DISTRICT COURT, LARIMER COUNTY, COLORADO
201 Laporte Avenue, Suite 100
Fort Collins, CO 80521

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Plaintiffs: Todd Wasulko, Rasheda Mayner, Manish Sing, and Ying Lil

v.

Defendant: eRentPayment, LLC

v.

Third-Party Defendant: Base Commerce d/b/a Check Commerce.

▲ COURT USE ONLY ▲

Case No. 2017cv031088

Division: 5A

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JOINT MOTION FOR CLASS CERTIFICATION AND APPROVAL OF THE CLASS SETTLEMENT AGREEMENT

Plaintiffs Todd Wasulko, Rasheda Mayner, Manish Sing, and Ying Li (collectively "Plaintiffs"), Defendant eRentPayment, LLC ("eRent"), and Third-Party Defendant Base Commerce, LLC d/b/a Check Commerce ("Check Commerce" and, together with Plaintiffs and eRent, the "Parties") jointly move this Court to certify the class, approve the proposed class settlement, approve the proposed notices of the class settlement, and establish the procedure for class member objections or opt-out. As grounds for this Joint Motion, the Parties state:

I. INTRODUCTION

This class action was initiated by Plaintiffs, on their own behalf and on behalf of a putative class, who were customers of eRent, asserting various claims concerning eRent's web-based property management services. eRent contracted with non-party CC Operations LLC dba eCHECKit ("eCHECKit") to fulfill the payment instructions provided from eRent's customers. eCHECKit, in turn, contracted with Check Commerce to obtain access to the Automated Clearing House ("ACH") Network.

In early October 2017, eRent began experiencing issues with eCHECKit not processing transaction instructions that it provided on behalf of its customers. On October 13, 2017, eRent

terminated its relationship with eCHECKit following communications from Check Commerce informing eCHECKit's customers that eCHECKit had insufficient deposits on account with Check Commerce to meet all of its debit obligations to eCHECKit's customers, including eRent. Check Commerce also provided notice that it was holding eCHECKit's existing deposits in reserve (the "Reserve Account") pending further instruction.

On October 18, 2017, eCHECKit filed a voluntary petition for Chapter 7 bankruptcy before the United States Bankruptcy Court for the Western District of Kentucky (the "Bankruptcy Court"), Case No. 17-33389 (the "Bankruptcy Case"). eRent, along with Plaintiffs and other customers of eCHECKit that had funds in the Reserve Account, filed claims against the bankruptcy estate for monies that were lost. On June 7, 2019, at the request of the bankruptcy trustee, the Bankruptcy Court ordered certain parties including eRent, Check Commerce, and the Plaintiffs, to attend mediation on September 4-5, 2019 in Kentucky.

By the time of the mediation, it was clear that the assets of eCHECKit's bankruptcy estate would not come close to satisfying eCHECKit's creditors, which included several merchants in positions similar to eRent. Indeed, it was clear that the only assets potentially available to resolve merchant claims against eCHECKit were limited to those funds in the Reserve Account. As is the case in most bankruptcies, the recovery available for claims against the bankruptcy estate was pennies on the dollar. With the realities of recovery for Plaintiffs involving a bankruptcy of one of the key liable parties in mind, the Parties agreed to the terms of a class-wide settlement.

In this Motion, the Parties jointly request that the Court approve the settlement agreement (Exhibit 1, the "Settlement Agreement") so that (i) the class may be certified for settlement

purposes only, (ii) a notice (Exhibit 2) may be sent to the class, and (iii) the parties can move forward with final approval of settlement and payment of funds to the injured class.

II. PROCEDURAL BACKGROUND

On December 28, 2017, and while the bankruptcy case was pending, Plaintiffs filed this class action against eRent seeking relief for eRent 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 (the "Landlord Class").

On March 26, 2018, eRent filed its Third-Party Complaint against Check Commerce. Check Commerce sought to dismiss eRent's Third-Party Complaint for lack of jurisdiction, or in the alternative, compel arbitration, and separately moved to dismiss for failure to state a claim. On September 17, 2018, the Court compelled arbitration of eRent's claims against Check Commerce, and, therefore, declined to rule on Check Commerce's motion to dismiss for failure to state a claim.

On January 30, 2019, Plaintiffs filed a motion seeking to amend their complaint (the "Motion to Amend Complaint") to add Check Commerce as a Defendant and alleged the following causes of action: (i) Bailment (against both Defendants), (ii) Negligence (against both Defendants), (iii) Breach of the Implied Duty of Good Faith and Fair Dealing (against eRent), (iv) Breach of Contract (against eRent), (v) Unjust Enrichment (against Check Commerce), and (vi) Accounting (against Check Commerce). Check Commerce opposed Plaintiffs' motion to amend their complaint for lack of personal jurisdiction and, separately, for failure to state a claim.

On April 30, 2019, the Court issued its Order Regarding Plaintiffs' Motion to Amend Complaint, ruling that the claims of Bailment and Accounting would stand, but not the claim for

Unjust Enrichment. On May 10, 2019, Check Commerce appealed the determination that this Court had personal jurisdiction over it by filing with the Colorado Supreme Court a Petition for Relief Pursuant to C.A.R. 21, resulting in the Colorado Supreme Court issuing an Order to Show Cause. Briefing in the appeal was closed and the Parties were awaiting a decision when the Parties reached settlement at the mediation ordered in the Bankruptcy Case. Notice of the settlement was provided to the Colorado Supreme Court and an order was issued on September 20, 2019 advising the Parties to provide a status report apprising the Court of the posture of the settlement in the trial court on October 18, 2019, and every 30 days thereafter until such time that the settlement is final.

On March 5, 2020, the Parties filed a Joint Motion for Limited Lift of Stay to Receive Approval for Class Action Settlement (the "Motion to Lift Stay") with the Colorado Supreme Court to enable them to seek approval of the proposed settlement before this Court. The Colorado Supreme Court granted the Motion to Lift Stay[1] and, again, advised the Parties to provide monthly status reports regarding the proceedings before this Court.

III. CLASS CERTIFICATION AND OPT-OUT PROCESS

A. Standard of Review for Class Certification

The Colorado Supreme Court has "consistently held that trial courts have a great deal of discretion in determining whether to certify a class action." *Jackson v. Unocal Corp.*, 262 P.3d 874, 881 (Colo. 2011). That broad discretion means that this Court need not find each element met by the preponderance of the evidence, nor is this Court required to hold a "protracted mini-trial on certification." *Id.* at 881-82 (reversing court of appeals for requiring "preponderance of

[1] The Order granting the Motion to Lift Stay was entered March 5, 2020, but the Parties did not receive notice of the Order until April 21, 2020.

the evidence" burden of proof). Rather, "[i]n light of the predictive and pragmatic nature of class certification, a trial court retains discretion to find whether the evidence satisfies C.R.C.P. 23 requirements, and ultimately, whether a class action lawsuit would provide the parties with a just, efficient, and economical resolution." *Id.* at 882.

"So long as the trial court rigorously analyzes the evidence, it retains discretion to find to its satisfaction whether the evidence supports each C.R.C.P. 23 requirement." *Id.* Practically, a reviewing court will analyze this Court's class certification under a "highly deferential abuse of discretion standard," reversing only if certification is "manifestly arbitrary, unreasonable, or unfair." *Garcia v. Medved Chevrolet, Inc.*, 263 P.3d 92, 97 (Colo. 2011).

B. <u>Class Certification</u>

Rule 23 governs class actions. C.R.C.P. 23. The analysis for class certification under C.R.C.P. 23 is a two-part test. *Jackson*, 262 P.3d at 880. When faced with a settlement-only class, this Court should confirm the class's satisfaction of Rule 23's class certification requirements, except the issue of trial manageability. *Toothman v. Freeborn & Peters*, 80 P.3d 804, 808, 810 (Colo. App. 2002).

Addressing the subsections of rule in order, the putative class must first meet the requirements in C.R.C.P. 23(a). *Jackson*, 262 P.3d at 880. These preconditions are:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable [(numerosity)]; (2) there are questions of law or fact common to the class [(commonality)]; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [(typicality)]; and (4) the representative parties will fairly and adequately protect the interests of the class [(adequacy)].

C.R.C.P. 23(a).

The putative class must also satisfy one of the three subsections of C.R.C.P. 23(b). *Farmers*

Ins. Exch. v. Benzing, 206 P.3d 812, 818 (Colo. 2009). Here, the Parties seek to establish class certification pursuant to C.R.C.P. 23(b)(3) which requires that "the court find that the questions of law or fact common to the members of the class **predominate** over any question affecting only individual members, and that a **class action is superior** to other available methods for the fair and efficient adjudication of the controversy." C.R.C.P. 23(b)(3) (emphasis added).

As part of the settlement, and for the purposes of settlement only, the Parties have agreed to the certification of the following Rule 23 Landlord Class as eRent customers that:

> (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.

C. Certification of the Landlord Class for the Purposes of Settlement is Proper Pursuant to C.R.C.P. 23(a)(1)-(4)

Plaintiffs can meet the four criteria of numerosity, commonality, typicality, and adequacy of representation which are preconditions to class certification. *Jackson*, 262 P.3d at 880.

1. Numerosity

The maintenance of individual actions by each class member would be impracticable. "[T]he numerosity requirement is satisfied where the exact size of the class is unknown but general knowledge and common sense indicate that it is large." *LaBerenz v. Am. Family Mut. Ins. Co.*, 181 P. 3d 328, 334-35 (Colo. App. 2007).

The Parties agree that there are approximately 1499 putative class members. The vast majority of class members are ascertainable through review of records obtained from eRent and Check Commerce. Specifically, transaction records indicate pending transactions in eRent's

system that eCheckit did not fund. *See* Declaration of Rick Sands attached as Exhibit 5. In addition, a review of the applicable records indicates that the class members are also geographically scattered, suggesting that joinder of these parties would be difficult to manage. Because the class is so numerous and geographically scattered, joinder is impracticable. And, because the class is readily ascertainable, the proposed class presumptively satisfies the numerosity requirement in Rule 23(a). Alba Conte, Herbert B. Newberg, & William B. Rubenstein, *Newberg on Class Actions* § 3:12 (5th ed. 2011) (suggesting that a class of 40 or more members should presumptively satisfy numerosity).

2. Commonality

To satisfy C.R.C.P. 23(b)(3), a proposed class must be "sufficiently cohesive to warrant adjudication by representation." *Schweizer v. Level 3 Communs., Inc.*, No. 03CA0310, 2006 Colo. App. LEXIS 2190, at *12 (App. Mar. 9, 2006) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). Courts use various approaches to determine whether a class is sufficiently cohesive, including:

> whether a common nucleus of operative facts exist, *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992); whether the proposed class seeks to remedy a common legal grievance, *Bennett v. Gravelle*, 323 F. Supp. 203 (D. Md.), aff'd, 451 F.2d 1011 (4th Cir. 1971); whether all class members and the party opposing the class share an essential common factual link for which the law provides a remedy, *Halverson v. Convenient Food Mart, Inc.*, 69 F.R.D 331 (N.D. Ill. 1974); and whether common or individual questions will be the focus of the litigants and the court, *Sargent v. Genesco, Inc*., 75 F.R.D 79 (M.D. Fla. 1977). *See* 32B Am. Jur. 2d Federal Courts § 1983. Thus, whether a case should be certified is a pragmatic, fact-intensive inquiry. *Medina v. Conseco Annuity Assurance Co.*, 121 P.3d 345 (Colo. App. 2005).

Schweizer, 2006 Colo. App. LEXIS 2190, at *12.

The putative class clearly satisfies commonality. The common question at the core of each

of the class member's claims is whether eRent landlords received unreturned rental payments made by tenants using eRent's website between October 3 and October 12, 2017. In this case, Plaintiffs allege that the class members were all subject to loss of payments resulting from eCHECKit's and eRent's failure to process transactions and Check Commerce's freezing of unsettled funds eCheckit had debited from its merchants' customers, including eRent, but that eCheckit did not credit as those merchants had instructed. eRent and Check Commerce deny any wrongdoing.

3. Typicality

To establish typicality, class representatives must demonstrate that "there is a nexus between the class representatives' claims or defenses and the common questions of fact or law which unite the class." *Patterson v. BP Am. Prod. Co.*, 240 P.3d 456, 462 (Colo. App. 2010). The positions of the class representatives and the putative class members need not be identical, and the requirement of typicality may be satisfied even though varying fact patterns support the claims or defenses of individual class members, and even though there is disparity in the damages claimed by the class representatives and the putative class members. *Id*. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status. *Id.*

Here, the Plaintiffs' claims are also typical of the claims of the putative class. They arise out of the same course of conduct and depend on the same legal relationship with eRent, eCHECKIt, and Check Commerce. Like all members of the putative class, Plaintiffs allege that they did not receive rental payments made by a tenant utilizing eRent's services and eRent's service providers. Plaintiffs, like all other putative class members, suffered damages when their tenants' funds were not transferred to Plaintiffs.

4. Adequacy of Representation

The adequacy of representation element set forth in C.R.C.P. 23(a)(4) focuses on two issues: (1) whether class counsel are sufficiently qualified and experienced to represent the class; and (2) whether the plaintiffs or their counsel have any conflicts of interest which create a disincentive to fully prosecute the claims of the class. *Patterson v. Bp Am. Prod. Co.*, Bo. 03 CV9926, 2009 Colo. Dist. LEXIS 414, *15-16 (August 18, 2009) (citing *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002)). Absent evidence to the contrary, the Court should presume that the adequacy of representation requirement is satisfied. *Id.*

First, Plaintiffs' counsel is qualified and has demonstrated substantial commitment to obtaining the maximum recovery that is reasonable based on the circumstances surrounding this action. Plaintiffs' counsel is experienced in class actions. Plaintiffs' counsel's incentives are aligned with the class as his contingent fee agreement with the named Plaintiffs only allows him to be compensated if he successfully prosecutes the suit. *Rutter & Wilbanks Corp.*, 314 F.3d at 1187-1188.

