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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

CHRISTOPHER BOHN, CAMERON  
POND, and DESTINEE SANDERS,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

REALPAGE, INC.; GREYSTAR REAL  
ESTATE PARTNERS, LLC; LINCOLN  
PROPERTY CO.; FPI MANAGEMENT,  
INC.; MID-AMERICA APARTMENT  
COMMUNITIES, INC.; AVENUE5  
RESIDENTIAL, LLC; EQUITY  
RESIDENTIAL; CAMDEN PROPERTY  
TRUST; ESSEX PROPERTY TRUST, INC.;  
THRIVE COMMUNITIES MANAGEMENT,  
LLC; SECURITY PROPERTIES INC.; B/T  
WASHINGTON, LLC d/b/a BLANTON  
TURNER; and INDEPENDENCE REALTY  
TRUST, INC.,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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1  
2 Plaintiffs Christopher Bohn, Cameron Pond, and Destinee Sanders, individually and on  
3 behalf of all others similarly situated (the “Class,” as defined below), upon personal knowledge  
4 as to the facts pertaining to themselves and upon information and belief as to all other matters,  
5 and based on the investigation of counsel, bring this class action complaint to recover treble  
6 damages, injunctive relief, and other relief as appropriate, based on Defendants RealPage, Inc.,  
7 Greystar Real Estate Partners, LLC, Lincoln Property Co., FPI Management, Inc., Mid-  
8 America Apartment Communities, Inc., Avenue5 Residential, LLC, Equity Residential,  
9 Camden Property Trust, Essex Property Trust, Inc., Thrive Communities Management, LLC,  
10 Security Properties Inc., B/T Washington, LLC d/b/a/ Blanton Turner, and Independence  
11 Realty Trust, Inc.’s violations of federal antitrust laws.

## 12 I. NATURE OF THE ACTION

13 1. This action arises from Defendants’ conspiracy to fix, raise, maintain, and  
14 stabilize rental housing prices. Defendants are RealPage, Inc. (“RealPage”), the developer of a  
15 software platform called “AI Revenue Management” (previously known as “YieldStar”), and  
16 several managers of large-scale residential apartment buildings that used RealPage’s software  
17 platform to coordinate and agree upon rental housing pricing, among other things, throughout  
18 the United States.

19 2. AI Revenue Management works by collecting vast amounts of non-public data  
20 from its client property managers regarding lease transactions, rent prices, occupancy levels,  
21 and virtually every other possible data point relevant to rent prices. This data is fed into an  
22 algorithm, along with additional data collected from RealPage’s myriad other data analytics  
23 and rental management software products. The algorithm then generates a rental price for each  
24 of RealPage’s client’s available units, which is updated daily. RealPage makes sure all of its  
25 clients know that to maximize revenues, they must accept the software’s rental price at least 80-  
26 90 percent of the time, and RealPage’s “Revenue Management Advisors” monitor clients to  
27 ensure compliance. As the allegations and evidence set forth below demonstrate, RealPage and  
28 the property managers who use its revenue management services constitute a price-fixing

1 cartel, and the revenue growth they have achieved is possible only through coordinated price  
2 setting.

3 3. With the assurance that other cartel members are setting prices using the same  
4 algorithm, property managers can allow a larger share of their units to remain vacant while  
5 maintaining higher rental prices across their properties, and thereby obtain greater revenue.  
6 This strategy is only effective because of the pricing coordination among competing property  
7 managers enabled by this cartel, which is why RealPage repeatedly and explicitly emphasizes  
8 that for the software to work properly, everyone needs to accept its suggested price at least 80-  
9 90 percent of the time. As one property manager put it: “[W]e are all technically competitors . . .  
10 . [but RealPage] helps us work together . . . to work with a community in pricing strategies,  
11 not to work separately.”

12 4. Before the introduction of coordinated rent-setting software, residential property  
13 managers generally set prices, independently, to maximize occupancy. Allowing apartments to  
14 stand vacant at their advertised rental prices made little sense when similar apartments in the  
15 area were available for less. Thus, in the past, property managers had an incentive to lower  
16 rents until all available units were occupied. Allowing apartments to sit, unoccupied, would not  
17 be a profitable strategy unless there was some assurance or expectation that other property  
18 managers would similarly allow their units to remain vacant without lowering rents. RealPage’s  
19 software provides such an assurance.

20 5. Beyond the anticompetitive exchange of nonpublic and competitively sensitive  
21 information among competing property managers, RealPage uses additional mechanisms to  
22 facilitate coordination among cartel members and prevent cheating by conspiracy participants.  
23 First, by allowing property managers to outsource their rent-setting process, RealPage causes  
24 them to consider higher rent prices than they ever would have before. In the words of an  
25 executive at one of RealPage’s major clients: “The beauty of YieldStar is that it pushes you to  
26 go places that you wouldn’t have gone if you weren’t using it.”<sup>1</sup>

27  
28 <sup>1</sup> Heather Vogell, *Rent Going Up? One Company’s Algorithm Could Be Why*, ProPublica (Oct. 15, 2022) (quoting Kortney Balas, director of revenue management at JVM Realty).

1           6.       Second, RealPage polices cartel members by applying heavy pressure on them  
2 to accept the algorithm’s suggested price at least 80-90 percent of the time. The AI Revenue  
3 Management service includes more than its rent-setting algorithm. Clients can expect constant  
4 communication with one or more of RealPage’s Revenue Management Advisors who provide  
5 “expert oversight of [clients’] pricing strategy.”<sup>2</sup> Any client property manager who chooses to  
6 diverge from the algorithm’s price is expected to provide justification to a Revenue  
7 Management Advisors.

8           7.       Third, the software also recommends lease renewal dates for its clients’  
9 properties. Using RealPage’s vast store of data on lease transactions, the algorithm suggests  
10 dates that are staggered to avoid temporary periods of oversupply resulting from the natural ebb  
11 and flow of the market.<sup>3</sup> This further reduces the incentive for property managers to undercut  
12 would-be competitors, which is the strongest during these temporary oversupply periods.

13           8.       Fourth, RealPage facilitates direct information exchanges between competitors  
14 and provides opportunities for direct coordination of prices. It hosts online forums, organizes  
15 in-person events for its clients,<sup>4</sup> and maintains standing committees of cartel members to advise  
16 on pricing strategy.<sup>5</sup>

17           9.       As the property managers acknowledge, they are competitors. Yet, RealPage’s  
18 clients shared a common goal of increasing rent prices across the board and understood that  
19 RealPage—which has been explicit that its aim is to help its clients “outperform the market  
20 [by] 3% to 7%”<sup>6</sup>—was the means by which to do it. RealPage’s clients include many of the  
21 nation’s largest property managers who often control a majority of rental units in desirable  
22 neighborhoods of major cities. A recent analysis conducted by ProPublica showed that rents in

23 \_\_\_\_\_  
24 <sup>2</sup> *RealPage AI Revenue Management*, RealPage, Inc., <https://www.realpage.com/assetoptimization/revenue-management/> (last visited Nov. 1, 2022).

25 <sup>3</sup> *Revenue Management: Proven in Any Market Cycle*, RealPage eBook at 3 (2020), <https://www.realpage.com/ebooks/outperform-in-a-down-market/>.

