vigorously represent the interests of the
2 Class.

3 **PROCEDURAL HISTORY AND BACKGROUND**

4 10. Defendants operate a network of storage facilities. Plaintiff has alleged he was
5 jointly employed from approximately **November 29, 2016** until **June 22, 2018** by Defendants as a
6 non-exempt hourly employee at Defendants' facilities operating under the iStorage brand in
7 Moreno Valley, California. There are at least approximately nine iStorage facilities throughout
8 California. Plaintiff also alleges Defendant NSAT has been a joint employer with, and delegated
9 all human resource management functions and some operational functions to, human resources
10 companies, including named Defendants SMLC and InTandem, whose names appeared on the
11 wage statements and checks issued to Plaintiff and the similarly situated Class and Collective
12 members.

13 11. By the PAGA Notice Letter Plaintiff submitted to the LWDA and Defendants on
14 **November 16, 2018**, Plaintiff satisfied all prerequisites to serve as a representative of the general
15 public to enforce California's labor laws, including without limitation, the penalty provisions
16 identified under the Private Attorneys General Act, Labor Code § 2698 *et seq.* ("PAGA"). Plaintiff
17 then filed his Class Action Complaint on **November 19, 2018** in San Francisco County Superior
18 Court alleging ten causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2)
19 Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Failure to Pay Wages Under the
20 FLSA, 29 U.S.C. §§ 206, 207; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest
21 Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of
22 Labor Code § 221; (8) Violation of Labor Code § 203; and (9) Failure to Reimburse Necessary
23 Business Expenditures under Labor Code § 2802; and (10) Violation of Business and Professions
24 Code § 17200 *et seq.*

25 12. On **December 26, 2018**, Defendant InTandem Human Resources, LLC removed
26 this Action to the Northern District of California Court (ND Cal Case No.: 3:18-cv-07717-MMC)
27 pursuant to 28 U.S.C. §§ 1331 and 1441(a), alleging federal question jurisdiction due to the FLSA
28 claim. After exhaustion of the notice period under the PAGA, on **March 28, 2019**, Plaintiff filed a

1 first amended complaint adding an eleventh cause of action under Labor Code §§ 2698 *et seq.*, the
2 Private Attorneys General Act (“PAGA”) for penalties, after the Court approved the parties’
3 stipulation to that end. Defendants National Storage Affiliates and iStorage filed their answer on
4 **May 9, 2019**. InTandem filed its answer on **May 9, 2019**.

5 13. In connection with the initial Case Management Conference, the parties informed
6 the Court they had agreed to conduct a mediation with Jeff Ross, Esq, a well-respected wage and
7 hour class action mediator, on **December 3, 2019**. They then stipulated to their proposed case
8 management dates taking this action through conditional certification of Plaintiff’s FLSA claims
9 by **May 3, 2020**, and to reflect their agreed upon mediation date.

10 14. Given the discovery completed as to the FLSA claims and the estimated potential
11 liability exposure for alleged underpaid overtime, and the parties’ negotiations and conferences at
12 the mediation, Plaintiff agreed to voluntary dismissal of the FLSA claims so the parties could
13 focus their efforts on litigating and resolving the California class claims. The parties entered into a
14 stipulated dismissal of Plaintiff’s Third Cause of Action under the FLSA on **January 29, 2020**.

15 15. Following dismissal of the FLSA claims, on **January 30, 2020**, the Court also
16 ordered the case remanded back to San Francisco County Superior Court. The case file was
17 transferred from Northern District of California to San Francisco County on **February 3, 2020**.
18 On **March 3, 2020**, the Court issued its Order Setting Case Management Conference assigning the
19 Action to Dept. 610 for case management purposes and setting a CMC for **April 15, 2020** in
20 Department 610 at 10:30 a.m. The CMC has been continued a number of times, and a further
21 conference is presently scheduled for **September 30, 2020**.

22 16. On **December 3, 2019**, the Parties participated in a private mediation with mediator
23 Jeff Ross, Esq., In advance of mediation, the parties agreed to and conducted comprehensive
24 informal discovery. This included an exchange of documents and records samplings, and detailed
25 Class data for the California class, including class numbers, work weeks and pay periods worked,
26 and average pay rates. The discovery also addressed the FLSA claims. Given the successful
27 mediation, the parties stipulated to dismissal of the FLSA claims and remand.

28

1 17. The parties were able to arrive at the general terms for settling Plaintiff's remaining
2 claims and executed a memorandum of understanding to that end. They began working on
3 finalizing their long form Settlement Agreement, and recently finalized and executed it. (Exhibit
4 A, Settlement, ¶¶ B.1-B.3). Prior to mediation, the Parties engaged in extensive informal
5 exchanges of documents and information, including data regarding the putative Class and
6 aggrieved employees. The Court then agreed to continue the CMC to **September 30, 2020** to
7 provide the parties time to complete their Settlement Agreement and hear the present motion for
8 its approval.

9 18. Class Counsel will be submitting the Settlement Agreement to the LWDA
10 concurrently with the filing of this motion pursuant to Labor Code § 2699(1)(2).

11 19. Plaintiff's operative First Amended Complaint alleges that he and the Class
12 members were either not paid by Defendants for all hours worked or otherwise were not paid at
13 the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants
14 failed to pay Plaintiff and the Class members all wages owed to them for all hours worked,
15 including by unlawful under-recording of hours worked resulting in off the clock work and by
16 failing to incorporate non-discretionary, performance based bonuses into the overtime rate
17 calculation, made unlawful deductions from their pay, failed to reimburse necessary business
18 expenses, failed to compensate for time spent off the clock, failed to provide meal and rest breaks,
19 and failed to furnish accurate wage statements, all in violation of various provisions of the
20 California Labor Code and applicable Wage Order paragraphs, and the FLSA.

21 20. Plaintiff has also alleged that Defendants required Plaintiff and the Class members
22 to have their facility offices open and ready to respond to customers generally at 9:00 a.m., but did
23 not permit them to clock in until two minutes before the opening and the scheduled start of their
24 shifts. Plaintiff alleges that in order to count money and prepare the office for opening, Plaintiff
25 and the Class members would have to arrive at work at least approximately ten minutes before the
26 opening, while they were not permitted to clock in until no earlier than two minutes before that
27 opening or the start of their shifts. Plaintiff further alleges that Plaintiff and the Class members
28 were required to input timekeeping hours worked into Defendants' computer system using their

1 employee numbers, and had to boot up the computer to clock in, thus resulting in further
2 uncompensated work time. Plaintiff alleges that Plaintiff and the Class members were generally
3 asked to work shifts over eight hours in a day and to work over forty hours in a work week, but
4 they were not paid at the appropriate overtime rate for all such hours, including by being required
5 to perform work duties and tasks without pay and while off-the-clock, and Defendants
6 miscalculated and underpaid overtime by failing to account for bonuses in the regular rate used to
7 calculate overtime payments. Plaintiff alleges that this uniform and unlawful policy applies to both
8 the California and FLSA claims.

9 21. Class members generally worked at five days a week and on shifts lasting
10 approximately nine hours. However, Plaintiff also asserts Defendants automatically deducted from
11 the hours worked by Plaintiff and the Class Members an unpaid meal break for one hour on these
12 shifts, despite requiring them to remain on duty and responsive to customer demands and
13 inquiries. Plaintiff has therefore alleged that he and the Class members were not provided with all
14 required meal periods and rest break, and those they did receive were interrupted by customer
15 demands or were otherwise not off-duty and timely. Plaintiff also argued that the NSAT Field
16 Employee Handbook provided a facially unlawful policy that required employees to not postpone
17 or delay customer service for the purposes of breaks. The other claims for damages and penalties
18 generally derive from the above claims for failure to pay wages and provide meal and rest breaks,
19 including for unlawful deductions, failure to pay all wages at termination, and failure to provide
20 accurate itemized wage statements.

21 22. The primary issues in dispute and questions of law and fact therefore included: (1)
22 Whether all named Defendants were joint employers of Plaintiff and the Class members; (2)
23 Whether Defendants followed the above summarized policies and practices and whether they
24 uniformly applied to all Class and Collective members; (3) Whether Defendants failed to pay all
25 wages owed and required off the clock work; (4) Whether Defendants failed to correctly calculate
26 and pay overtime to the Class and Collective members by failing to include bonuses in the regular
27 rate; (5) Whether Defendants failed to provide meal periods to the Class members; (6) Whether
28 Defendants failed to authorize and permit the Class members to take rest breaks; (7) Whether

1 Defendants failed to reimburse all necessary business expenses to the Class members; (8) Whether
2 Defendants failed to pay all wages at termination or separation from employment; (9) Whether
3 Defendants listed the correct employer on wage statements issued to Class Members and
4 otherwise issued inaccurate wage statements; (10) Whether Defendants failed to maintain accurate
5 and required records of Class members' hours worked and wages paid; (11) Whether Plaintiff and
6 the Class are entitled to penalties and damages and on what grounds; and (12) Whether the class
7 claims and the FLSA collective claims should be certified. As explained above, the FLSA claims
8 have been dismissed by stipulation. No notice was requested or authorized to go to potential opt-in
9 members of the FLSA collective action.

10 23. Finally, Plaintiff asserted claims deriving from the above alleged violations,
11 including for failure to provide accurate itemized wage statements and failure to timely pay all
12 wages and pay all wages at termination or separation, and for unfair competition and the above-
13 addressed PAGA claims. Defendants contend, among other things, that they have complied at all
14 times with all applicable laws and assert that Plaintiff and the Class Members were properly
15 compensated for all time worked, and otherwise treated at all times in compliance with all
16 applicable laws. (Exhibit A, Settlement, ¶ B.3).

17 **INVESTIGATION AND DISCOVERY**

18 24. Before filing the lawsuit, Class Counsel investigated and researched the facts and
19 circumstances underlying the pertinent issues and the law applicable thereto. This required
20 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
21 research into the various legal issues involved in the case, after conducting their initial
22 investigation. Class Counsel determined that Plaintiff's claims were well-suited for class action
23 adjudication based on what appeared to be a common course of conduct affecting a similarly
24 situated group of employees. (Exhibit A, Settlement, ¶¶ B.1 and B.2).

25 25. After filing the lawsuit and in advance of the mediation, Class Counsel conducted a
26 thorough investigation of the facts and claims giving rise to the action, including: (1) conducting
27 informal discovery and meeting and conferring with defense counsel about same; (2) reviewing
28 and analyzing time and pay records as well as employment handbooks, Plaintiff's personnel file,

1 relevant policies and CBA's and other documentation; (3) interviewing class members; (4)
2 researching the applicable law and potential defenses; (5) constructing damage models based on
3 interpretations of California law; and (6) reviewing information provided by Defendants in
4 advance of the mediation. (Exhibit A, Settlement, ¶ B.1).

5 26. The Class enumerated in this action is ascertainable because the Class Members
6 may be readily identified by reference to Defendants' records. Defendants have agreed to share the
7 information from these records with the Settlement Administrator in order to identify and contact
8 the Class members. Defendants records at the time of the mediation reflected approximately **89**
9 total Class members, and this number will be confirmed following preliminary approval filing
10 when Defendants provide the Class list to the Administrator (i.e. JND Settlement Administrators).
11 For estimating Settlement Administration costs, the parties used 100 Settlement Class members.

12 27. Defendants vigorously contested liability, the amount of claimed damages, and the
13 propriety of class certification. (Exhibit A, Settlement, ¶ B.3). After Class Counsel analyzed the
14 relevant documents and other gathered data, and provided the Class data to its statistical analysis
15 expert for review and analysis, Class Counsel believed that this case was appropriate for resolution
16 *via* mediation. Given the high level of risk present for both sides, the parties elected to mediate
17 Plaintiff's claims and explore the possibility of settlement. (Exhibit A, Settlement, ¶¶ B.1 and
18 B.2).

19 28. Upon agreeing to schedule mediation, and leading up to their agreement, the parties
20 conducted informal discovery and exchanged details regarding the claims and defenses and the
21 items Plaintiff believed were required to file a motion for class certification or a motion for
22 summary judgment for the PAGA claim and to complete a constructive and meaningful mediation.
23 This data, along with Plaintiff's expert's analysis of it and conclusions drawn from it, also
24 permitted Class counsel to objectively assess the strength and weaknesses of the PAGA and class-
25 wide claims and to appropriately and realistically value them.

26 29. Defendants counsel and Plaintiff's counsel worked together to agree on terms for
27 informal discovery in advance of mediation. Plaintiff provided a comprehensive listing of data and
28 items required to which Defendants responded, including by producing all relevant policy related

1 documents. Plaintiff also used informal discovery to establish that NSA operates its iStorage brand
2 nationally. Plaintiff agreed to limit the Class members to individuals who worked for NSA at
3 iStorage locations in California, as Plaintiff did. Plaintiff's counsel then provided the documents
4 and data to his statistical analysis expert, who drew conclusions from it and estimated numbers as
5 summarized below.

6 30. The following summarizes the Class-wide data and numbers provided and the
7 conclusions Class Counsel and Plaintiff's expert drew from them:

8 **Number of Putative Class Members:**

- 9 • Number of putative class members from November 19, 2014 to the present (89)
- 10 • Number of putative class members from September 15, 2016 to the present (65)
- 11 • Number of putative class members from November 19, 2017 to the present (61)
- 12 • Number of putative class members whose employment terminated from November 19,
2015 to the present (53)

13 **Number of Workweeks:**

- 14 • Average number of workweeks worked by each putative class member from November
19, 2014 to the present (62.56)
- 15 • Average number of workweeks worked by each putative class member from September
15, 2016 to the present (51.32)
- 16 • Total number of workweeks from November 19, 2014 to the present (4,706)
- 17 • Total number of workweeks from November 19, 2017 to the present (2,061) (969 pay
periods)
- 18 • Total number of workweeks from September 15, 2016 to the present (3,326)

19 **Number of Pay Periods:**

- 20 • Average number of pay periods for each putative class member from November 19, 2014
to the present (24.81)
- 21 ○ From above, total number of pay periods from November 19, 2017 to the present (969).
- 22 ○ These pay periods were worked by 61 class members.
- 23 • Average number of pay periods for each putative class member from September 15, 2016
to the present (23.97)

24 31. The following summarizes the data and numbers provided regarding hours and pay
25 details and the conclusions Class Counsel and Plaintiff's expert drew from them. Defendants also
26 provided similar numbers for the FLSA claims, which were not further addressed after dismissal,
27 but alleged claims for failure to include all forms of remuneration in the regular rate used to pay
28 overtime that remained as a further bases for Plaintiff's California wage claims.