Second, the Plaintiffs have demonstrated that they have diligently prosecuted the claims in the litigation to this point. Plaintiffs have taken steps to recover not only in this action but in the Bankruptcy Case. Additionally, Plaintiffs have pursued all potentially liable parties, including attempting to add Check Commerce to this litigation. Plaintiffs' counsel also undertook significant risk as a sole practitioner on a contingent fee basis.

Lastly, there is no evidence that the Plaintiffs have any conflict with putative class members. The conduct that forms the basis for Plaintiffs' claims is the same conduct that forms the basis for the claims of the class members as a whole. Similarly, no conflict is evident with

class counsel that would discourage full prosecution of the class members' claims.

D. Certification of the Landlord Class is Proper Pursuant to Rule 23(b)(3)

Under C.R.C.P. 23(b)(3), it must appear that common questions of law or fact predominate over any questions affecting only individual members and that a class action is superior to any other available method of adjudicating the controversy. *Villa Sierra Condo. Ass'n v. Field Corp.*, 787 P.2d 661, 664 (Colo. App. 1990). This Settlement Agreement meets the requirements of C.R.C.P. 23(b)(3).

1. The common issues predominate over individual issues

The class contemplated by the this Settlement Agreement should be certified because common questions predominate over individual ones. Common questions of law or fact predominate, "[w]hen one or more of the central issues in the action are common to the class and can be said to predominate, the action is proper under [C.R.C.P.] 23(b)(3), even though other matters will have to be tried separately." *Toothman*, 80 P.3d at 809 (citing *Villa Sierra Condo. Ass'n.*, 787 P.2d at 665). "Often, the issue most relevant to this inquiry is whether the plaintiff advances a theory by which to prove or disprove an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position." *Jackson*, 262 P.3d at 889 (Colo. 2011) (internal quotations omitted).

Here, Plaintiffs contend that landlords who used eRent's website during a specific time period did not receive their rent money. All of the transaction instructions were initiated and relayed in the same manner. The same parties collected the transmission instructions and processed them. Therefore, class members were subject to the same alleged treatment from the same parties and seek relief under the same legal theories.

The amount of damages will vary among class members but that should not defeat class certification. "The need for some proof of individual damages does not preclude certification under C.R.C.P. 23(b)(3). A class can prove its aggregate damages, thus making class certification appropriate, and then the court can appoint a master or magistrate to preside over individual damage proceedings." *Buckley Powder Co. v. State*, 70 P.3d 547, 554 (Colo. App. 2002) (internal quotation and citations omitted). Applied here, not all tenants paid the same rent amounts, nor did landlords own the identical number of rental units that were impacted. But these differences bear only on the ***amount*** of damages owed to individual class members, and individualized damages determinations alone cannot preclude class certification. *Jackson*, 262 P.3d at 889 (Colo. 2011) ("The predominance inquiry usually involves liability, not damages, and the need for some proof of individual damages does not preclude certification under C.R.C.P. 23(b)(3).") (internal citations and quotations omitted).

Furthermore, Plaintiffs are proposing that the damages be paid in a *pro-rata* distribution to the class members who do not opt out, after payment of counsel fees and administration expenses. This is a common, well-accepted, and perhaps the most widely used formula for distributing damages in class actions *See, e.g., In re Processed Egg Prod. Antitrust Litig*., 284 F.R.D. 249, 276 (E.D. Pa. 2012) (Citing 1 A. Conte & H. Newberg, Class Actions § 12.35 (5th ed. 2011); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig*., 246 F.R.D. 156, 170 (S.D.N.Y. 2007) ("A plan of allocation that calls for the pro rata distribution of settlement proceeds on the basis of investment loss is reasonable."); *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 648 (E.D. Pa. 2015) ("In general, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable.").

2. The class action is the superior method of adjudicating this controversy

Class certification is also appropriate because this lawsuit is the best vehicle for resolving the putative class's claims. *Id*. (citing 2 Herbert Newberg & Alba Conte, Newberg on Class Actions §§ 4.24-4.26 (3d ed. 1992) (the superiority requirement of rule 23(b)(3) entails a comparison of a class action to other available remedies and a determination of which procedure would achieve the fairest and most efficient adjudication of the controversy)).

Except for this lawsuit, no other potential class members have asserted similar claims against eRent or Check Commerce. Thus, no other potential class member has demonstrated an interest in controlling this litigation. *See* C.R.C.P. 23(b)(3)(A)-(B). Furthermore, Fort Collins, Colorado is a desirable forum for resolving this litigation because eRent's principle place of business is in Fort Collins, Colorado and one of the named Plaintiffs and putative class members reside in Colorado. *See id.* 23(b)(3)(C). Additionally, Check Commerce is willing to agree to Fort Collins, Colorado as the controlling jurisdiction solely for purposes of implementing the Parties' Settlement Agreement.

Class action is also the superior method for adjudicating this controversy because it involves small claims of unpaid rent amounts or fees. The putative class members are otherwise unlikely to pursue claims on their own and thus using the class action mechanism makes the most sense.

For all of the foregoing reasons, the proposed settlement class satisfies the prerequisites of Rule 23. As such, the Parties respectfully request the Court preliminarily certify the Rule 23 Class, as defined as eRent 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."

E. <u>The Notice, Notice Plan, and Opt-Out Process are Reasonable and Should be Approved</u>

When a court determines that a settlement warrants preliminary approval, C.R.C.P. 23(c)(2) requires the Court to "direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." The notice provided to class certified under Rule 23(b)(3) must advise "(A) [t]he court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel." C.R.C.P. 23(c)(2).

C.R.C.P. 23(c)(2) requires the court to direct to members of the class "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Mountain States Tel. & Tel. Co. v. Dist. Court, Denver*, 778 P.2d 667, 672 (Colo. 1989). The Parties propose providing notice to class members through electronic means and utilizing eRent's direct messaging and direct mailing capabilities to provide the notice. This will provide the best notice to prospective class members under the circumstances because it is also the method eRent used to communicate directly with its customers about transactions. Additionally, using eRent's services requires sufficient access to the internet so it is highly likely that all potential class members have internet access. The Parties propose a Detailed Notice and Claims Statement attached as Exhibits 2 and 3, respectively. The Parties also attach a proposed Claim Form as Exhibit 4, to be submitted if a class member has not received a Claims

Statement. The notice is sufficient as required by C.R.C.P. 23(c)(2). Moreover, the notice plan is designed to provide notice to a high percentage of class members.

In addition, the settlement does not require an extensive claims process. Instead of requiring class members to submit a lengthy claim form, they will receive a Claims Statement that summarizes each member's claim. If a class member does not receive a Claims Statement, the Claim Form will be available at the settlement website.

This notice and claims process is designed to be effective in (1) providing ***actual*** notice to as many members of the putative class as possible, and (2) distributing settlement funds to as many of those members as possible who do not opt out of the settlement.

IV. APPROVAL OF THE SETTLEMENT AGREEMENT

The terms of the Settlement Agreement are fair, adequate, and reasonable under all of the circumstances. The Parties respectfully request that the Court preliminarily approve the Settlement Agreement, attached in full as Exhibit 1.

A. Legal Standard

"A class action shall not be dismissed or compromised without the approval of the court[.]" C.R.C.P. 23(e). This Court's "approval of a settlement will not be overturned absent a 'strong showing of a clear abuse of discretion.'" *Higley v. Kidder, Peabody & Co.*, 920 P.2d 884, 891 (Colo. App. 1996) (quoting *Helen G. Bonfils Found. v. Denver Post Employees Stock Trust*, 674 P.2d 997, 999 (Colo. App. 1983)). "To establish that a court has abused its discretion, it must appear that the court's choice of a particular course of action was manifestly arbitrary, unreasonable, or unfair." *Id.* (citing *Hock v. New York Life Ins. Co.*, 876 P.2d 1242 (Colo. 1994)).

B. <u>The Settlement Agreement is fair, adequate, and reasonable</u>.

The Parties reached an arms-length agreement that provides recovery to the members of the injured class. The Settlement Agreement is fair and reasonable and in the best interests of all those who will be affected by it. *See id.* at 892. As a starting point, "settlements in class actions are favored." *Belote v. Rivet Software, Inc.*, No. 12-cv-02792-WYD-MJW, 2014 U.S. Dist. LEXIS 110684, *7 (D. Colo. Aug. 11, 2014) (citing *Williams v. FirstNat. Bank*, 216 U.S. 582 (1910)).

The complete terms of the Settlement Agreement are set forth in Exhibit 1. The Settlement Agreement requires Check Commerce to pay $250,000 and eRent to pay $200,000 in full and final settlement of the claims asserted by Plaintiffs on their own behalf and on behalf of the putative class, conditioned upon this Court's approval of the settlement. Under the Settlement Agreement, Plaintiffs' counsel will recover attorney's fees from those amounts pursuant to fee agreements between Plaintiffs' counsel and Plaintiffs, and any costs of administering the settlement agreement will be paid from the settlement payment amount.

"The 'universally applied standard is whether the settlement is fundamentally fair, adequate, and reasonable.'" *Helen G. Bonfils Found.*, 674 P.2d at 998 (quoting *Officers for Justice v. Civil Serv. Commission*, 668 F.2d 615 (9th Cir. 1982) and gathering cases). The appropriate analysis is case and context dependent, but generally this Court should balance "several factors which may include, among others, some or all of the following:

- The strength of plaintiffs' case;
- The risk, expense, complexity, and likely duration of further litigation;
- The risk of maintaining class action status throughout the trial;
- The amount offered in settlement;

- The stage of the proceedings;
- The experience and view of counsel; and
- The reaction of the class members to the proposed settlement."

Id. (quoting *Officers of Justice*, 668 P.2d at 615). It should also be noted that, although the dollar amount does not provide a full recovery or near a full recovery, that is not the primary or even significant consideration in the fairness analysis. "[T]he dollar amount of the settlement by itself is not decisive in the fairness determination, and the fact that the settlement fund may equal only a fraction of the potential recovery at trial does not render the settlement inadequate." *In re PaineWebber Ltd. Partnerships Litig.*, 171 F.R.D. 104, 131 (S.D.N.Y.), *aff'd sub nom. In re PaineWebber Inc. Ltd. Partnerships Litig.*, 117 F.3d 721 (2d Cir. 1997). "In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Id.* (quoting *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 455 n. 2 (2d Cir.1974)). *See also, Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("It is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial.") (citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)); (*Williams v. Vukovich,* 720 F.2d 909, 922 (6th Cir. 1983) (court may not withhold approval merely because settlement is only a fraction of what a successful plaintiff would have received in a fully litigated case).

With respect to Plaintiffs' counsel's fees, the terms of the proposed settlement are also reasonable. Class counsel's contingent fee agreements with the named Plaintiffs provided for a 30% recovery, which increased to 35% if a settlement or judgment was reached within 35 days of

a pending trial date. Class counsel is proposing a percentage payment of 27% of the gross settlement proceeds. This amount should be approved for several reasons.

First, approving counsel's fees on a percentage basis is the recent trend followed by a majority of federal courts under the analogous Fed. R. Civ. P. 23, especially in common or limited-fund cases such as this one, where there is one overall, definable settlement fund that will be depleted by the class settlement. *See, e.g., Brody v. Hellman,* 167 P.3d 192, 201 (Colo. App. 2007) ("[T]he more recent trend has been toward using the percentage method in common fund cases.") (citing *Gottlieb v. Barry,* 43 F.3d 474, 482 (10th Cir. 1994); *Court Awarded Atty. Fees,* 108 F.R.D. 237, 254–59 (1986) (report of Third Circuit task force recommending use of percentage method in common fund cases); *In re Aetna Inc. Sec. Litig.,* 2001 WL 20928, at *13 (E.D. Pa. Jan. 4, 2001) ("The lodestar method has been criticized for potentially encouraging attorneys to delay settlement to maximize fees or undercompensating attorneys for the risk of undertaking complex or novel cases on a contingency basis. The method also places pressure on the judicial system by forcing the court to evaluate the propriety of thousands of billable hours. Due to these flaws, courts have increasingly used the percentage method.") (Internal citations omitted).

Second, the percentage sought is also reasonable, and well within the range that has been routinely approved by courts. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (upholding an award of $27 million, or 28%, in attorney fees on a $97 million settlement); *In re Telectronics Pacing Sys., Inc.,* 137 F. Supp. 2d 1029, 1040 (S.D. Ohio 2001) (awarding $17 million, or 27%, attorney fees on a $62 million settlement); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (observing that attorney fees in the range of 25-33% have been routinely awarded in class actions: "Empirical studies show that, regardless

whether the percentage method or the lodestar method is used, fee awards in class actions average around one–third of the recovery.").

Finally, Plaintiffs' counsel is proposing that the named class representatives receive administrative fees of $3,000.00 each for Rasheda Mayner and Todd Wasulko, and $2,000.00 each for Ying Li and Manish Singh, in addition to their settlement payments. In support of the requested administrative fees, the Declaration of Ian T. Hicks, Esq. (Plaintiffs' counsel) is attached as Exhibit 6 ("Hicks Declaration").