26 <sup>4</sup> See *RealWorld 2022: The Pursuit of Excellence*, RealPage, Inc., <https://www.realpage.com/realworld/> (last visited Nov. 1, 2022).

27 <sup>5</sup> *User Group Overview*, RealPage, Inc., <https://www.realpage.com/user-group/overview/> (last visited Nov. 1, 2022).

28 <sup>6</sup> Vogell, *supra* note 1 (citing RealPage web page which has since been removed).

1 areas where RealPage clients control a high percentage of rental units have increased at a  
2 significantly higher rate than those where the company's influence is weaker.<sup>7</sup>

3 10. Defendants' price fixing conspiracy is a *per se* unlawful restraint of trade under  
4 Section 1 of the Sherman Act. It has resulted in artificially inflated rent prices and a diminished  
5 supply of affordable rental units. Plaintiffs and the Class, who rent in residential markets  
6 throughout the United States from property managers that use RealPage's software, paid  
7 significant overcharges on rent and suffered harm from the reduced availability of rental units  
8 they could reasonably afford.

## 9 II. JURISDICTION AND VENUE

10 11. Plaintiffs bring this antitrust class action lawsuit pursuant to Sections 4 and 16  
11 of the Clayton Act (15 U.S.C. §§ 15 and 26), to recover treble damages and the costs of suit,  
12 including reasonable attorneys' fees, for the injuries sustained by Plaintiffs and members of the  
13 Class; to enjoin Defendants' anticompetitive conduct; and for such other relief as is afforded  
14 under the laws of the United States for Defendants' violations of Section 1 of the Sherman Act  
15 (15 U.S.C. § 1).

16 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337,  
17 and Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a), 26).

18 13. Venue is proper in this District pursuant to Sections 4, 12, and 16 of the Clayton  
19 Act (15 U.S.C. §§ 15, 22, and 26), and pursuant to 28 U.S.C. § 1391(b), (c), and (d), because, at  
20 all relevant times, one or more of the Defendants resided, transacted business, was found, is  
21 licensed to do business, and/or had agents in this District.

22 14. This Court has personal jurisdiction over each Defendant because, among other  
23 things, each Defendant: (a) transacted business throughout the United States, including in this  
24 District; (b) leased residential units to individuals throughout the United States, including in  
25 this District; and/or (c) engaged in an antitrust conspiracy that was directed at and had a direct,  
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28 <sup>7</sup> *Id.*

1 foreseeable, and intended effect of causing injury to the business or property of persons  
2 residing in, located in, or doing business throughout the United States, including in this District.

3 15. The activities of the Defendants and their co-conspirators, as described herein,  
4 were within the flow of, were intended to, and did have direct, substantial, and reasonably  
5 foreseeable effects on the interstate commerce of the United States.

6 16. No other forum would be more convenient for the parties and witnesses to  
7 litigate this case.

### 8 III. THE PARTIES

9 17. Plaintiff Christopher Bohn is a resident of Dallas, Texas. He has rented a  
10 residential unit in a property previously known as Aura Bluffview and since renamed Bellevue  
11 at the Bluffs in Dallas, Texas from 2018 to present. During that time, Defendants Avenue5  
12 Residential, LLC and Greystar Real Estate Partners, LLC managed this property using  
13 RealPage software. Consequently, Mr. Bohn paid higher rental prices by reason of the violation  
14 alleged herein.

15 18. Plaintiff Cameron Pond is a resident of Austin, Texas. He has rented a  
16 residential unit in a property known as Sur512 in Austin, Texas from July 2020 to present.  
17 Defendant Greystar Real Estate Partners, LLC managed this property using RealPage software.  
18 Consequently, Mr. Pond paid higher rental prices by reason of the violation alleged herein.

19 19. Plaintiff Destinee Sanders is a resident of Seattle, Washington. She rented a  
20 residential unit in a property known as Ivy Apartments from May 31, 2021, through May 31,  
21 2022. Defendant B/T Washington, LLC d/b/a/ Blanton Turner was the original manager of this  
22 property. It managed this property using RealPage software. Upon information and belief,  
23 Defendant Thrive Communities Management, LLC took over management of Ivy Apartments  
24 in 2022 while Ms. Sanders was a resident. Consequently, Ms. Sanders paid higher rental prices  
25 by reason of the violation alleged herein.

26 20. Defendant RealPage, Inc. is a corporation headquartered in Richardson, Texas,  
27 organized and existing under the laws of Delaware. RealPage provides software and services to  
28 managers of residential rental apartments, including the YieldStar/AI Revenue Management

1 software described herein. RealPage was a public company from 2010 until December 2020,  
2 when it was purchased by Chicago-based private equity firm Thoma Bravo, LP, in a transaction  
3 that valued RealPage at approximately \$10.2 billion.<sup>8</sup> At that time, RealPage had over 31,700  
4 clients, including each of the ten largest multifamily property management companies in the  
5 U.S.<sup>9</sup>

6 21. Defendant Greystar Real Estate Partners, LLC is a limited liability company  
7 headquartered in Charleston, South Carolina, organized and existing under the laws of  
8 Delaware. Greystar is by far the largest manager of residential rental apartments in the country,  
9 with over 698,000 units under its management.

10 22. Defendant Lincoln Property Company is a corporation headquartered in Dallas,  
11 Texas, organized and existing under the laws of Texas. Lincoln is residential apartment  
12 manager with over 210,000 rental units under its management.

13 23. FPI Management, Inc. is a corporation headquartered in Folsom, California,  
14 organized and existing under the laws of California. FPI is a residential property manager with  
15 over 140,000 units under its management.

16 24. Defendant Mid-America Apartment Communities, Inc. is a corporation  
17 headquartered in Germantown, Tennessee, organized and existing under the laws of Tennessee.  
18 Mid-America is a residential apartment manager with over 100,000 rental units under its  
19 management.

20 25. Defendant Avenue5 Residential, LLC is a limited liability company  
21 headquartered in Seattle, Washington, organized and existing under the laws of Delaware.  
22 Avenue5 is a residential apartment manager with over 86,000 rental units under its  
23 management.

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27 <sup>8</sup> Press Release, RealPage, Inc., Thoma Bravo Completes Acquisition of RealPage (Apr. 22, 2021),  
<https://www.realpage.com/news/thoma-bravo-completes-acquisition-of-realpage/>.

28 <sup>9</sup> RealPage Inc., Annual Report (Form 10-K) at 6 (Mar. 1, 2021).



1           26. Defendant Equity Residential is a real estate investment trust headquartered in  
2 Chicago, Illinois, organized and existing under the laws of Maryland. Equity is residential  
3 apartment manager with over 77,000 rental units under its management.

4           27. Defendant Essex Property Trust, Inc. is a real estate investment trust  
5 headquartered in San Mateo, California, organized and existing under the laws of Maryland.  
6 Essex is a residential apartment manager with over 61,000 rental units under its management.

7           28. Defendant Camden Property Trust is a real estate investment trust headquartered  
8 in Houston, Texas, organized and existing under the laws of Texas. Camden Property Trust is a  
9 residential apartment manager with over 58,000 rental units under its management.

10           29. Defendant Thrive Communities Management, LLC is a limited liability  
11 company headquartered in Seattle, Washington, organized and existing under the laws of  
12 Washington. Thrive is a residential apartment manager with over 18,000 rental units under its  
13 management.

