

DISTRICT COURT  
LARIMER COUNTY, COLORADO  
201 LaPorte Avenue, Suite 100  
Fort Collins, Colorado 80521

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CASE NUMBER: 2017CV31088

Plaintiffs:

Todd Wasulko; Rasheda Mayner; Manish Sing; and Ying Li

vs.

Defendants:

eRentPayment, LLC

*Counsel for Plaintiffs:*

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Case Number:

Division:

**PLAINTIFFS' CLASS-ACTION COMPLAINT AND JURY DEMAND**

Plaintiffs, individually and as class representatives, hereby file their Class Action Complaint and Jury Demand through their counsel of record, The Law Office of Ian T. Hicks, LLC, and in support thereof, state as follows:

## **I. NATURE OF THE CASE**

1. “History repeats itself. First as a tragedy, then as a farce.”<sup>1</sup> And so it goes here. The use of advanced technology as a vehicle for the secure and efficient transaction of business has once again been used as a Trojan Horse to effectuate theft on a massive scale. Plaintiffs own a small handful of rental properties in Colorado and other states. They each hired eRentPayment, LLC (“eRent”) to collect and transmit monthly rental payments from their respective tenants. eRent induced the Plaintiffs to utilize its services by representing that it had the skill, expertise, and technical abilities to reliably handle its assigned payment-processing function. Yet, in October of 2017, Plaintiffs began noticing that payments made by their respective tenants were delayed.

2. Ultimately, it became clear that it wasn’t just a delay—the payments were, in fact, lost forever due to the wrongful actions of eRent. Hundreds, perhaps thousands, of landlords who also retained eRent have seen the monthly rental payments of their tenants vanish, without a trace. Accordingly, Plaintiffs file this action individually and as class representatives, on behalf of all landlords who hired eRent to handle the processing of rental payments made by tenants, yet never received payments made into the eRent system by those tenants between October 1, 2017 and December 1, 2017. This case is tailor-made for certification as a class action: a cohesive group of Plaintiffs, who suffered a legally and factually common injury, whose individual claims lack significant value.

## **II. PARTIES, JURISDICTION, AND VENUE**

3. Ying Li (“Ying”) is a resident of Colorado, who utilized eRent’s services as a landlord for the purpose of handling payments made by a tenant on a real property located in the

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<sup>1</sup> Karl Marx.

state of Colorado. Ying is currently owed approximately \$2,500.00 from a rental payment that was actually made by a tenant into the eRent system, but was never received by Ying due to the wrongful actions of eRent alleged herein.

4. Todd Wasulko (“Todd”) is a resident of New York, who utilized eRent’s services as a landlord for the purpose of handling payments made by a tenant on a real property located in the state of New York. Todd is currently owed approximately \$1,150.00 for a rental payment that was actually made by his tenant into the eRent system, but was never received by him due to the wrongful actions of eRent alleged herein.

5. Rasheda Mayner (“Rasheda”) is a resident of Georgia, who utilized eRent’s services as a landlord for the purpose of handling payments made by a tenant on a real property located in the state of Georgia. Rasheda is currently owed approximately \$1,500.00 for a rental payment that was actually made by her tenant into the eRent system, but was never received by her due to the wrongful actions of eRent alleged herein.

6. Manish Singh (“Manish”) is a resident of Arizona, who utilized eRent’s services as a landlord for the purpose of handling payments made by a tenant on a real property located in the state of Arizona. Manish is currently owed approximately \$3,125.00 for a rental payment that was actually made by his tenant into the eRent system, but was never received by him due to the wrongful actions of eRent alleged herein.

7. eRent is a privately-held, limited-liability company organized and existing under the laws of the state of Colorado. eRent has its principal place of business at 31 Commodore Place, in Fort Collins, Colorado, 80525. Rick Sands or Richard Sands, or both if these are different

persons, is, upon information and belief, the sole proprietor, owner, and managing member of eRent and associated entities identified as eRentPayment II, LLC, and eRentPayment III, LLC.