Because a named plaintiff is an essential component of any class action, an incentive award is appropriate to compensate a named plaintiff for the time and expense in bringing the suit and to reward the named plaintiff for the benefits achieved for other class members. *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 2009). In deciding whether an incentive award is reasonable, courts consider the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *See, e.g., id.*

Here, Mr. Wasulko was primarily responsible for understanding, very early on, that the underlying losses giving rise to this civil action may constitute a class action, despite his complete lack of legal training. He also was the driving force in contacting attorneys in Denver under this theory, which ultimately led to this case being filed as a class action by Plaintiffs' counsel. *See Hicks Declaration* at ¶ 3. Ms. Mayner also undertook affirmative and wide-ranging efforts, without direction from any attorney, which were exceptionally helpful to formulating critical data, identifying relevant class members, and facilitating communications with the potential class. More specifically, Ms. Mayner organized a Facebook discussion group of putative class members,

including the accumulation of data relating to losses, addresses, and timing. This was time-consuming and essential to the success of this class. *See id.* at ¶ 4.

Ms. Li and Mr. Singh, while they did not undertake affirmative efforts prior to the retention of Plaintiffs' counsel that were critical to the case's success, nevertheless served very important roles based on their jurisdictional contacts with Colorado, which facilitated jurisdiction but also would have precluded removal to federal district court had eRent been dismissed from the action, or had the claims been severed from this action. *See id.* at ¶ 5. Finally, the amount of the proposed incentive fee is well within the range, and in fact, quite far below, what has been approved in other class action settlements. *See, e.g.*, *Pliego v. Los Arcos Mexican Restaurants, Inc.*, 313 F.R.D. 117, 131 (D. Colo. 2016) (holding that $7,500 service payment awards to named plaintiffs was "commensurate with awards in similar cases."); *see also, Dorn v. Eddington Sec., Inc.*, 2011 WL 9380874, at *7 (S.D.N.Y. Sept. 21, 2011) (holding that a service award of $10,000 to the plaintiff in a FLSA and state law wage class action was reasonable, stating "such service awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs."); *Torres v. Gristede's Operating Corp.*, 2010 WL 5507892, at *7 (S.D.N.Y. Dec. 21, 2010) aff'd, 519 Fed. Appx. 1 (2d Cir. 2013) (finding service awards of $15,000 to each of 15 named plaintiffs reasonable); *Clark v. Ecolab, Inc.*, 2010 WL 1948198, at *9 (S.D.N.Y. May 11, 2010) (granting service awards of $10,000 to each of 7 named plaintiffs).

1. <u>Absent settlement, Plaintiffs face significant obstacles, possibility of no recovery</u>.

In light of the merits of their claims, Plaintiffs' receipt of separate six-figure settlements from each of the two defendants evidences that the settlement is fair, adequate, and reasonable. This Court is not tasked with determining whether Plaintiffs' recovery is the "best possible" settlement, but only whether the amount is "within the range of reasonableness." *Thomas v. Rahmani-Azar*, 217 P.3d 945, 950 (Colo. App. 2009) (approving settlement where "no money was paid" to certain members of the settling class). Plaintiffs' claims in this case face significant legal obstacles that, if litigated to the case's conclusion, would likely prevent (or significantly diminish) any recovery at all.

At the outset, it is important to note that Plaintiffs' losses are primarily the result of the conduct of non-party eCHECKit. But, eCHECKit's Chapter 7 bankruptcy estate has virtually no assets, rendering recovery against eCHECKit impossible. This leaves Plaintiffs with no path to recovery except against eRent and Check Commerce, neither of whom benefited from eCHECKit's conduct or Plaintiffs' losses. To the contrary, eRent and Check Commerce were also victimized by eCHECKit's misfeasance And, Plaintiffs face long odds in any attempt to tie eCHECKit's misconduct to either eRent or Check Commerce sufficient to impose legal liability against either of them. But, failure to do so would erase any recovery because eRent and Check Commerce could simply designate eCHECKit as a non-party at fault. Additionally, a fully-litigated outcome of any sort would likely also result a long appellate process in a case involving losses that were incurred almost three years ago.

Moreover, this Court likely lacks personal jurisdiction over Check Commerce. Indeed, at the time the Parties reached the settlement under consideration here, the Colorado Supreme Court

had stayed the proceedings to address Check Commerce's compelling argument defeating Plaintiffs' personal jurisdiction. Evaluated against the backdrop of Check Commerce's likely dismissal, Plaintiffs' six-figure recovery is patently fair, adequate, and reasonable. *See Higley*, 920 P.2d at 891 (explaining that settlement approval is a "fact-specific inquiry requiring the balancing of the various factors which may be relevant in that case").

On the merits too, Plaintiffs' claims face significant legal obstacles, particularly for any recovery against Check Commerce. Among other shortcomings, Plaintiffs' claims failed under the economic loss rule, which barred Plaintiffs' tort claims because of the absence of an "independent duty of care under tort law." *Town of Alma v. AZCO Constr. Inc.*, 10 P.3d 1256, 1264 (Colo. 2000). Plaintiffs likely also could not have recovered anything under their "unjust enrichment" theory because Plaintiffs could not identify a benefit conferred on either Check Commerce or eRent. *See Bachrach v. Salzman*, 981 P.2d 219, 222 (Colo. App. 1999), *aff'd and remanded for further proceedings*, 996 P.2d 1263 (Colo. 2002). Because Plaintiffs "claims were not likely to succeed on the merits," their sizeable recovery is fair, adequate, and reasonable. *Thomas*, 217 P.3d at 949 (citing *City P'ship Co. v. Atlantic Acquisition Ltd. P'ship*, 100 F.3d 1041, 1045 (1st Cir. 1996) (approving settlement as reasonable where claims had "little, if any, value")).

2. <u>For Plaintiffs, litigation invites significant downside risk, expense, and complexity</u>.

Plaintiffs face little benefit and significant downside from continuing this litigation. In addition to exposing further the potentially fatal flaws with the merits of their claims, Plaintiffs continued prosecution of their claims would also reduce the available funds for any settlement. This consideration is particularly important in this case because eRent has represented it has a limited ability to pay a potential judgment, and continuing to pursue Plaintiffs' claims would

require rehashing all of issues implicated in the expensive and protracted bankruptcy dispute concerning nonparty eCHECKit. This dispute, moreover, will not benefit from additional discovery or protracted litigation; the Parties do not require additional time or money to fairly understand and evaluate the "strengths and weaknesses of the plaintiffs' case." *See New York v. Exxon Corp.*, 697 F. Supp. 677, 692 (S.D.N.Y.) (cited favorably by the Colorado Supreme Court in *Thomas* and explaining that there is a "presumption in favor of settlement" where the parties possess sufficient information to evaluate the settlement's material terms).

By settling now, Plaintiffs also avoid unnecessary complexity and as-yet unknown risks. Comparing "terms of the compromise with the likely rewards of litigation," the settlement is a good deal. *Seiffer v. Topsy's Int'l, Inc.*, 70 F.R.D. 622, 627 (D. Kan. 1976) ("Moreover, the fact that a proposed settlement of a class action may only amount to a fraction of potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should therefore be disapproved."). Nor should this Court judge the concrete settlement reached here with "a hypothetical or speculative measure of what *might* have been achieved" through a different settlement. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (holding that settlement may be adequate even if recovery is a small fraction of potential recovery because the "very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes'" (citation omitted)). The risk, expense, and complexity of further litigation all favor the Court approving the settlement.

3. <u>Counsel for all Parties approve the Settlement Agreement</u>.

Settlement is also appropriate because counsel for all Parties approve it. The Colorado Court of Appeals has explained that where counsel "familiar with the underlying facts"

recommend "settlement," it deserves significant weight. *Thomas*, 217 P.3d at 950. It is particularly notable in this case that Plaintiffs' counsel—a lawyer well-positioned to evaluate the fairness of a settlement—approves it. *See In re Pacific Enterp. Sec. Litig.*, 47 F.3d 373, 377 (9th Cir. 1995) (cited by the *Thomas* Court and explaining: "Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.").

4. <u>The settlement process allows parties who disagree with the recovery to opt out</u>.

The "reaction of the class members to the proposed settlement" also favors approval. *Higley*, 920 P.2d at 891. At this stage, no other member of the putative class has pursued his or her claim outside of this class-wide litigation. Consistent with that posture, the Parties anticipate significant class-wide acceptance of the Settlement Agreement after notices are provided. And—more importantly for purposes of approving the settlement—individual class members can opt out. The collective (at this point, implicit) approval of the class members favors approval. *Accord Reynolds v. King*, 790 F. Supp. 1101, 1109 (M.D. Ala. 1990) (majority silence may be indicative of class-wide support).

To that point, though no particular threshold of opt-in is required, the anticipated class-wide acceptance and (anticipated) limited objections strongly favors approval of the settlement. *See, e.g., Manchaca v. Chater*, 927 F. Supp. 962, 966 (E.D. Tex. 1996) (settlement approved when no class member objected after widespread dissemination of notice of settlement); *In re Marine Midland Motor Vehicle Leasing Litig.*, 155 F.R.D. 416, 420 (W.D.N.Y. 1994) (single, later-withdrawn objection in class involving 53,000 notices raised a strong presumption approve class settlement).

All relevant factors suggest that Plaintiffs have achieved a favorable settlement. The Court should approve it.

V. APPROVAL OF THE SETTLEMENT ADMINISTRATOR

Plaintiffs have retained, without objection by the other Parties, The Notice Company, Inc. as settlement administrator. The Notice Company, Inc. has experience administering class actions involving landlord-tenant issues. A summary of The Notice Company's experience in administering class action lawsuits is attached as Exhibit 7. The Notice Company, Inc. has provided a quote of approximately $19,500.00 for the administration of this class settlement, as reflected in the Agreement for Class Action Notice and Administration Services attached as Exhibit 8. This amount is well within an acceptable range for the maximization of payment to the putative class members. The Parties request that The Notice Company, Inc. be approved as the settlement administrator in this case.

VI. PROPOSED SCHEDULE

The parties propose the following schedule for finalizing the settlement, distributing notice, and allowing for objections from absent class members.

Order Approving Motion	
Parties Submit Known Names and Known Contact Information for Class Members	Within **30 days** of **Court approval of Motion**
Notice Distributed to the Class	Within **70 days** of **Court approval of Motion**
Objection Deadline	**60 days** following **transmission of Notice**
Opt-Out Deadline	**60 days** following **transmission of Notice**
Class Administrator Discloses to Parties Amounts to be Distributed per Known Class Member Who Has Not Opted Out	Within **10 days** following **Opt-Out period**
Final Approval and Fairness Hearing	**Following Opt-Out period**
Effective Date	**Final approval and expiration of appeal period or resolution of appeals**
Settlement Payment	Within **14 days of the Effective Date**
Claims Payment Period	**90 days** following **Effective Date**

VII. CONCLUSION

WHEREFORE, Plaintiffs, eRent, and Check Commerce jointly move the Court to enter its Order:

1. Approving class certification for purposes of settlement;
2. Preliminarily approving the Settlement Agreement, subject to Notices to the putative class;
3. Approving The Notice Company, Inc. as the settlement administrator in this case;
4. Approving the form and content of the proposed Notices electronically mailed to the Class Members;
5. Establishing deadlines for the Class Members to submit objections, opt-out, or comment on the Settlement Agreement;

6. Granting final approval of the Settlement Agreement;

7. And for such further relief as the Court deems just.

Submitted this 19th day of May, 2020.

/s/ Ian T. Hicks
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CASE NUMBER: 2017CV31088

EXHIBIT 1

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release ("Settlement Agreement") is entered and made, effective as of the date of the last signature below, by and among Plaintiffs Ying Li, Todd Wasulko, Rasheda Mayner, and Manish Singh (collectively, "Named Plaintiffs"), on their own behalf and on behalf of a class of similarly situated individuals (collectively, "Plaintiffs"), Defendant eRentPayment, LLC and its individual owner and manager, Rick A. Sands (collectively, "eRent"), and Third-Party Defendant Base Commerce, LLC d/b/a Check Commerce ("Check Commerce" and, together with Plaintiffs and eRent, the "Parties" and each a "Party"). As part of this Settlement Agreement, the Parties also intend a complete mutual release and dismissal of all claims amongst each other. This Settlement Agreement is a full expression of the agreements between the Parties.