14           30. Defendant Security Properties Inc. is corporation headquartered in Seattle,  
15 Washington organized and existing under the laws of Washington. Security Properties is a  
16 residential apartment manager with over 22,000 rental units under its management.

17           31. Defendant B/T Washington, LLC d/b/a Blanton Turner is a limited liability  
18 company headquartered in Seattle, Washington, organized and existing under the laws of  
19 Washington. Blanton Turner is a residential apartment manager with over 5,300 rental units  
20 under its management.

21           32. Defendant Independence Realty Trust, Inc. is a real estate investment trust  
22 headquartered in Philadelphia, PA, organized and existing under the laws of Maryland.  
23 Independence Realty Trust is a residential apartment manager with over 36,000 rental units  
24 under its management.

25           33. Various other persons, firms, and corporations not named as defendants have  
26 participated as co-conspirators with Defendants and have performed acts and made statements  
27  
28

1 in furtherance of the conspiracy. The Defendants are jointly and severally liable for the acts of  
2 their co-conspirators whether or not named as defendants in this Complaint.

3 34. Whenever reference is made to any act of any corporation, the allegation means  
4 that the corporation engaged in the act by or through its officers, directors, agents, employees,  
5 or representatives while they were actively engaged in the management, direction, control, or  
6 transaction of the corporation's business or affairs.

7 35. Each of the Defendants named herein acted as the agent of or for the other  
8 Defendants with respect to the acts, violations, and common course of conduct alleged herein.

9 36. Defendants are also liable for acts done in furtherance of the alleged conspiracy  
10 by companies they acquired through mergers and acquisitions.

#### 11 IV. FACTUAL ALLEGATIONS

##### 12 A. Historical Competition Among Residential Property Managers

13 37. Before the introduction of software like YieldStar, competition in the rental  
14 housing market was driven by property managers' desire to keep occupancy levels in their  
15 buildings as high as possible and to keep turnover among their tenants down.<sup>10</sup> In addition to  
16 lost rent revenue caused by letting apartments sit empty, the costs of owning and maintaining a  
17 rental apartment are not significantly different whether the unit is occupied or not. This  
18 provides a strong incentive for property managers to lower their rents to fill vacant units. While  
19 property managers knew in theory that if they all resisted this temptation, they would all benefit  
20 from higher average rents, any individual property manager that lowered its rents to fill  
21 vacancies while the others did not would be able to gain market share at the others' expense.

22 38. As Donald Davidoff, the principal developer of competing price-setting software  
23 that RealPage acquired in 2017, explained in a 2020 blog post: "All [property managers] would  
24 be better off limiting their rent reductions; however, should one property manager lower their  
25 rents while the others don't, then that operator would outperform. The result can be a race to  
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27 <sup>10</sup> See, e.g., *Proven in any Market Cycle: See How These Companies Outperformed During*  
28 *Downturns* at 3, RealPage eBook (2020), <https://www.realpage.com/ebooks/outperform-in-a-down-market/>.

1 the bottom that is not good for anyone, but the fear of missing out coupled with laws  
2 prohibiting collusion make this the most likely outcome.”<sup>11</sup> This so-called “race to the bottom”  
3 might be bad for all property managers but is, of course, good for renters. It represents nothing  
4 beyond healthy price competition.

5 39. Absent collusion, property managers could not unilaterally raise rents above  
6 market rates—any property manager that did so would lose tenants to its competitors who  
7 offered rental units at market rates, granting them a higher share of the available profits. This  
8 dynamic causes rental prices in a competitive marketplace to be sensitive to changes in  
9 demand. For example, rents have historically gone up quickly in neighborhoods that become  
10 trendy, or when new public transportation infrastructure is added, and have fallen in areas  
11 where businesses close, or that new generations find less desirable than previous ones did. Any  
12 number of factors that made people want to live in a certain area or a certain type of apartment  
13 could cause rents to rise or fall accordingly. Rents were also historically responsive to changes  
14 in renters’ average income.

15 40. As described more fully below, Defendants’ conspiracy avoids a race to the  
16 bottom, but it does so at the financial expense of their customers—the renters. It allows  
17 property managers to hike rents at a faster pace when demand is strong without needing to  
18 lower them when it is weak. It eases natural competitive constraints and causes renters to spend  
19 higher and higher portions of their incomes on housing.

## 20 **B. RealPage and AI Revenue Management**

21 41. RealPage markets a “comprehensive platform of data analytics and on demand  
22 software solutions and services for the rental real estate industry.”<sup>12</sup> Its clients are managers of  
23 residential rental apartments, to which it offers an array of products for (1) marketing and  
24 leasing of apartments, (2) resident experience (including IT portals and rent payment software),  
25 (3) site management, (4) vendor and expense management, (5) budgeting and investment,  
26

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27 <sup>11</sup> Donald Davidoff, *They’re Heckling Revenue Management Again*, The Demand Solutions Blog  
(Aug. 18, 2020), <https://www.d2demand.com/mfhblog/theyre-heckling-revenue-management-again>.

28 <sup>12</sup> RealPage Inc., Annual Report (Form 10-K) at 6 (Mar. 1, 2021).

1 (6) accounting, (7) data analytics, and (8) so-called “revenue management”—advisory services  
2 on how to obtain higher rents on every unit. This “revenue management” service is the fulcrum  
3 of Defendants’ anticompetitive scheme.

4 42. RealPage was founded in 1998, and in 2002 it acquired the original YieldStar  
5 software from Defendant Camden Property Trust, a large real estate investment trust and  
6 manager of apartment buildings.<sup>13</sup> Two years later, the company hired Jeffrey Roper as its  
7 principal scientist to improve YieldStar’s performance and grow its client base.<sup>14</sup> Roper saw  
8 potential in the software as a means for RealPage’s customers to increase their revenue by  
9 maintaining higher average rents, but he realized that to function properly, the algorithm  
10 needed huge amounts of detailed data regarding rent prices and occupancy of individual units.<sup>15</sup>  
11 RealPage began collecting information from its clients and other sources in a “data warehouse,”  
12 which the algorithm could mine. Beyond rent prices and occupancy rates, this data included  
13 records of actual lease transactions, signed lease documents, lease renewal dates, records of  
14 rent payments, and detailed data on tenants and their finances.

15 43. Roper had previously helped design similar price-setting software for Alaska  
16 Airlines that also facilitated information exchange and price-fixing, according to the DOJ.<sup>16</sup>  
17 During his tenure as director of revenue management, Alaska Airlines and its competitor  
18 airlines began using common software to exchange information regarding planned routes and  
19 ticket prices among themselves before that information became public.<sup>17</sup> The software allowed  
20 the airlines to avoid price wars that would have lowered ticket prices. The Justice Department’s  
21 Antitrust Division filed suit against eight of the largest U.S. airlines, alleging that the software-  
22 enabled information exchange amounted to anticompetitive price fixing under the antitrust

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23 <sup>13</sup> Press Release, RealPage, Inc., RealPage Acquires YieldStar Multifamily Revenue Management  
24 System (July 19, 2002), <https://www.realpage.com/news/realpage-acquires-yieldstar-multifamily-revenue-management-system/>.

25 <sup>14</sup> See Vogell, *supra* note 1.