8. This Court has personal jurisdiction over eRent because it is an entity that is domiciled in the state of Colorado, because it is organized and existing under the laws of this state and because its principal office is in Fort Collins, Colorado. Further, eRent advertises on its website that it is based in Fort Collins.

9. Venue is also proper in this Court pursuant to C.R.C.P. 98(c)(1) because eRent resided in Larimer County at the commencement of this action and further under subsection 98(b)(4) because the services, to the extent there was a contract, were to be performed in Larimer County.

### **III. GENERAL ALLEGATIONS**

10. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

11. eRent advertises itself as an online rental payment solution, that was “started in 2004 to offer landlords and property managers of any size the flexibility and convenience of collecting rental payments online.” eRent utilizes a website to conduct its business activities, through which tenants log in, submit a payment, and those funds are then handled purportedly by eRent and ultimately transmitted into the property owner or landlord’s checking account. eRent receives payment through the application of a set schedule of transaction fees, either \$3.00 per transaction or \$10.00 per month, which is automatically applied.

12. This procedure is explained on eRent’s website, which, for fee, “allows Renters to pay their rent and other related fees electronically over the internet. All transactions are

electronically deposited into the Property Manager/Owner's bank account. Our service allows Property Manager/Owners to refund security deposits and other payments electronically, include late fees with late payments, send email reminders, and export transactions.”

13. In describing the benefits of using their service, eRent's website states that by using their service, one gets to “[e]njoy the ease of not cashing checks, automatic deposits, electronic record keeping, avoiding lost or late payments, and improved service for your Residents.” Thus, eRent induced its customers, including the Plaintiffs, into believing that its service provided a heightened degree of security over its competitors as well as traditional rent-payment methods.

14. Moreover, on its website, under the “Frequently Asked Questions” section, the following question and answer appears: “How do I know the system is secure?” In response, eRent states “Keeping your financial information secure is one of our top priorities so here are some of the processes we follow . . .” Thereafter, eRent lists several types of security processes it follows to ensure the integrity of its own, discrete data and computer systems.

15. By listing the security processes that it follows, but which only relate to its own discrete data and computer systems, as evidence of its ability to ensure the integrity of its payment-processing operation, eRent creates the impression that it manages, controls, or has the right of control over that operation from start to finish. Yet, eRent relied upon the services of a third party, CC Operations, LLC d/b/a eCHECKit (“eCheckit”) for the bulk of its processing operations. Thus, eRent's promise concerning the security and integrity of its payment-processing operation covered not only its operation, but also the operation and systems of eCheckit and every other entity involved in effectuating the payment and transmittal of rental payments for eRent's customers.

16. eCheckit, in turn, relied upon yet another vendor, Base Commerce, LLC, d/b/a Check Commerce (“Check Commerce”), to undertake the payment processing eCheckit was handling on behalf of eRent. More specifically, eCheckit utilized the services of Check Commerce to obtain access to the Automated Clearing House Network (“ACH Network”) necessary to carry out the debit and credit instructions tendered on behalf of eCheckit’s customers, such as Plaintiffs, and their respective tenants.

17. At some point in late September through October of 2017, eCheckit, due to alleged irregularities with the debit and credit instructions it was submitting on behalf of eRent and others, had its ability to submit further transaction instructions suspended by Check Commerce. Check Commerce then took the additional step of freezing all of the unsettled funds held on behalf of eCheckit, and by extension, eRent, in a reserve account.

18. It appears that eCheckit was, upon information or belief, the victim of a hacking, data breach, fraud, or other wrongful act that resulted in the theft of potentially millions of dollars, including rent payments owed to the Plaintiffs and other property owners and landlords who are customers of eRent. This occurred because eCheckit failed to adequately secure its data, systems, and security processes. The security of that data, those systems, and those security processes were the responsibility of eRent.

19. As a consequence of the foregoing, at a minimum, hundreds, and perhaps thousands, of eRent’s customers, including Plaintiffs, failed to receive rent payments submitted by their respective tenants during the time period between October 3, 2017 and October 12, 2017. Those rent payments (the “Lost Payments”) were submitted by Plaintiffs’ tenants through the eRent website, as instructed by eRent.