RECITALS

WHEREAS, Named Plaintiffs filed a Complaint against eRent on December 28, 2017 in a case captioned: *Wasulko et al. v. eRentPayment, LLC v. Base Commerce*, case number 2017CV31088 (the "Action") in the District Court for Larimer County, Colorado (the "Trial Court"), and sought relief both on Named Plaintiffs' own individual behalf and on behalf of a class of similarly situated persons, 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 (the "Landlord Class");

WHEREAS, in the Action, Named Plaintiffs (on their own behalf and behalf of the Landlord Class) asserted various claims, against eRent concerning eRent's web-based property management services and eRent's processing of electronic debit transactions ("Plaintiffs' eRent Claims"). Plaintiffs alleged that eRent and Check Commerce harmed them (and the Landlord Class they purport to represent) by failing to collect and transmit certain rent payments owed to Plaintiffs;

WHEREAS, in the Action, Plaintiffs (on their own behalf and behalf of the Landlord Class) filed a Motion for Leave to Amend their Complaint on January 30, 2019 seeking to assert claims against Check Commerce ("Plaintiffs' Check Commerce Claims") for Check Commerce's role in processing payments as part of the Automated Clearing House network (the "ACH Network"), which the Trial Court granted over Check Commerce's objection;

WHEREAS, eRent also asserted various claims in the Action as a third-party plaintiff against Check Commerce ("eRent's Claims") arising from the same or similar allegations as Plaintiffs' Check Commerce Claims, and on September 17, 2018 the Trial Court ordered eRent's Claims to be resolved by arbitration in Arizona;

WHEREAS, eRent has not yet commenced arbitration to pursue eRent's Claims;

WHEREAS, Plaintiffs commenced the Action as a putative class action, but there has been no certification of any class pursuant to Rule 23 of the Colorado Rules of Civil

Procedure (the "Colorado Rules");

WHEREAS, Check Commerce denies any and all liability, the material allegations, and the requested relief asserted by Plaintiffs (including on behalf of the Landlord Class as pled in Plaintiffs' Amended Complaint with the Trial Court) and eRent in the Action;

WHEREAS, eRent denies any and all liability, the material allegations, and the requested relief asserted by Plaintiffs (including on behalf of Landlord Class) in the Action;

WHEREAS, on May 16, 2019, the Colorado Supreme Court issued an Order and Rule to Show Cause, requesting Plaintiffs to explain why the Trial Court did not err in its purported exercise of personal jurisdiction over Check Commerce, case number 2019SA91 (the "Interlocutory Appeal");

WHEREAS, the Parties intend to seek a limited remand of the Interlocutory Appeal to the Trial Court to complete this Settlement Agreement, including approval of this Settlement Agreement, the certification of Landlord Class, and notice to the Landlord Class;

WHEREAS, the Parties, in good faith, have agreed to avoid the expense and time of litigation, and intend to resolve all of the Parties' asserted and potential claims against each other by this Settlement Agreement;

SETTLEMENT TERMS

NOW, THEREFORE, in consideration of the mutual promises, conditions, representations, and agreements set forth herein, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

A. Recitals. The recitals enumerated above are true and correct and are incorporated herein as a material part of this Settlement Agreement.

B. Appeal Decision. The Parties agree to file a joint motion in the Interlocutory Appeal seeking a limited remand to the Trial Court for certification of a settlement class and final resolution of the Action, consistent with this Settlement Agreement. The Parties acknowledge that the Colorado Supreme Court may not grant the requested relief for a limited remand, or the Colorado Supreme Court may resolve the Interlocutory Appeal, reaching a decision before complete resolution of this Settlement Agreement (the "Appeal Decision"). The Parties further agree that the Colorado Supreme Court's orders in the Interlocutory Appeal (including the Appeal Decision and whatever the result) shall not impact the terms of this Settlement Agreement other than as expressly set forth herein. The Parties therefore agree:

1. If the Appeal Decision determines that Check Commerce is subject to personal jurisdiction in the Trial Court, or otherwise remands the matter to the Trial Court for further proceedings, then the Parties shall continue implementation of this Settlement Agreement before the Trial Court as set forth in this Settlement Agreement.

2. If the Appeal Decision determines that Check Commerce is not subject to personal jurisdiction in the Trial Court, then the Parties shall seek implementation of this Settlement Agreement through a separate action, filed by Plaintiffs in the Superior Court of the State of Arizona, Maricopa County (the "Arizona Court" and, together with the Trial Court, the "Certifying Courts" and each a "Certifying Court"). Plaintiffs agree that any action filed pursuant to this Paragraph B.2. will be for the limited purpose of completing the settlement memorialized in this Settlement Agreement.

C. Implementation of the Settlement Agreement. This Settlement Agreement shall be implemented in accordance with the provisions of this Paragraph C hereof, and shall be final when the conditions specified in this Paragraph have been satisfied or waived in writing. The conditions in this Paragraph C are material condition precedents to this Settlement Agreement.

1. Motion for Settlement Approval. If the Colorado Supreme Court grants a limited remand to the Trial Court for certification as specified in Paragraph B, or if the Appeal Decision determines that Check Commerce is subject to personal jurisdiction in the Trial Court as specified in Paragraph B.1., then, within ten (10) business days of such determination, the Parties shall submit to the Trial Court a joint motion for approval of settlement, which shall include a request to stay all proceedings in the Trial Court until the Trial Court has approved this Settlement Agreement and entered a final judgment and entered an order dismissing the Action with prejudice. If the Certifying Court is the Arizona Court, the Parties agree to seek approval of this Settlement Agreement in a manner consistent with the material terms of this Settlement Agreement and the applicable Arizona Rules of Civil Procedure (the "Arizona Rules").

2. Certification of the Action. The Parties will seek certification of this Action as a Class Action for settlement purposes only, pursuant to Colorado Rule 23(b)(3) or Arizona Rule 23(b)(3), as applicable. The Parties agree to seek class certification for the Landlord Class under Colorado Rule 23(c)(2) or Arizona Rule 23(c)(2), as applicable, including providing notice to all potential class members and allowing individuals to request exclusion from the Landlord Class and this Settlement Agreement. The Parties shall, in good faith, work together to agree upon a stipulated motion to certify the settlement class and the notice to be sent to potential class members. Plaintiffs (and their counsel) shall bear all expenses and burden of providing all notice required by the Certifying Courts in connection with completing class certification.

3. Failure to Certify or Inadequate Class Participation. The Parties agree that if the Certifying Courts do not certify the Landlord Class or approve the proposed settlement of the Landlord Class' claims upon the terms set forth in this Settlement Agreement, then this

Settlement Agreement is null and void and of no effect. The Parties also agree that if the persons responding to the notice to participate in the Landlord Class exercise their right to be excluded from the Landlord Class in an amount that exceeds 15% in number of responses or represents in excess of $100,000.00 (USD) in aggregate claims, then Check Commerce or eRent (each a "Defending Party") may, at either Defending Party's sole election and in that Defending Party's sole discretion, decline to participate in this Settlement Agreement by providing written notice to the other Parties hereto as provided in Paragraph O within ten (10) days of the expiration of the time period for prospective members of the Landlord Class to respond to the notice to participate, whereupon this Settlement Agreement will be null and of no effect as to that Defending Party and Plaintiffs only.

i. Unless both Defending Parties opt out, this Settlement Agreement will remain in effect in all material respects for all Parties that have not opted out of the Settlement Agreement. The Plaintiffs acknowledge, understand, and agree that if either Check Commerce or eRent opt out of the Settlement Agreement, then the Plaintiffs will receive a reduced monetary recovery. Plaintiffs further agree that any such reduction in recovery (or other consequence of one Defending Party's opt out, known or unknown) will not affect the enforceability, material terms, or any other aspect of this Settlement Agreement among the other Parties hereto, and Plaintiffs further agree not to raise any claim, challenge, or defense based on one Defending Party's opt out of this Settlement Agreement.

4. Opt-Out Landlords. This Settlement Agreement is not applicable to any Plaintiffs that opt-out of the Landlord Class and file their own claims against any Defending Party.

5. Court Approval. Upon the Certifying Court's certification of the Landlord Class as described in Paragraph C.2. above, the Parties shall jointly move the Certifying Court for an order and judgment approving this Settlement Agreement as to the Plaintiffs and Landlord Class, as certified. The Parties agree to cooperate in good faith, including taking all steps and efforts contemplated by this Settlement Agreement and any other steps or efforts that may become necessary by order of the Certifying Court (unless the Certifying Court's order materially modifies the terms of this Settlement Agreement), to carry out this Settlement Agreement. If the Certifying Court does not approve this Settlement Agreement, it is null and void and of no effect.

D. Settlement Payment.

1. Check Commerce Settlement Payment. Conditioned upon completion of the requirements in Paragraph C, including certification of, and participation by, a sufficient Landlord Class (in each Defending Party's discretion pursuant to Paragraph C.3.), and upon the Certifying Court's approval of this Settlement Agreement and the expiration of any applicable appeal period for a final appealable order approving the terms of this Settlement Agreement issued by the Certifying Court, Check Commerce agrees that payment on its behalf will be made to Ian T. Hicks ("Plaintiffs' Counsel") the amount of **Two Hundred Fifty Thousand Dollars ($250,000.00)** made payable to "Ian T. Hicks Trust Account" (the "Check Commerce Settlement Payment").

2. eRent Settlement Payment. Conditioned upon completion of the requirements in Paragraph C, including certification of, and participation by, a sufficient Landlord Class (in each Defending Party's discretion pursuant to Paragraph C.3.), and upon the Certifying Court's approval of this Settlement Agreement and the expiration of any applicable appeal period for a final appealable order approving the terms of this Settlement Agreement issued by the Certifying Court, eRent agrees that payment on its behalf will be made to Plaintiffs' Counsel the amount of **Two Hundred Thousand Dollars ($200,000.00)** representing One Hundred and Ninety-Five Thousand Dollars ($195,000.00) on behalf of eRent and Five Thousand Dollars ($5,000.00) on behalf of Rick A. Sands (the "eRent Settlement Payment" and, together with the Check Commerce Settlement Payment, the "Settlement Payment").

3. No Joint Liability. Check Commerce shall be solely responsible for the Check Commerce Settlement Payment and shall bear no responsibility, liability, or obligation of any kind in the event that eRent fails to deliver the eRent Settlement Payment to Plaintiffs' Counsel. eRent shall be solely responsible for the eRent Settlement Payment and shall bear no responsibility liability, or obligation of any kind in the event that Check Commerce fails to deliver the Check Commerce Settlement Payment to Plaintiffs' Counsel. The failure of either Check Commerce or eRent to make their respective Settlement Payment shall not impact the enforcement, effectiveness, releases, or other material terms of this Settlement Agreement. Plaintiffs agree that their remedy for either Check Commerce or eRent failing to make their respective Settlement Payment is a claim solely against the nonpaying Party.

4. Attorneys' Fees and Costs. Plaintiffs' Counsel may apply to the Certifying Court for an award of attorneys' fees, for an amount not to exceed 30%, and for reimbursement of expenses, each amount to

be paid solely from the Settlement Payment described in this Paragraph D.

5. Settlement Costs. Any and all costs associated with administering this Settlement Agreement, including, without limitation, identifying and providing notices and distributions to the Landlord Class, shall be paid solely from the Settlement Payment described in this Paragraph D.

E. Distribution of Settlement Payment. Upon receipt of the Settlement Payment, and consistent with the Certifying Court's orders, Plaintiffs' Counsel shall promptly issue from the Settlement Payment the amounts owed to Plaintiffs, including Named Plaintiffs if that amount differs, and any other members of the Landlord Class. The responsibility of dividing the Settlement Payment between Plaintiffs, Landlord Class, and Plaintiffs' Counsel, is the sole responsibility of Plaintiffs' Counsel. Neither Check Commerce nor eRent are responsible in any way for the division or distribution of the Settlement Payment between or among Plaintiffs, Landlord Class, and Plaintiffs' Counsel. Plaintiffs, Landlord Class, and Plaintiffs' Counsel shall be solely responsible for any tax treatment of the Settlement Payment, including but not limited to issuance of any required W-9's as between Plaintiffs, Landlord Class, and Plaintiffs' Counsel regarding the division or distributions of the Settlement Payment.

F. Mutual Releases. The Parties intend a mutual and complete release of all claims among and between them related in any way (directly or indirectly) to the Action. For purposes of this Settlement Agreement "Released Claims" means: Any and all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal equitable relief), whether accrued or not, whether known, unknown, or unsuspected in law or equity, as well as any claim or right obtained by assignment, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise, in any court or other tribunal, arising out of or in any way related to, directly or indirectly, any or all of the acts, omissions, facts, matters, transaction, or occurrences (i) that are, were, or could have been alleged, asserted, or set forth in the Action; or (ii) would be barred by principles of res judicata or collateral estoppel had such claims been fully litigated.

1. Release by Plaintiffs and Landlord Class. Conditioned upon completion of the requirements in Paragraph C, including certification of a sufficient Landlord Class and the Certifying Court's approval of this Settlement Agreement, Plaintiffs and the Landlord Class (as certified by the Certifying Court), releases and forever discharges with prejudice Check Commerce and eRent and all of their respective predecessors, successors, assigns, subsidiaries, partners, related entities, employers, subcontractors, employees, officers, owners, shareholders, directors, representatives, affiliates, agents, banks, insurers, servants, and attorneys from all Released Claims.

2. Releases by Check Commerce. Conditioned upon completion of the requirements in Paragraph C, including certification of a sufficient Landlord Class and the Certifying Court's approval of this Settlement Agreement, Check Commerce releases and forever discharges with prejudice Plaintiffs, the Landlord Class (as certified by the Certifying Court), and eRent and all of their respective predecessors, successors, assigns, subsidiaries, partners, related entities, employers, subcontractors, employees, officers, owners, shareholders, directors, representatives, affiliates, agents, banks, insurers, servants, and attorneys from all Released Claims.

3. Release by eRent.

   i. Upon execution of this Agreement, eRent releases Check Commerce and all of its predecessors, successors, assigns, subsidiaries, partners, related entities, employers, subcontractors, employees, officers, owners, shareholders, directors, representatives, affiliates, agents, banks, insurers, servants, and attorneys from all Released Claims.

   ii. Upon completion of the requirements in Paragraph C, including certification of a sufficient Landlord Class and the Certifying Court's approval of this Settlement Agreement, eRent releases and forever discharges with prejudice Plaintiffs and the Landlord Class (as certified by the Certifying Court), and all of their respective predecessors, successors, assigns, subsidiaries, partners, related entities, employers, subcontractors, employees, officers, owners, shareholders, directors, representatives, affiliates, agents, banks, insurers, servants, and attorneys from all Released Claims.

G. No Admission of Liability. The Parties understand and agree that this Settlement Agreement reflects a compromise settlement of disputed claims and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, constitutes any admission of wrongdoing by Check Commerce or eRent. This Settlement Agreement and the payments made pursuant to this Settlement Agreement are not admissions of any liability of any kind, legal or factual. Check Commerce and eRent each specifically denies any such liability or wrongdoing and are entering into this Settlement Agreement to eliminate the burden and expense of additional litigation.