26 <sup>15</sup> See *id.*

27 <sup>16</sup> Press Release, Justice Department Settles Airlines Price Fixing Suit, May Save Consumers  
28 Hundreds of Millions of Dollars, U.S. Dep’t of Just., (Mar. 17, 1994), [https://www.justice.gov/archive/atr/public/press\\_releases/1994/211786.htm](https://www.justice.gov/archive/atr/public/press_releases/1994/211786.htm).

<sup>17</sup> Vogell, *supra* note 1.

1 laws.<sup>18</sup> A government economist calculated that the scheme cost consumers up to \$1.9 billion.<sup>19</sup>  
 2 All eight airlines eventually entered into consent decrees requiring them to eliminate the  
 3 information exchange features of the software that had enabled the conspiracy.<sup>20</sup> At one point  
 4 during the investigation, federal agents removed a computer and documents from Roper's  
 5 office at Alaska Airlines.<sup>21</sup>

6 44. Much like the airlines' price-fixing cartel, Defendants' cartel avoids price wars  
 7 and the "race to the bottom" during periods of oversupply. As RealPage declares to potential  
 8 clients in its advertising materials: "You don't have to sacrifice rent growth during a softening  
 9 market."<sup>22</sup>

10 45. Naturally, YieldStar's coordinated pricing strategy became more and more  
 11 effective as more property managers implemented it. To this end, RealPage began buying up  
 12 similar and competing software companies, and it has completed 26 acquisitions since its  
 13 founding.<sup>23</sup> The most important of these transactions came in 2017, when RealPage acquired  
 14 Lease Rent Options (LRO), a company which offered a similar rent-setting software that was  
 15 YieldStar's strongest rival. Instead of relying on nonpublic data from competitors, however,  
 16 LRO's algorithm used only public market data as input. LRO's chief architect, Donald  
 17 Davidoff, designed it that way specifically to avoid the potential antitrust violations arising  
 18 from the use of nonpublic data to coordinate prices among competitors.<sup>24</sup>

19 46. LRO's software was not the most valuable piece of the acquisition for RealPage,  
 20 however—its customer base was. At the time of the merger, RealPage was pricing 1.5 million  
 21

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 23 <sup>18</sup> Press Release, Justice Department Files Price Fixing Suit Against Eight Airlines and Fare  
 24 Dissemination System, U.S. Dep't of Just., (Dec. 21, 1992), [https://www.justice.gov/archive/atr/public/press\\_releases/1992/211323.htm](https://www.justice.gov/archive/atr/public/press_releases/1992/211323.htm).

25 <sup>19</sup> DOJ Press Release, *supra* note 16.

26 <sup>20</sup> DOJ Press Release, *supra* note 16.

27 <sup>21</sup> Vogell, *supra* note 1.

28 <sup>22</sup> RealPage, Inc., *Proven in any Market Cycle: See How These Companies Outperformed During  
 Downturns* (2020) <https://www.realpage.com/ebooks/outperform-in-a-down-market/>.

<sup>23</sup> Bloomberg Company Report, RealPage, Inc. (generated Nov. 1, 2022).

<sup>24</sup> Vogell, *supra* note 1.

1 units. That number doubled with the acquisition.<sup>25</sup> RealPage rebranded the product AI Revenue  
 2 Management, and its client base and influence on rental markets in urban areas across the  
 3 country continued to grow. RealPage’s website currently claims that its clients use AI Revenue  
 4 Management to set the price for more than 4 million rental units.<sup>26</sup> While the DOJ issued a so-  
 5 called “Second Request” in connection with the proposed merger due to its potential effects on  
 6 competition, DOJ took no further action, and RealPage completed the acquisition.<sup>27</sup>

7 47. These 4 million units provide only a piece of the data available for RealPage’s  
 8 algorithm to mine, however. According to RealPage’s last annual report before being acquired  
 9 by Thoma Bravo, as of December 31, 2020, its “client base of over 31,700 clients used one or  
 10 more of [its] integrated data analytics or on demand software solutions to help manage the  
 11 operations of approximately 19.7 million rental real estate units.”<sup>28</sup>

12 48. RealPage’s vast client base provides it with real-time data on every aspect of  
 13 the rental housing market, including actual rent prices as opposed to advertised rents—data  
 14 which was previously unavailable to landlords. RealPage advertises that the algorithm  
 15 “crunches *millions of transactions each night*, pinpointing price shifts for *every single unit* on  
 16 the platform at any point in time.”<sup>29</sup>

17 49. Figure 1, below, is a diagram from an eBook published by RealPage on its  
 18 website.<sup>30</sup> It demonstrates how RealPage aggregates the data (including nonpublic lease  
 19 transaction data) which enables RealPage to coordinate pricing among its clients.

23 <sup>25</sup> *Id.*

24 <sup>26</sup> *RealPage AI Revenue Management*, RealPage, Inc., <https://www.realpage.com/assetoptimization/revenue-management/> (last visited Nov. 1, 2022).

25 <sup>27</sup> Vogell, *supra* note 1.

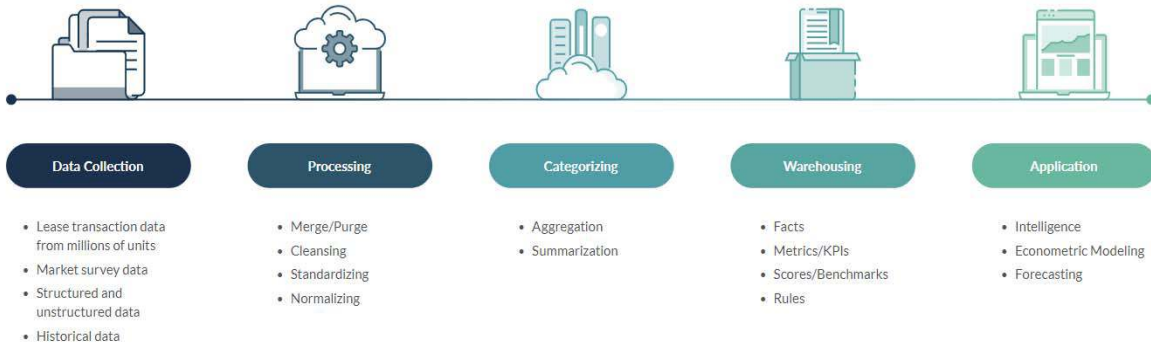
26 <sup>28</sup> See RealPage Inc., Annual Report (Form 10-K) at 14 (Mar. 1, 2021).

27 <sup>29</sup> *YieldStar Calculates the Right Rent Price at the Right Time*, RealPage Videos, <https://www.realpage.com/videos/yieldstar-measures-price-elasticity/> (last visited Nov. 1, 2022).

28 <sup>30</sup> *3 Ways to Leverage AI for Maximum NOI* at 8, RealPage eBook (2022), <https://www.realpage.com/ebooks/leverage-ai-maximum-noi/>.