25 **Hours and Pay Detail:** (Plaintiff notes these likely exclude an automatic deduction for a
presumed meal period)

- 26 • Average number of hours per workweek (37.52) and per day (7.80) for each putative
class member from November 19, 2014 to the present
- 27 • Average number of hours per workweek (37.19) and per day (7.79) for each putative
class member from September 15, 2016 to the present
- 28 • Average hourly rate for each putative class member from November 19, 2014 to the
present (\$13.81)

- Average hourly rate for each putative class member from September 15, 2016 to the present (\$14.10)
- Total number of workweeks where a putative class member worked overtime, received a bonus, and the bonus was not accounted for the in regular rate from November 19, 2014 (908) (416 pay periods) to the present and total amount allegedly owed as a result (\$989)
- Total number of workweeks where a putative class member worked overtime, received a bonus, and the bonus was not accounted for the in regular rate from September 15, 2016 to the present (805) (363 pay periods) and total amount allegedly owed as a result (\$477)

32. On **December 3, 2019**, the parties mediated this case with Jeff Ross, Esq. in Oakland, California. Mr. Ross is a respected and highly experienced mediator in wage and hour class actions. This took place only after the parties exchanged extensive informal information, documents, and data. During the mediation, the parties discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to meal periods and rest breaks, rounding, and off the clock work. Upon completion of the mediation and formulating the general details of their class-wide settlement, the parties agreed to a Memorandum of Understanding setting forth the material terms of their Settlement, which were later memorialized in the Settlement Agreement now before the Court for preliminary approval. The parties have worked diligently to finalize their Settlement Agreement, but restrictions and operational changes created by the COVID-19 pandemic have caused the process to take longer than anticipated.

33. From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each class member’s claim to the settlement award he or she will receive. Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm’s length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the parties made significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

SUMMARY OF SETTLEMENT

1
2 34. The parties have executed their Settlement Agreement attached hereto and
3 incorporated herein as **Exhibit A**. Defendants have agreed to settlement on a non-reversionary
4 basis, such that Defendants will pay the entirety of the agreed upon total settlement amount. The
5 agreed total settlement amount is Four Hundred Thousand Dollars (**\$400,000.00**) (the “Total
6 Settlement Amount” or “Total Settlement Payment”). (Exhibit A, Settlement, ¶¶ A.33, D.2). The
7 Total Settlement Payment includes: (i) Individual Settlement Payments to Class Participants; (ii)
8 expenses for administration of this Settlement by the Settlement Administrator; (iii) Service
9 Payment to the Class Representative; (iv) Class Counsel’s Fees and Costs; and (v) payment to the
10 Labor and Workplace Development Agency in connection with settlement of a claim for civil
11 penalties under the Labor Code’s Private Attorneys General Act (“PAGA”). The employer’s share
12 of payroll taxes will not be paid from the Total Settlement Amount and will remain the sole
13 responsibility of Defendants. (Exhibit A, Settlement, ¶¶ A.33, D.2).

14 35. The Net Settlement Amount for the Settlement Class will constitute the total sum
15 from which Settlement Class Members will be paid. The Net Settlement Amount is the Total
16 Settlement Amount less the following: Court-approved Settlement Administration Costs (up to
17 \$7,500.00 to JND), payment to the LWDA under PAGA (i.e. \$15,000 or 75% of \$20,000), Class
18 Counsel’s Court-approved attorneys’ fees (up to one-third of the Total Settlement Amount,
19 \$133,333.34) and litigation costs and expenses (up to \$15,000.00), and any Court-approved
20 Enhancement Award, or Class Representative Service Payment (up to \$10,000.00) for the Class
21 Representative. (Exhibit A, Settlement, ¶¶ A.20, A.29, A.31, A.33, D.2 - D.5). The PAGA
22 allocation from the Total Settlement Amount will total \$20,000, subject to the Court’s final
23 approval, of which 75% of that amount (\$15,000.00) will be paid to the LWDA out of the Total
24 Settlement Amount, and the remaining 25% (\$5,000.00) will become part of the Net Settlement
25 Amount for distribution to Settlement Class Members. (*Id.* at ¶ D.3). The remaining sum after all
26 these deductions will represent the Net Settlement Amount, which will be used to calculate the
27 settlement share that each Settlement Class Member will receive after the Effective Date, which is
28 referred to as the Class Participant’s Individual Settlement Payment. (*Id.* at ¶¶ A.18, D.6).

1 36. The "Class" is defined as all individuals who are or previously were employed by
2 Defendants or predecessor entities as non-exempt, hourly employees at Defendants' storage
3 facilities within the State of California during the time period of **November 19, 2014** and
4 **February 3, 2020** (the "Class Period"). "Class Members" or "Settlement Class Members" or the
5 "Settlement Class" is defined as any person who is a member of the Class or, if such person is
6 incompetent or deceased, the person's legal guardian, executor, heir or successor in interest. Class
7 Participants are all Class members, except those who opt out of the Settlement by requesting
8 exclusion. (Exhibit A, Settlement, ¶¶ A.3, A.5, A.7, A.8, D.2 - D.5).

9 37. If the Court approves all requested allocations and awards above, the Net
10 Settlement Amount is estimated to be **\$219,166.66**. For the approximately **89** estimated Settlement
11 Class Members, the average gross individual settlement payment, using a straight average, is
12 **\$2,462.54**. Any amounts not approved by the Court as a Class Representative Service Payment, or
13 Attorneys' Fees and Costs, or Settlement Administration costs or for the PAGA claim will be
14 added back to the Net Settlement Amount to be distributed to the Settlement Class Members who
15 are Class Participants. (Settlement, ¶ D.5). The parties have selected JND Class Action
16 Administrators as the Settlement Claims Administrator. (Exhibit A, Settlement, ¶¶ A.30, A.31,
17 A.33; C.3, C.4; Exhibit 1 thereto, Class Notice).

18 38. Calculation of Individual Settlement Payments: Class Participant's "Individual
19 Settlement Payment" will be based on the ratio of each Class Participant's Individual Workweeks
20 to the Total Workweeks. "Individual Workweeks" shall mean all the weeks of employment for a
21 particular Class Member during the Class Period according to Defendants' records, as measured
22 by each Class Member's dates of employment. "Total Workweeks" shall mean the total number of
23 weeks of employment for all Class Members during the Class Period according to Defendants'
24 records, as measured by each Class Member's dates of employment. The Individual Settlement
25 Payment will be calculated by dividing the Class Participant's Individual Workweeks by the Total
26 Workweeks and multiplying by the Net Settlement Amount. A portion of this resulting amount
27 will be subject to tax withholdings. (Exhibit A, Settlement, ¶¶ A.18, A.19, A.34; D.6).

28

1 39. Each Individual Settlement Payment will be allocated 50% for settlement of the
2 unpaid wages claims and 50% for civil and/or statutory penalties and interest. (Exhibit A,
3 Settlement, ¶ D.8). The “Effective Date” of this Agreement shall be the first court day after the
4 last date by which a notice of appeal of the Judgment to the California Court of Appeals may be
5 timely filed, if none is filed, and the Settlement provides further details. (Exhibit A, Settlement, ¶
6 A.15). The distribution of Settlement Payments to Settlement Class Members will occur no later
7 than the first regular business date that is ten court days after the Effective Date (the “Settlement
8 Proceeds Distribution Deadline”). (Exhibit A, Settlement, ¶ E).

9 40. The checks for individual settlement payments mailed to Settlement Class
10 Members will remain negotiable for 180 days. Any settlement checks that are not claimed or not
11 negotiated within one hundred and eighty (180) calendar days after the distribution of Settlement
12 Payments to Settlement Class Members shall be void and the funds not disbursed as a result, and
13 will instead be paid to the State Controller’s Office Unclaimed Property Fund to be held in the
14 name of the Class Member and in accordance with the procedures set forth in CCP §1520.
15 (Exhibit A, Settlement, ¶ E). The Parties agree this disposition results in no “unpaid residue”
16 under California Civil Procedure Code § 384(b), as the entire Net Settlement Amount will be paid
17 to Settlement Class members, whether or not all checks are cashed. (*Id.*).

18 41. Released Claims and Parties: Upon the Court’s issuance of a Final Approval Order
19 approving this Settlement, each Class Participant shall release and discharge the Released Parties
20 from the Released Claims. (Exhibit A, Settlement, ¶ D.9). “Released Parties” shall mean
21 Defendants National Storage Affiliates Trust; Storage Management and Leasing Co., LLC;
22 iStorage JV, LLC; and InTandem Human Resources, LLC and each of their past, present and
23 future officers, directors, shareholders, members, partners, employees, agents, principals, heirs,
24 representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective
25 successors and predecessors in interest, subsidiaries, dba’s, affiliates, parents, brother and sister
26 corporations, franchisees, franchisors, and attorneys and each of their company-sponsored
27 employee benefit plans of any nature, and all of their respective officers, directors, employees,
28 administrators, fiduciaries, trustees, and agents. (Exhibit A, Settlement, ¶¶ A.28; D.9).

1 42. “Released Claims” means any and all claims, causes of action, damages, wages,
2 benefits, expenses, premiums, penalties, debts, liabilities, demands, obligations, attorneys’ fees,
3 costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any
4 relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect,
5 whether under federal law or the law of any state, whether suspected or unsuspected, whether
6 known or unknown, whether contingent or vested, which Plaintiff or any Class Participant has
7 against the Released Parties or any of them for any acts occurring during the Class Period which
8 are based on, arise out of, relate to, or are covered by any of the facts, or any of the factual
9 allegations, in the Action, without regard to the theory on which the claim is or may be brought,
10 including claims that are based upon or arise out of the California Labor Code or any similar
11 provision of federal, state or local law, including but not limited to:

12 a. Any and all claims that are based on, arise out of, relate to, or are covered by any of
13 the facts alleged or litigated in the Action concerning Plaintiff’s and/or Class Participants’
14 compensation or other payments received, and/or the provision of meal periods and rest
15 breaks, while employed by any Released Party as a non-exempt employee during the Class
16 Period, including, but not limited to, claims arising under or relating to (i) the wage-and-
17 hour provisions of the California Labor Code and the Wage Orders adopted by the
18 California IWC, specifically including but not limited to claims under Labor Code sections
19 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194,
20 1194.2, 1197, 1197.1, 1198, 2698, 2802; (ii) the federal Fair Labor Standards Act and its
21 Regulations; (iii) conversion; and/or (iv) the California Business and Professions Code
22 sections 17200, et seq.; and

23 b. Any and all wage and hour violations, whether premised on statute, contract, tort or
24 other theory of liability under state, federal or local law, arising out of or reasonably
25 related to the facts, incidents, transactions, events, occurrences, disclosures, statements,
26 acts, or omissions in law or in equity, asserted or that could have been reasonably asserted
27 from the facts alleged or litigated in the Action by any Class Member against the Released
28 Parties. (Exhibit A, Settlement, ¶¶ A.27(a)-(b); D.9).

1 c. Plaintiff will provide a general release and a Section 1542 waiver specific to all his
2 claims rather than just those articulated in the pleadings. (*Id.* at ¶ D.4, D.4(a)-(c)).

3 43. The settlement amount was a compromise figure, factoring in the inherent risks
4 related to certification, liability and damages. However, taking into account all of the
5 circumstances of the action and the defenses raised by Defendants against certification, liability
6 and damages, Class Counsel believes that the settlement is fair and reasonable. (Exhibit A,
7 Settlement, ¶¶ B.1 – B.2). Notice of the Settlement Agreement will be provided to the Class
8 Members in the form of the **Class Notice** attached to the Settlement Agreement as **Exhibit 1**. (*See*
9 Exhibit A, ¶¶ A.6, A.21; C.4, C.5; and Settlement Class Notice at Exhibit 1 thereto). The Class
10 Notice includes a summary of the case and settlement terms and provides Class Members with
11 instructions on how to exclude themselves, dispute the amount of pay periods, and object to the
12 settlement. The Class Notice mailed to all Settlement Class Members will advise each class
13 member of their right to opt-out of the Settlement Agreement. Any Settlement Class Member who
14 wishes to opt-out from the Settlement Agreement must submit any such opt-out election notice,
15 also referred to as a Request for Exclusion, in writing to the Settlement Administrator postmarked
16 no later than thirty calendar days from the date of mailing of the Class Notice. (Exhibit A,
17 Settlement, ¶ C.5). The Settlement Agreement and Class Notice provide further details on the
18 procedures for opting out of the Settlement.

19 44. The Notice mailed to all Settlement Class Members will advise each Settlement
20 Class Member of their right to object to all or any part of the Settlement Agreement. Any
21 Settlement Class Member who wishes to object must not submit an opt-out to the Settlement
22 Administrator, and should send to the Settlement Administrator, postmarked no later than thirty
23 calendar days from the date of mailing of the Notice, a written Objection statement including the
24 Settlement Class Member's full name and the grounds of objection, signed by the objecting
25 Settlement Class Member, or his or her attorney, along with all supporting papers. Settlement
26 Class Members may also object to the Settlement by appearing at the final approval hearing.
27 (Exhibit A, Settlement, ¶ C.5; *see also* Class Notice at Exhibit 1 thereto). The Settlement
28 Agreement and Class Notice provide further details on the procedures for objecting to the

1 Settlement. Class counsel submits that a Class Member who does not file and serve a written
2 objection in the manner and by the deadline specified above, in addition to formally intervening in
3 the action as required under *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018), should be
4 deemed to have waived any objections and will be foreclosed from making any objections
5 (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting
6 Class Member does not formally intervene in the action and/or the Court rejects the Class
7 Member’s objection, the Class Member should still be bound by the terms of the Agreement.

8 45. Finally, the Notice will include a procedure by which a Class Member may
9 challenge the number of Individual Workweeks identified in his/her Notice by submitting a timely
10 postmarked written challenge to the Settlement Administrator no later than the Response Deadline
11 (i.e. 30 calendar days from mailing of the Class Notice). The Settlement Agreement and Class
12 Notice provide further details for such challenges and how they will be addressed. (Exhibit A,
13 Settlement, ¶ C.5; *see also* Class Notice at Exhibit 1 thereto).

14 **STRENGTH OF PLAINTIFF’S CASE BASED ON THE SETTLEMENT AMOUNT**

15 46. Because the Class consists of numerous employees, it was unlikely that the
16 potential monetary claims of individual Class members would have proved viable without the
17 class-action mechanism. The Settlement should be approved in light of two California appellate
18 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
19 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

20 47. The strength of the plaintiff’s case in light of the settlement amount is deemed by
21 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
22 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to provide
23 proper meal and rest breaks or provide premium pay in lieu thereof, failed to pay all wages and
24 overtime, failed to provide accurate wage statements, failed to pay minimum wages and overtime,
25 and failed to pay all wages upon termination, all in violation of California law. Plaintiff seeks
26 related violations of California’s Business & Professions Code, and penalties pursuant to Labor
27 Code § 2698 *et seq.* The merits of each of these claims will be addressed separately below.