H. Governing Law. This Settlement Agreement shall be governed by the laws of the state of the Certifying Court without giving effect to the conflict of laws or choice of law provisions thereof.

I. Attorneys' Fees and Costs. Expressly excluding satisfaction of the requirements of Paragraphs C. and D., in the event of any judicial or other adversarial proceeding between the Parties relating to the execution, enforcement, or interpretation of

this Settlement Agreement, the prevailing Party in the proceeding shall be entitled to recover, from the opposing Party, all of its reasonable attorney fees and costs, including attorney fees and costs incurred on appeal, in addition to any other relief to which the prevailing Party may be entitled.

J. Amendment. This Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties.

K. Waiver. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The Parties agree that the waiver by any Party of any breach of this Settlement Agreement is not, and should not be construed as, a waiver of any other breach of this Settlement Agreement.

L. Construction. None of the Parties hereto shall be considered the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction.

M. Confidential. To the extent practicable, and as permitted by the Certifying Court, the Parties and their counsel hereby acknowledge and agree to keep confidential this Settlement Agreement and its terms and conditions. The Parties and their counsel may, however, disclose the Settlement Payment received by Plaintiffs and Landlord Class to the IRS or as otherwise required by law.

N. Further Assurances. All Parties agree, without further consideration, and as part of completing this Settlement Agreement, that they will in good faith execute and deliver such other documents and take such other action as may be necessary to consummate and complete this Settlement Agreement and its purpose.

O. Notices. Any communication under this Settlement Agreement (except as required to certify the Landlord Class) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail, or sent by email.

If to Plaintiffs:

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Shawna.Ruetz@lewisbrisbois.com

If to Check Commerce:

Brian McQuaid, Vice President & General Counsel
Check Commerce
5055 E. Washington Street, Suite 300
Phoenix, Arizona 85034
brian.mcquaid@basecommerce.com

-with a copy to-

Aaron Boschee, Esq.
Squire Patton Boggs (US) LLP
1801 California Street, Suite 4900
Denver, Colorado 80202
Aaron.boschee@squirepb.com

P. **Benefit of Counsel.** Each Party represents that they have had the benefit of counsel of their own choice and have reviewed this Settlement Agreement with their respective chosen counsel. Each Party represents they have carefully read this Settlement Agreement, understand it, and have executed it voluntarily and as a result of their own judgment. This Settlement Agreement was prepared by the joint efforts of each Party, and it must be construed as such. If there is an ambiguity in this Settlement Agreement, it should not be resolved against any particular Party, but rather should be resolved by a fair reading of what the Settlement Agreement was intended by the Parties to provide.

Q. **Non-disparagement.** Each Party hereto agrees that, from and after the date of the last signature below, they will not defame or publicly disparage another Party or any of their respective its predecessors, successors, assigns, subsidiaries, partners, related entities, employers, subcontractors, employees, officers, owners, shareholders, directors, representatives, affiliates, agents, banks, insurers, servants, or attorneys regarding any matters relating to or concerning the Action or other obligations performed or not performed by any Party in connection with the Action or any acts, omissions or conduct for or in connection with the Action unless such prohibited statement is required by law or pursuant to legal process, such as (by way of example only) truthful testimony given under oath at depositions, hearings, or trials.

R. Entire Agreement. This Settlement Agreement contains the entire agreement among the Parties relating to this Settlement and the Action. It specifically supersedes any settlement terms or settlement agreements that were previously agreed upon orally or in writing by any of the Parties.

S. Counterparts. This Settlement Agreement may be executed by exchange of faxed or scanned executed signature pages, and any signature thereby transmitted for the purpose of executing this Settlement Agreement shall be deemed and original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constituted one and the same instrument.

T. Binding Effect. This Settlement Agreement binds an inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors.

U. Severability. The provisions of this Settlement Agreement are severable. If any provision of this Settlement Agreement, or part thereof, is held invalid, void, or voidable as against public policy or otherwise, the invalidity will not affect other provisions, or parts thereof, which shall be given effect without the invalid provision or part.

V. Dismissal With Prejudice. Within five (5) days of completion of this Settlement Agreement (including satisfaction of the conditions in Paragraph C), payment of the Settlement Payment, and compliance with the Certifying Court's orders related to class certification and notice to the Landlord Class, Plaintiffs shall file, using a form mutually agreed to by the Parties, a notice or stipulation of dismissal with prejudice, of Plaintiffs' claims asserted in the Action.

[Signatures on next pages]

EXECUTION BY PARTIES AND CLASS COUNSEL

Check Commerce

Brian Bonfiglio,
Chief Executive Officer Of Check Commerce

Date: 9-27-19

Approved as to Form

Aaron Boschee
Squire Patton Boggs (US) LLP

eRentPayment, LLC

Rick A. Sands
Owner and Manager

Date: Sep 27 2019

Approved as to Form

Jon J. Olafson
Lewis Brisbois Bisgaard & Smith, LLP

Rick A. Sands

Rick A. Sands

Date: Sep 27 2019

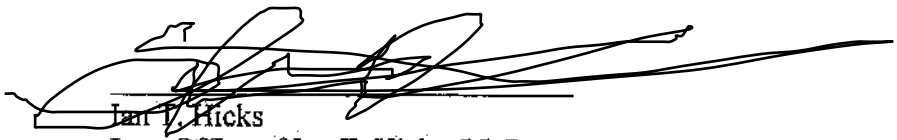
Approved as to Form

_____
Jon J. Olafson
Lewis Brisbois Bisgaard & Smith, LLP

Plaintiff Ying Li

_____
Ying Li

Date: _____

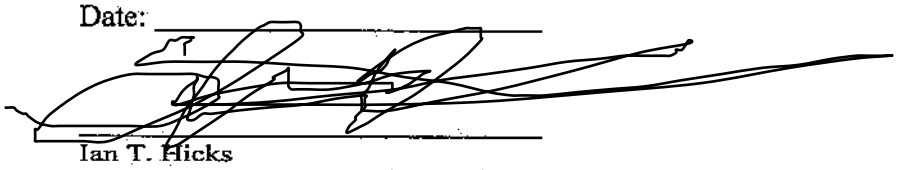


_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Todd Wasulko

_____
Todd Wasulko

Date: _____

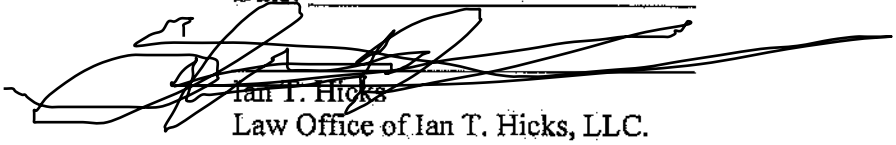


_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Rasheda Mayner

_____
Rasheda Mayner

Date: _____



_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Approved as to Form

_____
Jon J. Olafson
Lewis Brisbois Bisgaard & Smith, LLP

Plaintiff Ying Li

_____
Ying Li

Date: 10/15/2019.

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Todd Wasulko

_____
Todd Wasulko

Date: _____

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Rasheda Mayner

_____
Rasheda Mayner

Date: _____

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Approved as to Form

_____
Jon J. Olafson
Lewis Brisbois Bisgaard & Smith, LLP

Plaintiff Ying Li

_____
Ying Li

Date: _____

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Todd Wasulko

_____
Todd Wasulko

Date: 10/15/2019

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Rasheda Mayner

_____
Rasheda Mayner

Date: _____

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Approved as to Form

_____
Jon J. Olafson
Lewis Brisbois Bisgaard & Smith, LLP

Plaintiff Ying Li

_____
Ying Li

Date: _____

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Todd Wasulko

_____
Todd Wasulko

Date: _____

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Rasheda Mayner

Rasheda Mayner

Date: 10/16/19

_____
Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Manish Singh

Manish Singh

Manish Singh

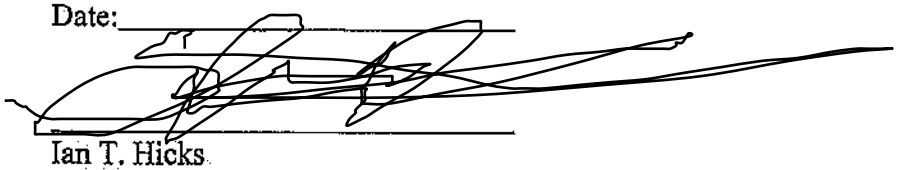
Date: 10/16/2019

Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

Plaintiff Manish Singh

Manish Singh

Date:



Ian T. Hicks
Law Office of Ian T. Hicks, LLC.

DATE FILED: May 19, 2020 8:56 AM
FILING ID: 9ABEE2A99ED62
CASE NUMBER: 2017CV31088

EXHIBIT 2

District Court of Larimer County, Colorado

If You Lost Rent Money Using eRent's Online Rent Payment Services, A Class Action Settlement May Affect You.

A Colorado Court authorized this notice. This is not a solicitation from a lawyer.

- Please read this Notice carefully. Your legal rights may be affected whether or not you act.
- This Settlement resolves litigation concerning alleged negligence of eRentPayment, LLC ("eRent") and Base Commerce, LLC (d/b/a Check Commerce) in the management of funds received from tenants intended for Plaintiffs (the "Landlords") in the case entitled *Todd Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce ,* Civil Action No. 2017-CV-031088 (the "Lawsuit").
- You may be eligible for payment based on the Settlement of the Lawsuit if you are an eRent customer that (1) agreed to utilize eRent's online rental payment-collection service to receive rental payments; (2) whose tenant(s) 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.
- If you received a ***Claim Statement*** addressed specifically to you or your business, then your claim will automatically be processed and you do NOT need to submit a claim. If you qualify as a member of the Settlement Class and your copy of this Notice was not accompanied by a Claim Statement addressed specifically to you or your business, then you will need to fill out and submit a Claim Form which is available at **www.RentalPaymentClass.com** (see Question 11 below).
- The Court has not expressed any opinion concerning the truth of any allegations or defenses asserted in the Lawsuit. This Notice is solely to advise you of the proposed Settlement of the Lawsuit and of your rights in connection with the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
IF YOU RECEIVED A CLAIM STATEMENT ADDRESSED TO YOU WITH THIS DOCUMENT	If you received a Claim Statement, you do ***not*** have to submit a Claim; you will automatically receive a payment from the Settlement. If you did not receive a Claim Statement and you are a member of the Settlement Class, then you must submit a completed Claim Form to get a payment.
SUBMIT A COMPLETED CLAIM FORM BY MONTH XX, 2020	This is the only way to receive a payment if you did ***not*** receive a Claim Statement in the mail showing your name or business name as the intended recipient. If you do nothing, you will not receive a payment from the Settlement.
OBJECT BY MONTH XX, 2020	You can file an objection with the Court explaining why you disagree with the Settlement. See Question 16 for specifics.
GO TO THE HEARING ON MONTH XX, 2020	Ask to speak in Court about the Settlement. *See* Questions 17 and 19.
EXCLUDE YOURSELF BY MONTH XX, 2020	The only option that allows you to exclude yourself from the settlement and retain your rights against the Defendants. If you exclude yourself you will not receive any funds from the Settlement. See Questions 12 and 13 for specifics.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice. A copy of the Settlement is

available online to **www.RentalPaymentClass.com** or by calling **1-800-XXX-XXXX**.

BASIC INFORMATION

1. What is this Notice about?

This Notice is to inform you about the proposed Settlement ("Settlement") that has been reached which may affect your rights, including your right to object or to exclude yourself from the Settlement. You have the right to know about the Settlement and about your legal rights and options before the Court decides whether to approve the Settlement.

The Court in charge is the District Court of Larimer County, Colorado. The case is entitled *Todd Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce, Civil Action No. 2017-CV-031088* (the "Lawsuit"). The people that sued are called the Plaintiffs, and the companies they sued are called the Defendants (see Question 6).

2. What is the Settlement Class Period?

The Settlement Class Period is the time period commencing as of October 3, 2017, and continuing through October 12, 2017.

3. What is the Lawsuit about?

Plaintiffs have asserted claims alleging that Defendants eRent and Check Commerce are liable for a failure to fund rental payments from tenants to the Landlords directed through eRent's website between October 3, 2017 and October 12, 2017. eRent and Check Commerce each deny any liability and have compelling legal defenses, including that any failure to transfer funds resulted from the conduct of a bankrupt non-party, eCHECKit.

To avoid the expense, uncertainty, and risks of continued litigation, eRent, Check Commerce, Named Plaintiffs and Plaintiffs' Counsel consider it desirable to resolve the lawsuit through settlement. Plaintiffs' Counsel believes that a settlement now provides the most money to the Settlement Class. A proposed settlement has been reached between Plaintiffs and Defendants eRent and Check Commerce in the Lawsuit.

4. What is a Class Action?

In a class action, one or more persons or businesses called class representatives sue on behalf of a group or a "class" of others with similar claims. If the Court determines that a case should proceed as a class action, then the group's claims can be combined into a single proceeding, creating efficiencies for the parties and the courts. In a class action, the court resolves the issues for all class members except those who exclude themselves from the Class.

WHO IS INCLUDED IN THE LAWSUIT?

5. Who are the Named Plaintiffs?

The named plaintiffs ("Named Plaintiffs" or "Class Representatives") are Todd Wasulko, Rasheda Mayner, Ying Li, and Manish Singh.

6. Who are the Defendants?

The Defendants are eRentPayment, LLC ("eRent") and Base Commerce, LLC (d/b/a Check Commerce).

7. How do I know if I am in the Settlement Class?

The "Settlement Class" consists of any eRent customers that (1) agreed to utilize eRent's online rental payment-collection service to receive rental payments; (2) whose tenant(s) 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.