Figure 1

How Quality Data Is Processed to Produce Powerful AI



50. By enabling property managers to outsource lease pricing decisions to the software, RealPage has transformed rental markets. Where lease prices were formerly set to maximize occupancy rates, increasing revenue on individual rental units has become the driving force. David Hannan, senior vice president at the Morgan Group, a Houston-based property manager, which grew revenue five percent above expectations when it implemented YieldStar, characterized the transformation like this: “My generation grew up worshipping the occupancy gods. We learned that if you were not 95 percent-plus occupied, the asset was failing. But that’s not necessarily true anymore . . . this totally turns the industry upside down.”<sup>31</sup> RealPage characterizes this transformation as a shift from an “occupancy focus” to “rent growth focus.”<sup>32</sup>

51. Other traditional aims for a healthy rental property, such as low turnover rates, have also been abandoned. Ric Campo, the CEO of Camden Property Trust, a national real estate investment trust, said his turnover rates increased around 15 percentage points in 2006 after implementing YieldStar. Despite that increase in turnover rates, Camden Property Trust’s overall same-property revenue grew over seven percent in its first year using YieldStar. “What

<sup>31</sup> Joe Bousquin, *In the Back Office, Revenue Management Software is Causing a Revolution*, Multifamily Executive (Apr. 20, 2009), [https://www.multifamilyexecutive.com/technology/in-the-back-office-revenue-management-software-is-causing-a-revolution\\_o](https://www.multifamilyexecutive.com/technology/in-the-back-office-revenue-management-software-is-causing-a-revolution_o).

<sup>32</sup> *Proven in any Market Cycle*, RealPage eBook, *supra* note 10, at 3.



1 we found,” Campo said, “was that driving our turnover rate up actually captured additional  
2 revenue.” While Camden Property Trust’s turnover expenses increased by \$2.5 million,  
3 revenue increased \$12.5 million. According to Campo, “[T]he net effect of driving revenue and  
4 pushing people out was \$10 million in income.”<sup>33</sup>

5 52. Additionally, RealPage provides its customers with real-time information about  
6 their competitors sufficient to avoid oversupply of units caused by natural ebbs and flows in the  
7 market. The algorithm uses the occupancy data it collects to recommend lease renewal dates  
8 that are staggered to avoid any period of oversupply. Property managers can then hold units  
9 vacant for a period, while keeping rent prices inflated.<sup>34</sup> This strategy of staggering of lease  
10 renewal dates smooths out natural fluctuations of supply and demand, which further reduces  
11 any incentive for Defendants and their coconspirators to undercut their inflated prices. This  
12 incentive is always the greatest in periods of oversupply, when falling revenues could be  
13 replaced by achieving full occupancy at reduced rents.

14 **C. Property Managers Who Adopted YieldStar/AI Revenue**  
15 **Management Did So with the Common Goal of Raising Rent Prices**

16 53. Property managers who use YieldStar/AI Revenue Management do so with the  
17 explicit and common goal of increasing rents for all members of the cartel by using coordinated  
18 algorithmic pricing. RealPage advertises that its customers “outperform the market by 2%-7%  
19 year over year,”<sup>35</sup> by switching from an “occupancy focus” to a “rent growth focus.”<sup>36</sup>  
20 RealPage’s clients find its revenue management services particularly helpful because those  
21 services allow the property managers to “make sure we’re limiting our supply when there isn’t  
22 too much demand.”<sup>37</sup> As one property manager described in a promotional video on RealPage’s

23 <sup>33</sup> Bousquin, *supra* note 31.

24 <sup>34</sup> *See Proven in any Market Cycle*, RealPage eBook, *supra* note 10, at 4-5.

25 <sup>35</sup> *Introducing AI Revenue Management: Next-Generation Price Optimization That Unlocks Hidden*  
26 *Yield*, RealPage, Inc. (2020), <https://www.realpage.com/storage/files/pages/pdfs/2021/02/ai-revenue-management-lookbook-nov20.pdf>.

27 <sup>36</sup> *Proven in any Market Cycle*, RealPage eBook, *supra* note 10, at 3.

28 <sup>37</sup> *RealPage Revenue Management Maximizes Market Opportunity*, RealPage Video (Dec 2, 2019),  
<https://www.realpage.com/videos/revenue-management-maximizes-market-opportunity/> (interview with  
John Kirchmann, CFO of IRET Property Management).



1 website, YieldStar takes on the burden of “implementing the increases in rents . . . it’s running  
2 the lease expiration for us and we’re not manually doing it which means we’re increasing our  
3 revenue for those units.”<sup>38</sup>

4 54. To join the cartel, property managers must agree to abide by certain conditions.  
5 They must provide RealPage with real-time access to detailed, nonpublic data regarding their  
6 residential leases. They must agree to outsource daily pricing and ongoing revenue oversight to  
7 RealPage. Importantly, they agree to rent their units at the algorithm’s recommended price,  
8 even where it is higher than they would have previously considered. While it is possible for  
9 property managers to reject the algorithm’s suggested price for a given unit, RealPage uses  
10 multiple mechanisms to enforce what it refers to as pricing “discipline” or “courage.” The  
11 result is that property managers adopt at least 80 percent and as much as 90 percent of  
12 suggested rates.<sup>39</sup>

13 55. RealPage provides participating property managers with daily recommended  
14 rents for available rental units. The property manager must either accept these rates or provide  
15 justification to a RealPage Revenue Management Advisor for their divergence from the  
16 recommended price. And, according to a former RealPage executive, property managers only  
17 ever offered minimal pushback on the recommended rates.<sup>40</sup>

18 56. Unlike renters, RealPage’s customers (the property managers) are fully aware  
19 when they sign up that the higher rents achieved by using the algorithm are the result of  
20 coordinated pricing among competing property managers. Before the introduction of rent-  
21 setting software, markets for residential leases were characterized by a prisoner’s dilemma.  
22 While higher rents across the board would benefit all landlords, one self-interested landlord  
23 could outperform the rest by undercutting the price and achieving full occupancy. Without  
24

25  
26 <sup>38</sup> *YieldStar™ Revenue Management Optimizes Rent Pricing*, RealPage Videos (Sept. 10, 2019),  
27 <https://www.realpage.com/videos/yieldstar-optimizes-rent-pricing/> (testimonial of Holly Casper, Vice  
28 President of Operations for RKW Residential).

<sup>39</sup> See Vogell, *supra* note 1.

<sup>40</sup> See *id.*

1 assurances that competitors will refrain from undercutting rent prices, individual landlords are  
2 forced to price their units to maximize occupancy.

3 57. By enforcing price discipline and setting rents that result in lower occupancy  
4 rates, RealPage provides assurances that all property managers using its software are doing the  
5 same thing—raising rents and accepting lower occupancy instead of lowering the price to fill  
6 units. In this way, RealPage enables property managers to overcome the prisoner’s dilemma  
7 that prevented coordinated pricing in the historical market for residential rental apartments.<sup>41</sup>

8 58. RealPage’s clients are also aware that the rent growth they achieve is based on  
9 real-time sharing of nonpublic lease transaction and pricing data. RealPage calls this  
10 information exchange “continuous optimization through connected intelligence” and brags that  
11 it is “[b]uilt on the market’s largest real-time data set.”<sup>42</sup> Coordinated algorithmic pricing  
12 allows property managers to, in RealPage’s own words, “outsource daily pricing and ongoing  
13 revenue oversight” to RealPage, allowing RealPage to set prices for client property managers’  
14 properties “as if we [RealPage] own them ourselves.” Put differently, the software allows the  
15 independent property managers to operate as if they were one company setting prices.