28

1 **Failure to Pay Regular Wages and Overtime**

2 48. Plaintiff alleged that Defendants failed to pay all wages owed to the California
3 Class members by: (1) not paying for off the clock work Defendants required before and after shift
4 times, including arriving at least 10 minutes early to count money and prepare for opening or shift
5 start and computer boot up time and hours after the end of the shift when required to take money
6 to the bank; and (2) Defendants did not incorporate non-discretionary, performance based bonuses
7 paid to the employees in the Class and Collective into the regular rate of pay Defendants used to
8 calculate and pay them overtime. California Labor Code § 1197 prohibits “Pay of Less Than
9 Minimum Wage” and states, “[t]he minimum wage for employees fixed by the commission is the
10 minimum wage to be paid to employees, and the payment of a less wage than the minimum so
11 fixed is unlawful.” Plaintiff further alleged that when Defendants required off the clock work,
12 Plaintiff and the Class members were not being paid for all hours worked, including the time they
13 were under Defendants’ “control,” such as when performing pre-shift start up tasks and drive time
14 for performing company business. Generally, employees must be paid for the time they are
15 working or are “subject to the control of” an employer. *See, Morillion v. Royal Packing Co.* (2000)
16 22 Cal.4th 575, 582 (“*Morillion*”). Defendants argued that these claims were not suitable for class
17 treatment, they did not require off the clock work, and correctly calculated and paid overtime
18 wages under California law.

19 49. Plaintiff estimated the Class members endured approximately 12 minutes of off the
20 clock work per work shift, including in the manner described above. Using 5 shifts per week, this
21 amounts to approximately 60 minutes per week, or one hour. From Defendants’ numbers,
22 Defendants employed 89 Class members during the relevant period of **November 19, 2014**
23 through mediation, and each of them worked an average of 62.56 workweeks. Defendants
24 provided a 4,706 total workweeks number. As addressed above, the shifts were generally
25 scheduled for over eight hours, and therefore, off the clock work must be paid at the overtime rate.
26 The regular rate for employees during this period is \$13.81/hr according to Defendants. Therefore,
27 the overtime rate would be \$20.71/hr. This resulted in the following estimated liability exposure
28 on the wage claims for failure to pay all regular and overtime wages for all hours worked: 4,706

1 work weeks x 1.0 hours/week x \$20.71/hr = **\$97,461.26.**

2 **Meal Periods and Rest Breaks**

3 50. Plaintiff alleged the California Class Members were required to work through their
4 meal periods, nor were they afforded the opportunity to take uninterrupted meal periods in
5 accordance with Cal. Labor Code § 512. Moreover, Plaintiff alleged that what meal periods the
6 California Class Members did receive were often for less than 30 minutes due to productivity
7 demands or were provided after five hours into a work shift, all in violation of Labor Code and
8 applicable Wage Orders. Plaintiff also alleged that Defendants' Employee Handbook provides
9 unlawful on-duty meal and rest break policies and practices, instructing that breaks must remain
10 flexible to adhere to the needs of customers and Company business, and that customer services
11 should not be delayed for breaks.

12 51. For each meal period allegedly missed, of less than 30 minutes, or taken late for
13 which the employee was not provided a reasonable opportunity to take a complete and timely meal
14 period, an employer must pay the employee an additional one hour of compensation. Labor Code
15 §226.7. This additional hour of compensation is referred to as "premium pay." To comply with
16 these laws, every employer must keep, for each employee, accurate time records showing when
17 the employee begins and ends each work period and takes his or her meal periods.

18 52. Plaintiff alleged that Defendants consistently failed to provide timely and
19 uninterrupted and complete meal breaks to class members by exerting control over them by
20 requiring them to respond to work requirements and provide customer services. Moreover,
21 Plaintiff alleges that what meal periods the California Class Members did receive were often
22 untimely, all in violation of Labor Code and applicable Wage Orders.

23 53. Defendants maintained that during the relevant period, Defendants regularly
24 provided Plaintiff and other employees opportunities to take compliant meal breaks and that they
25 maintained lawful meal break policies.

26 54. Using Defendants' numbers, and a 100% violation rate, the following calculation
27 for estimated meal period liability resulted: 4,706 work weeks x 5 shifts/work week x 1
28 violation/work shift x \$13.81/violation = **\$324,949** in potential meal period liability.

1 that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a
2 three-year limitations period under Labor Code § 203(b). Defendants also argued that there is no
3 liability under Labor Code § 203 for violations of meal and rest break requirements alone.

4 63. For the employees who departed from Defendants' employment during the relevant
5 time period, Plaintiff alleged that Defendants have failed to provide all wages due to those
6 employees at the time of their termination or resignation. Therefore, Class Counsel argued
7 waiting-time penalties were triggered and employees are entitled to 30 days of wages at their
8 regular rates of pay. Defendants disclosed 53 total class members whose employment ended from
9 **November 19, 2015** through mediation (the three year SOL for Section 203 claims). Defendants
10 contended the average number of hours per work shift/day worked by the Class members was
11 7.80. The regular hourly rate is \$13.81/hr. The following calculation results. The 203 penalty was
12 calculated by multiplying the number of terminated employees in the 3-year SOL by 30 days and
13 by the average daily hours and by the average rate of pay as follows: 53 employees x 30
14 shifts/employee x 7.80 hours per shift x \$13.81/hr = **\$171,272.00**.

15 **PAGA Penalties**

16 64. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows
17 Plaintiff to obtain civil penalties on behalf of himself and other aggrieved employees for
18 Defendants' violation of any provision of the Labor Code enumerated under Labor Code § 2699.5.
19 Where civil penalties are provided in the statute, those civil penalties are recoverable; where no
20 civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for
21 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
22 for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor
23 Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor
24 and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent
25 allocated to the affected employees. The limitations period as for all penalties is one year prior to
26 the filing of the complaint.

27 65. The provisions of the Labor Code potentially triggering PAGA penalties in this
28 case include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA

1 penalties are not mandatory, and are instead permissive. Labor Code § 2699(e)(2) states that “a
2 court may award a lesser amount than the maximum civil penalty amount specified by this part if,
3 based on the facts and circumstances of the particular case, to do otherwise would result in an
4 award that is unjust, arbitrary and oppressive, or confiscatory.” See *Thurman v. Bayshore* (2012)
5 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision).
6 Defendants contested Plaintiff’s claim for PAGA penalties.

7 66. PAGA penalties are also derivative of each and every other claim, and Defendants
8 argued the PAGA claims would be subject to the same defenses as the underlying claims, and as
9 well as additional equitable defenses, including substantial compliance. Finally, under *Amaral v.*
10 *Cintas Corp.* (2008) 163 Cal.App.4th 1157, Defendants asserted that penalties under PAGA could,
11 at best, be awarded only at the rates obtainable for initial violations under the applicable statutes,
12 because Defendants had never been notified of the alleged violations. *Id.* at 1208-1209.

13 67. Class Counsel estimated any PAGA recovery would be substantially reduced, and
14 applied discounts in light of the countervailing arguments with regard to the other causes of
15 action, and the Court’s power to award “a lesser amount than the maximum civil liability.” The
16 PAGA allocation agreed upon by the parties therefore shall be \$20,000, subject to the Court’s final
17 approval, of which 75% of that amount (\$15,000.00) will be paid to the LWDA out of the Total
18 Settlement Amount, and the remaining 25% (\$5,000.00) will become part of the Net Settlement
19 Amount for distribution to participating Settlement Class Members. (Exhibit A, Settlement, ¶
20 D.3).

21 **Unfair Business Practices**

22 68. Plaintiff pled this cause of action in order to augment her other causes of action and
23 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on
24 Plaintiff’s wage claims, which qualify as unfair business practices, to four years rather than the
25 three years provided by statute.

26 **Summary**

27 69. The foregoing discussion establishes why the settlement amount is adequate in light
28 of the merits of Plaintiff’s case. It does so by explaining the legal basis for each of Plaintiff’s

1 causes of action, summarizing the evidence that Class Counsel gathered in support of those causes
2 of action, and relating to Defendants' legal and factual arguments that worked to detract from the
3 strength of Plaintiff's case.

4 70. Class Counsel had to apply appropriate discounts in light of the facts and law as
5 discussed above. In addition, meal period liability exposure is limited by the fact that not all class
6 members worked on the same schedule and under the same supervisors making the certification of
7 all class members across all locations less than a certainty. Additionally, the rest break exposure is
8 limited by the fact there are no records of rest breaks taken by class members so all evidence
9 would have to be testimonial. This settlement, like most others, was the product of compromise.

10 71. In light of the above described risks, and those inherent in any contested litigation,
11 a gross recovery of **\$400,000.00** under the Settlement Agreement is an excellent result. If the
12 Court approves all requested allocations and awards above, the Net Settlement Amount is
13 estimated to be **\$219,166.66**. For the approximately **89** estimated Settlement Class Members, the
14 average gross individual settlement payment, using a straight average, is **\$2,462.54**. Additionally,
15 by summarizing the potential liability exposure numbers estimated for Plaintiff's main claims as
16 addressed above, Class Counsel estimated **\$1,013,981.26** in potential liability exposure to
17 Defendants for Plaintiff's main claims for damages and penalties.

18 72. The Total Settlement Amount of **\$400,000** therefore represents a recovery for the
19 Class members of approximately **39.45%** of the total maximum liability exposure (**\$1,013,981.26**)
20 Plaintiff estimated Defendants could face on these class-wide claims. Plaintiff and Class Counsel
21 submits this is an excellent result in the face of uncertainty and the prospects of protracted and
22 contested litigation through class certification, summary judgment, and trial, and this is especially
23 true in light of the Court closures and operational challenges employers such as Defendants face in
24 the wake of the present coronavirus pandemic.

25 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**

26 **RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL**

27 73. The next *Clark/Kullar* factors recognize that settlements take into consideration the
28 risks and expenses posed by further litigation and, in the class-action context, the risk of non-

1 certification. Consequently, it is proper that trial courts should keep these considerations in mind
2 when judging the adequacy of class action settlements.

3 74. Further litigation of this case posed real risks for a number of reasons. First, there
4 were the risks of unfavorable rulings on the merits of the various indeterminate legal issues
5 outlined in the previous section. Each of Plaintiff's causes of action was subject to some unique
6 indeterminacy, and the derivative causes of action were doubly indeterminate on their own and
7 based on the claims from which they derive.

8 75. The parties disputed the effect of these and other issues on class certification and
9 decertification. Class Counsel maintained that there were several legal and factual questions at
10 issue in the case that could best be decided on a class wide basis. Plaintiff contended that the same
11 policies and practices applied to all class members and therefore common questions were likely to
12 predominate over individual inquiries, especially regarding off the clock work and meal and rest
13 break claims founded upon a control argument. Defendants disputed these contentions and argued
14 that individualized issues would predominate in the putative class, preventing certification.
15 Defendants also argued that its policies were compliant with the law. Plaintiff disputed that
16 argument, asserting that the lawfulness of such policies give rise to common questions amenable
17 to certification. These disputes weighed in favor of entering into this Settlement.

18 76. Finally, it is always preferable to reach a relatively early resolution of a dispute that
19 saves time and money that would otherwise go towards continuing contested litigation. If this case
20 ended up settling after further litigation, the settlement amount would have to account for the
21 additional costs incurred, and there likely would be less amounts available for Class members
22 when a settlement was finalized. This is not just an abstract contention. The parties were moving
23 into the phase of this litigation where they would have had to depose managers, supervisors, and
24 employees in order to establish class certification and then liability for trial. Continued calling to
25 Class members and gathering of Declarations would have continued in earnest. Potentially, there
26 would have been discovery disputes. The parties were also aware that a class action trial would be
27 a complicated and expensive proceeding, as well as the likelihood of a long, drawn-out appeal
28 process. The settlement provides real and tangible benefits for Class members in the immediate

1 future. In fact, the estimated average recovery for the Settlement Class members in this action over
2 **\$2,400.00**. The benefits of this Settlement are not insignificant for anyone, especially given the
3 current economic climate. Consequently, the risk and expense of further litigation outweighed the
4 potential benefit that might have otherwise been gained.

5 **NOTICE TO AND REACTION OF CLASS MEMBERS**
6 **TO THE PROPOSED SETTLEMENT**

7 77. It is premature to address this factor now, at the preliminary approval stage, but
8 some observations are in order. First, the notification procedure set out in the Settlement
9 Agreement (at Exhibit A) provides the greatest likelihood that each and every class member will
10 receive the Class Notice (the “Notice”), attached to the Settlement as Exhibit 1. Under the
11 Settlement, the Settlement Administrator (JND Class Action Administrators “JND”) will send the
12 Class Notice to each class member via First Class U.S. mail. (Exhibit A, Settlement, ¶¶ A.30 –
13 A.31; C.4 – C.5). If any Notice Packets are returned undeliverable, the Settlement Administrator
14 will forward them to any address appearing on the returned envelope or, if there is no forwarding
15 address, perform a skip trace before mailing them to any addresses thereby identified. (*Id.*). This is
16 the best and most practicable way to ensure the greatest possible number of class members will
17 receive the Notice.

18 78. The Class Notice itself fully apprises class members of the nature of the lawsuit,
19 the claims involved, the terms of the settlement, and their options thereunder. It provides for a
20 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement or
21 challenging work weeks. (Exhibit A, Settlement, ¶ C.4; Exhibit 1, Class Notice). In the Class
22 Notice, Class members will also receive Class Counsel’s contact information, so they can speak to
23 attorneys conversant with the legal and factual issues involved in this case, as well as the contact
24 information for the Settlement Administrator. The efforts taken to ensure that Class members
25 receive the Class Notice and are well informed about the settlement are reasonable and the best
26 notice practicable under the facts.

27 79. If a class member disputes the number of workweeks stated for that Class member
28 in the Class Notice, the Class member may ask the Settlement Administrator to resolve the matter

1 by submitting the pay periods that the Class member claims to have actually worked for
2 Defendants during the Class Period. (Exhibit A, Settlement, ¶ C.5). The Class member is able to
3 submit all supporting documentation he or she has. Defendants' records will have a rebuttable
4 presumption of correctness. After consultation with Class Counsel and Defendants' Counsel and
5 providing time for a response from them, the Claims Administrator will make a determination of
6 the class member's total pay periods during the applicable period, and if the parties do not agree,
7 they can turn to the Court for assistance in resolving any disagreement. (*Id.*).

8 **CONCLUSION AS TO THE CLARK/KULLAR ANALYSIS**

9 80. The foregoing discussion establishes the fairness of the class-action settlement in
10 the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. This analysis
11 compels a conclusion that the settlement is fair, reasonable, and adequate. Class Counsel
12 conducted a thorough investigation of the subject wage-and-hour practices and engaged in non-
13 collusive, arm's-length negotiations in order to reach a settlement. Defendants have agreed to pay
14 fair value to settle Plaintiff's claims given the existence of legal uncertainty. From Class Counsel's
15 substantial experience with wage-and-hour class action lawsuits, Class Counsel believes that this
16 case could not have settled on better terms under the circumstances. Request therefore is made that
17 the Settlement be granted preliminary approval so that those persons whom it was intended to
18 benefit will be afforded the opportunity to determine its adequacy for themselves.