20. The Lost Payments, upon information or belief, cannot be recovered and Plaintiffs have as a result suffered direct economic damages as a result. In fact, despite a flood of complaints, phone calls, and email communications relating to the Lost Payments, eRent has failed to explain when, or more importantly, if, the Lost Payments will be returned.

21. The Lost Payments were submitted by Plaintiffs' tenants through the eCheckit website, as instructed by eCheckit. Yet, despite being in actual or constructive possession of the Lost Payments from that point in time forward, eCheckit failed to ensure that the Lost Payment were deposited into Plaintiffs' checking accounts. Accordingly, eRent failed to exercise reasonable care to ensure compliance with its obligation to safeguard monies owed to the Plaintiffs.

22. On its website, eRent claims to have a broad array of insurance to protect against losses of the very kind that were suffered by the Plaintiffs. That claim is made in response to the question in the "Frequently Asked Questions" section in response to the question "How do I know the system is secure?" Thus, eRent induces its customers to utilize its service in material part by promising to have insured against risks that are unique to its business model.

#### **IV. CLASS ALLEGATIONS**

23. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

24. Plaintiffs propose a single class for certification pursuant to C.R.C.P. 23(a) and (b)(3), with the following class definition: all customers who (1) agreed to utilize eRent's online rental payment-collection service to receive rental payments, (2) whose tenant made a rental payment using eRent's website between October 3, 2017 and October 12, 2017, and (3) did not receive the payment made by the tenant.

25. The foregoing class definition and the facts alleged demonstrate that this case is one that is uniquely well-suited for certification: a cohesive group of Plaintiffs, who share the same legal relationship with the eRent, who suffered damages as a result of single wrongful act or omission, or closely-connected series of acts or omissions, and whose individual claims lack significant individual value. The proposed class definition and the facts alleged also satisfy the discrete requirements of C.R.C.P. 26(a) and (b)(3).

The Proposed Class Satisfies C.R.C.P. 23(a)(1)-(4)

26. First, the class is so numerous that joinder of all members is impracticable under C.R.C.P. 23(a)(1). Approximately 800 class members have responded to an online survey demonstrating that they have suffered the same legal wrongs, injuries, and damages as the proposed class representatives. Having several hundred individual Plaintiffs in one pleading, testify at trial, serve discovery, respond to discovery, and appear at trial would be unmanageable and a waste of judicial resources, especially given the average value of each claim.

27. Second, there are questions of law or fact common to the class under C.R.C.P. 23(a)(2). Each of the Plaintiffs and proposed class members have suffered the same legal wrong, as a consequence of the same act or omission, or series of act or omissions, have the same legal relationship with eRent, and have all suffered damages of the same type. It would be impossible to prove the Plaintiffs' claims without also simultaneously proving the proposed class members' claims. Nearly every question of law or fact in this action is common to the class and the Plaintiffs.

28. Third, the claims of the Plaintiffs are fairly typical of the proposed class members under C.R.C.P. 23(a)(3). Every one of the Plaintiffs and the proposed class members have the same claim that arises from the same factual and legal foundation: they are all landlords or property



owners who hired eRent to collect, safely handle, and transmit monthly rental payments that disappeared because eRent failed to adequately and reasonably safeguard those funds. There is no material deviation between the facts and law giving rise to Plaintiffs' claims and those of the proposed class members.

29. Fourth, the representative parties will fairly and adequately protect the interests of the class under C.R.C.P. 23(a)(4). The Plaintiffs, especially Todd and Rasheda, have undertaken significant time and effort to obtain information from the proposed class members and organize information essential to the filing of this action. Moreover, undersigned counsel has significant experience in real estate and complex commercial litigation, having appeared in hundreds of real estate litigation matters in jurisdictions across the United States.