You are not a member of the Settlement Class if your tenants did not make any payments through eRent's website; or if your tenants initially submitted payment through eRent's website between October 3, 2017 and October 12, 2017, but then had their payment returned to them by reversing the transaction.

THE SETTLEMENT'S BENEFITS

8. What does the Settlement provide?

The proposed Settlement establishes Settlement Funds totaling $450,000.

The Settlement Funds will be used to pay (1) the Settlement Class members in this Lawsuit; (2) the cost to administer the Settlement; (3) attorneys' fees; (4) litigation expenses, and (5) payments to the Named Plaintiffs (see Question 9).

The Settlement Agreement and the papers filed in support of the Settlement are available for review and download at **www.RentalPaymentClass.com** or you can request copies by calling 1-800-XXX-XXXX.

9. How much money can I get?

A. No money will be distributed to the Class yet. The plan of distribution for the Settlement funds will depend on several factors, including the percentage of the Members of the Class who opt out and whether either Defendant exercises its discretionary right to decline to participate in the Settlement because a threshold of Class member participation is not met.

B. If the number of Class Members who request to be excluded from the Settlement (see Questions 12 & 13) exceeds 15% of the Class or represents in excess of $100,000.00 in aggregate claims, then either Defendant or both may elect to withdraw from the Settlement. If Defendant Check Commerce withdraws, Settlement Funds will be reduced by $250,000. If Defendant eRent withdraws, Settlement Funds will be reduced by $200,000.

C. If the Court approves the Settlement, each member of the Settlement Class who does not opt-out will receive a distribution from the Settlement.

D. The amount of your distribution will be calculated based on the Defendants' records that show the amount of your unpaid rental payments as described in your Claim Statement. If you disagree with this amount, you can challenge the information by contacting the Settlement Administrator and submitting clear documentary evidence that you are owed a different amount of rental payments. If you do not challenge the amount of unpaid rent before the deadline provided in the Claim Statement, then the Settlement Administrator will use the amount listed in your Claim Statement to determine your distribution from the Settlement Fund. The Settlement Administrator is authorized to resolve any dispute regarding your unpaid rental payments, subject to the Court's review and approval.

E. Details of the proposed distribution of the Settlement Funds are set forth in the Joint Motion for Approval of Class Settlement ("Joint Motion"), which is posted at **www.RentalPaymentClass.com**. In summary, the Joint Motion provides for distribution of the Settlement Funds as follows:

(a) $299,000 to be allocated, as described above, to members of the Settlement Class;

(b) The Named Plaintiffs shall share an incentive award of $10,000 as follows: (i) $3,000.00 for both Rasheda Mayner and Todd Wasulko, and (ii) $2,000.00 for both Ying Li and Manish Singh, in addition to their settlement payments.

(c) The expenses of the Settlement Administrator for notice and administration of this Settlement. Such expenses are estimated to be $19,500 but may be greater. Plaintiffs' Counsel shall seek the Court's review and approval if such expenses exceed $25,000.

(d) Plaintiffs' Counsel's fees shall be paid one-time cash payout equal to 27% of the gross Settlement proceeds or $121,500.

In order to receive a payment you will need to review your Claim Statement carefully. Further information is available at **www.RentalPaymentClass.com** or by calling **1-800-XXX-XXXX**.

10. When will I get a payment?

Payments will be distributed if the Court grants final approval to the Settlement and after any appeals are resolved. If the Court approves the Settlement after the hearing on MONTH XX, 2020, there may be appeals. We don't know how much time it could take to resolve any appeals that may be filed.

HOW TO GET A PAYMENT CHECK

11. How can I get a payment check?

Members of the Settlement Class who receive a Claim Statement will receive a payment unless you exclude yourself. See Question 12 below about exclusions. Settlement Class members who dispute the amount of unpaid rental payments listed in their Claim Statement must submit documentation to support their dispute before the deadline provided in the Claim Statement.

Members of the Settlement Class who did not receive a Claim Statement will need to fill out and submit a claim form with their supporting documentation in order to get paid.

Claim forms are available at **www.RentalPaymentClass.com** or you can obtain a copy by calling, toll free, **1-800-XXX-XXXX**, or by writing to The Notice Company at the address below. To be valid, Claim Forms must be mailed and postmarked no later than **MONTH XX, 2020**, and addressed to:

Rental Payment Class
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

RIGHT TO EXCLUDE YOURSELF

12. May I exclude myself from the Settlement?

If you do not wish to participate in the settlement, you have the right to exclude yourself. By excluding yourself from the Settlement you will keep your right to sue any of the Defendants about the claims alleged and settled in this case (see Questions 3 and 8). If you exclude yourself, you will not receive any money from the Settlement.

13. How do I exclude myself from the Settlement?

In order to exclude yourself from the Settlement, and keep your individual rights, if any, to sue the Defendants, you must send a written request for exclusion to the Settlement Administrator to the following address:

Rental Payment Class Exclusions
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

To be valid, your exclusion request must be postmarked by **no later than MONTH XX, 2020**. Your request for exclusion must (a) specify your full name and mailing address, (b) be signed and dated, and (c) state that you request to be "Excluded from the Rental Payment Class Settlement (*Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce*, Civil Action No. 2017-CV-031088) in the State of Colorado". A member of the Settlement Class submitting such a timely request shall be deemed excluded from the Settlement Class and from this Settlement.

Any member of the Settlement Class who does not file a timely written request for exclusion will be bound by the Settlement and all subsequent proceedings, orders and judgments in this lawsuit, even if that member of the Class does not cash their payment or subsequently initiates litigation against the Defendants relating to the matters released. The Court documents describe the released claims in detail, so read them carefully. If you have any questions, you may call the toll-free number and speak to the Settlement Administrator. You may also consult your own lawyer at your own expense. The Court documents are available at **www.RentalPaymentClass.com**.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer representing me?

The Court has appointed Ian T. Hicks, The Law Office of Ian T. Hicks, LLC, 6000 East Evans Ave, Bldg. 1, Suite 140, Denver, CO 80222 (email address: ian@ithlaw.com), to represent you as "Plaintiffs' Counsel" for the Settlement Class. You do not have to pay Plaintiffs' Counsel separately. The attorneys will seek compensation by asking the Court for an award from the Settlement Funds.

15. How will the lawyers be paid?

Plaintiffs' Counsel will ask the Court for 27% of the gross Settlement fund plus reimbursement for costs and expenses in full settlement of attorneys' fees, costs, expenses, and any other sum to which Plaintiffs' Counsel may claim entitlement in the Lawsuit.

If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you may hire one at your own expense. Any award of attorneys' fees, litigation expenses and awards that the Court orders, plus the costs to administer the Settlement, will come out of the Settlement Funds and is subject to Court approval.

OBJECTING TO OR COMMENTING ON THE SETTLEMENT, PLAN OF DISTRIBUTION, ATTORNEYS' FEES AND LAWSUIT EXPENSES, AND AWARDS TO NAMED PLAINTIFFS

16. How do I object or comment on the Settlement?

You can ask the Court to deny approval by filing an objection to the Settlement Agreement. If the Court denies approval, no settlement payments will be sent out and the Lawsuit will continue.

You may object to the Settlement Agreement in writing. Written objections should include the following information:

- Your full name, current mailing address, telephone number, and if you are being assisted by a lawyer, the lawyer's name, address and telephone number;
- The case name and number of the Litigation (*Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce*, Civil Action No. 2017-CV-031088);
- A statement establishing your membership in the Settlement Class;
- A brief explanation of your reasons for objecting; and
- Your signature.

An objection must be submitted to the Court either by mailing it to the Clerk at the address below, or by filing it in person at the Courthouse. **To be valid, objections must be filed with the Court or postmarked on or before MONTH XX, 2020:**

COURT
Clerk of The Court Larimer County District Court 201 LaPorte Avenue, Suite 100, Fort Collins, CO 80521

Copies of the objection must be mailed, postmarked on or before MONTH XX, 2020, to counsel to the parties and to the Settlement Administrator as follows:

Plaintiffs' Counsel	**Defendants' Counsel**	**Settlement Administrator**
Ian T. Hicks, Esquire The Law Office of Ian T. Hicks, LLC 6000 East Evans Ave, Bldg. 1, Ste 140 Denver, CO 80222	Alice Conway Powers, Esquire Jon J. Olafson, Esquire Shawna M. Ruetz, Esquire Lewis Brisbois Bisgaard & Smith LLP 1700 Lincoln St, Ste 4000 Denver, CO 80203	Rental Payment Class c/o The Notice Company P.O. Box 455 Hingham, MA 02043
	Aaron A. Boschee, Esquire Achieve Law Group, LLC 146 West 11th Avenue Denver, CO 80204	

THE FAIRNESS HEARING

17. When and where will the Court consider the Settlement, the plan of distribution, request for attorneys' fees, litigation expenses, and awards to Named Plaintiffs?

The hearing for Final Approval of the Settlement ("Final Approval Hearing") will be held on MONTH XX, 2020 at XX:XX a.m./p.m., before the Honorable XXXXXXXXXX, Colorado District Court Judge, at the District Court of Larimer County, 201 LaPorte Avenue, Suite 100, Fort Collins, CO 80521. The Court may adjourn the Settlement Hearing from time to time and without further notice to the Settlement Class, so you should routinely check the website **www.RentalPaymentClass.com** for current information.

The purpose of the Final Approval Hearing will be to determine: (1) whether the proposed settlement, as set forth in the Settlement Agreement, should be approved as fair, reasonable, and adequate to the Members of the Settlement Class; (2) whether the proposed plan to distribute the Settlement Funds is fair, reasonable, and adequate; (3) whether the application by Plaintiff's Counsel for an award of attorneys' fees and expenses and by the Named Plaintiffs for incentive awards should be approved; and, if so, in what amounts; and (4) whether the stipulation for dismissal described in the Settlement Agreement, should be filed.

18. Do I have to come to the hearing?

No. Plaintiffs' Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you file an objection or comment, you don't have to come to Court to talk about it. As long as you filed your written objection on time, your objection will be presented to the Court for its consideration. You may also pay another lawyer to attend on your behalf, but it's not required.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file a "Notice of Intent to Appear in *Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce*, Civil Action No. 2017-CV-031088." Be sure to include your name, address, telephone number and your signature. Your Notice of Intent to Appear must be submitted to the Court either by mailing it to the Clerk at the address in Question 16, or by filing it in person at the Courthouse no later than MONTH XX, 2020. You cannot speak at the hearing if you excluded yourself from the Settlement Class.

GET MORE INFORMATION

20. Where can I get more information?

This notice summarizes the Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at **www.RentalPaymentClass.com**.

ALL INQUIRIES CONCERNING THIS NOTICE SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR OR TO PLAINTIFFS' COUNSEL.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE.

DATE FILED: May 19, 2020 8:56 AM
FILING ID: 9ABEE2A99ED62
CASE NUMBER: 2017CV31088

EXHIBIT 3

Lost Rental Payment Settlement Administrator
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

Todd Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce,
Civil Action No. 2017-CV-031088

MONTH XX, 2020

[TNC-ID]
[Class Member]
[Address1]
[Address 2]
[City, State ZIP Code]

Re: **CLAIM STATEMENT**
RENTAL PAYMENT CLASS SETTLEMENT

Dear [CLASS MEMBER]:

Your Class Member ID is: [TNC-ID]

According to eRentPayment's records, you qualify as a Settlement Class Member, which means that you had agreed to utilize eRentPayment's online rental payment-collection service to receive rental payments; and one or more of your tenants made a rental payment using eRent's website between October 3, 2017 and October 12, 2017; and you did not receive the payment made by the tenant. **Please read the Detailed Notice carefully. Your legal rights may be affected whether or not you act.**

According to eRentPayment's records, your total "Landlord Lost Revenue" for your impacted rental properties on the attached list was $XXX.XX.

If the Court approves the Settlement, then you will receive a ***pro rata*** share of the Settlement Fund calculated as follows:

Your Landlord Lost Revenue / Lost Revenue for All Landlords in the Class	=	Your ***Pro Rata*** Share	×	Available Settlement Class Fund	=	Calculated Compensation

If the Court approves the Settlement, your **Calculated Compensation** will be received in the form of a cash payment and is projected to be [$XXX.XX]. This calculated amount may change (a) if you disagree with your Lost Revenue amount shown on the attached ledger, (b) if other landlords disagree with their Lost Revenue amounts, (c) if Settlement Funds are diminished by additional administrative costs, or (d) if one or both defendants decline to participate in the Settlement because a threshold of Class member participation is not met. **See the Detailed Notice for complete information.**

- **If you agree** with your Landlord Lost Revenue amount as shown on the attached ledger you do not need to submit anything to receive your compensation.
- **If you disagree** with your Landlord Lost Revenue amount, then you must submit to the Settlement Administrator a letter, ***along with supporting documentation***, disputing the Calculated Compensation. The enclosed Detailed Notice provides instructions for submitting a dispute.

The Calculated Compensation will be presumed correct unless you submit a written dispute by MONTH XX, 2020, to us at our address given above.

Sincerely,
Settlement Administrator

PROPERTY LIST FOR:

[TNC-ID]
[Class Member]
[Address1]
[Address 2]
[City, State ZIP Code]

Properties that utilized eRentPayment's online rental payment-collection service where the landlord did not receive one or more payments made by tenants between October 3, 2017 and October 12, 2017.