19 **REQUEST FOR ATTORNEYS' FEES**

20 81. Under the Settlement, Class Counsel also requests, without opposition from
21 Defendants, an award of attorneys' fees and costs and expenses incurred in connection with the
22 prosecution of this action, and all of the work remaining to be performed by Class Counsel in
23 documenting the Settlement, securing Court approval of the Settlement, carrying out their duties to
24 see that the Settlement is fairly administered and implemented, and obtaining dismissal of the
25 Lawsuit, in an amount not to exceed one-third (1/3) of the Total Settlement Amount (i.e. up to
26 **\$133,333.34**), and for an award of reasonable costs and expenses in an amount not to exceed
27 **\$15,000.00**, subject to approval by the Court. (Exhibit A, Settlement, ¶ D.5).

28

1 82. This request is fair, reasonable, and adequate to compensate Class Counsel for the
2 substantial work they have put into this case and, moreover, the risk they assumed by taking it in
3 the first place. The attorneys' fees award is intended to reimburse Class Counsel for all
4 uncompensated work that they have already done and for all the work they will continue to do in
5 carrying out and overseeing the notification to class members, communicating with class members
6 regarding their claims, and assisting in the administration of the settlement if it is preliminarily
7 approved.

8 83. My firm took this case on a contingent-fee basis against a business represented by a
9 reputable defense firm. When we take contingent cases, we must pay careful attention to the
10 economics involved or one bad case can destroy years of work. Accordingly, when we take
11 contingency cases, we anticipate that we will, if successful, receive a fee that exceeds our normal
12 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
13 number of hours in a day is limited. Because of this, when we take on one particular matter, we are
14 unable to take on all of the other matters we would otherwise be able to undertake. When Class
15 Counsel became involved in this case, we realized the time commitment that it would entail and
16 we were forced to turn down matters that we otherwise should have been able to handle. In sum,
17 this case claimed a significant portion of Class Counsel's time and attention throughout its
18 pendency.

19 84. The requested fees are reasonable for the services provided to Class Members and
20 for the benefits they are to receive. Indeed, even with a requested multiplier under the lodestar
21 theory, Class Counsel's fees will still be justified. Class Counsel will more fully brief the Court on
22 its lodestar in the motion for final approval. My hourly rate, approved before other Courts, has
23 been \$685 per hour, and I have increased it to \$700 per hour starting in 2020. Alvin B. Lindsay is
24 our firm's senior counsel, and his hourly rate has been consistently approved at \$650 per hour for
25 several years. His hourly rate has also increased to \$700 starting in 2020. Co-counsel Emil
26 Davtyan is an extremely well-respected wage and hour class action litigator, and has been
27 practicing for many years, and will also provide a supporting declaration in support of final
28 approval and our fees and costs. Our firm attorneys, paralegals, and staff have incurred substantial

1 hours in prosecuting this action, and a modest lodestar multiplier will be fully justified in
2 connection with final approval. With the additional hours we will incur in taking this action
3 through preliminary approval, claims administration, and final approval, and the time invested by
4 other firm employees, an award of full attorneys' fees requested of **\$133,333.34** is fair and
5 reasonable, subject to further documentation and discussion in connection with final approval.

6 85. Class Counsel's Costs/Expenses reimbursement request at final approval will not
7 exceed fifteen thousand dollars (**\$15,000.00**). (Exhibit A, Settlement, ¶ D.5). Counsel will provide
8 a detailed invoice of its costs at final approval, and will request only reimbursement of reasonably
9 incurred and documented costs specific to litigating this action. Any amounts not approved by the
10 Court as Attorneys' Fees and Costs will be added back to the NSA to be distributed to the Class
11 Members who do not opt-out. (Settlement, ¶ D.5). Through the filing of this motion, Class
12 Counsel has incurred approximately **\$9,000.00** in litigation costs. While Class Counsel will incur
13 additional costs in taking this action through administration, final approval, disbursement, and
14 post-distribution accounting, the total will likely not exceed the \$15,000.00 requested, and the
15 difference will increase the Net Settlement Amount and the payments to the Settlement Class
16 Members accordingly.

17 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

18 86. Plaintiff herein is entitled to a reasonable service payment for his efforts and
19 initiative in bringing and helping to prosecute this action. Plaintiff spent a considerable amount of
20 time better apprising himself of his rights, deciding whether remedial action should be taken, how
21 it should be taken, searching for attorneys, and finally contacting Class Counsel, who spent many
22 hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not
23 only her own rights but also those of her co-workers by filing a class action lawsuit.

24 87. Subject to Court approval and in exchange for an individual general release and his
25 efforts in bringing and prosecuting the class claims, and in addition to his Individual Settlement
26 Payment as a member of the Settlement Class, Plaintiff will request in connection with final
27 approval and without opposition from Defendants, a Class Representative Enhancement Award of
28 up to **\$10,000.00** (Exhibit A, Settlement, ¶ C.4). Plaintiff will also provide a Declaration in

1 support of approval and the award of his enhancement in connection with Plaintiff's motion for
2 fees and costs and final approval of the Settlement.

3 88. By suing Defendants, Plaintiff increased his risk of retaliation by not only
4 prospective employers, but also from Defendants. Plaintiff's lawsuit has now required Defendants
5 to expend considerable resources and has gained notoriety in the community and amongst
6 Plaintiff's co-workers, and Plaintiff justifiably fears the fact that he served as a class representative
7 in a wage and hour class action will not be lost on a prospective employer who has to choose
8 between an applicant who has never sued a prior employer and one who has. Plaintiff contends
9 this risk is particularly real in the information age, where employers can, more easily than ever,
10 perform background checks of prospective employees, sometimes with the stroke of a key.

11 89. But Plaintiff did not allow his fears of the potential repercussions of being class
12 representative deter him from acting for the benefit of Class Members. To the contrary, Plaintiff
13 has been intimately involved in this case since its inception. He has devoted a substantial amount
14 of time to helping Class Counsel effectively develop and prosecute this action at every stage of the
15 litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on
16 numerous occasions to discuss every aspect of this case. Plaintiff provided Class Counsel with
17 information about Defendants and about the industry generally, reviewed documents, identified
18 witnesses, responded to many inquiries from fellow Class members about the case and its status,
19 consulted Class Counsel throughout the litigation at length, responded to written discovery and
20 produced documents, participated in the mediation process, monitored the progress of the
21 litigation with Class Counsel, and reviewed and signed the Settlement Agreement.

22 90. Plaintiff has spent a significant amount of time with Class Counsel detailing
23 knowledge of Defendants' practices and helping Class Counsel with the prosecution of this action
24 and the identification of potential witnesses. Class Counsel and Plaintiff submit he has diligently,
25 adequately, and fairly represented Class Members, and has not placed his interests above any
26 member of the putative Class. The payment to Plaintiff is intended to recognize his time and effort
27 on behalf of the Class. The amount requested is fair and appropriate based on his contribution and
28 involvement. For example, Plaintiff instigated the Lawsuit by bringing these violations to the

1 attention of Class Counsel. He spent several hours answering questions and providing information
2 to Class Counsel throughout the pendency of this action, and answered inquiries from Class
3 members about the case. He identified witnesses, explained to Class Counsel day to day business
4 practices of Defendants with regard to work schedules and rounding and off the clock work and
5 overtime payments and meal and rest breaks, etc. The parties are in agreement that Plaintiff is
6 entitled to an enhancement for his time and effort in this matter. This sort of payment to a class
7 representative has been a common feature of settlements negotiated by Class Counsel and has
8 been routinely approved by trial courts. This is especially true when the Plaintiff and Class
9 Representative is also providing a general release broader than that of the Class members.

10 91. In light of the foregoing, Plaintiff and Class Counsel believe that the Representative
11 Enhancement and Service Payment in the amount of **\$10,000.00** is fair and reasonable. This
12 amount is a far cry from the \$50,000 of enhancement awards to the two named plaintiffs approved
13 by the trial court in *Clark*. See *Clark, supra*, 175 Cal.App.4th at 807. Although Class Counsel
14 appreciate that the Court has a duty to ensure that class representatives are not overcompensated at
15 the expense of the Class, modest incentive awards in employment class actions, such as the one
16 here, are necessary not only to compensate class representatives for the time they spend in the
17 case, but also, and more importantly, to encourage aggrieved employees to challenge questionable
18 employment practices notwithstanding the very real consequences they may face.

19 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

20 92. Plaintiff alleges that the proposed Class satisfy the criteria for certification of a
21 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
22 Defendants have agreed to the conditional certification of the class for settlement purposes only.
23 Defendants do not concede that certification is appropriate outside of this Settlement and preserves
24 all rights to oppose certification if, for any reason, the settlement does not become effective.
25 (Exhibit A, Settlement Agreement, ¶ C.2). In general, courts may take a proposed settlement into
26 account in evaluating the propriety of class certification. See *Dunk v. Ford Motor Co.* (1996) 48
27 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in certifying classes
28 for settlement purposes. *Id.* Therefore the Court should take into consideration the fact that the

1 parties have settled their claims and stipulated to certification for settlement purposes when
2 assessing whether the Settlement is fair and reasonable.

3 93. Numerosity. The putative Class is so numerous that joinder of all members is
4 impractical. Class members are all current and former non-exempt employees of Defendants and
5 Defendants' records establish at least 89 Class Members. Thus, there are a sufficient number of
6 Class Members to warrant conditionally certifying these proceedings as a class action for
7 settlement purposes.

8 94. Ascertainability. Plaintiff alleges that the putative Class is defined in a manner that
9 is precise, objective, and ascertainable. The 89 Class Members have already been identified by
10 reference to Defendants' payroll and personnel records.

11 95. Typicality. A class representative's claims are typical when they arise from the
12 same event, practice, or course of conduct that gives rise to the claims of other putative class
13 members, and if their claims rest on the same legal theories. The class representative's claims
14 must be "typical" but not necessarily identical to the claims of other class members. It is sufficient
15 that the representative is similarly situated so that he or she will have the motive to litigate on
16 behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom*
17 *Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in
18 California that the class representative must have identical interests with the class members."). It is
19 unnecessary that class representative has personally incurred all of the damages suffered by each
20 of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

21 96. Plaintiff alleges that his claims are typical of class members' claims because they
22 arose from the same factual basis and are based on the same legal theories. Plaintiff was employed
23 by Defendants during the Class Period subject to the allegedly unlawful meal and rest policies and
24 pay practices at issue in this litigation. Accordingly, Plaintiff is a member of the Class. The central
25 issues of this litigation (whether Defendants failed to provide meal periods and rest breaks,
26 whether off the clock work was required, whether Defendants paid employees for time under its
27 control or calculated overtime correctly, etc.), which would arise if this were an individual action
28 brought by Plaintiff, apply to the other Class members as well, and the answers to these questions

1 would determine Defendants' liability as to the entire putative Class. Plaintiff alleges that his
2 claims are typical of the claims of the putative Class, and that the typicality requirement is
3 satisfied.

4 97. Adequacy. A class representative must possess the same interest and suffer the
5 same injury as the class members. "To assure 'adequate' representation, the class representative's
6 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
7 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
8 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
9 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

10 98. Plaintiff has no conflicts with the Class and his interests are aligned with those of
11 the Class. Plaintiff alleges that his claims are identical to those that would be asserted by the
12 unnamed Class Members. Plaintiff alleges that he has every interest in zealously representing the
13 unnamed Class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has
14 devoted a substantial amount of time and energy to litigating this action and effecting a settlement.
15 Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour litigation,
16 especially class actions, and have zealously represented the interests of the class in litigating this
17 case. *See supra*, ¶¶ 3-9; *see also* Declaration of Alvin B. Lindsay, filed concurrently herewith.
18 Accordingly, the adequacy requirement is satisfied.

19 99. Commonality. Plaintiff alleges that common questions of law or fact in this case
20 predominate over individual questions. This action involves, *inter alia*, a determination about
21 Defendants' alleged failure to provide meal and rest periods, failure to pay all wages due to
22 allegedly common and unlawful policies, the resulting failure to pay final wages when required,
23 the failure to provide accurate paystubs, and largely derivative claims under the Business &
24 Professions Code and PAGA. Plaintiff contends these practices, including an alleged practice of
25 failing to provide complete meal and rest periods, related meal and rest period policies applicable
26 to the class, an alleged systemic policy of off the clock work, and the alleged failure to provide
27 corresponding premium and overtime payments, that affected Class members in the same way. All
28 Class members were employed during the Class Period. Plaintiff alleges that the operative

1 complaint delineates a common course of conduct applicable to all Class members. Therefore,
2 based on Class Counsel's investigation, the review of the discovery produced by Defendants, and
3 their discussions with Plaintiff, Plaintiff contends the evidence supports his position that the
4 employment practices and policies of Defendants' were consistent and uniform.

5 100. Predominance. Plaintiff alleges that individualized issues do not predominate over
6 the issues of law and fact that are common to the Class as a whole. Plaintiff alleges that the
7 principal issues in controversy are whether Class Members were paid for all hours worked and
8 provided meal and rest breaks. As explained, *supra*, Plaintiff alleges that there are common issues
9 of law and fact given that Plaintiff and all Class Members were subjected to the same policies and
10 pay practices during the relevant time period. Plaintiff and Class Members seek meal and rest
11 premiums, unpaid wages and overtime, and penalties for work performed as non-exempt
12 employees for Defendants. Plaintiff alleges that these issues are suitable for common adjudication
13 because all Class Members were allegedly subject to the same employment policies and Plaintiff
14 contends the practices applied uniformly to all Class Members.

15 101. Superiority. Plaintiff alleges that class resolution is superior to other available
16 methods for the fair and efficient adjudication of the controversy. Plaintiff alleges that there is
17 little interest or incentive for Class Members to individually control the prosecution of separate
18 actions. Although the alleged injury resulting from Defendants' policies and practices are
19 allegedly real and significant, the cost of individually litigating each such case against Defendants
20 would easily exceed the value of any relief that could be obtained by any one Class member
21 individually. If Class members are forced to litigate their claims individually this would result in
22 89 individual actions against Defendants. Here, the alternative methods of resolution are
23 individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical
24 for potential plaintiffs because litigation costs would dwarf a potential recovery.

25 102. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
26 actions by Class Members against Defendants asserting similar claims as here. Furthermore, San
27 Francisco County is a compelling forum for this action given that Defendants employed certain of
28 the Class members at facilities here.

1 103. Plaintiff alleges that there are no serious manageability difficulties presented by
2 preliminarily approving the case for settlement purposes. As this case will not go to trial if finally
3 approved, all that would remain is claims administration and responding to possible objectors.
4 Class Counsel respectfully submits the Settlement is within the range of reasonableness to justify
5 granting it preliminary approval so the parties can proceed with the sending the Class Notice and
6 administering the Settlement.

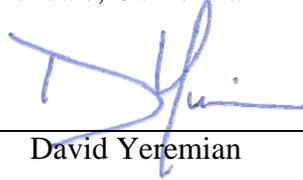
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8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed this 27th day of July, 2020, at Glendale, California.

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David Yeremian

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EXHIBIT A

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10 Attorneys for Plaintiff DIEGO ORNELAS
on behalf of himself and all other similarly situated

11 *[Additional counsel listed on following page]*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF SAN FRANCISCO

14 DIEGO ORNELAS,
15 Plaintiff,

16 v.