The Proposed Class Satisfies C.R.C.P. 23(b)(3)

30. The proposed class also satisfies and should be maintained as a class action under C.R.C.P. 23(b)(3). More specifically, there are not only questions of law or fact common to the Plaintiffs and the proposed class members, but those common questions predominate over any individual issues. Moreover, the class action device is the most appropriate for the fair and efficient adjudication of this controversy, because it will combine this litigation into one forum, there are no other large-scale actions that have been filed, and no unique difficulties exist in the management of this action, which will only require limited discovery.

**V. CLAIMS FOR RELIEF**

**First Claim for Relief – Bailment**

31. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

32. Plaintiffs, as bailees, caused to be delivered their personal property in the form of rental payments to the eRent, as bailor, for the agreed and specific purpose of having those payments tendered to Plaintiffs after the deduction of a transaction fee.

33. In the alternative or in addition, a constructive bailment arose by virtue of the eRent taking possession of Plaintiffs' personal property in the form of rental payments.

34. Thus, eRent owed Plaintiff a duty of reasonable care to protect their personal property in the form of rental payments.

35. The eRent breached that duty by (a) failing to exercise adequate control over the security processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; (b) failing to ensure the integrity and security of the systems and processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; and (c) engaging in acts and omissions that compromised the safety and security of Plaintiffs' rental payments.

36. eRent's breach of duty proximately caused the Plaintiffs to suffer injuries, damages, and losses in an amount to be proven at trial.

### **Second Claim for Relief – Negligence**

37. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

38. eRent owed Plaintiffs a duty of reasonable care to ensure the safety, security, and integrity of the rental payments transmitted by their respective tenants.

39. eRent breached that duty by (a) failing to exercise adequate control over the security processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; (b) failing to ensure the integrity and security of the systems and processes utilized by eCheckit

and others involved in the handling of Plaintiffs' rental payments; and (c) engaging in acts and omissions that compromised the safety and security of Plaintiffs' rental payments.

40. eRent's breach of duty proximately caused the Plaintiffs to suffer injuries, damages, and losses in an amount to be proven at trial.

### **Third Claim for Relief – Breach of the Implied Duty of Good Faith and Fair Dealing**

41. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

42. In addition or in the alternative to Plaintiffs' tort claims, Plaintiffs had a contractual relationship with eRent, under which eRent agreed to receive, care for, and safely transmit Plaintiffs' rental payments, and not to engage in any act or omission that might compromise those rental payments.

43. Pursuant to that duty of good faith and fair dealing, eRent had an obligation not to engage in any act that was inconsistent with the agreed common purpose and reasonable expectations of the Plaintiffs.

44. Yet, eRent's actions in (a) failing to exercise adequate control over the security processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; (b) failing to ensure the integrity and security of the systems and processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; and (c) engaging in acts and omissions that compromised the safety and security of Plaintiffs' rental payments, leading to their loss, breached that duty.

45. eRent's breach of duty caused Plaintiffs to suffer injuries, damages, and losses in an amount to be proven at trial.

#### **Fourth Claim for Relief – Breach of Contract**

46. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

47. In addition or in the alternative to Plaintiffs' tort claims, Plaintiffs had a contractual relationship with eRent, under which eRent agreed to receive, care for, and safely transmit Plaintiffs' rental payments, and not to engage in any act or omission that might compromise those rental payments.

48. This contractual relationship was supported by mutual consideration, was sufficiently definite in its material terms, and was the end result of mutual assent between the parties.

49. Yet, eRent breached its contractual obligations to Plaintiffs by (a) failing to exercise adequate control over the security processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; (b) failing to ensure the integrity and security of the systems and processes utilized by eCheckit and others involved in the handling of Plaintiffs' rental payments; (c) engaging in acts and omissions that compromised the safety and security of Plaintiffs' rental payments, leading to their loss; and (d) merely losing or failing to deliver or timely deliver Plaintiffs' rental payments, regardless of the reason.

50. eRent's breach of contract caused Plaintiffs to suffer injuries, damages, and losses in an amount to be proven at trial.



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