1. [Address]
2. [Address]

DATE FILED: May 19, 2020 8:56 AM
FILING ID: 9ABEE2A99ED62
CASE NUMBER: 2017CV31088

EXHIBIT 4

District Court of Larimer County, Colorado

Wasulko, et al. v. eRentPayment, LLC, et al. v. Base Commerce d/b/a CheckCommerce

Civil Action No. 2017-CV-031088

RENTAL PAYMENT CLASS SETTLEMENT CLAIM FORM

Submit this Claim Form only if (1) you reviewed the Detailed Notice at *www.RentalPaymentClass.com*, (2) you believe that you qualify as a member of the Class, and (3) you have not received a Claim Statement that was addressed to you. If you qualify to submit this Claim Form, it must be returned no later than Month XX, 2020. This Claim Form is for Landlords who qualify as Class Members. If you are a Tenant who made payments through eRentPayment, you are not a Class Member and should not submit this form.

IF YOU RECEIVED A CLAIM STATEMENT, THEN YOU SHOULD NOT COMPLETE THIS FORM.

NAME OF AUTHORIZED PERSON COMPLETING THIS FORM: (FIRST) (MI) (LAST):	**BUSINESS NAME**:
CURRENT MAILING ADDRESS: STREET OR PO BOX: CITY: STATE: ZIP CODE:	**LANDLORD'S eRENTALPAYMENT ID**: **ADDRESS(ES) OF RENTAL PROPERTIES**:
DAYTIME PHONE NO.:	**DATE(S) OF MISSED RENTAL PAYMENT(S)**:
E-MAIL ADDRESS:	
BUSINESS EIN OR SSN (LAST 4 DIGITS ONLY):	**TOTAL AMOUNT OF LOST RENTAL PAYMENT(S)**:

PROOF OF LOST RENTAL PAYMENT(S)

Please attach documentation showing that between October 3, 2017, and October 12, 2017, the following is true:

1. You were an eRentPayment, LLC ("eRent") customer utilizing eRent's online rental payment-collection service to receive rental payments;

2. Your tenant(s) made rental payment(s) using eRent's website; **and**

3. You did not receive the payment made by your tenant;

Be sure to attach supporting documentation, such as a copy of your eRent agreement, or receipts or bank statements showing eRent billings or other eRent transactions.

VERIFICATION

I hereby certify and affirm that I am an eRent customer: (1) who agreed to utilize eRent's online rental payment-collection service to receive rental payments from tenant(s); (2) whose tenant(s) made a rental payment using eRent's website between October 3, 2017, and October 12, 2017 ("Class Period"); (3) who did not receive the payment made by the tenant; and (4) whose tenant(s) did not receive funds returned by reversing the transaction. I declare under the penalty of perjury that the information provided in this submission with accompanying documentation is true and correct to the best of my knowledge and belief.

Dated:_____Authorized Signature:_____

Your Title:_____

COMPLETED CLAIM FORMS MUST BE SUBMITTED NO LATER THAN MONTH XX, 2020.

Submit by Email to: claims@RentalPaymentClass.com OR

Mail to: Rental Payment Settlement, c/o The Notice Company, P.O. Box 455, Hingham, MA 02043

DATE FILED: May 19, 2020 8:56 AM
FILING ID: 9ABEE2A99ED62
CASE NUMBER: 2017CV31088

EXHIBIT 5

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521 **Plaintiffs:** Todd Wasulko, Rasheda Mayner, Manish Sing, and Ying Lil v. **Defendant:** eRentPayment, LLC v. **Third-Party Defendant:** Base Commerce d/b/a Check Commerce.	▲ COURT USE ONLY ▲ Case No. 2017cv031088 Division: 5A

Attorneys for Defendant
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Jon J. Olafson, Atty. Reg. No.: 43504
Shawna M. Ruetz, Atty, Reg. No.: 44909
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Attorneys for Third-Party Defendant
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Attorneys for Plaintiffs
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Denver, CO 80222

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ian@ithlaw.com

DECLARATION OF RICKS SANDS IN SUPPORT OF JOINT MOTION FOR CLASS CERTIFICATION AND APPROVAL OF THE CLASS SETTLEMENT AGREEMENT

I, Rick Sands, declare under criminal penalty of the State of Colorado that the following is true and correct:

1. I am the owner and manager of eRentPayment, LLC ("eRent").

2. I am over the age of 18 and have personal knowledge of the facts set forth in this declaration and could testify if called as a witness.

3. During normal business operations, eRent tracked all transactions provided to CC Operations LLC dba eCHECKit ("eCHECKit") with an initial status of "PENDING" until eCHECKit updated its systems to reflect that a transaction had been sent for deposit. At that point, eRent confirmed transactions had been completed by changing the status to "PROCESSED" or if the transaction failed for any reason the status became "RETURNED".

4. During October 2017, this same process was followed and all transactions that were not confirmed continued to have a status in eRent's system of "PENDING".

5. Data provided by Base Commerce, LLC d/b/a Check Commerce ("Check Commerce") detailed all returned transactions for eCHECKit's customers following eCHECKit filing for bankruptcy in October 2017.

6. eRent was able to compare its data with data from Check Commerce to determine which eRent customers had their transactions completed or returned in October 2017 as eCHECKit was no longer providing that information through its system. eRent updated the status of transactions in its system accordingly.

7. To determine which eRent landlords whose tenant(s) made a payment using eRent's website between October 3, 2017 and October 12, 2017, and did not receive the payment made by the tenant, eRent pulled all transactions for those dates that continue to have a "PENDING" status.

8. This data determined that there are approximately 1499 landlords that fall into the parameters established for the class in this matter.

9. Transaction and contact information for these landlords have been provided to all parties in this litigation in order to identify all potential class members.

Executed this 6th day of February, 2020.

Rick Sands
Owner and Manager
eRentPayment, LLC

DATE FILED: May 19, 2020 8:56 AM
FILING ID: 9ABEE2A99ED62
CASE NUMBER: 2017CV31088

EXHIBIT 6

DISTRICT COURT, LARIMER COUNTY, COLORADO
201 Laporte Avenue, Suite 100
Fort Collins, CO 80521

Plaintiffs: Todd Wasulko, Rasheda Mayner, Manish Sing, and Ying Lil

v.

Defendant: eRentPayment, LLC

v.

Third-Party Defendant: Base Commerce d/b/a Check Commerce.

▲ COURT USE ONLY ▲

Case No. 2017cv031088

Division: 5A

Attorneys for Defendant
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Phone: (720) 216-1511
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ian@ithlaw.com

DECLARATION OF IAN T. HICKS, ESQ.

I, Ian T. Hicks, Esq., an attorney licensed in the state of Colorado, and counsel for the named Plaintiffs, individually and as putative class members, hereby states the following under penalty of perjury, based on my personal knowledge, information, and belief:

1. I am an attorney licensed in the state of Colorado, attorney registration number 39332. I originally filed this civil action in Larimer County District Court, and drafted, researched, and filed all pleadings in this matter. I also drafted, researched, and filed all pleadings in the related interlocutory appeal. Finally, I managed all factual research, client interviews, and data collection relating to this litigation. Therefore, I have personal knowledge of the facts stated and related opinions stated herein.

2. As stated in the Joint Motion for Approval of Class Settlement and Class Certification, I believe that the administrative fees of $3,000.00 for Rasheda Mayner and Todd Wasulko, and $2,000.00 for Ying Li and Manish Singh, in addition to their settlement payments, is fair and reasonable.

3. Mr. Wasulko was primarily responsible for understanding, very early on, that the underlying losses giving rise to this civil action may constitute a class action, despite his complete lack of legal training. He also was the driving force in contacting attorneys in Denver under this theory, which ultimately led to this case being filed as a class action by Plaintiff's counsel.

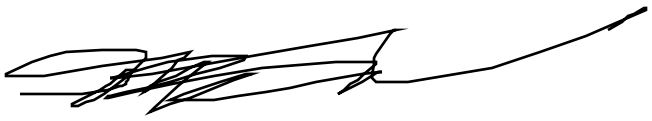
4. Ms. Mayner also undertook affirmative and wide-ranging efforts, without direction from any attorney, which were exceptionally helpful to formulating critical data, identifying

relevant class members, and facilitating communications with the potential class. More specifically, Ms. Mayner organized a Facebook discussion group of putative class members, including the accumulation of data relating to losses, addresses, and timing. This was time-consuming and essential to the success of this class.

5. Ms. Li and Mr. Singh, while they did not undertake affirmative efforts prior to the retention of Plaintiff's counsel that were critical to the case's success, nevertheless served a very important roles based on their jurisdictional contacts with Colorado, which facilitated jurisdiction but also would have precluded removal to federal district court had eRent been dismissed from the action, or had the claims been severed from this action. Therefore, the proposed administrative fees are fair and reasonable.

6. Finally, although it is clear from the pleadings, it is appropriate for me to state under oath that I undertook the litigation of this civil action at significant professional risk. This case involved novel legal issues involving e-commerce liability, a nationwide class of proposed class members, an interrelated bankruptcy, a limited fund, and numerous potential claimants who could have exhausted that limited fund. It has taken several years for these issues to shake out to a resolution, and I have personally funded all of the litigation costs during this time, while maintaining a busy and diverse civil litigation practice focused primarily on consumer protection, plaintiffs'-side work.

Dated and Signed this 2nd day of March, 2020

By 

Ian T. Hicks, Esq.

DATE FILED: May 19, 2020 8:56 AM
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CASE NUMBER: 2017CV31088

EXHIBIT 7

The Notice Company, Inc.

94 Station Street, Hingham, MA 02043

www.notice.com *classact@notice.com* *(888) 870-9530* *(781) 740-1900* *fax (781) 836-4297*

SUMMARY OF EXPERIENCE

SUMMARY OF EXPERIENCE

The Notice Company, Inc. is principally engaged in the administration of class action lawsuits pending in courts around the United States, including the dissemination of notice to class members, administering the claims process, and distributing the proceeds of the litigation to the class. Courts throughout the country have appointed us to act as Class Administrator in both class actions and collective actions. We have successfully implemented notice programs and claims processes in a wide variety of cases, with class membership sizes ranging from a few hundred to millions of persons, including the following cases:

Federal Courts

* *Abasi v. HCA-The Health Care Company, Inc.* (C.D. CA)
* *Alani v. FC Harris Pavilion Apartments Limited Partnership* (N.D. CA)
* *Aramburu v. Healthcare Financial Services, Inc.* (E.D. NY)
* *Brenner v. I.C. System, Inc.* (D. CT)
* *Brewer v. Village of Old Field* (E.D. NY)
* *Cagler v. Papa John's USA, Inc.* (W.D. NC)
* *In Re: Cathode Ray Tube (CRT) Antitrust Litigation* (N.D. CA)
* *In Re: Chi-Chi's, Inc.* (Bankr. D. DE)
* *In Re: Chocolate Confectionary Antitrust Litigation* (E.D. PA)
* *Coco v. Village of Belle Terre* (E.D. NY)
* *Dixon v. Hibbett Sporting Goods, Inc.* (N.D. MS)
* *Duronslet v. Transworld Systems, Inc.* (C.D. CA)
* *EEOC v. Cintas Corp.* (E.D. MI)
* *Fainbrun v. Chex Systems, Inc.* (E.D. NY)

* *Fasten v. Dun & Bradstreet Receivable Management Services, Inc.* (E.D. NY)
* *Hurwitz v. Ameriquest Recovery Services, LLC* (E.D. NY)
* *Knott v. Dollar Tree Stores, Inc.* (N.D. AL)
* *McCarthy v. Exterra Credit Recovery, Inc.* (S.D. NY)
* *McClain, et al., v. Morning Star, LLC* (W.D. NC)
* *Moore v. Sank* (D. CT)
* *In re OSB Antitrust Litigation* (E.D. PA)
* *In re Risk Management Alternatives, Inc. Fair Debt Collection Practices Act Litigation* (S.D. NY)
* *Rowell v. Voortman Cookies, Ltd* (N.D. IL)
* *Segelnick v. Risk Management Alternatives, Inc.* (E.D. NY)
* *Shimada v. Dun & Bradstreet* (C.D. CA)
* *Vega v. CBE Group, Inc.* (E.D. NY)
* *Weber v. Saint John's Health Center* (C.D. CA)
* *Weiss v. Regal Collections* (D. NJ)
* *Wood v. Village of Patchogue* (E.D. NY)

State Courts

* *Adams & Associates, P.C. v. Helena's Adventures In Travel, Inc.* (Oklahoma County, OK)
* *Aron v. U-Haul Co. of California & U-Haul International, Inc.* (Los Angeles County, CA)
* *Baker v. Lvovskiy d/b/a Quiznos Subshop* (Suffolk County, MA)
* *Beck v. Point Loma Patients Consumer Cooperative Corporation*

(San Diego County, CA)

* *Bellotti v. Smiley Brothers, Inc. d/b/a Mohonk Mountain House* (Ulster County, NY)
* *Branch v. Princeton Park Homes, Inc.* (Cook County, IL)
* *Boccia v. U.B. Vehicle Leasing, Inc.* (Miami-Dade, FL)
* *Bonilla v. Starwood Hotels & Resorts Worldwide* (Los Angeles, CA)
* *Busse v. Motorola, Inc.* (Cook County, IL)
* *Calhoun v. Crossroads Hospitality, Inc.* (Cook County, IL)
* *Coulson v. Waldrep* (Los Angeles, CA)
* *Cuehlo v HNK, Sato v Genki Sushi USA* (1st Cir., HI)
* *Fay v. The Wackenhut Corporation* (San Mateo County, CA)
* *Fisher v. East Lake Management Group, Inc.* (Cook County, IL)
* *Foster v. Friendly Ice Cream Corporation* (Middlesex County, MA)
* *Friedman v. Samsung Electronics America, Inc.* (Bergen County, NJ)
* *Gabiola v. S.R.O. Operating Company, LLC* (Cook County, IL)
* *Gray v. Board of Education of The Township Of Hamilton, Mercer County* (Mercer County, NJ)
* *Hubbs v. Red Robin International, Inc.* (Greene County, MO)
* *Johnson v. BH Management Services, LLC* (DuPage County, IL)
* *Johnson v. Houlihan's Restaurants, Inc.* (Kane County, IL)
* *Johnson v. RPH Management, Inc. d/b/a McDonald's Restaurant* (Tuscaloosa County, AL)
* *Karbelashvili v. Extreme Learning, Inc.* (Santa Clara County, CA)
* *Ketch, Inc. v. Royal Windows, Inc.* (Oklahoma County, OK)