17 NATIONAL STORAGE AFFILIATES
18 TRUST, a Maryland real estate investment
19 trust; INTANDEM HUMAN
20 RESOURCES, LLC, a Colorado limited
21 liability company; STORAGE
MANAGEMENT AND LEASING CO.,
22 LLC, a Florida limited liability company;
23 ISTOREG JV, LLC, a Delaware limited
24 liability company;. and DOES 1 through 50
25 inclusive,

26 Defendants.

Case No. CGC-18-571421

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

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9 Attorneys for Defendants
10 NATIONAL STORAGE AFFILIATES TRUST;
INTANDEM HUMAN RESOURCES, LLC,
11 STORAGE MANAGEMENT, AND LEASING
CO., LLC; ISTOREAGE JV, LLC

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1 IT IS HEREBY STIPULATED AND AGREED, by Plaintiff DIEGO ORNELAS and the Class
2 (as defined below), on the one hand, and Defendants NATIONAL STORAGE AFFILIATES TRUST,
3 a Maryland real estate investment trust; INTANDEM HUMAN RESOURCES, LLC, a Colorado
4 limited liability company; STORAGE MANAGEMENT AND LEASING CO., LLC, a Florida limited
5 liability company; and ISTOREAGE JV, LLC, a Delaware limited liability company, on the other
6 (collectively the “Parties”), subject to the approval of the Court, that the settlement of this action shall
7 be effectuated upon and subject to the following terms and conditions.

8 **A. DEFINITIONS**

9 As used in this Joint Stipulation of Settlement of Class Action (“Joint Stipulation”), the
10 following terms shall have the meanings specified below. To the extent terms or phrases used in this
11 Joint Stipulation are not specifically defined below, but are defined elsewhere in the Joint Stipulation,
12 they are incorporated by reference into this definition section.

13 1. “Action” or “Lawsuit” shall mean the above-entitled case venued in the Superior Court
14 of California for the County of San Francisco, Case No. CGC-18-571421.

15 2. “Agreement,” “Stipulation,” “Joint Stipulation,” “Stipulation of Settlement,”
16 “Settlement Agreement,” or “Stipulation and Agreement” shall mean this Joint Stipulation, including
17 any attached exhibits.

18 3. “Class” shall mean all individuals who are or previously were employed by Defendants
19 or predecessor entities as non-exempt, hourly employees at Defendants’ storage facilities within the
20 State of California during the time period of November 19, 2014 and the date of preliminary approval.

21 4. “Class Counsel” shall mean David Yeremian & Associates, Inc. and Davtyan Law
22 Firm.

23 5. “Class Member” or “Settlement Class Member” or “Settlement Class” shall mean any
24 person who is a member of the Class or, if such person is incompetent or deceased, the person’s legal
25 guardian, executor, heir or successor in interest.

26 6. “Class Notice” shall mean the Notice of Class Action Settlement, as set forth in the
27 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
28 Class Members as part of the Notice Packet (defined below).

1 7. “Class Participant(s)” shall mean any and all Class Members, except those who timely
2 request exclusion (i.e., who elect to “opt out”) as provided herein.

3 8. “Class Period” is November 19, 2014 to February 3, 2020.

4 9. “Class Representative” and “Plaintiff” shall mean Plaintiff Diego Ornelas.

5 10. “Class Settlement” or “Settlement” shall mean the settlement embodied in this Joint
6 Stipulation, which is subject to Court approval.

7 11. “Complaint” shall mean the operative Complaint in the above-entitled case.

8 12. “Court” shall mean the Superior Court of California for the County of San Francisco.

9 13. “Defendants” shall mean National Storage Affiliates Trust; InTandem Human
10 Resources, LLC; Storage Management And Leasing Co., LLC; and iStorage JV, LLC.

11 14. “Defense Counsel” or “Defendants’ Counsel” shall mean the law firm of Littler
12 Mendelson, P.C.

13 15. The “Effective Date” of this Agreement shall be the first court day after the latter of:
14 (i) the last date by which a notice of appeal of the Judgment to the California Court of Appeals may
15 be timely filed, if none is filed; (ii) the last date by which a petition for review to the California
16 Supreme Court of a decision by the California Court of Appeals affirming the Judgment may be timely
17 filed, if none is filed; or (iii) if a notice of appeal to the Court of Appeals or a petition for review to
18 the California Supreme Court is timely filed, the date on which the highest reviewing court’s decision
19 denying the petition (where the immediately lower court affirmed the Judgment) or affirming the
20 Judgment becomes final. The Effective Date is conditioned upon all of the following occurring:

- 21 a. This Agreement has been signed by the Parties and Class Counsel;
- 22 b. The Court has entered a Preliminary Approval Order consistent with the terms
23 of this Stipulation;
- 24 c. The Class Notice has been mailed to the Class Members as ordered by the Court
25 in this Action; and
- 26 d. The Court has entered an order finally approving the Settlement consistent with
27 the terms of this Stipulation.

28 Any appeal of the Court’s orders related to Class Counsel’s Fees and Expenses and/or Class

1 Representative Service Payment shall constitute an appeal for purposes of this provision and for
2 purposes of the occurrence of the Effective Date.

3 16. “Final Approval Date” shall mean the date upon which the Court enters an Order
4 approving the Class Settlement, after having determined that the Class Settlement is fair, adequate,
5 and reasonable to the Class as a whole, following: (i) notice to the Class; (ii) an opportunity to submit
6 timely exclusion or objections to the Settlement; and (iii) a hearing on the fairness of the terms of the
7 Settlement.

8 17. “Final Approval Hearing” shall mean the final hearing held by the Court to ascertain
9 the fairness, reasonableness, and adequacy of the Class Settlement.

10 18. “Individual Settlement Payment” shall mean the amount to be, and which is, distributed
11 to any and each Class Participant, based on a ratio of the Class Participant’s Individual Workweeks to
12 the Total Workweeks. The Individual Settlement Payment will be calculated by dividing the Class
13 Participant’s Individual Workweeks by the Total Workweeks and multiplying by the Net Settlement
14 Amount. A portion of this resulting amount will be subject to tax withholdings.

15 19. “Individual Workweeks” shall mean all the weeks of employment for a particular Class
16 Member during the Class Period according to Defendants’ records, as measured by each Class
17 Member’s dates of employment.

18 20. “Net Settlement Amount” means the Total Settlement Fund available for distribution
19 to Class Participants after deduction of (i) the Class Representative Service Payments; (ii) all costs of
20 administering the Settlement; (iii) the payment to Labor and Workforce Development Agency; and
21 (iv) Class Counsel’s Fees and Expenses.

22 21. “Notice Packet” shall mean the Notice of Class Action Settlement.

23 22. “Opt-Out(s)” shall mean any and all Class Members who timely and validly request
24 exclusion from the Class in accordance with the terms of the Class Notice.

25 23. “Parties” shall mean Plaintiff/Class Representative and Defendants.

26 24. “Preliminary Approval” means the Court Order preliminarily approving this Joint
27 Stipulation and the form and process for notice to be provided to the Class.

28 25. “Preliminary Approval Date” means the date upon which the Court enters an Order

1 preliminarily approving this Stipulation, pending notice, an opportunity to submit objections, and a
2 fairness hearing thereon.

3 26. “Preliminary Approval Hearing” shall mean the hearing held on the motion for
4 preliminary approval of the Class Settlement.

5 27. “Released Claims” means any and all claims, causes of action, damages, wages,
6 benefits, expenses, premiums, penalties, debts, liabilities, demands, obligations, attorneys’ fees, costs,
7 and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief
8 whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether
9 under federal law or the law of any state, whether suspected or unsuspected, whether known or
10 unknown, whether contingent or vested, which Plaintiff or any Class Participant has against the
11 Released Parties or any of them for any acts occurring during the Class Period which are based on,
12 arise out of, relate to, or are covered by any of the facts, or any of the factual allegations, in the Action,
13 without regard to the theory on which the claim is or may be brought, including claims that are based
14 upon or arise out of the California Labor Code or any similar provision of federal, state or local law,
15 including but not limited to:

16 a. Any and all claims that are based on, arise out of, relate to, or are covered by any of the
17 facts alleged or litigated in the Action concerning Plaintiff’s and/or Class Participants’ compensation
18 or other payments received, and/or the provision of meal periods and rest breaks, while employed by
19 any Released Party as a non-exempt employee during the Class Period, including, but not limited to,
20 claims arising under or relating to (i) the wage-and-hour provisions of the California Labor Code and
21 the Wage Orders adopted by the California IWC, specifically including but not limited to claims under
22 Labor Code sections 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558,
23 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2802; (ii) the federal Fair Labor Standards Act and its
24 Regulations; (iii) conversion; and/or (iv) the California Business and Professions Code sections 17200,
25 *et seq.*; and

26 b. Any and all wage and hour violations, whether premised on statute, contract, tort or
27 other theory of liability under state, federal or local law, arising out of or reasonably related to the
28 facts, incidents, transactions, events, occurrences, disclosures, statements, acts, or omissions in law or

1 in equity, asserted or that could have been reasonably asserted from the facts alleged or litigated in the
2 Action by any Class Member against the Released Parties.

3 28. “Released Parties” shall mean Defendants National Storage Affiliates Trust; Storage
4 Management and Leasing Co., LLC; iStorage JV, LLC; and InTandem Human Resources, LLC and
5 each of their past, present and future officers, directors, shareholders, members, partners, employees,
6 agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers,
7 and their respective successors and predecessors in interest, subsidiaries, dba’s, affiliates, parents,
8 brother and sister corporations, franchisees, franchisors, and attorneys and each of their company-
9 sponsored employee benefit plans of any nature, and all of their respective officers, directors,
10 employees, administrators, fiduciaries, trustees, and agents.

11 29. “Service Payment” shall mean any additional monetary payment provided to the Class
12 Representative for his efforts on behalf of the Class in this Action, and as consideration for the general
13 release of claims and other provisions agreed to by the Class Representative individually as set forth
14 herein.

15 30. “Settlement Administrator” shall mean the company which the Parties have mutually
16 agreed will be responsible for administration of the Settlement and related matters.

17 31. “Settlement Administrator’s Expenses” means all costs and expenses relating to the
18 administration of the Settlement, including without limitation, mailing of Notice Packets, accounting
19 for Opt-Outs and objections, calculation and determination of payments and percentages, accounting
20 and maintenance of Settlement Fund Account (defined below), providing appropriate documentation
21 of the notice and distribution status and process for evaluation by the Court, and distribution of all
22 payments to individuals, entities, and government agencies provided for herein.

23 32. “Settlement Fund Account” shall mean the bank account established pursuant to the
24 terms of this Joint Stipulation from which all monies payable under the terms of this Stipulation shall
25 be paid, as set forth herein.

26 33. “Total Settlement Amount” or “Total Settlement Payment” shall mean the total amount
27 that Defendants will pay to resolve this Action, based on the aggregation of the agreed-upon settlement
28 value of individual claims, which is Four Hundred Thousand Dollars (\$400,000.00), which includes

1 all amounts that Defendants shall be obligated to pay to any party in connection with the full resolution
2 of this matter and the Settlement as set forth herein and as approved by the Court, including (i)
3 Individual Settlement Payments to Class Participants; (ii) expenses for administration of this
4 Settlement by the Settlement Administrator; (iii) Service Payments to the Class Representative; (iv)
5 Class Counsel’s Fees and Costs; and (v) payment to the Labor and Workplace Development Agency
6 in connection with settlement of a claim for civil penalties under the Labor Code’s Private Attorneys
7 General Act (“PAGA”). The employer’s share of payroll taxes shall not be paid from the Total
8 Settlement Amount and shall remain the sole responsibility of Defendants.

9 34. “Total Workweeks” shall mean the total number of weeks of employment for all Class
10 Members during the Class Period according to Defendants’ records, as measured by each Class
11 Member’s dates of employment.

12 **B. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

13 **1. Investigation, Discovery and Research**

14 Class Counsel has conducted investigation, discovery and research during the prosecution of
15 the Action. Such efforts included, among other things: (a) conducting a thorough pre-filing
16 investigation; (b) inspecting and analyzing data and documents produced by Defendants pertaining to
17 Plaintiff and the putative class members; (c) interviewing numerous putative class members; (d)
18 analyzing the legal positions taken by Defendants; (e) preparing an analysis of potential class-wide
19 damages and constructing a damages model; and (f) researching the applicable law with respect to the
20 claims asserted in this Action and the potential defenses thereto. Thus, the Parties have engaged in
21 sufficient investigation, discovery and research to assess the relative merits of the claims of Plaintiff
22 and of Defendants’ defenses to them.

23 **2. Allegations of the Class Representative and Benefits of Settlement**

24 The investigation and discovery conducted in this matter were adequate to give Plaintiff and
25 Class Counsel a sound understanding of the merits of their position and to evaluate the worth of the
26 claims of the Class. This Settlement was reached after arm’s-length bargaining by the Parties with the
27 assistance of an experienced mediator, and after Class Counsel thoroughly reviewed all relevant
28 evidence. The information obtained from investigation and informal discovery, as well as information

1 exchanged for mediation, was sufficient to assess reliably the merits of the respective Parties' positions
2 and to compromise the issues on a fair and equitable basis.

3 Plaintiff and Class Counsel believe that the causes, allegations and contentions asserted in the
4 Action have merit. However, they recognize and acknowledge the uncertainty, expense and delay of
5 continued lengthy proceedings necessary to prosecute the Action against Defendants through trial and
6 through appeals. Class Counsel has taken into account the uncertain outcome and the risk of any
7 litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and
8 delays inherent in such litigation, and the potential difficulty maintaining the Action as a Class Action.
9 Class Counsel is also mindful of the inherent problems of proof under, and possible defenses to, the
10 claims alleged in the Action. Class Counsel believes that the Settlement set forth in this Joint
11 Stipulation confers substantial benefits upon the Class Representative and each member of the Class,
12 and that an independent review of this Joint Stipulation of Settlement by the Court in the approval
13 process will confirm this conclusion. Based on Class Counsel's own independent investigation and
14 evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation is in the best
15 interest of Plaintiff and the members of the Settlement Class.

16 **3. Defendants' Denial of Wrongdoing and Benefits of Settlement**

17 Defendants have denied and continue to deny generally each and specifically all of the claims
18 and contentions alleged by Plaintiff in the Action. Further, and supported by their own investigation
19 and discovery in connection with this action, Defendants have expressly denied and continue to deny
20 all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts
21 or omissions alleged in the Action. Nonetheless, Defendants have concluded that the further litigation
22 of the Action would be protracted and expensive, and determined that it is desirable that the Action be
23 fully and finally settled in the manner and upon the terms and conditions set forth in this Joint
24 Stipulation in order to limit further expense, inconvenience and distraction of protracted litigation.
25 Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially
26 in a complex case such as the Action. Defendants have, therefore, determined that it is desirable and
27 beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this
28 Joint Stipulation.