16 **D. The Conspiracy Caused Inflated Rental Prices and Reduced**  
17 **Occupancy of Residential Rental Units**

18 59. RealPage’s model works to increase revenue by raising rent prices while  
19 accepting lower occupancy levels. RealPage has not been shy about this mechanism of action.  
20 During a 2017 earnings call, then-CEO of RealPage Steve Winn offered as an example one  
21 large property company, managing over 40,000 units, which learned it could make more profit  
22 by operating at a lower occupancy level that “would have made management uncomfortable  
23 before.”<sup>43</sup> Prior to adopting YieldStar, the company had targeted 97 or 98 percent occupancy  
24 rates in markets where it was a leader. After outsourcing rent prices to the algorithm, the

25 <sup>41</sup> See Salil K. Mehra, *Price Discrimination-Driven Algorithmic Collusion: Platforms for Durable*  
26 *Cartels*, 26 Stan. J.L. Bus. & Fin. 171, 197-203 (2021).

27 <sup>42</sup> *Introducing AI Revenue Management: Next-Generation Price Optimization That Unlocks Hidden*  
28 *Yield*, RealPage, Inc. (2020), <https://www.realpage.com/storage/files/pages/pdfs/2021/02/ai-revenue-management-lookbook-nov20.pdf>.

<sup>43</sup> Vogell, *supra* note 1.

1 company began targeting three to four percent revenue growth while operating at a 95 percent  
2 occupancy rate.<sup>44</sup>

3 60. RealPage’s software not only facilitates price hikes, but it also allows  
4 conspirators to *maintain* higher prices. RealPage claims that Defendant property managers and  
5 their co-conspirators were able to maintain rent prices 7 percent above the competitive market  
6 rate. Speaking at a RealPage webcast, America Melragon, a former VP of revenue management  
7 for IRT, discussed how property managers can stabilize rents by using RealPage’s software.  
8 According to Melragon, “We’ve noticed . . . competitors that are manually pricing have already  
9 started to experience pretty significant swings in their effective price. . . . For us, really having  
10 that insight into our own individual supply and demand exposure has helped our price pretty  
11 much stay in line with where we anticipated it to be.”<sup>45</sup>

12 61. Defendants and their co-conspirators are aware that the higher revenues they  
13 obtain using RealPage’s software are the result of increasing average rent prices in the  
14 neighborhoods they serve. In a video shown at a conference for real estate executives in the  
15 summer of 2021, RealPage vice president Jay Parsons noted that average rents had recently  
16 shot up by 14 percent. “Never before have we seen these numbers,” he said. Parsons then asked  
17 Andrew Bowen, another RealPage executive, what role he thought the company had played in  
18 the unprecedented increase. “I think it’s driving it, quite honestly,” Bowen replied.<sup>46</sup>

19 62. Defendants’ conspiracy allows property managers to hike rents even higher  
20 when demand is strong without needing to lower them when it is weak. It untethers rent prices  
21 from their natural constraints, forcing renters to spend more money than they would have in a  
22 competitive rental market.

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23  
24  
25  
26 <sup>44</sup> *Id.*

27 <sup>45</sup> *IRT Gains Pricing Stability with RealPage Revenue Management*, RealPage Videos (June 17,  
2020), <https://www.realpage.com/videos/irt-gains-pricing-stability/>.

28 <sup>46</sup> Vogell, *supra* note 1.

1           **E. “Plus Factors” in the Residential Rental Market Provide Additional**  
 2           **Evidence of a Price Fixing Conspiracy**

3           63. Prominent legal and economic antitrust scholars studying collusive behavior  
 4 have identified certain “plus factors,” which are “economic actions and outcomes, above and  
 5 beyond parallel conduct by oligopolistic firms, that are largely inconsistent with unilateral  
 6 conduct but largely consistent with explicitly coordinated action,” and therefore support an  
 7 inference of collusion.<sup>47</sup> Each plus factor that is present constitutes a piece of circumstantial  
 8 evidence supporting active collusion, as opposed to mere conscious parallelism. The factors  
 9 that provide the most probative value and lead to a strong inference of explicit collusion are  
 10 referred to as “super plus factors.”<sup>48</sup>

11           64. Here, several plus and super plus factors support the plausible inference that  
 12 Defendants are members of a *per se* unlawful price fixing cartel. These include: (i) Defendants’  
 13 exchange of competitively sensitive information, (ii) the presence of a price-verification  
 14 scheme, (iii) a motive to conspire, (iv) opportunities and invitations to collude, (v) high barriers  
 15 to entry, (vi) high switching costs for renters, (vii) high market concentration, (viii) stability in  
 16 the market shares of large residential apartment managers, and (ix) maintenance of excess  
 17 capacity during periods of rising prices.

18           65. **First**, the reciprocal sharing of firm-specific competitively sensitive information  
 19 that would normally remain private is a “super plus factor” that leads to a strong inference of  
 20 active collusion.<sup>49</sup> As described above, RealPage requires client property managers to input  
 21 data on actual rents paid and occupancy rates, along with detailed records of lease transactions.  
 22 This data, which would normally be kept private, is fed into the algorithm which sets  
 23 coordinated rents among competing property managers. Importantly, individual property  
 24 managers would be competitively disadvantaged by providing private data to other property  
 25

26           <sup>47</sup> William E. Kovacic, *Plus Factors and Agreement in Antitrust Law*, 110 Mich. L. Rev. 393, 393  
 (2011).

27           <sup>48</sup> *See id.* at 396-97.

28           <sup>49</sup> Christopher R. Leslie, *The Probative Synergy of Plus Factors in Price-Fixing Litigation*, 115 Nw.  
 Univ. L. Rev. 1581, 1608 (2021).

1 managers unilaterally, and rational actors will only do so with the expectation that they will  
2 benefit from similar private information shared by its competitors.

3 66. **Second**, RealPage provides participating property managers with a price-  
4 verification scheme. As described above, RealPage pushes its clients to accept the algorithm's  
5 rent price at least 80-90 percent of the time and clients cannot freely diverge from the  
6 algorithm's price. This type of price-verification makes little sense absent collusion.<sup>50</sup>

7 67. **Third**, RealPage provides property managers with a motive to conspire by  
8 advertising its software and claiming it can increase revenue by 3 to 7 percent.<sup>51</sup>

9 68. **Fourth**, the YieldStar/AI Revenue Management software itself is an opportunity  
10 to coordinate prices that was previously unavailable, and RealPage's advertisements are naked  
11 invitations to collude. Additionally, RealPage hosts online forums and in-person conferences  
12 for property managers<sup>52</sup> and maintains standing committees of cartel members to advise on  
13 pricing strategy,<sup>53</sup> all of which provide opportunities for more direct collusion.

14 69. **Fifth**, the market for residential apartment rentals is highly concentrated.  
15 Desirable neighborhoods in many major cities are dominated by large corporate property  
16 managers, such as Greystar and Camden Property Trust, which are themselves increasingly  
17 controlled by even larger private equity firms.<sup>54</sup> For example, ProPublica found that in one  
18 popular Seattle neighborhood, 70 percent of the apartments were managed by just 10 property  
19 managers, all of which were using RealPage's pricing software.<sup>55</sup>

20 70. **Sixth**, multifamily residential building owners and operators face significant  
21 entry barriers. These include the high cost of acquiring property and establishing a property  
22 management infrastructure as well as ongoing costs of building maintenance and regulatory

23 <sup>50</sup> *Id.* at 1602.