* *Kinoshita v. Makena Hawaii, Inc.* (1st Cir., HI)
* *Kong v. Nova Cellular Co.* (Cook County, IL)
* *Liik v. New Jersey Civil Service Commission* (Mercer County, NJ)
* *Lucca v. Delops, Inc., d/b/a D'Angelo's Sandwich Shops* (Bristol County, MA)
* *Mavrikis v. MDwise Marketplace, Inc.* (Marion County, IN)
* *McAuliffe v. Bay State Gas Co.* (Plymouth County, MA)
* *Milex Electronics, Inc. v. Pitney Bowes Credit Corp.* (Suffolk County, NY)
* *MLC Mortgage Corp. v. Extol Mortgage Services, Inc.* (Oklahoma County, OK)
* *Novak v. Pacific Bioscience Laboratories, Inc.,* (Los Angeles County, CA)
* *Padron v. Universal Protection Services, Inc.* (Orange County, CA)
* *Palomino v. Shop-Vac Corporation* (Bergen County, NJ)
* *Parker v. Water Tower Realty Management Company* (Cook County, IL)
* *Patterson v. JKLM, Inc. d/b/a McDonalds* (Rock Island County, IL)
* *Plum v. Bayer A.G.* (Seminole County, FL)
* *Prescott v. GMRI, Inc. d/b/a The Olive Garden Italian Restaurant* (Cumberland County, NC)
* *Rovner v. Forest City Residential Management, Inc.* (Cook County, IL)
* *Sarris v. Akzo Nobel Car Refinishes B.V.* (Essex County, MA)
* *Schwab v. America Online, Inc.* (Cook County, IL)
* *Sells v. Boyland Auto Orlando, LLC, d/b/a Mercedes Benz of South Orlando* (Orange County, FL)
* *Serrano v. Woodrow Wilson Gaitor* (Hartford Judicial District, CT)
* *Shalman v. World Real Estate* (Cook County, IL)

* *Shorb v. Draper & Goldberg, PLLC* (Frederick County, MD)
* *Snuffer v. Wal-Mart Stores, Inc.* (Raleigh County, WV)
* *Springer v. State of New York* (Court of Claims, NY)
* *Stein v. The Lorali Company* (Cook County, IL)
* *Summer v. Toshiba America Consumer Products, Inc.* (Bergen County, NJ)
* *Welch v. Jascor, Inc., d/b/a McDonald's Restaurant* (Seneca County, NY)
* *Werkmeister v. Hardee's Restaurants, LLC* (Spartanburg County, SC)
* *White v. East Lake Management Group, Inc.* (Cook County, IL)
* *Williams v. Williamsbridge Restaurant Inc. d/b/a New Hawaii Sea Restaurant* (Bronx County, NY)
* *Zimmerman v. Michigan Avenue Hotel, LLC* (Cook County, IL)
* *Zmucki v. Extreme Learning, Inc.* (Santa Clara County, CA)

DATE FILED: May 19, 2020 8:56 AM
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EXHIBIT 8

AGREEMENT FOR CLASS ACTION NOTICE AND ADMINISTRATION SERVICES

This Agreement is entered into as of January 16, 2020, by and between **The Notice Company, Inc.**, with offices at 94 Station Street, Hingham, MA 02043 (together with its affiliates and subcontractors, the "Administrator") and **The Law Office of Ian T Hicks LLC**, with offices at 6000 East Evans Ave, Bldg 1, Ste 140, Denver, CO 80222 (the "Counsel"), Class Counsel in the case entitled ***Wasulko et al. v. eRentPayment LLC et al.***, No. 2017CV31088 (the "Case"), in the Larimer County District Court, Eighth Judicial District, State of Colorado (the "Court").

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. General Provision. In exchange for Administrator's services, Counsel will pay, or arrange for payment of, the fees allocated to those services, all as described herein.

2. Services. Administrator will provide the following services:

A. Required Services. Administrator will provide the services as described on Attachment A hereto (the "Required Services"). Counsel shall give Administrator at least twenty (20) business days' prior written notice of the commencement date for such Required Services.

B**. No Legal Advice.** Counsel agrees and understands that the Administrator shall not provide legal advice to Counsel, the parties, class members or claimants in the Case.

3. Fees. Counsel will remit to Administrator the fees as set forth in Attachment A hereto.

4. Manner of Work.

A. Reasonable and Professional Work. All services provided by Administrator will be performed in a reasonable and professional manner in accordance with this Agreement.

B. Reliance. Administrator shall be entitled to rely on the instructions given and requests made by Counsel and its employees, attorneys, or other designated representatives, and such instructions or requests shall be binding on Counsel and the parties in the Case.

C. Reports. Before Administrator prepares any report for submission to the Court or to any of the parties in a judicial proceeding, Counsel shall provide Administrator with the proper form for such report.

D. Disbursement of Funds. Before Administrator prepares checks or engages in other work to disburse funds to claimants or other persons in the Case, Counsel shall provide Administrator with a copy of the Court order authorizing such disbursement. All funds for the benefit of claimants in the Case shall be held by Administrator in FDIC-insured accounts where neither nor Counsel nor the parties in the Case shall have the right to require the accrual or payment of interest on such funds. It is the intent of the Administrator and Counsel that the aforementioned funds shall be distributed in accordance with the Settlement Agreement between the parties to the Case and all applicable orders of the Court.

5. Additional Work.

A. Time and Expenses. If Administrator is required to perform work other than the Required Services, Counsel shall pay for the time and expenses of Administrator that are incurred in connection with the handling of such other work.

B. Witness Appearances. Nothing in this contract shall be construed as requiring Administrator or any of its directors, officers, employees, affiliates, representatives, suppliers and agents (collectively the "Admin Staff") to appear as a witness in any trial, deposition, hearing or other proceeding,

including any appearance or work as an expert witness. In the event any of the Admin Staff is directed or required to appear as a witness, or to respond to a subpoena, including a subpoena duces tecum, Counsel shall pay all associated costs, including reasonable charges for their time, out-of-pocket expenses, attorneys' fees (if outside counsel is required) and travel costs.

6. Relationship. Counsel and Administrator are and shall be independent contractors of each other. No agency, partnership, joint venture or employment relationship between Administrator and Counsel, or between Administrator and the parties in the Case, shall arise, directly or indirectly, as a result of this Agreement.

7. Force Majeure. Whenever performance by the Administrator of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions or by reason of any other matter beyond the Administrator's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

8. Miscellaneous. Counsel agrees that except as expressly set forth herein, the Administrator makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

9. Entire Agreement/Modifications. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. Counsel represents that it is fully authorized and empowered to enter into this Agreement and that its performance hereunder, including the directions and instructions it provides to Administrator, will not violate any applicable law, Court order, government regulation, or agreement to which Counsel is a party. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of Counsel and an officer of the Administrator.

10. No Construction Against Drafter. The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, the terms of the agreement should be construed against the drafter of the agreement, shall have no application to the terms and conditions of this Agreement.

11. Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THE NOTICE COMPANY, INC.	THE LAW OFFICE OF IAN T HICKS LLC
By _____	By _____
Joseph M. Fisher, President	Ian T Hicks, Esquire

Attachment A to
CONTRACT FOR CLASS ACTION NOTICE AND ADMINISTRATION SERVICES

CASE: ***Wasulko et al. v. eRentPayment LLC et al.***
No. 2017CV31088
Larimer County District Court
Eighth Judicial District
State of Colorado

COUNSEL: The Law Office of Ian T Hicks LLC

WORK DESIGNATION: **REQUIRED SERVICES**

Prior to Preliminary Approval:

TASK 1: Prior to Preliminary Approval

a. Assist Counsel with design and content of notice documents
b. Assist Counsel with design of claim submission process, including provision for digital payments

After Preliminary Approval and Prior to Final Approval:

TASK 2: Prepare and Distribute Notice Documents

a. Receive from Counsel a database file in acceptable electronic format, e.g. Excel, containing data for 1,449 class members, including name, email address and mailing address for each class member
b. Update mailing address information utilizing the NCOA^{Link} (National Change of Address) service of the U.S. Postal Service
c. Receive from Counsel electronic versions of Summary Notice of Proposed Settlement (1 page), Detailed Notice of Proposed Settlement (up to 4 pages) and Claim Form (up to 2 pages)
d. Administrator to receive the database and documents at least fifteen (15) days prior to the date specified for distribution
e. Set up a designated email address for sending and receiving email communications
f. Designate a Post Office Box to receive returned mail
g. Send out notice documents by email as follows: body of email to include Summary Notice with embedded (clickable) links to Detailed Notice and Claim Form (***no*** documents to be included as attachments to email)
h. Track email bounce backs; resend email to soft bounces
i. Send out by first-class U.S. mail the Detailed Notice and Claim Form to class members where emails failed to deliver

TASK 3: Press Release

a. Reformat Summary Notice as a press release
b. Issue press release via *US1 National Newsline* of Cision PR Newswire

TASK 4: Class Website

a. Create website for class settlement
b. Exclusion and objection deadlines to be posted
c. Settlement Agreement, notice and claim form documents to be available for download by class members
d. Online claim form setup to facilitate online claim submissions
e. No online submission of exclusions or objections
f. Website server to be maintained for at six (6) months

TASK 5: Toll-Free Phone Line

a. Set-up toll-free phone line for Class Members to request copies of notice and claim form, to provide updated address information, or to ask questions
b. Prepare two-minute recorded message summarizing important case information
c. No live operators. Callers may leave a message with (i) mailing address to request copy of documents, (ii) updated/change of address information or (iii) questions about the settlement or claims process
d. The Notice Company to send documents by mail or email as requested; The Notice Company or Counsel to return messages as appropriate

TASK 6: Opt-Out Processing

a. Receive at P.O. Box Opt-Out (Exclusion) Requests from class members
b. Review Requests for completeness and acceptability
c. Prepare a report summarizing Opt-Out requests; transmit report to Counsel

TASK 7: Objections to Settlement

a. Receive at P.O. Box Objections to Settlement from class members.
b. Forward Objections to counsel on both sides

TASK 8: Claim Form Processing

a. Receive online claim submissions
b. Receive at P.O. Box mailed claim forms
c. Review claim submissions for completeness and acceptability
d. Review with Counsel issues associated with incomplete or defective forms
e. Send out notification to claimants with incomplete or defective Forms
f. Provide opportunity to cure
g. Prepare report summarizing the forms accepted and rejected; transmit report to Counsel

TASK 9: Declaration

a. Receive from Counsel the appropriate format for a Declaration, including case caption
b. Prepare a Declaration reporting on the outcome of the notice program

After Final Approval:

TASK 10: Receive Settlement Fund

a. Receive and hold Settlement Fund in a segregated, FDIC-insured account
b. Order checks for issuance of payments to Class Members

TASK 11: Issue Settlement Payments (1st Round)

a. Calculate payments in accordance with the terms of the Settlement Agreement

b. Issue payments to eligible Class Members as digital payments and/or checks
c. Checks and funding to expire 180 days after issuance
d. After expiration date determine amount of Unclaimed Funds

TASK 12: Issue Settlement Payments (2nd Round)

a. Calculate distribution of Unclaimed Funds in accordance with the terms of the Settlement Agreement
b. Issue payments to those Class Members who deposited their funds
c. Checks and funding to expire 180 days after issuance
d. After expiration date determine amount of Residual Funds

TASK 13: Distribution of Residual Funds

a. Report Residual Funds to Counsel
b. Counsel to request direction from the Court as to distribution of Residual Funds
c. Issue single payment of Residual Funds as directed by the Court, for example, to the Indiana Bar Foundation

Excluded Services - The Administrator is not responsible for the following:

1. Translation of documents, notices, correspondence or other communications into Spanish or any other foreign language
2. Preparation or filing of tax returns or tax documents in connection with Settlement payments
3. Filing documents in Court; Counsel shall handle all required filings

FEES TO BE PAID TO ADMINISTRATOR

First Payment: $15,000

To be received by the Administrator within five (5) days of Preliminary Approval of Settlement
Includes email, web server, printing, postage and all other costs

Payment amount to be increased as follows:
a) If more than 10% of email addresses are undeliverable, then $4.50 per additional item sent by U.S. mail
b) If press release is more than 400 words, then $260 for each additional 100 words
c) If website is up for more than 6 months, then $50/month for additional months

Second Payment: $4,500

To be received by the Administrator within five (5) days of Final Approval of the Settlement

Payment amount to be increased by $1,500 if digital payments to claimants are not allowed (e.g., PayPal, Zelle or ACH/Direct Deposit)

TOTAL: $19,500

Optional Third Payment:

$2,500

Due only if 2nd round of payments is required; payment to be received at least ten (10) days prior to issuance of payments.

Payment amount to be increased by $1,500 if digital payments to claimants are not allowed (e.g., PayPal, Zelle or ACH/Direct Deposit)

Note: Administrator has no obligation to proceed if fees as specified above are not received when due.