1 **4. Intent of the Settlement**

2 The Class Settlement set forth herein intends to achieve the following: (1) entry of an Order
3 approving the Class Settlement and granting the monetary relief set forth in this Joint Stipulation to
4 the Class Participants; (2) entry of judgment; and (3) discharge of Released Parties from liability for
5 any and all of the Released Claims and from any and all claims, known and unknown, by Plaintiff
6 individually.

7 **C. PROCEDURAL ISSUES**

8 **1. Preliminary Approval**

9 Class Counsel will submit this Joint Stipulation to the Court along with the Motion for
10 Preliminary Approval of Class Action Settlement.

11 **2. Qualified Stipulation to Class Certification**

12 The Parties stipulate to class certification for purposes of Settlement only. Defendants contend
13 that the facts do not justify class certification under the governing legal standards. The Court has not
14 ruled on class certification in the underlying litigation. Consequently, a Settlement Class has been
15 established for purposes of administration and resolution of this matter only. It is not, and it should
16 not be construed as, any admission of fact or law in this matter or any other matter that class
17 certification is appropriate. If the Court does not grant either preliminary or final approval of this
18 Settlement, then the Parties revert to their previous positions and Defendants will not stipulate to class
19 certification. Further, this Settlement and any proceedings or statements of the Parties in connection
20 therewith shall not be admissible for any purpose in any proceedings related to ongoing litigation of
21 this matter in event the Court does not grant preliminary or final approval of the Settlement
22 contemplated herein.

23 **3. Settlement Administrator**

24 A mutually agreed upon third-party company will act as the Settlement Administrator. The
25 Settlement Administrator will perform the following tasks: mail the Notice Packet to Class Members;
26 perform calculations concerning Individual Settlement Payments; handle inquiries from Class
27 Members; review and process requests to opt out of the Settlement (if any) and objections (if any);
28 resolve any differences between Defendants' payroll records and information provided by Class

1 Members; distribute payments to Class Participants, the LWDA, Class Counsel, and tax authorities,
2 as required to effectuate this Settlement; provide documentation of the administration activities for
3 submission to the Court in connection with the approval of the Settlement by the Court; and any other
4 issues related to the settlement administration.

5 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
6 Defense Counsel updating them as to the number of Opt-Out Forms as well as any disputes or
7 objections submitted by Class Participants. The Settlement Administrator will serve on Class Counsel
8 and Defense Counsel via e-mail date-stamped copies of the original Opt-Out Requests, challenges and
9 objections no later than five (5) court days after their receipt. The Settlement Administrator will
10 provide Class Counsel with a declaration setting forth the results of the settlement administration no
11 later than five (5) court days after the end of the Opt-Out period.

12 All fees and costs of the Settlement Administrator for administration of the Settlement shall be
13 paid from the Total Settlement Amount.

14 **4. Notice to Class Members**

15 Notice shall be provided to Class Members in the following manner:

16 Within ten (10) court days of the Court's Order granting Preliminary Approval of the
17 Settlement, Defendants shall provide, to the extent available, the Settlement Administrator with a
18 Class List containing the names, most current mailing address and telephone number, social security
19 number, and the respective Individual Workweeks that each Class Member worked during the Class
20 Period in a format acceptable to the administrator (collectively "Class List and Data").

21 Within five (5) court days after receipt of the Class List and Data, the Settlement Administrator
22 shall mail the Notice Packet to the Class Members via first-class regular U.S. mail. Prior to mailing,
23 the Settlement Administrator will perform a search based on the National Change of Address Database
24 information to update and correct for any known or identifiable address changes. It will be
25 conclusively presumed that, if an envelope containing the Class Notice has not been returned before
26 the end of the 30-day opt-out period (the "Response Deadline"), the Class Member received the
27 Notice. If a new address is obtained by a way of a returned Notice Packet, then the Settlement
28 Administrator shall promptly forward the original Notice Packet to the updated address via first-class

1 regular U.S. mail indicating on the original Notice Packet the date of such re-mailing. Where a Notice
2 Packet is returned as undeliverable, without a forwarding address, the Settlement Administrator will
3 perform a computer/SSN and “skiptrace” search to attempt to obtain an updated address within three
4 (3) court days after receiving the notice from the U.S. Post Office. If a new address is obtained by a
5 way of a returned Notice Packet or skiptrace, then the Settlement Administrator shall promptly forward
6 the original Notice Packet (no later than 3 court days of receiving the undeliverable notice or obtaining
7 the skiptrace results) to the new address via first-class regular U.S. mail. Those Class Members who
8 were re-mailed the Notice Packet will be given additional 15 calendar days after the 30-day deadline.
9 The Parties agree to cooperate with the Settlement Administrator to locate a more recent address for
10 Class Members, where necessary.

11 The Notice will include, but shall not be limited to: information regarding the nature of the
12 Lawsuit; a summary of the substance of the Settlement; the Class definition; a description of the
13 Settlement administration, procedure and the deadline for requesting exclusion (“opting out”) from
14 the Settlement or objecting; the date for the Final Approval Hearing; and the formula used to calculate
15 Individual Settlement Payments. The Notice shall also include the number of Individual Workweeks
16 the Class Member will be credited with (according to Defendants’ payroll records), and shall afford
17 the Class Member the opportunity to challenge the number Individual Workweeks reflected in
18 Defendants’ payroll records, and to provide evidence supporting any such challenge.

19 Within ten (10) calendar days after the Response Deadline, the Settlement Administrator will
20 provide Class Counsel and Defendants’ Counsel with a report by name listing the Settlement Payment
21 to be made to each Class Participant, a list by name of all Class Members who timely opted out, and
22 a list of all Class Participants who timely objected. After receiving the Settlement Administrator’s
23 report, Class Counsel and Defendants’ Counsel shall be entitled to review the same to determine if the
24 calculation of payments to Class Participants is consistent with this Agreement.

25 **5. Submission of Claim Form Unnecessary to Participate in Settlement**

26 Unless the Class Member submits a valid and timely request to opt out to the Settlement
27 Administrator by not later than thirty (30) calendar days after the Notice Packet was first mailed, the
28 Class Member will automatically be mailed a check for his or her pro rata share of the Settlement

1 payment, and will be bound by the terms of the Settlement, including the release of claims, as a Class
2 Participant. If a Class Member does not want to participate in this Settlement and wants to avoid being
3 bound by the Settlement terms, a Class Member must submit a timely request to opt out and submit it
4 to the Settlement Administrator by not later than thirty (30) calendar days after the Notice Packet was
5 first mailed. In order to object to the Settlement, a Class Member must send his or her written objection
6 to the Settlement Administrator not later than thirty (30) calendar days after the Notice Packet was
7 first mailed.

8 A Class Member must make a timely and valid Opt-Out Request in order to opt out of the
9 Settlement. An Opt-Out Request must be: (i) made in writing; (ii) signed by the Class Member seeking
10 exclusion from the Settlement; and (iii) mailed to the Settlement Administrator so that it is postmarked
11 on or before the Response Deadline. The Opt-Out Request must additionally state in substance:

12 “I have read the Class Notice and I wish to opt out of the class action
13 and the settlement of the case: *Diego Ornelas, Plaintiff, v. National*
14 *Storage Affiliates Trust, a Maryland real estate investment trust;*
15 *InTandem Human Resources, LLC, a Colorado limited liability*
16 *company; Storage Management and Leasing Co., LLC, a Florida*
limited liability company; iStorage JV, LLC, a Delaware limited
liability company; and Does 1 through 50 inclusive, Defendants,
Superior Court of the State of California for the County of San
Francisco, Case No. CGC-18-571421.”

17 The Opt-Out Request must also contain the individual’s printed name, last four digits of Social
18 Security Number, and some form of contact information for the Class Member requesting exclusion.
19 The Opt-Out Request must be signed by the Class Member seeking exclusion from the Settlement.
20 Any Class Member who properly opts out of the Class using this procedure will not be entitled to any
21 payment from the Settlement and will not be bound by the Settlement or have any right to object,
22 appeal or comment thereon. Defendants shall have the option to rescind this Agreement and the
23 contemplated settlement, in their sole discretion, if the number of Opt-Outs exceeds 5 percent of the
24 Class Members.

25 Any Class Participant may object to the Settlement. Any such objection must be filed with the
26 clerk of the Court and submitted to the Settlement Administrator by United States mail no later than
27 the Response Deadline, in accordance with this Agreement and the instructions set forth in the Class
28 Notice. An objection must state all of the specific grounds on which it is being made and all of the

1 supporting facts, as well as whether the objector intends to appear at the Settlement Hearing, either in
2 person or through an attorney of his/her choice. The objection must also contain the printed name, last
3 four digits of Social Security Number, signature, and some form of contact information for the
4 objecting Class Member, and must also state the case name and number of the Action. Settlement
5 Class Members who fail to so timely file a written statement of objection shall be foreclosed from
6 making any objection to this Settlement. Only Class Participants may object to the Settlement. If a
7 Class Member submits both a timely Opt-Out Request and an objection(s), then the Opt-Out Request
8 will be considered valid, and the Class Member will not be considered a Settlement Class Member
9 with standing to object to the Settlement. The Settlement Administrator shall promptly forward all
10 objections that it receives to the Parties and shall attach the objections to its declaration that will be
11 filed with the Court. Class Counsel and Defendants' Counsel may, at least five (5) calendar days before
12 the Final Approval Hearing (or as otherwise scheduled by the Court), file optional responses to any
13 written objections.

14 The Notice will include a procedure by which a Class Member may challenge the number of
15 Individual Workweeks identified in his/her Notice by submitting a timely postmarked written
16 challenge to the Settlement Administrator no later than the Response Deadline. Only a Class Member
17 may challenge the number of Individual Workweeks. Such written challenges must include the Class
18 Member's full name, last four digits of Social Security Number, the number of Individual Workweeks
19 they contend is correct, some form of contact information, the name and number of the Action, and
20 their signature. A Class Member challenging the number of Individual Workweeks identified in the
21 Class Notice must also submit documentary evidence sufficient to prove his or her asserted number of
22 Individual Workweeks during the Class Period. Defendants shall have the right to respond to the
23 challenge by any Class Member. The Settlement Administrator will resolve the challenge and make a
24 final and binding determination without hearing or right of appeal. The personnel records, including
25 payroll and time records, of Defendants shall be considered by the Settlement Administrator as the
26 presumptive best evidence of the number of Workweeks. To receive an Individual Settlement
27 Payment, a Class Member must be a Class Participant.

1 **D. SETTLEMENT TERMS**

2 **1. The Settlement Class**

3 For the purposes of this Joint Stipulation, the Settlement Class to be conditionally certified
4 shall consist of all individuals who are or previously were employed by Defendants or predecessor
5 entities as non-exempt, hourly employees at Defendants' storage facilities within the State of
6 California during the time period of November 19, 2014 through February 3, 2020.

7 **2. Total Settlement Amount**

8 The Total Settlement Amount that Defendants will pay to resolve this Action, based on the
9 aggregation of the agreed-upon settlement value of individual claims, is Four Hundred Thousand
10 Dollars (\$400,000.00), which includes all amounts that Defendants shall be obligated to pay to any
11 party in connection with the full resolution of this matter and the Settlement as set forth herein and as
12 approved by the Court, including (i) Individual Settlement Payments to Class Participants; (ii)
13 expenses for administration of this Settlement by the Settlement Administrator; (iii) Service Payment
14 to Plaintiff; (iv) Class Counsel's Fees and Costs; and (v) payment to the Labor and Workplace
15 Development Agency in connection with settlement of a claim for civil penalties under PAGA.

16 **3. Payment to Labor and Workforce Development Agency**

17 The Parties agree to allocate \$20,000 to the settlement of claims for civil penalties under
18 PAGA, Labor Code § 2699, *et seq.* Pursuant to Labor Code Section 2699(i), 75% of that amount will
19 be paid to the Labor and Workforce Development Agency by the Settlement Proceeds Distribution
20 Deadline. The remaining 25% will remain part of the Net Settlement Amount.

21 **4. Class Representative's Service Payment And General Release**

22 Defendants will not oppose Plaintiff's application to the Court to receive \$10,000 as his service
23 payment to be paid out of the Total Settlement Amount, and as consideration for his general release
24 of claims and other individual provisions agreed to herein. To the extent the Court approves less than
25 the requested amount, the difference between the requested and awarded amount will added to the Net
26 Settlement Amount to be distributed to the Class Participants. Any Class Representative Service
27 Payment approved by the Court shall be paid to the Class Representative from the Total Settlement
28 Amount, and shall be in addition to any distribution to which they may otherwise be entitled as a Class

1 Participant. The Class Representative Service Payment shall be considered 50% wages and 50% non-
2 wage income. The Settlement Administrator shall issue appropriate tax documentation(s).

3 As of the date on which the Court files an order of final approval of this Settlement, Plaintiff
4 fully releases and discharges Defendants and the other Released Parties from any and all claims that
5 Plaintiff now has or claims to have, or which Plaintiff at any time heretofore had or claimed to have,
6 or which Plaintiff at any time hereafter may have or claim to have, in each case whether known or
7 unknown, suspected or unsuspected, contingent or otherwise, arising out of or related to any act,
8 omission, event, fact or other thing, including without limitation as related to and arising from his
9 employment, application for employment and/or separation of employment with Defendants and/or
10 any subsidiary or affiliated business or entity or Released Party, which existed or occurred on or prior
11 to the date on which the Court files an order of final approval of the Settlement.

12 a. Without limiting the generality of the foregoing, and in addition to the
13 foregoing, Plaintiff specifically and expressly releases to the maximum extent permitted by law all
14 claims against Defendants and the Released Parties occurring prior to the date on which the Court files
15 an order of final approval of the Settlement arising out of or related to violations of any federal or state
16 employment discrimination laws, including the California Fair Employment and Housing Act; Title
17 VII of the Civil Rights Act of 1964; the California Family Rights Act; the Americans with Disabilities
18 Act; the National Labor Relations Act; the Fair Labor Standards Act, the Equal Pay Act; the Employee
19 Retirement Income Security Act of 1974; the California Labor Code; the California Government Code;
20 the California Business & Professions Code; the California Civil Code; California Industrial Welfare
21 Commission Wage Orders; state and federal wage and hour laws; breach of contract; fraud;
22 misrepresentation; common counts; unfair competition; unfair business practices; negligence;
23 defamation; infliction of emotional distress; invasion of privacy; assault; battery; false imprisonment;
24 wrongful termination; and any other state or federal law, rule, ordinance and regulation.

25 b. This release by Plaintiff is intended to settle any and all of the claims, whether
26 known or unknown, suspected or unsuspected, contingent or otherwise, that Plaintiff has or may have
27 against the Released Parties for any acts or omissions occurring on or before the date on which the
28 Court files an order of final approval of this Settlement. Therefore, Plaintiff waives any and all rights

1 conferred upon him under section 1542 of the California Civil Code, which provides as follows:

2 A general release does not extend to claims which the creditor does not
3 know or suspect to exist in his or her favor at the time of executing the
4 release, which if known by him or her must have materially affected his
or her settlement with the debtor.