24 <sup>51</sup> *Proven in any Market Cycle*, RealPage eBook, *supra* note 10, at 6.

25 <sup>52</sup> *RealWorld 2022: The Pursuit of Excellence*, RealPage, Inc., <https://www.realpage.com/realworld/>  
(last visited Nov. 1, 2022).

26 <sup>53</sup> *User Group Overview*, RealPage, Inc., <https://www.realpage.com/user-group/overview/> (last  
visited Nov. 1, 2022).

27 <sup>54</sup> Heather Vogell, *When Private Equity Becomes Your Landlord*, ProPublica (Feb. 7, 2022),  
<https://www.propublica.org/article/when-private-equity-becomes-your-landlord>.

28 <sup>55</sup> Vogell, *supra* note 1.

1 compliance. Even small multifamily rental properties cost millions of dollars to acquire. Larger  
2 properties run into the hundreds of millions of dollars to own and manage and take several  
3 years and significant experience to build or acquire. Thus, new entrants into the residential real  
4 estate leasing market are unlikely to discipline cartel pricing.

5 71. **Seventh**, there are significant switching costs that prevent effective price  
6 competition in rental markets. In other markets with low switching costs, consumers can stop  
7 purchasing a particular manufacturer's product when its prices are no longer competitive.  
8 Rental contracts, however, are usually for a term of at least one year. Renters who break their  
9 lease during the rental term will likely face significant financial penalties for doing so. These  
10 penalties may include, among other things: the forfeiture of a security deposit (typically at least  
11 one month's rent), or the requirement that the renter to continue paying rent until the property  
12 is re-leased. Because of these high switching costs, renters cannot readily switch from one  
13 rental unit to another in the event their current rental unit no longer aligns with market prices.  
14 This creates a certain degree of natural market power for owners of rental properties and makes  
15 collusion more effective because even if a competing property manager were to offer lower  
16 prices on available units, customers will not typically break their leases to enter a lease for a  
17 lower cost property given the substantial cost of doing so.

18 72. **Eighth**, the relative market share held by the largest residential apartment  
19 managers has been remarkably stable. Since 2018, the list of the top 10 apartment managers in  
20 the country has been virtually identical, with a total of 13 companies appearing on the  
21 combined list. The small variance is due largely to the merger between two of the top five  
22 apartment managers in 2020.<sup>56</sup> Stability of relative market shares indicates a market that lacks  
23 dynamic competition.

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25 <sup>56</sup> *NMHC 50 Largest Apartment Managers*, Multifamily Housing Council, <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2022-top-managers-list/> (2022); <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2021-top-manager-list/> (2021); <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2020-top-managers-list/> (2020); <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2019-managers-list/> (2019); <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2018-manager-list/> (2018) (last visited Nov. 1, 2022).

1           73.     **Finally**, RealPage’s clients maintain excess capacity while simultaneously  
2 raising prices. As described above, the ability of RealPage’s clients to increase their revenue  
3 depends on them continuing to raise rental prices while simultaneously maintaining a higher  
4 vacancy rate than they would have independently. This is evidence of collusion because in a  
5 competitive market, firms with surplus inventory normally reduce prices to grow market  
6 share.<sup>57</sup> As described above, RealPage and its clients are open about how they can achieve  
7 higher revenues while maintaining a lower occupancy rate than they could setting prices  
8 independently.

9   **V. CLASS ACTION ALLEGATIONS**

10           74.     Plaintiffs bring this action on behalf of themselves and all others similarly  
11 situated as a class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3), seeking  
12 damages, as well as equitable and injunctive relief, on behalf of the following Class:

13                     All persons and entities who paid rent for a residential unit owned,  
14                     managed, or controlled by a Defendant using YieldStar, AI Revenue  
15                     Management, or any other RealPage software from January 1, 2016 to  
                       the present.

16           75.     Specifically excluded from this Class are Defendants; the officers, directors or  
17 employees of any Defendant; any entity in which any Defendant has a controlling interest; and  
18 any affiliate, legal representative, heir or assign of any Defendant. Also excluded from this  
19 Class are any federal, state, or local governmental entities, any judicial officer presiding over  
20 this action and the members of his/her immediate family and judicial staff, any juror assigned  
21 to this action, and any co-conspirator identified in this action.

22           76.     The Class is so numerous as to make joinder impracticable. Plaintiffs do not  
23 know the exact number of Class members because such information presently is in the  
24 exclusive control of Defendants. Plaintiffs believe that due to the nature of the residential rental  
25 market there are likely millions of Class members in the United States and its territories.  
26  
27

28           <sup>57</sup> See Leslie, *supra* note 49, at 1606.



1           77. Common questions of law and fact exist as to all members of the Class.  
2 Plaintiffs and the Class were injured by the same unlawful price fixing conspiracy, and  
3 Defendants anticompetitive conduct was generally applicable to all the members of the Class,  
4 and relief to the Class as a whole is appropriate. Common issues of fact and law include, but  
5 are not limited to the following:

- 6           (a) Whether Defendants and their co-conspirators engaged in a combination or  
7 conspiracy to fix, raise, maintain or stabilize rent prices for residential  
8 units;  
9           (b) The duration of the conspiracy alleged herein and the acts performed by  
10 Defendants and their co-conspirators in furtherance of the conspiracy;  
11           (c) Whether such combination or conspiracy violated the federal antitrust  
12 laws;  
13           (d) Whether the conduct of Defendants and their co-conspirators, as alleged in  
14 this Complaint, caused injury to the Plaintiffs and other members of the  
15 Class;  
16           (e) Whether Defendants caused Plaintiffs and the Class to suffer damages in  
17 the form of overcharges on rent for residential units;  
18           (f) The appropriate class-wide measure of damages; and  
19           (g) The nature of appropriate injunctive relief to restore competition in the  
20 residential apartment rental market.

21           78. Plaintiffs' claims are typical of the claims of Class members, and Plaintiffs will  
22 fairly and adequately protect the interests of the Class. Plaintiffs and all members of the Class  
23 are similarly affected by Defendants' unlawful conduct in that they paid artificially inflated rent  
24 for residential units managed cartel members.

25           79. Plaintiffs' claims arise out of the same common course of conduct giving rise to  
26 the claims of the other members of the Class. Plaintiffs' interests are coincident with and  
27 typical of, and not antagonistic to, those of the other members of the Class.  
28



1 80. Plaintiffs have retained counsel with substantial experience litigating complex  
2 antitrust class actions in myriad industries and courts throughout the nation.

3 81. The questions of law and fact common to the members of the Class predominate  
4 over any questions affecting only individual members, including issues relating to liability and  
5 damages.

6 82. Class action treatment is a superior method for the fair and efficient adjudication  
7 of the controversy, in that, among other things, such treatment will permit a large number of  
8 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
9 efficiently and without the unnecessary duplication of evidence, effort and expense that  
10 numerous individual actions would engender. The benefits of proceeding through the class  
11 mechanism, including providing injured persons or entities with a method for obtaining redress  
12 for claims that it might not be practicable to pursue individually, substantially outweigh any  
13 difficulties that may arise in management of this class action. Moreover, the prosecution of  
14 separate actions by individual members of the Class would create a risk of inconsistent or  
15 varying adjudications, establishing incompatible standards of conduct for Defendants.

16 83. Plaintiffs know of no difficulty likely to be encountered in the maintenance of  
17 this action as a class action under Federal Rule of Civil Procedure 23.

## 18 VI. ANTITRUST INJURY

19 84. Defendants' anticompetitive conduct had the following effects, among others:

- 20 (a) Competition among Defendants has been restrained or eliminated with  
21 respect to residential rental units;
- 22 (b) The price of residential rental units has been fixed, stabilized or  
23 maintained at artificially high levels; and
- 24 (c) Individuals have been deprived of free and open competition.

25 85. Defendants' violations of the antitrust laws have caused Plaintiffs and the Class  
26 to pay higher prices for residential rental units than they would have in the absence of  
27 Defendants' illegal contract, combination, or conspiracy, and as a result, have suffered damages  
28 in the form of overcharges paid on their rental units.

1 86. This is an injury of the type that the antitrust laws were meant to punish and  
2 prevent.

### 3 VII. FRAUDULENT CONCEALMENT

4 87. Plaintiffs and the members of the Class had neither actual nor constructive  
5 knowledge of the facts constituting their claim for relief. Plaintiffs and members of the Class  
6 did not discover, and could not have discovered through the exercise of reasonable diligence,  
7 the existence of the conspiracy alleged herein until shortly before filing this Complaint.  
8 Defendants engaged in a secret conspiracy that did not reveal facts that would put Plaintiffs or  
9 the Class on inquiry notice that there was a conspiracy to fix residential rental unit prices.

10 88. The combination and conspiracy alleged herein was fraudulently concealed by  
11 Defendants by various means and methods, including, but not limited to, sharing non-public  
12 data via YieldStar/AI Revenue Management, secret meetings, surreptitious communications  
13 between Defendants by the use of telephone or in-person meetings at trade association  
14 meetings (and elsewhere) in order to prevent the existence of written records, limiting any  
15 explicit reference to competitor or supply restraint communications on documents, and  
16 concealing the existence and nature of their competitor supply restraint and price discussions  
17 from non-conspirators. The conspiracy was by its nature self-concealing.

18 89. Throughout the Class Period set forth in this Complaint, Defendants and their  
19 co-conspirators effectively, affirmatively, and fraudulently concealed their unlawful  
20 combination and conspiracy from Plaintiffs and Class members.

21 90. The residential rental market is not exempt from antitrust regulation, and thus,  
22 before October 15, 2022, when ProPublica published the article “Rent Going Up? One  
23 Company’s Algorithm Could Be Why.,” Plaintiffs reasonably considered it to be a competitive  
24 industry. Accordingly, a reasonable person under the circumstances would not have been  
25 alerted to begin to investigate the legitimacy of Defendants’ rental practices.

26 91. Plaintiffs exercised reasonable diligence. Plaintiffs and the members of the Class  
27 could not have discovered the alleged conspiracy at an earlier date by the exercise of reasonable  
28

1 diligence because of the deceptive practices and techniques of secrecy employed by Defendants  
2 and their co-conspirators to conceal their combination.

3 92. By virtue of the fraudulent concealment of their wrongful conduct by  
4 Defendants and their co-conspirators, the running of any statute of limitations has been tolled  
5 and suspended with respect to any claims and rights of action that Plaintiffs and the other Class  
6 members have as a result of the unlawful combination and conspiracy alleged in this  
7 Complaint.

## 8 **VIII. CLAIMS FOR RELIEF**

### 9 **COUNT 1** 10 **Price Fixing in Violation of** 11 **Section 1 of the Sherman Act (15 U.S.C. § 1)**

12 93. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

13 94. Beginning at a time currently unknown to Plaintiffs, but at least as early as  
14 January 1, 2016 (further investigation and discovery may reveal an earlier date), and continuing  
15 through the present, Defendants and their co-conspirators entered and engaged in a contract,  
16 combination, or conspiracy to unreasonably restraint of trade in violation of Section 1 of the  
17 Sherman Act (15 U.S.C. § 1).

18 95. The contract, combination or conspiracy consisted of an agreement among the  
19 Defendants and their co-conspirators to fix, raise, stabilize, or maintain at artificially high  
20 levels the rents they charge for residential units and involved the exchange of competitively  
21 sensitive information between and among Defendants, causing anticompetitive effects without  
22 sufficient procompetitive justifications.

23 96. Plaintiffs and members of the Class have been injured and will continue to be  
24 injured in the form of overcharges on rent.

25 97. Defendants' anticompetitive conduct had the following effects, among others:

- 26 (a) Competition among Defendants has been restrained or eliminated with  
27 respect to residential rental units;
- 28 (b) The price of residential rental units has been fixed, stabilized or  
maintained at artificially high levels; and

1 (c) Individuals have been deprived of free and open competition.

2 98. This conduct is unlawful under the *per se* standard. Defendants' conduct is also  
3 unlawful under either a "quick look" or rule of reason analysis because the agreement is  
4 factually anticompetitive with no valid procompetitive justifications. Moreover, even if there  
5 were valid procompetitive justifications, such justifications could have been reasonably  
6 achieved through means less restrictive of competition.

7 99. Plaintiffs and members of the Class are entitled to treble damages, attorneys'  
8 fees and costs, and an injunction against Defendants to end the ongoing violations alleged  
9 herein.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, on behalf of themselves and the Class of all others so  
12 similarly situated, respectfully request that:

13 A. The Court determine that this action may be maintained as a class action under  
14 Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class  
15 Representatives and their counsel of record as Class Counsel, and direct that notice of this action,  
16 as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once  
17 certified;

18 B. The Court adjudge and decree that the acts of Defendants are illegal and unlawful,  
19 including the agreement, contract, combination, or conspiracy, and acts done in furtherance  
20 thereof by Defendants and their co-conspirators be adjudged to have been a *per se* violation (or  
21 alternatively illegal under a quick look or full-fledged rule of reason violation) of Section 1 of  
22 the Sherman Act (15 U.S.C. § 1);

23 C. The Court permanently enjoin and restrain Defendants, their affiliates, successors,  
24 transferees, assignees, and other officers, directors, agents, and employees thereof, and all other  
25 persons acting or claiming to act on their behalf, from in any manner continuing, maintaining, or  
26 renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into  
27 any other contract, conspiracy, or combination having a similar purpose or effect, and from  
28 adopting or following any practice, plan, program, or device having a similar purpose or effect;

1 D. The Court enter judgment against Defendants, jointly and severally, and in favor  
2 of Plaintiffs and members of the Class for treble the amount of damages sustained by Plaintiffs  
3 and the Class as allowed by law, together with costs of the action, including reasonable  
4 attorneys' fees, pre- and post-judgment interest at the highest legal rate from and after the date of  
5 service of this Complaint to the extent provided by law; and

6 E. The Court award Plaintiffs and members of the Class such other and further relief  
7 as the case may require and the Court may deem just and proper under the circumstances.

8 **JURY TRIAL DEMANDED**

9 Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil  
10 Procedure, of all issues so triable.

11 DATED: December 9, 2022

Respectfully submitted,

12 By: /s/ Steve W. Berman

13 Steve W. Berman, WSBA #12536

14 By: /s/ Breanna Van Engelen

15 Breanna Van Engelen, WSBA #49213

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*\*pro hac vice applications forthcoming*

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