5 In giving this release, Plaintiff acknowledges that he is aware that facts may be discovered in
6 addition to or different from those which he now knows or believes to be true with respect to the
7 subject matter of the release, but that it is his intention to, and he does hereby fully, finally, and forever
8 settle and release any and all Released Parties from any and all claims without regard to the subsequent
9 discovery or existence of such additional or different facts.

10 c. Plaintiff further warrants and agrees that, other than this action, he has not made
11 or filed any claim, charge, or complaint (other than for an application for unemployment benefits and
12 workers' compensation benefits) against Defendants or any Released Party or related to his
13 employment with Defendants that is open or pending before any local, state, or federal, judicial,
14 administrative, or arbitral body. Plaintiff hereby warrants and agrees that any such claim, charge or
15 complaint previously filed has been dismissed, withdrawn, or otherwise resolved.

16 **5. Class Counsel's Attorneys' Fees and Costs**

17 Defendants will not oppose Plaintiff's application to the Court for attorneys' fees for one-third
18 of the Total Settlement Payment (i.e. \$133,333.34) and actual expenses not to exceed \$15,000. The
19 Class Counsel's fees and costs approved by the Court shall encompass: (a) all work performed and
20 costs incurred by Class Counsel in representing Plaintiff and the putative class through the date of this
21 Joint Stipulation; (b) all work to be performed and costs to be incurred in connection with approval by
22 the Court of this Joint Stipulation; and (c) all work and costs, if any, incurred in connection with
23 administering the Settlement through the conclusion of the Action. To the extent the Court approves
24 less than the requested amount of Class Counsel's fees and costs, the difference between the requested
25 and awarded amounts will added to the amount to be distributed to the Class Participants as part of the
26 Net Settlement Amount. Defendants shall bear their own attorneys' fees and costs incurred for the
27 Action.
28

1 **6. Class Participant Distribution Formula**

2 The “Net Settlement Amount” will be distributed as follows: Each Class Participant’s
3 “Individual Settlement Payment” will be based on the ratio of each Class Participant’s Individual
4 Workweeks to the Total Workweeks. The Individual Settlement Payment will be calculated by
5 dividing the Class Participant’s Individual Workweeks by the Total Workweeks and multiplying by
6 the Net Settlement Amount. A portion of this resulting amount will be subject to tax withholdings, as
7 described below.

8 **7. Non-Reversionary Settlement**

9 The Parties agree that no part of the Total Settlement Amount will revert back to Defendants.

10 **8. Treatment of Class Settlement Payments**

11 All class Individual Settlement Payments will be allocated as follows: 50% to settlement of
12 wage claims subject to tax withholdings and 50% to settlement of claims for penalties and/or interest.

13 **9. Release of Claims by Class Participants**

14 Upon the Court’s issuance of a Final Approval Order approving this Settlement, each Class
15 Participant shall release and discharge the Released Parties (i.e., National Storage Affiliates Trust;
16 Storage Management and Leasing Co., LLC; iStorage JV, LLC; and InTandem Human Resources,
17 LLC and each of their past, present and future officers, directors, shareholders, members, partners,
18 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and
19 reinsurers, and their respective successors and predecessors in interest, subsidiaries, dba’s, affiliates,
20 parents, brother and sister corporations, franchisees, franchisors, and attorneys and each of their
21 company-sponsored employee benefit plans of any nature, and all of their respective officers,
22 directors, employees, administrators, fiduciaries, trustees, and agents) from Released Claims, as
23 defined herein.

24 **10. Termination of Employment and No Re-employment**

25 As part of the full settlement of all claims, Plaintiff understands and agrees not to seek future
26 employment, reemployment or reinstatement of employment with Defendants and/or any of their
27 parent, subsidiary and affiliated business entities, divisions or business units. Plaintiff further agrees
28 that Defendants and/or any of the Released Parties may reject without cause any application for

1 employment that Plaintiff may make, and that he shall have no legal recourse arising out of any such
2 rejection.

3 **11. Confidentiality and Non-Disparagement**

4 a. Plaintiff agrees that he shall not promote, or publicize the filing of this Action,
5 the Parties' Settlement, this Agreement and its terms, or the negotiations leading to this Agreement,
6 with anyone other than the Court. Notwithstanding the foregoing, Plaintiff may disclose the terms of
7 this Agreement to his immediate family members, Class Members, to those persons to whom
8 disclosure is necessary for the preparation of tax returns and other financial reports, and to persons to
9 whom disclosure is ordered by a court of competent jurisdiction or otherwise required by law.

10 The Parties and their counsel agree that they will not issue any press releases, engage in any
11 communications, or take any other action that would directly or indirectly provide the press or media
12 or any litigation reporting service with information about this Action, this Agreement, or the Parties'
13 Settlement or would otherwise enable or allow the press or other media or any litigation reporting
14 service to learn or obtain such information; except that Parties shall have the right to undertake any
15 and all submissions and filings with the Court, and shall cooperate in so doing, in order to facilitate
16 preliminary and final approval of the Settlement and (i) Defendants shall have the right to disclose the
17 Settlement and information related thereto (x) to their affiliates and each of their respective employees,
18 agents, members, partners, representatives, contractors, auditors and financing sources who have a
19 need to know and (y) as may be reasonably required or appropriate under federal or state law or under
20 generally accepted accounting principles; and (ii) Defendants shall also have the right to respond in
21 reasonably general terms to inquiries from the media, investors, analysts and other investment-related
22 entities, if any. Plaintiff and Class Counsel further agree that they will not post any information
23 regarding this Agreement or the Settlement on any internet websites or take any such action that would
24 cause or allow such information to be posted on any internet website or on the web. Nor will Class
25 Counsel, in any other communication (oral, written, electronic, or otherwise), reference this Action or
26 this Settlement in lists or samples of representative cases handled by Class Counsel, except as to
27 information publicly available through the Court and/or where Class Counsel are submitting
28 declarations regarding their adequacy to act as class counsel.

1 b. Plaintiff agrees that he will not (and will not direct, encourage or solicit any
2 other person or entity to) make any written or oral statement about Defendants, their parent, subsidiary,
3 and affiliated companies or any of their shareholders, members, partners, directors, officers, or
4 employees, or any of their products or services, which is known by Plaintiff or reasonably should be
5 known by Plaintiff to be untrue and agrees that he will not make (and will not direct, encourage or
6 solicit any other person or entity to make) any disparaging or negative written or oral statement about
7 Defendants, their parent, subsidiary or affiliated companies or any of their shareholders, members,
8 partners, directors, officers or employees, or any of its/their products or services with the intent to
9 cause any form of injury or harm, including reputational and/or financial injury or harm. However,
10 nothing in this Paragraph shall prevent Plaintiff from providing truthful information, if required by
11 law, or from making any statement to the Court in order to effectuate the Settlement.

12 Certain materials provided by Defendants to the Class Representative and/or Class Counsel in
13 this Action were provided pursuant to the mediation privilege, a confidentiality agreement or
14 protective order, and/or possibly other privileges or protections from disclosure. Class Representative
15 and Class Counsel agree not to use, disseminate, or disclose any of the documents, data, and/or
16 information provided to them by Defendants in this Action, except as may be necessary to effectuate
17 the Settlement of this Action, or the defense or prosecution of a malpractice action, or the defense of
18 any state bar complaint.

19 **E. DISTRIBUTION OF SETTLEMENT FUNDS**

20 Within five (5) court days after the Effective Date, Defendants shall transfer to the Settlement
21 Administrator an amount equal to the Total Settlement Amount. The delivery of the Settlement
22 Amount to the Settlement Administrator shall constitute full and complete discharge of the entire
23 obligation of Defendants under this Agreement. No Released Party shall have any further obligation
24 or liability to the Class Representative or Settlement Class Members under this Agreement.

25 The distribution of Settlement Payments to Settlement Class Members shall occur no later than
26 the first regular business date that is ten (10) court days after the Effective Date (the “Settlement
27 Proceeds Distribution Deadline”). The Settlement Administrator shall be deemed to have timely
28 distributed Settlement Payments if it places in the mail Individual Settlement Payments for all Class

1 Participants by the Settlement Proceeds Distribution Deadline. No person shall have any Claim against
2 the Settlement Administrator, Plaintiff, Defendants, Class Counsel, Defendants' Counsel, the
3 Released Parties, or any other agent designated by Plaintiff or Defendants based upon the distribution
4 of Settlement Payments made substantially in accordance with this Agreement or further orders of the
5 Court.

6 Any settlement checks that are not claimed or not negotiated within one hundred and eighty
7 (180) calendar days after the distribution of Settlement Payments to Settlement Class Members shall
8 be void and the funds not disbursed as a result, and will instead be paid to the State Controller's Office
9 Unclaimed Property Fund to be held in the name of the Class Member and in accordance with the
10 procedures set forth in CCP §1520.

11 The Settlement Administrator's distribution of Class Counsel's Fees and Expenses, and the
12 Class Representative Payments from the Settlement Fund shall occur no later than the Settlement
13 Proceeds Distribution Deadline. Upon such payment, Defendant, the Released Parties, Defendants'
14 Counsel, and the Settlement Administrator shall have no further liability or responsibility to Class
15 Counsel or to any vendors or third parties employed by Plaintiff or Class Counsel.

16 Defendants shall not be obligated to make any payments contemplated by this Agreement
17 unless and until the Court enters a Final Order and Final Judgment, and then only after the Effective
18 Date.

19 **F. NULLIFICATION OF THE JOINT STIPULATION**

20 If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by
21 the Parties, or (b) the Court should for any reason fail to enter a judgment in the Action, or (c) the
22 judgment is reversed, modified or declared or rendered void, then this Settlement shall be considered
23 null and void, and neither this Settlement, nor any of the related negotiations or proceedings, shall be
24 of any force or effect, and all Parties to this Settlement shall stand in the same position, without
25 prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of
26 any material portion of this settlement shall invalidate this Settlement in its entirety, unless the Parties
27 shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in
28 full force and effect.

1 **G. FINAL APPROVAL HEARING**

2 At the Final Approval Hearing, Class Participants shall move the Court for an order finally
3 approving the terms of the Joint Stipulation, certifying the Class for settlement purposes only, finding
4 the terms of the Joint Stipulation as being fair, reasonable and adequate to the Class Participants. Class
5 Counsel and Defendants' Counsel shall submit to the Court such pleading and/or evidence as may be
6 required for the Court's determination.

7 **H. DUTIES OF THE PARTIES**

8 **1. Mutual Full Cooperation**

9 The Parties agree to cooperate fully with each other to accomplish and implement the terms of
10 this Joint Stipulation. Such cooperation shall include, but not be limited to, execution of such other
11 documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of
12 this Joint Stipulation. The Parties shall use their best efforts, including all efforts contemplated by this
13 Joint Stipulation and any other efforts that may become necessary by Court Order, or otherwise, to
14 effectuate this Joint Stipulation and the terms set forth herein. As soon as practicable after execution
15 of this Joint Stipulation, Class Counsel with the cooperation of Defendants and their counsel, shall
16 take all necessary and reasonable steps to secure the Court's Final Approval of the terms of this Joint
17 Stipulation.

18 **2. Duty to Support and Defend the Settlement**

19 The Parties agree that the terms of the Joint Stipulation are fair and reasonable and will so
20 represent to the Court. The Parties hereto agree to abide by all of the terms of the Joint Stipulation in
21 good faith and to support the Settlement fully, and to use their best efforts to defend this Settlement
22 from any legal challenge, whether by appeal or collateral attack.

23 The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage
24 Class Members to submit an Opt-Out Request or an objection to the Settlement or to appeal from the
25 Final Order or Final Judgment. Parties shall be entitled to express support for this Agreement and
26 Settlement to Class Members, or any of them, provided that Parties do nothing to mislead any Class
27 Member, and in the case of Defendant, does not condition any benefit on participation in the Settlement
28 or deny any benefit if a Class Member does not participate in the Settlement.

1 **I. MISCELLANEOUS PROVISIONS**

2 **1. Waiver of Appeals**

3 The Parties and Class Participants agree to waive appeals and to stipulate to class certification
4 for purposes of implementing this Settlement only, provided, however, that Plaintiff and Class Counsel
5 can appeal any reduction by the Court of the requested attorneys' fees and costs.

6 **2. Construction**

7 The Parties hereto agree that the terms and conditions of this Joint Stipulation are the result of
8 lengthy, intensive, arm's-length negotiations between the Parties, and that this Joint Stipulation is not
9 to be construed in favor of or against any party by reason of the extent to which any party or its counsel
10 participated in its drafting.

11 **3. Choice of Law**

12 This Joint Stipulation is intended to and shall be governed by the laws of the State of California,
13 without regard to conflicts of law principles.

14 **4. Captions and Interpretations**

15 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
16 reference only, and in no way define, limit, extend, or describe the scope of this Joint Stipulation or
17 any provision thereof.

18 **5. Modification**

19 This Joint Stipulation may not be changed, altered, or modified, except in writing signed by
20 the Parties hereto and approved by the Court. This Joint Stipulation may not be discharged except by
21 performance in accordance with its terms or by a writing signed by the Parties hereto.

22 **6. Integration Clause**

23 This Joint Stipulation contains the entire agreement between the Parties relating to the
24 Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous
25 agreements, understandings, representations, and statements, whether oral or written, and whether by
26 a party or such party's legal counsel, are merged herein. No rights under this Joint Stipulation may be
27 waived except in writing.

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7. Successors and Assigns

This Joint Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

8. Class Counsel Signatories

Because the Members of the Class are so numerous, the Parties agree that it is impossible or impractical to have each Class Participant sign this Joint Stipulation. Thus, it is agreed that, for purposes of seeking approval of the Class Settlement, this Joint Stipulation may be executed on behalf of the Class by Plaintiff and Class Counsel.

9. Corporate Signatories

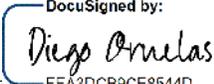
Any person executing this Joint Stipulation or any such related document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all parties hereto, that such person has been duly authorized by such corporation to execute this Joint Stipulation or any such related document.

10. Execution in Counterparts

This Joint Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Joint Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

PLAINTIFF/CLASS REPRESENTATIVE

Dated: May 18, 2020

By: 
DIEGO ORNELAS

NATIONAL STORAGE AFFILIATES TRUST

Dated: May 8, 2020

By: *Tamara D. Fischer*
Print Name: Tamara D. Fischer
Title: President and Chief Executive Officer

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INTANDEM HUMAN RESOURCES, LLC

Dated: May, 11, 2020

By: Monica Denler
Print Name: Monica Denler
Title: Authorized Person

STORAGE MANAGEMENT AND LEASING CO., LLC

Dated: May 8, 2020

By: Tamara D. Fischer
Print Name: Tamara D. Fischer
Title: Authorized Person

ISTORAGE JV, LLC

Dated: May 8, 2020

By: Tamara D. Fischer
Print Name: Tamara D. Fischer
Title: Authorized Person of National Storage
Affiliates Management Company,
LLC, its Non-Member Manager

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APPROVED AS TO FORM

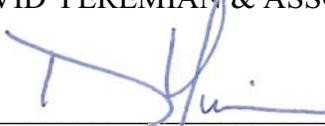
LITTLER MENDELSON, P.C.

Dated: May 11, 2020

By: 
ANGELA J. RAFOTH
LAUREN E. MEYERHOLZ
Attorneys for Defendants NATIONAL
STORAGE AFFILIATES TRUST,
INTANDEM HUMAN RESOURCES, LLC,
STORAGE MANAGEMENT AND LEASING
CO., LLC, and ISTOREAGE JV, LLC,

DAVID YEREMIAN & ASSOCIATES, INC.

Dated: May 19, 2020

By: 
DAVID YEREMIAN
ALVIN B. LINDSAY
Attorneys for Plaintiff DIEGO ORNELAS

DAVTYAN LAW FIRM

Dated: May 20, 2020

By: 
EMIL DAVTYAN
Attorneys for Plaintiff DIEGO ORNELAS

4836-3414-1116.1 100993.1001

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO

Ornelas v. National Storage Affiliates Trust et al. (Case No. CGC-18-571421)

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were employed by Defendants as a non-exempt employee at any time between November 19, 2014 and February 3, 2020, you are eligible to receive compensation from a class action settlement.

A non-exempt employee filed a wage and hour class action against Defendants National Storage Affiliates Trust; InTandem Human Resources, LLC; Storage Management and Leasing Co., LLC; and iStorage JV, LLC (collectively “NSA” or “Defendants”) on behalf of himself and all other similarly situated individuals. NSA denies the allegations and the Court has not made any determination regarding the claims made in the lawsuit.

The parties have reached a settlement, and the Court has preliminarily approved it on the ground that the settlement is fair, reasonable, adequate, and in the best interests of the class members.

*A court authorized this notice. This is not an advertisement.
This is not a lawsuit against you. You are not being sued.
But, your rights will be affected by this settlement.*

YOU MUST RESPOND BY [REDACTED], 2020 IF YOU WISH TO EXCLUDE YOURSELF FROM OR OBJECT TO THIS SETTLEMENT.

YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	If you received this Notice of Class Action Settlement, you may be entitled to a payment under this Settlement. If you do nothing, you will <u>automatically</u> receive your share of the settlement. You do <u>not</u> need to submit a claim or any other form to receive this payment.
EXCLUDE YOURSELF	You may exclude yourself from the Settlement by “opting out.” If you exclude yourself, you will <u>get no payment</u> , but will have the right to pursue any claims you have on your own. This is the only option that allows you to be part of any other lawsuit against NSA that involves the claims made in this case. But you will have to get your own attorney or represent yourself.
OBJECT	If you so choose, you may object to this settlement.

PLEASE READ THIS NOTICE CAREFULLY.

Your rights will be affected by this settlement.

1. Why did I get this notice?

You received this notice because Defendants' business records indicate that you were or continue to be employed by Defendants or predecessor entities as a non-exempt, hourly employee at one or more of Defendants' storage facilities within the State of California during the time period of November 19, 2014 to February 3, 2020.

2. Why should I read this notice?

This notice is to let you know that the parties in a class action case filed against Defendants have reached a tentative settlement. Under California law, a class action settlement must be reviewed by a judge via a two-step process: preliminary approval and final approval. On [REDACTED], 2020, Judge [REDACTED] of the Superior Court of California, County of San Francisco preliminarily approved the terms of this proposed settlement and ordered this notice to be mailed to all class members. The Court will hold a Final Fairness Hearing concerning the proposed settlement on [REDACTED], 2020 at [REDACTED].m in Department _____. This notice tells you about your rights to share in the settlement and object to it, or to potentially exclude yourself (otherwise known as "opting out") from the settlement.

3. What is this case about?

Plaintiff claims that Defendants violated California wage and hour laws and unfair competition laws by: failing to pay employees properly for all hours they worked; failing to provide meal and rest periods that complied with California law or pay premium wage in lieu thereof; failing to reimburse business expenses; failing to pay all wages due timely upon termination; and failing to provide accurate, itemized wage statements. Based on these alleged violations, Plaintiffs also seek penalties pursuant to California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act) and California Labor Code § 558. Defendants deny all of these allegations and assert that they have paid employees properly for all of their work, have complied with California laws regarding meal and rest breaks, and have otherwise fully complied with all of their legal obligations under California law.

4. Who are the parties in this case?

Mr. Diego Ornelas is the Plaintiff/Class Representative. National Storage Affiliates Trust, InTandem Human Resources, LLC, Storage Management and Leasing Co., LLC, and iStorage JV, LLC are the Defendants.

5. Why did Defendants agree to the settlement?

Defendants have agreed to the settlement only as a compromise because they wish to finally, fully and completely resolve the dispute and to limit the further expense and inconvenience of protracted litigation. By agreeing to the terms of the settlement, Defendants do not admit any of the allegations in the case and do not admit that they have done anything wrong or that any Class Member has suffered any damage. As such, Defendants are not giving up their right to defend themselves against any of the allegations involved in the lawsuit if this settlement fails for any reason.

6. How much is the settlement and what are the settlement terms?

The Total Settlement Amount is \$400,000, which will cover settlement payments to all Class Members, a payment to the Labor and Workforce Development Agency (\$15,000), settlement administration fees (\$7,500), the class representative service payment (up to \$10,000), and Plaintiff's attorneys' fees (up to \$133,333.34) and costs (up to \$15,000).

YOU DO NOT NEED TO SUBMIT A CLAIM FORM IN ORDER TO RECEIVE YOUR SHARE OF THE SETTLEMENT.

If you wish to be a participating Class Member and receive payment under the settlement, you do not have to do anything except ensure your address is correct with the Settlement Administrator. The actual amount that you will receive will be based on your total weeks of employment between November 19, 2014 and February 3, 2020 (the "Class Period") according to Defendants' records. The Net Settlement Amount (the amount remaining to pay individual settlement payments after the above deductions from the Total Settlement Amount for payment to the Labor and Workforce Development Agency, settlement administration fees, class representative service payment, and Plaintiff's attorneys' fees and costs) will be divided by the total number of weeks worked by all Class Participants (Class Members who do not opt out) during the Class Period to determine a multiplier. Each Class Participant's payment will equal the number of weeks of employment for that Class Participant during the Class Period, times the multiplier.

The Individual Settlement Payments to the Class Participants will be allocated as follows: 50% to settlement of wage claims and subject to tax withholdings, and 50% to settlement of claims for penalties and/or interest. Any settlement checks that are not claimed or not negotiated within 180 calendar days after the distribution of Settlement Payments to Settlement Class Members will be voided and the funds will be sent to the State Controller's Office Unclaimed Property Fund to be held in the name of the Participating Class Member.

IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST NOTIFY THE SETTLEMENT ADMINISTRATOR IN WRITING THAT YOU WANT TO OPT-OUT, AND THE NOTICE MUST BE POSTMARKED NO LATER THAN [REDACTED], 2020, AS ADDRESSED IN FURTHER DETAIL BELOW.

7. How will my share be determined and how do I challenge my workweeks?

Defendants' business records indicate that you were employed as a non-exempt, hourly employee at one or more of Defendants' storage facilities within the State of California for [REDACTED] weeks during the period from November 19, 2014 through February 3, 2020. If you do not opt out of this Settlement, you will automatically be mailed a check for your proportional share of the settlement payment, which will be based on your total workweeks stated in this Notice.

If you disagree with your workweeks stated in the prior paragraph, please contact the Settlement Administrator in writing and provide the total number of weeks that you believe you were employed as a non-exempt, hourly employee at one or more of Defendants' storage facilities

within the State of California during the period from November 19, 2014 through February 3, 2020. You will need to submit supporting documentation of your claimed workweeks by mailing, faxing or emailing them to the Settlement Administrator as follows:

JND Class Action Administration (“JND”)

[MAILING ADDRESS]

[PHONE NUMBER] [FAX NUMBER]

[EMAIL ADDRESS]

You must include your full name, the last four digits of your social security number, and mailing address on your statement and sign it.

If you disagree with your stated workweeks, the Settlement Administrator will review your claim and all supporting documentation that you provide and then will notify you of the final determination via written correspondence within 14 calendar days of their receipt of your supporting documentation.

8. What are the procedures for requesting exclusion from and submitting objections to the Settlement?

Requests for Exclusion: If you do not wish to participate in the settlement, you must request exclusion by notifying the Settlement Administrator (see JND contact information above) in writing post-marked no later than [REDACTED], 2020. Your request must be signed by you, include your printed name, last four digits of your Social Security Number, and some way to contact you (phone number or address). Your request needs to make the following statement:

“I have read the Class Notice and I wish to opt out of the class action and the settlement of the case: *Diego Ornelas, Plaintiff, v. National Storage Affiliates Trust, a Maryland real estate investment trust; InTandem Human Resources, LLC, a Colorado limited liability company; Storage Management and Leasing Co., LLC, a Florida limited liability company; iStorage JV, LLC, a Delaware limited liability company; and Does 1 through 50 inclusive, Defendants*, Superior Court of the State of California for the County of San Francisco, Case No. CGC-18-571421.”

If you request exclusion, you will receive no money from the settlement. Any Class Members who submit a timely and valid request to be excluded from the settlement will not be entitled to any recovery under the settlement and will not be bound by the terms of the settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a timely and valid opt-out request on or before the above deadline will be Class Members bound by all terms of the settlement and the Final Approval Order entered in this Action, when the settlement is finally approved by the Court, and entry of the judgment will bind all Class Members who do not timely and properly request exclusion.

Objections: If you wish to make an objection to the settlement, you may submit a written statement stating your objection and the basis for your objection, along with any and all

documents that support your objection, to the Settlement Administrator, JND Class Action Administration, at [MAILING ADDRESS]. Your objection must be signed by you (or your attorney if you have one), include your printed name, last four digits of your Social Security Number, and some way to contact you (phone number or address). The last day to postmark your objection and send it to the Administrator is [REDACTED], 2020.

The Claims Administrator will provide objections received to counsel for the parties, who will lodge them with the Court. The Court will rule on any objections at the final approval hearing, where it will either sustain or overrule them before proceeding with approval of the Settlement. Even if you object to the settlement, you will still receive your proportional share of the Net Settlement Amount if the court approves the settlement.

9. What rights will I give up if I participate in this settlement?

The Class Members who participate in the settlement will fully and finally release and discharge the Released Parties from all liability for the Released Claims which covers the time period from November 19, 2014 to February 3, 2020.

The Released Parties means Defendants National Storage Affiliates Trust; Storage Management and Leasing Co., LLC; iStorage JV, LLC; and InTandem Human Resources, LLC and each of their past, present and future officers, directors, shareholders, members, partners, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, dba's, affiliates, parents, brother and sister corporations, franchisees, franchisors, and attorneys and each of their company-sponsored employee benefit plans of any nature, and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents.

The Released Claims means any and all claims, causes of action, damages, wages, benefits, expenses, premiums, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether under federal law or the law of any state, whether suspected or unsuspected, whether known or unknown, whether contingent or vested, which the Class Representatives or any Class Participant has against the Released Parties or any of them for any acts occurring during the Class Period which are based on, arise out of, relate to, or are covered by any of the facts, or any of the factual allegations, in the Action, without regard to the theory on which the claim is or may be brought, including claims that are based upon or arise out of the California Labor Code or any similar provision of federal, state or local law, including but not limited to:

- a. Any and all claims that are based on, arise out of, relate to, or are covered by any of the facts alleged, or litigated in the Action concerning the Class Representative's and/or Class Participants' compensation or other payments received, and/or the provision of meal periods and rest breaks, while employed by any Released Party as a non-exempt employee during the Class Period, including, but not limited to, claims arising under or relating to (i) the wage-and-hour provisions of the California Labor Code and the Wage Orders adopted by the California IWC, specifically including but not limited to claims under Labor Code

sections 201, 202, 203, 204, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198; (ii) the federal Fair Labor Standards Act and its Regulations; (iii) conversion; and/or (iv) the California Business and Professions Code sections 17200, et seq.; and

- b. Any and all wage and hour violations, whether premised on statute, contract, tort or other theory of liability under state, federal or local law, arising out of or reasonably related to the facts, incidents, transactions, events, occurrences, disclosures, statements, acts, or omissions in law or in equity, asserted or that could have been reasonably asserted from the facts alleged or litigated in the Action by any Class Member against the Released Parties.

10. Is there a trial date set for this class action?

Currently, there is no trial date. If the settlement is not approved by the Court, the parties may proceed to trial.

11. Who are the attorneys representing the parties?

Attorneys for Plaintiff:	Attorneys for Defendants:
David Yeremian and Alvin B. Lindsay DAVID YEREMIAN & ASSOCIATES, INC. 535 N. Brand Blvd., Suite 705 Glendale, California 91203 Telephone: (818) 230-8380 Facsimile: (818) 230-0308	ANGELA J. RAFOTH LITTLER MENDELSON, P.C. 333 Bush Street, 34th Floor San Francisco, California 94104 Telephone: 415.433.1940 Facsimile: 415.399.8490
Emil Davtyan DAVTYAN LAW FIRM 880 E. Broadway Glendale, California 91205 Telephone: (818) 875-2008 Facsimile: (818) 722-3974	LAUREN E. MEYERHOLZ LITTLER MENDELSON, P.C. 1900 Sixteenth Street, Suite 800 Denver, Colorado 80202 Telephone: 303.629.6200 Facsimile: 303.629.0200

12. How will the attorneys, class representatives and settlement administrator be paid?

Class Counsel has been working on this case since before November 2018. They will apply for fees of one-third of the Total Settlement Amount (up to \$133,333.34) and up to \$15,000 for actual litigation costs. Defendants will bear their own attorneys' fees and costs outside of this settlement. Class Counsel will further apply for a class representative service payment for Plaintiff Diego Ornelas in the amount of \$10,000 to recognize his services to the class action, for assuming the risk of paying the litigation costs incurred by Defendants in the event of an unsuccessful outcome in this case at trial or on appeal, and in exchange for a general release. Additionally, the Court-appointed Settlement Administrator's costs (estimated at \$15,000)

associated with mailing and processing Class Members' settlement-related papers will be deducted from the settlement fund.

13. What if I need additional information?

For a more detailed statement of the matters involved in the Action and the Class Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement of Class Action, and other papers filed in the Action, which may be inspected at the Office of the Court Clerk, Superior Court of California, County of San Francisco during the Court's normal business hours. All inquiries by Class Members about this class action settlement should be directed to Plaintiff's counsel or the Settlement Administrator at:

JND Class Action Administration ("JND")

[MAILING ADDRESS]

[PHONE NUMBER] [FAX NUMBER]

[EMAIL ADDRESS]

Refer to the *Ornelas v. National Storage Affiliates Trust, et al.* Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE ADMINISTRATION PROCESS.